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# **VOTER-INTERVENORS' BRIEF OPPOSING SUMMARY RELIEF**

## INTRODUCTION

No matter how tightly it shuts its eyes, the Pennsylvania Senate Intergovernmental Operations Committee (“Committee”) cannot ignore the Voter-Intervenors<sup>1</sup> and their constitutional rights. The Committee is no more entitled to trample those rights through a mandamus action than it is through a motion to enforce its Subpoena or any other mechanism. Whatever procedural mechanism it seeks to use, in order to obtain voters’ personally-identifying information, including drivers’ license numbers and the last four digits of Social Security numbers, and to overcome Voter-Intervenors’ constitutional right to privacy in that information, the Committee must establish a compelling government interest that outweighs those constitutional interests and must show that its request is narrowly tailored to that compelling government interest. Once again, however, it has made no attempt to do so. The Committee does not even pay lip service to, much less

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<sup>1</sup> Roberta Winters, Nichita Sandru, Kathy Foster-Sandru, Robin Roberts, Kierstyn Zolfo, Michael Zolfo, Ben Bowens, the League of Women Voters of Pennsylvania, Common Cause Pennsylvania and Make the Road Pennsylvania are collectively referred to herein as “Voter-Intervenors.”

substantively address, Intervenor-Voters' arguments that the Subpoena infringes the constitutional rights of Pennsylvania's nearly nine million registered voters.

This Court already concluded, in the currently-pending Consolidated Proceedings addressing the same issues, that none of the Parties herein had a clear right to relief, and that issues of material fact must be resolved through discovery and an evidentiary hearing. January 10, 2022, Memorandum Order in Consolidated Proceedings at Docket No. 310 MD 2022. Not willing to accept no for an answer, the Committee initiated this new action and immediately moved (again) for summary relief, all while trying to prevent the Voter-Intervenors from participating in this new action. Yet, the factual record has not changed since this Court's January 10, 2022, Memorandum, and the same factual issues – and disputes – remain. The Committee is no more entitled to summary relief here than it was in the Consolidated Proceedings.

Even if the Committee were able to satisfy the stringent test necessary to justify the massive and intrusive data request, the Committee would still need to demonstrate that it has the technical expertise and has adopted appropriate safeguards to control transfer, storage and access to the highly-sensitive data to prevent breaches and thereby protect nine million voters' constitutional privacy rights. The Committee has not met its burden 1) to demonstrate a legitimate, compelling interest in the personally-identifying information of all registered



voters, and 2) that the demand for this information, especially driver’s license and social security numbers, is narrowly tailored for a legitimate purpose. And it certainly has not established that it can protect this information if it receives it.

## **I. FACTUAL BACKGROUND**

### **A. The Subpoena and its Purported Purpose**

On September 15, 2021, Senator Cris Dush, in his capacity as Chair of the Committee, issued a subpoena *duces tecum* to Veronica Degraffenreid, then Acting Secretary of the Commonwealth (“Subpoena,” attached to the Committee’s Petition for Review as Exhibit A). The Subpoena “ordered” the Secretary<sup>2</sup> to “supply the following documents listed below” no later than October 1, 2021. The Subpoena then listed the various documents and other information it required, including:

A complete list containing the name, date of birth, driver’s license number, last four digits of Social Security number, address, and date of last voting activity of all registered voters within the Commonwealth of Pennsylvania as of May 1, 2021, by County.

(Exhibit A, ¶4). The Subpoena further requested additional lists of the same information, broken down by individuals who voted in the November 2020

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<sup>2</sup> At the time of the Subpoena, Ms. Degraffenreid was the Acting Secretary of the Commonwealth. At the present time, Leigh Chapman is the Acting Secretary. In this brief, Voter-Intervenors refer to both as the “Secretary.”

election and the May 2021 primary, further broken down by the type of vote cast, i.e., in-person, mail-in ballot, absentee ballot or provisional ballot (Exhibit A, ¶¶6-13). Thus, the Subpoena on its face seeks personally-identifying information, including date of birth, driver's license number and partial Social Security number, of every registered voter in the Commonwealth. As of December 31, 2020, there were approximately nine million registered voters in the Commonwealth.

The Subpoena itself does not describe its purpose or the reasons why the Committee needs personally-identifying information of any particular set of voters, let alone all registered voters in the Commonwealth. At a September 15, 2021, Committee hearing, when asked the purpose of the Subpoena, Senator Dush responded:

Those documents are part of any audit that the auditor general would conduct or anybody who is ***looking to verify the identity of individuals and their place of residence and their eligibility to vote.***

(Transcript of 9/15/21 Hearing, attached to the Committee's Application as Exhibit B, at 17:4-8 (emphasis added)). *See also* Exhibit B, at 19:12-13 ("Again, it is to verify the individuals"). When asked why it was necessary to verify the identity of individual voters, Senator Dush responded as follows:

Because ***there have been questions*** regarding the validity of people who have voted, whether or not they exist. ***Again, we are not responding to proven allegations. We are***

*investigating the allegations to determine whether or not they are factual.*

(Exhibit B, 17:15-20 (emphasis added)). Senator Dush was asked on several occasions why these “questions” warranted an investigation when testimony at prior hearings revealed no issues regarding voter identity, and the transcript does not show any response to those queries (Exhibit B, pp. 18-20).

**B. The Lack of Factual Basis for the Subpoena**

Before issuing its Subpoena, the Committee held a hearing on September 9, 2021 (Transcript of September 9, 2021 Hearing, attached to the Committee’s Application as Exhibit A). According to Senator Dush, the purpose of the September 9 hearing was to examine “Act 77<sup>3</sup> and how the regulatory issues of the last-minute guidances [sic] came down that impacted it” (Exhibit A, at 61:18-24). *See also* Exhibit A, at 70:17-22 (“the actions that led up to and during the last-minute guidance from the Secretary”). Because the hearing was limited to Act 77 and last minute guidance on its implementation from the Department of State, and was not intended to address any problems regarding voter identity, no testimony was received, or other evidence presented, regarding any duplicate registrations, fake registrations or voter identity irregularities or anomalies. Although not the

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<sup>3</sup> Act of October 31, 2019, P.L. 552, No. 77 (which provided for expanded mail-in voting, among other election reforms)

intended subject of the hearing, the sole witness at that hearing, Fulton County Commissioner Stuart Ulsh, testified that Fulton County had conducted an investigation earlier that year that reported no instances of voting irregularities (Exhibit A, 62:24 to 63:12).

Three separate legislative and joint government committees already have examined the November 2020 election and found no voter identity irregularities or anomalies. The House State Government Committee, which typically oversees the Department of State and elections generally, held ten hearings and heard from 52 testifiers, as part of an investigation into Pennsylvania's election laws. On May 10, 2021, that committee issued a report with its findings (A COMPREHENSIVE REVIEW OF PENNSYLVANIA'S ELECTION LAWS: HOW PENNSYLVANIA CAN GUARANTEE RIGHTS AND INTEGRITY IN OUR ELECTION SYSTEM, attached hereto as Exhibit 1). Separately, the Senate Special Committee on Election Integrity and Reform conducted its own investigation into the 2020 election, holding three public hearings and hosting an online survey. That committee published its report in June 2021 (REPORT ON THE SPECIAL COMMITTEE'S FINDINGS AND RECOMMENDATIONS TO THE SENATE AND THE SENATE STATE GOVERNMENT COMMITTEE, attached hereto as Exhibit 2). Finally, the Election Law Advisory Board to the Joint State Government Commission, created by the General Assembly, conducted yet another investigation and issued a report in June 2021

(ELECTION LAW IN PENNSYLVANIA: REPORT OF THE ELECTION LAW ADVISORY BOARD FOR THE FISCAL YEAR 2020-2021, attached hereto as Exhibit 3). The Reports of these Committees and Commissions do not reflect any findings of irregularities or anomalies in voter identity or eligibility during the November 2020 election or May 2021 primary.

In response to numerous lawsuits alleging voting irregularities both before and after the November 2020 election, the courts routinely dismissed such allegations for lack of evidence of fake or duplicate registrations, or any issues with voter-identity. *See, e.g., Bolus v. Boockvar*, No. 3:20-CV-1882-RDM, 2020 U.S. Dist. LEXIS 219337 (M.D. Pa. 2020) (denying injunction and dismissing complaint for failure to show likelihood of success on the merits, adopting a report and recommendation (2020 U.S. Dist. LEXIS 200373) that found: “Wholly lacking is any allegation that collecting ballots in locations other than the office of the County Election Board results in fraudulent ballots”); *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp.3d 899, 906 (M.D. Pa. 2020) (granting motion to dismiss claims, finding “One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, . . . That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by

evidence.”), *aff’d*, 830 Fed. Appx. 377 (3d Cir. 2020); *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp.3d 331, 342, 373 (W.D. Pa. 2020) (granting summary judgment to defendants after “extensive discovery” and finding, “While Plaintiffs may not need to prove actual voter fraud [prior to the election], they must at least prove that such fraud is ‘certainly impending.’ They haven’t met that burden. At most, they have pieced together a sequence of uncertain assumptions . . .”) (opinions collectively attached hereto as Exhibit 4).

Thus, while Senator Dush referenced unspecified and unspoken “questions” or “allegations” to support the issuance of the Subpoena, many different governmental bodies comprising officials from both major political parties and from all three of Pennsylvania’s branches of government, county elections departments, and many federal and state courts have already considered these same issues. None have identified any factual support for these so-called questions or allegations that underlie the Committee’s highly intrusive demand for 9 million voters’ personally identifying information.

### **C. Lack of Security Preparations for the Subpoenaed Information**

When asked about security protocols for the personally-identifying information that the Subpoena seeks, the Committee has provided only general statements that the information will be “stored securely” and that any third party vendor personnel would sign a non-disclosure agreement. Senator Dush stated

during the September 15, 2021, hearing that documents and data responsive to the subpoena would be “held in legal counsel’s office until such time as we have a finalized agreement and a contract for the investigator” (Exhibit B, 24:10-12). He further stated that the data responsive to the Subpoena would be secured “just like any other legal documents are secured within the senate legal offices” (Exhibit B, 24:16-20). The records of nine million Pennsylvania voters containing highly sensitive personally-identifying information, however, are not the same “as any other legal document” (Declaration of J. Alex Halderman, attached hereto as Exhibit 5, at ¶17).

Dr. Halderman is Professor of Computer Science and Engineering, Director of the Center for Computer Security and Society, and Director of the Software Systems Laboratory at the University of Michigan in Ann Arbor. An important part of his scholarship has been election security and techniques for conducting rigorous post-election audits. He is Co-Chair of the State of Michigan’s Election Security Advisory Commission, and has performed security testing of electronic voting systems in California. Dr. Halderman is greatly concerned about the Committee’s Subpoena, and has submitted a Declaration discussing those concerns (Exhibit 5).

At the September 15, 2021 Committee hearing, Senator Dush could not explain who would have access to the information except noting that those with

access would include his staff, his legal counsel, Senate Republican legal counsel, possibly unidentified outside counsel, and unidentified third-party vendors (Exhibit B, p. 20-21). With respect to vendors, Senator Dush noted “there is going to be a need to have multiple investigators, multiple areas of expertise,” but those vendors have not yet been identified (Exhibit B, p. 39:16-17). It is not known whether other members of the Committee and their staffs and counsel also would have access.

Subsequently, the Committee has identified one vendor – Envoy Sage – with no demonstrated experience in election investigation and no demonstrated track record in maintaining large databases of personally-identifying information. Secretary’s Application to file SurReply, and exhibits thereto, filed on or about December 7, 2021 in the Consolidated Proceedings. Other than conclusory statements regarding undefined “industry best practices,” the contract with Envoy Sage includes no provisions describing how Envoy will receive the data, how and where it will store the data, who will have access to the data, what it will do with that data, how the data will be protected from unauthorized access, or how it will delete the data. Nor has the Committee established that Envoy Sage has the capability, know-how and personnel to actually secure the data, which is particularly concerning given its lack of experience and the fact that it did not even exist prior to August of 2020. *Id.*



Transferring, storing and sharing a large data set of sensitive, personally-identifying information without the ability to employ, and experience employing, industry-recognized best practices to protect that information creates substantial risk (Exhibit 5, ¶22). Widely recognized standards exist to protect such information (Exhibit 5, ¶¶25-28). *See also* House State Government Committee Report (Exhibit 2), p. 60-61 (With respect to election security, expert testified that “there must be a strong access control to the database to know who has access at any time” and “cyber-attacks can be mounted to the system by an adversary impersonating an individual through their Social Security number, found on the dark web”). But the Committee has not indicated that it will, or demonstrated that it can, comply with such standards (Exhibit 5, ¶24).

#### **D. The Owners of the Subpoenaed Information**

Voter-Intervenors include seven registered voters who reside throughout the Commonwealth, and who cast votes in the November 2020 election and/or the May 2021 primary. The Subpoena seeks information about, and belonging to, Voter-Intervenors and other registered voters in the Commonwealth. All of the individual Voter-Intervenors are concerned about the disclosure of their personally-identifying information (Verified Petition in the Consolidated Proceedings, attached hereto as Exhibit 6, ¶5-43). Each has particularized concerns set forth in the Verified Petition for Review. *Id.*

Voter-Intervenors also include three organizations which expend considerable resources for the purpose of registering voters and ensuring that eligible voters can exercise their right to vote (Exhibit 6, ¶¶44-74). Their members and constituents register to vote and choose to participate in elections based on the reasonable expectation that their highly sensitive private personal information will be kept confidential. Disclosure of voters' private personal information works against the mission of these organizations and would require the organizations to divert resources and expend additional sums in an effort to try to protect that information, educating their members and constituents regarding the risk to their personal information, and encouraging them to participate in the process. In particular, these organizations encounter resistance from voters who are wary of providing their driver's license number or last four digits of their Social Security number because they fear misuse of that private information (Exhibit 6, ¶¶52, 61).

As discussed below, Voter-Intervenors have a reasonable expectation of privacy in their personally-identifying information, and in fact, have a constitutional right to maintain the privacy of that information.

**E. The Substantial Risks of Unauthorized Disclosure of Personally-Identifying Information**

The unauthorized disclosure of voters' highly sensitive personal information would violate their constitutional right to privacy as explained below. Moreover,

disclosure poses significant risk above and beyond the infringement of voters' constitutional right to privacy, and the adverse impact on the voters' constitutional right to vote.

The risk from disclosure of sensitive personally-identifying information is that thieves can create false accounts in individuals' names, access bank accounts or medical records, incur debt in a person's name, and cause other severe disruptions to an individual's life (Exhibit 5, ¶18). An individual's name and address coupled with the last four digits of their Social Security number and/or driver's license number is enough to allow criminals to pose as the individual and engage in various activities to enrich themselves at the expense of the individual (Exhibit 5, ¶18). In particular, a criminal could use one's name address, zip code and last 4 digits of his or her Social Security number to access credit card information and bank accounts (Exhibit 5, ¶19).

Several Voter-Intervenors previously have been victims of identity theft, and are especially attuned to the risk of disclosure of their personally-identifying information. Roberta Winters has twice had her private information disclosed through data breaches, and her husband's bank account was drained of all funds (Exhibit 6, ¶6). Nichita Sandru's debit card was hacked and used to make illegal purchases (Exhibit 6, ¶14). Kathy Foster-Sandru's debit card also was hacked recently and used to make illegal purchases (Exhibit 6, ¶18). Robin Roberts'

husband bank card similarly was used to make unauthorized online purchases (Exhibit 6, ¶22).

According to some estimates, it can take between 100 and 200 hours of an individual's time to recover from a stolen identity, especially when an impostor has opened new accounts, applied for government benefits or taken other actions in the name of the individual. The Identity Theft Resource Center reports that identity theft victims suffer financial, emotional and physical impacts from identity misuse. While the financial impacts vary, more than 21% of victims report that they lost more than \$20,000 to identity criminals (Exhibit 5, ¶20).

Voters' private information can be disclosed through numerous mechanisms, including hacking, phishing or other social engineering methods, breaches of physical security, bribery, extortion, or insider attacks (Exhibit 5, ¶22). All of these mechanisms could be used to access voters' personally-identifying information. Sharing this large dataset with many people, as yet unidentified, who have no announced plans to reliably safeguard the information, creates a high risk of a data breach (Exhibit 5, ¶¶28-31). Given the Committee's inability (or unwillingness) to detail their security precautions around data transfer, storage and access, enforcing the Subpoena would be "extremely risky" (Exhibit 5, ¶22).

## **F. The Consolidated Proceedings.**

In or around September 2021, three separate petitions were filed challenging the Subpoena. The Court consolidated those petitions at Docket No. 310 MD 2021 (“Consolidated Proceedings”), and Voter-Intervenors, the same voters and organizations as in this case, moved to intervene in the Consolidated Proceedings. The Committee opposed Voter-Intervenors’ application, but this Court permitted intervention. In the Consolidated Proceedings, the Committee and other Respondents filed an Application for Summary Relief, specifically relying upon the Administrative Code in support of its request that the Secretary immediately respond to the Subpoena. *See* Respondents’ Brief in the Consolidated Proceedings at 310 MD 2021 (filed October 22, 2021), at 12-13, 121 (specifically citing sections 272 and 801 of the Administrative Code); January 10, 2022 Memorandum and Order in the Consolidated Proceeding, at 4 n.5. Indeed, the Respondents there argued (just as the Committee does here) that they had a right to this information both pursuant to the Subpoena and pursuant to their statutory right under the Administrative Code (Respondents’ Brief, at 121).

In response to those Motions, this Court held that the legislature’s investigative role is subject to the limitations of the Constitution (January 10, 2022, Memorandum and Order, p. 3). The Court then denied the cross-applications for summary relief, finding material issues of fact:

The Court concludes that *none of the parties have established a clear right to relief* given the *outstanding issues of material fact* surrounding the issue of maintaining the privacy of voter information and infrastructure.

*Id.* at p. 6 (emphasis added). The Consolidated Proceedings remain pending.

### **G. The Committee Launches a New Action.**

While the Consolidated Proceedings remain pending, the Committee commenced the instant action – an entirely new case – without including Voter-Intervenors, and without even notifying Voter-Intervenors they would be filing, or had filed, this new action. The Committee’s Petition for Review (filed March 11, 2022) is entitled “Petition for Review in the Nature of a Complaint in Mandamus, Or, In the Alternative, To Enforce Subpoena.” It includes a mandamus count (Count I) and a count seeking enforcement of its Subpoena (Count II). Both Counts seek an order “compelling the Acting Secretary to immediately produce to the Senate Committee all records responsive to the September 15, 2021 subpoenas [sic] duces tecum, subject to the imposition of fines, costs and imprisonment” (Petition for Review, p. 19). Once again, the Court granted Voter-Intervenors’ application for intervention over the Committee’s objection.<sup>4</sup>

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<sup>4</sup> In its July 13, 2022, Order granting the Application to Intervene, the Court *sua sponte* “struck” Voter-Intervenors’ Cross-Petition for Review on the basis that

## II. ARGUMENT

It is Voter-Intervenors, and the nearly nine million similarly situated Pennsylvania voters, whose constitutional privacy rights are jeopardized by the Committee's Subpoena. The Committee's Brief fails to mention the Voter-Intervenors at all, other than as "those additional parties permitted to intervene" (Brief, p. 9), and fails to mention the sensitivity of the private information it seeks, describing the personally-identifying information only as "certain information contained within the SURE system" (Brief, p. 8). Indeed, the Committee does not even acknowledge that it seeks third-party information in the Secretary's possession, and that third parties have a recognized, constitutional right to privacy in that information. Nor does it acknowledge the risks of identity theft and financial fraud.

The Committee's legal arguments, thus, are not based on the specific information sought in the Subpoena, but rather, are based on its belief that it is entitled to anything and everything it wants, without regard to anyone else's interest in the same material. Its argument, if accepted, means that legislative

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the "cause of action and the relief are the same in both actions" (referring to the Consolidated Proceedings).

committees are entitled to *any and all* information in the possession of the Secretary, regardless of the purpose of the request, the interest the Committee seeks to serve, whether the request is narrowly tailored to serve that interest, the privacy or other interests of the third parties whose information is sought, the ability of the Committee to safeguard that information, whether the request might violate someone's constitutional rights, etc. In short, the Committee contends that its right to information is unlimited and brooks no exception.

Voter-Intervenors, on the other hand, do not contend that legislative committees are *never* entitled to request information from the Secretary. They simply contend that *this Subpoena's* request for constitutionally-protected, personally-identifying information is improper, and that the Secretary or this Court must balance voters' constitutional rights against the Committee's interest in obtaining that information. In its January 10, 2022, Memorandum and Order, this Court recognized the competing interests here, including the constitutional right to privacy, and found disputed issues of material fact. The Committee's failure to acknowledge this Court's prior ruling, and voters' constitutional rights, is fatal to its application.



**A. Pennsylvania Law Zealously Guards the Right to Privacy, and Plainly Protects Personally-Identifying Information Against Legislative Subpoenas or Requests for Information.**

This Court must start with a consideration of the interests at stake.

Pennsylvania’s “Constitution has historically been interpreted to incorporate a strong right of privacy....” *Commonwealth v. Alexander*, 243 A.3d 177, 204 (Pa. 2020) (quoting *Commonwealth v. Edmunds*, 586 A.2d 887, 899 (Pa. 1991)). See also *Commonwealth v. Gindlesperger*, 743 A.2d 898, 899 n.3 (Pa. 1999) (“strong notion of privacy” in Pennsylvania); *Commonwealth v. Waltson*, 724 A.2d 289, 292 (Pa. 1998) (“notion of enhanced privacy rights” in Pennsylvania); *Commonwealth v. Matos*, 672 A.2d 769, 773 (Pa. 1996) (“strong right of privacy”). Another decision characterized privacy as “the most comprehensive of rights and the right most valued by civilized [people].” *Denoncourt v. Commonwealth State Ethics Comm’n*, 470 A.2d 945, 948-49 (Pa. 1983) (quoting *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (dissenting opinion of J. Brandeis)). In Pennsylvania, therefore, this “right to privacy is as much property of the individual as the land to which he holds title and the clothing he wears on his back.” *Pennsylvania State Educ. Ass’n v. Commonwealth Dep’t of Cmty. & Econ. Dev.*, 148 A.3d 142, 151 (Pa. 2016) (“PSEA”) (citing *Commonwealth v. Murray*, 223 A.2d 102, 109 (Pa. 1966)).

This decades-long commitment to safeguarding Pennsylvanians’ privacy is rooted in the common law, the protection of “inherent and inalienable rights” in Article 1, Section 1 of the Pennsylvania Constitution, and the protection against unreasonable searches and seizures in Article 1, Section 8. *See, e.g., Stenger v. Lehigh Valley Hops. Ctr.*, 609 A.2d 796, 800-02 (Pa. 1992); *Murray*, 223 A.2d at 109-10. The fact that this right emanates from multiple sources “is a recognition that the constitution of our Commonwealth embodies a commitment to principles that manifest themselves in a coherent pattern of protection of individual privacy.” Seth F. Kreimer, *The Right to Privacy in the Pennsylvania Constitution*, THE PENNSYLVANIA CONSTITUTION: A TREATISE ON RIGHTS AND LIBERTIES (Gormley, Ed. 2020), at 788-89.

Pennsylvania’s longstanding commitment to safeguarding individuals’ privacy is stronger than protections under the U.S. Constitution. The Pennsylvania Supreme court recently reaffirmed that, “Article 1, Section 1 of the Pennsylvania Constitution provides even ‘more rigorous and explicit protection for a person’s right to privacy’” than does the U.S. Constitution. *PSEA*, 148 A.3d at 151 (citation omitted). *See also Alexander*, 243 A.3d at 206 (“Article I, Section 8 affords greater protection to our citizens than the Fourth Amendment” and, referring also to Article I, Section I, “[w]e must consider our charter as a whole . . .”).

The right to privacy includes what is referred to as the “right of informational privacy,” described as “the right of the individual to control access to, or the dissemination of, personal information about himself or herself.” *PSEA*, 148 A.3d at 150. *See also In re T.R.*, 731 A.2d 1276, 1279 (Pa. 1999) (plurality) (“There is no longer any question that the United States Constitution and the Pennsylvania Constitution provide protections for an individual’s right to privacy . . . [including] . . . the individual’s interest in avoiding disclosure of personal matters . . .”). As discussed further below, personal information subject to constitutional protection includes the personally identifying information subpoenaed by the Committee.

Pennsylvania’s constitutional privacy rights indisputably apply to legislative subpoenas. Pennsylvania courts, going back decades, have applied the constitutional right of privacy to protect individuals from unjustified and overbroad legislative investigations. *See, e.g., Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 519 A.2d 408, 415 (Pa. 1986); *Commonwealth ex. Rel. Carcaci v. Brandamore*, 327 A.2d 1, 4 (Pa. 1974) (“Broad as it is, however, the legislature’s investigative role, like any other governmental activity, is subject to the limitations placed by the Constitution on governmental encroachments on individual freedom and privacy”); *McGinley v. Scott*, 164 A.2d 424, 431 (Pa. 1960) (“[L]egislative investigations must be kept strictly within their proper bounds if the

orderly and long-established processes of our coordinate branches of government are to be maintained”); *Annenberg v. Roberts*, 2 A.2d 612, 617-18 (Pa. 1938) (“None of the rights of the individual citizen has been more eloquently depicted and defended in the decisions of the Supreme Court of the United States than the right of personal privacy as against unlimited and unreasonable legislative or other governmental investigations....”).

**1. Social Security Numbers and Driver’s License Numbers, In Particular, Are Included Within the Right of Privacy**

The Pennsylvania Supreme Court recently recognized that there are “certain types of information whose disclosure, by their very nature, would operate to the prejudice or impairment of a person’s privacy, reputation, or personal security, and thus intrinsically possess a palpable weight that can be balanced by a court against those competing factors that favor disclosure.” *PSEA*, 148 A.3d at 155. The Court referenced earlier decisions protecting the personal information of constituents who contacted elected officials as examples where “patently strong privacy interests” outweighed the “weak, perhaps non-existent” public interest in favor of disclosure. *Id.* (citing *Sapp Roofing Co. v. Sheet Metal Workers’ Int’l Ass’n, Local Union No. 12*, 713 A.2d 627 (Pa. 1998) (plurality), and *Tribune–Review Publ. Co. v. Bodack*, 961 A.2d 110 (Pa. 2008)). Driver’s license and Social Security numbers are particularly sensitive private information that merit heightened protection.

Pennsylvania law protects individuals' privacy in Social Security numbers. *See PSEA*, 148 A.3d at 158 (citing *Times Publ'g Co. v. Michel*, 633 A.2d 1233, 1237-38 (Pa. Commw. 1993), and *Sapp Roofing*, 713 A.2d 627 (refusing request for names, addresses, Social Security numbers and phone numbers)). *See also Governor's Office of Admin. v. Purcell*, 35 A.3d 811, 813 (Pa. Commw. 2011) (Social Security number part of the "holy trinity" for identity theft and deserves special protection); *Cypress Media, Inc. v. Hazleton Area Sch. Dist.*, 708 A.2d 866, 870 (Pa. Commw. 1998) ("[T]his Court has held that a person's [personally-identifying information including] Social Security number are not subject to disclosure under the [previous Right-to-Know] Act because the benefits of disclosing such information are outweighed by a person's privacy interests in that information.") (citations omitted). *cf. Pa. State Univ. v. State Emples. Ret. Bd.*, 935 A.2d 530, 539 (Pa. 2007) ("With regard to the right to privacy in one's Social Security number, . . . , we would have greater difficulty concluding that the public interest asserted here outweighs those basic rights to privacy").

Even partial Social Security numbers, i.e., the last four digits, are sufficient to enable breaches of sensitive private data. Social Security numbers have been called the "skeleton key" for identity theft criminals. Jonathan J. Darrow & Stephen Lichtenstein, *Do you Really Need My Social Security Number? Data Collection Practices in the Digital Age*, 10 N.C.J.L. & Tech. 1, 4 (2008). The first

five numbers are relatively easy to recreate. For example, the first three digits represent an “area number,” which identify a geographic area. Knowing where an individual lives can help narrow down the possible combinations. In fact, using “fairly standard computer algorithms,” investigators have been able to predict the first five digits of Social Security numbers with alarming accuracy. “Social Security Numbers are Easy to Guess,” *Science Magazine*, July 6, 2009, found at <https://www.science.org/content/article/Social-Security-numbers-are-easy-guess> (predicted first five digits on the first try 44% of the time). Thus, protecting the last four digits of the Social Security number is of extreme importance in assuring privacy (Exhibit 5, ¶19).

Courts across the country, in other contexts, have recognized the highly sensitive nature of just the last four digits of Social Security numbers.<sup>5</sup>

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<sup>5</sup> See, e.g., *Curphey v. F&S Mgmt., LLC*, 2021 U.S. Dist. LEXIS 25829, at \*14 (D. Az. 2021) (“The Court will not ask Defendants to violate their employees’ informational privacy unnecessarily. Defendants are not required to produce the last four digits of employees’ Social Security number.”); *Watt v. Fox Rest. Venture, LLC*, 2019 U.S. Dist. LEXIS 26959, at \*24 (C.D. Ill. 2019) (“Because the last four digits of Social Security numbers is of marginal use in locating putative collective members and the marginal use is outweighed by the privacy concerns of putative collective members, the Court will not order Defendants to provide such information”); *Figuroa v. Harris Cuisine LLC*, 2019 U.S. Dist. LEXIS 12271, at \*19 (E.D. La. 2019) (“The disclosure of dates of birth and the last four digits of Social Security numbers raises significant privacy and Security concerns that outweigh the plaintiff’s risk of failing to contact the potential class in this case, where notice will be provided via mail, email, and text message.”); *Firreno v. Radner Law Grp., PPLC*, 2016 U.S. Dist. LEXIS 142907, at \*10-11 (E.D. Mich.

Pennsylvania’s Right to Know Law also recognizes this, providing that “a record containing *all or part of* a person’s Social Security number. . .” constitutes “personal identification information” that is exempt from disclosure. 65 P.S. §67.708(b)(6)(k)(A) (emphasis added).

Federal and state law likewise recognize the need to maintain the privacy of driver’s license numbers because they can be used to identify particular individuals just as easily as can Social Security numbers. Driver’s license numbers are considered “personal information” that the government may not disclose under the Drivers Protection Privacy Act, 18 U.S.C. §§2721, 2725(3). State law similarly prohibits the disclosure of records relating to the driving record of any person, 75 Pa.C.S. §6114, and this Court has held that information included in a driver’s license falls within this protection. *Advancement Project v. Pennsylvania Dep’t of*

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2016) (“Plaintiffs persuasively argue that ‘the invasion of privacy caused by the unauthorized viewing and retention of their personal credit and other information’ — including the last four digits of their Social Security number, their address, and the exact amount of debt owed to creditors — is a de facto injury that satisfies the injury-in-fact requirement.”); *Acevedo v. WorkFit Med, LLC*, 2014 U.S. Dist. LEXIS 131269, at \*30 (W.D.N.Y. 2014) (“Plaintiffs argue that they need the last four digits of the potential plaintiffs’ Social Security numbers in order to locate potential plaintiffs if notices are returned as undeliverable. The Court is not persuaded that this rationale justifies disclosure of such sensitive information, particularly given that the Court has no way of knowing if and/or how many notices will be returned as undeliverable.”); *White v. Integrated Elec. Techs., Inc.*, 2013 U.S. Dist. LEXIS 83298, at \*41 (E.D. La. 2013) (“the Court recognizes the significant privacy and security concerns inherent in disclosing the last four digits of class members’ Social Security numbers.”).

*Transp.*, 60 A.3d 891, 895-97 (Pa. Commw. 2013). In a recent case, the trial court found driver's license numbers to fall within the constitutional right of privacy and prohibited disclosure, a point conceded by the appellant on appeal. *Lancaster County District Attorney's Office v. Walker*, 245 A.3d 1197, 1205, 1206 (Pa. Commw. 2021) (Leavitt, J) ("the driver's license and address information should be redacted").

Other state laws and security protocols buttress Pennsylvanians' expectation that Social Security numbers and driver's license numbers will be kept confidential and exempt from disclosure requirements. For example, Pennsylvania's Right to Know Law protects from disclosure Social Security numbers or driver's license numbers, among other information. 65 P.S. §67.708(b)(6)(k)(A). Similarly, the Commonwealth's Information Technology Policy includes both pieces of information in its definition of personally-identifiable information (Pennsylvania Information Technology Policy No. ITP-SEC025 (March 19, 2010), [https://www.oa.pa.gov/Policies/Documents/itp\\_sec025.pdf](https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf)). *See also* Breach of Personal Information Notification Act, 73 P.S. §§2301, 2302 (defining personal information to mean last name, first name or initial, and any of the following: Social Security number, driver's license number, financial account number, and credit or debit card number).



Indeed, the security protocols for filing documents in Pennsylvania courts, including this Court, acknowledge the importance of maintaining the confidentiality of driver's license and Social Security numbers. Each time an attorney files a document in this Court, the attorney must verify that he or she has redacted personally-identifying information. Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of Appellate and Trial Courts, attached hereto as Exhibit 7. That Policy specifically identifies Social Security numbers and driver's license numbers as "Confidential Information" that must be redacted (Exhibit 7, Section 7.0(A)).

As a matter of law, driver's license and partial Social Security numbers are confidential and thereby protected by the constitutional right of informational privacy.

## **2. Large Collections of Data Pose Heightened Levels of Concern**

Although Social Security numbers and driver's license numbers are, in and of themselves, highly confidential personally-identifying information, that information is even more sensitive when combined with other personally-identifying information such as name, address and date of birth. Together, those five pieces of information make it easy for a bad actor to steal one's identity or commit financial fraud (Exhibit 5, ¶18 ("An individual's name and address

coupled with the last four digits of their Social Security number and/or driver's license number is enough to allow criminals to pose as the individual and engage in various activities to enrich themselves at the expense of the individual.”)).

*Accord Purcell*, 35 A.3d 811, 813 (noting that theft experts consider name, date of birth and Social Security as the “Holy Trinity,” because together they can be used to commit financial fraud). For example, with just the name, address, zip code and last four digits of the Social Security number, criminals can access credit card information and bank accounts (Exhibit 5, ¶ 19).

When that same information is packaged together for multiple people, rather than just one person, it is especially attractive to identity thieves (Exhibit 5, ¶16). And where that information is available for nine million voters in one dataset, it becomes an irresistible target. The Pennsylvania Supreme Court recently acknowledged “the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files.” *PSEA*, 148 A.3d at 150, citing *Whalen v. Roe*, 429 U.S. 589, 605 (1977). As Dr. Halderman explains:

The database of nine million Pennsylvania voters including driver's license and the last four digits of Social Security numbers is an attractive target for many reasons, not least its financial value. This data has a monetary value proportional to the number of people it represents, and it could command an even higher price because of the number of records that have multiple data points per individual. Voter registration records

with name, address, date of birth, last four digits of Social Security number and driver's license number would be a treasure trove of neatly packaged information that could command a high price on the "Dark Web."

(Exhibit 5, ¶21). *See also* Darrow & Lichtenstein, *Do you Really Need My Social Security Number?*, 10 N.C.J.L. & Tech. at 13 ("Unfortunately, the aggregation of vast amounts of data is like the hoarding of treasure: while few will bother to pick up a penny lying on the sidewalk, a bank vault full of cash will draw thieves and imposters from far afield.").

The Committee does not appear even to understand the need for (much less to demonstrate the desire and the wherewithal to implement) the appropriate level of security for this massive collection of private information. The National Institute for Standards and Technology, the Commonwealth and the Federal Trade Commission all have issued guidance for creating security protocols to secure personally-identifying information (Exhibit 5, ¶¶25-27), and all indications are that the Committee does not have the expertise or capacity to implement any of these measures (Exhibit 5, ¶24). Without such security protocols, the risk that further disclosure will compound the initial privacy violation (disclosure of personally-identifying information to the Committee) is substantial (Exhibit 5, ¶28 ("There is no evidence that the Committee has implemented or is in a position to adopt these measures, and until and unless they do, voters' private data turned over to the Committee would be highly vulnerable"))).

**B. The Committee Is Not Entitled to Summary Relief on Count I Because It Has Failed to Establish Any of the Required Elements for Mandamus.**

These privacy interests, and the Secretary's response to the Committee's request, demonstrate that the Committee has failed to establish a right to mandamus.

The courts routinely describe mandamus as an "extraordinary remedy." *See, e.g., Jackson v. Vaughn*, 777 A.2d 436, 438 (Pa. 2001). Mandamus is only available when each of the following elements are met: (1) the plaintiff has a clear legal right to relief; (2) the defendant has a corresponding duty to act, and the act is ministerial rather than discretionary; and (3) there is no other appropriate and adequate remedy. *Phila. Firefighters' Union v. City of Phila.*, 119 A.3d 296, 303 (Pa. 2015); *Jackson*, 777 A.2d at 438; *Pennsylvania Dental Ass'n v. Commonwealth Insurance Dep't*, 516 A.2d 647, 652 (Pa. 1986). Mandamus may not be used to establish rights to relief; rather, it is only available to enforce rights that already have been clearly established. *Boyer v. Pennsylvania Dep't of Transp.*, No. 513 MD 2020 (Pa. Commw. July 26, 2022); *Brown v Wetzel*, No. 318 MD 2015 (Pa. Commw. Sept. 9, 2016). This writ is "rarely issued," and the burden of proof to establish the above elements is on "the party seeking this extraordinary remedy." *Baron v. Com., Dept of Human Services*, 169 A.3d 1268,

1272 (Pa. Commw. 2017). The Committee here has not established any of the required three elements.

1. **The Committee Cannot Establish a Clear Legal Right to Voters' Constitutionally-Protected, Personally-Identifying Information.**

To satisfy the “clear legal right” requirement, the Committee relies solely on two sections of the Administrative Code that provide that the Secretary “shall” grant access to her books and records (Brief, p. 14-15). The Committee argues that “because no legal authority exists that allows Respondents to ignore their legal obligation under these provisions—Respondents are required to produce the subpoenaed information” (Brief, p. 15). The Committee is mistaken. Actually, there is legal authority that precludes or limits the Secretary from producing voters’ personally-identifying information, and limits the Committee’s access to that information—that authority is the Pennsylvania Constitution.

There can be no “clear legal right” supporting mandamus where the asserted right is inconsistent with the Constitution. Statutes and regulations cannot undo or invalidate the constitutional right to privacy. *Robinson Twsp. v. Pa. Pub. Util. Comm’n*, 83 A.3d 901, 975 (Pa. 2013) (citing *Page v. Allen*, 58 Pa. 338, 338 (1868)). *See also* January 10, 2022 Order in the Consolidated Proceedings at 310 MD 2021, p. 3 (“Broad as it is, however, the legislature’s investigative role, like any other governmental activity, is subject to the limitations placed by the

Constitution on governmental encroachments on individual freedom and privacy,” quoting *Com. Ex rel. Carcaci v. Brandamore*, 327 A.2d 1, 4 (Pa. 1974)). Indeed, in construing statutory language, the General Assembly is presumed not to intend to violate the Constitution. 1 Pa.C.S. §1922; *Tremont Twsp. Sch. Dist. v. W. Anthracite Coal Co.*, 73 A.2d 670, 673 (Pa. 1950).

There also can be no dispute that the right to privacy under the Pennsylvania Constitution includes “the right of the individual to control access to, or the dissemination of, personal information about himself or herself.” *PSEA*, 148 A.3d at 150. See also Section II(A), *infra*, of this Brief. And in the absence of some compelling reason, government agencies have a constitutional duty to prevent “all government disclosures of personal information” even in the absence of any specific statutory requirement to do so. *Reese*, 173 A.3d at 1159.

Under black-letter Pennsylvania law, any attempt to override the right to informational privacy is subject to a balancing test that guards that right from unwarranted intrusion. See *PSEA*, 148 A.3d at 151; see also, e.g., *Easton Area Sch. Dist. v. Miller*, 232 A.3d 716, 732–33 (Pa. 2020); *Reese*, 173 A.3d at 1145–46. That balancing analysis must take into account the rights and arguments of the individuals whose private information is threatened with disclosure. *City of Harrisburg v. Prince*, 219 A.3d 602, 605 (Pa. 2019). To justify its request for millions of voters’ personally-identifying information, the Committee must show

that “the government interest [in the information sought] is significant and there is no alternate reasonable method of lesser intrusiveness to accomplish the governmental purpose.” *Denoncourt v. Commonwealth State Ethics Comm’n*, 470 A.2d 945, 949 (Pa. 1983); accord *In re T.R.*, 731 A.2d 1276, 1280 (Pa. 1999); *Stenger v. Lehigh Valley Hosp. Ctr.*, 609 A.2d 796, 802 (Pa. 1992). And the Pennsylvania Supreme Court repeatedly has held that our Constitution *requires* courts to permit individuals to assert their constitutionally-protected privacy rights, and then balance those rights against the government’s demonstrated interests in the information, *before* the disclosure of such information. See, e.g., *Easton Area Sch. Dist.*, 232 A.3d at 733 (“Before the government may release personal information, it must conduct a balancing test to determine whether the right of informational privacy outweighs the public’s interest in dissemination”); *Reese*, 173 A.3d at 1145–46 (“Before disclosing any section 614 information, however, the State Treasurer must perform the balancing test set forth in [*PSEA*]”).

The broadly-worded Administrative Code provisions cited by the Committee did not intend to, and could not, erase the constitutional right to privacy.<sup>6</sup> Thus,

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<sup>6</sup> The National Voter Registration Act provides an interesting parallel. That Act generally provides that “all records” relating to voting must be publicly available, yet courts still require redaction of Social Security numbers and driver’s license numbers from voter registration records before allowing access to such files. 52 U.S.C. §20507(i)(1); see, e.g., *Pub. Interest Legal Found. v. Boockvar*, 431 F. Supp.3d 553, 562-63 (M.D. Pa 2019) (noting that driver’s license numbers are nevertheless protected by other statutes); *Project Vote/Voting for Am., Inc. v.*

there can be no “clear legal right” to someone’s constitutionally-protected personally-identifying information. Rather, the extent of the Committee’s “right” can only be determined by a balancing of the interests at stake. *Denoncourt*, 470 A.2d at 949; *accord In re T.R.*, 731 A.2d 1276, 1280 (Pa. 1999); *Stenger*, 609 A.2d at 802. That balancing has not yet occurred.<sup>7</sup>

This Court *already has held* (in the Consolidated Proceedings) that the legislature’s investigative role is subject to the limitations of the Constitution. January 10, 2022, Memorandum and Order in the Consolidated Proceedings at 310 MD 2021, p. 3. There, the Court went on to deny cross-applications for summary relief, finding:

The Court concludes that *none of the parties have established a clear right to relief* given the outstanding issues of material

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*Long*, 752 F. Supp.2d 697, 711-12 (E.D. Va. 2010) (requiring redaction of social security numbers), *aff’d*, 682 F.3d 331 (4<sup>th</sup> Cir. 2012).

<sup>7</sup> In any event, the Committee cannot, on the present record, satisfy this balancing test. *See* pp. 46-57 of this Brief, *infra*. The Committee has not included in its brief any arguments regarding (a) alleged waiver of Voter-Intervenors’ right to privacy; (b) whether the right to privacy should apply to “inter-governmental” requests for information; or (c) whether all branches of government should be considered a “single entity” for purposes of evaluating constitutional rights to privacy. Because it has not done so, and because this Court already has addressed these issues in the Consolidated Proceedings, Voter-Intervenors likewise will not address those issues. To the extent the Committee seeks to raise these issues in a reply brief or during oral argument, Voter-Intervenors rely on the authority and arguments set forth in their Reply Brief filed in the Consolidated Proceedings on or about November 8, 2021.



fact surrounding the issue of maintaining the privacy of voter information and infrastructure.

*Id.* at p. 6 (emphasis added). The Committee was one of the parties that moved for summary relief in the Consolidated Proceedings, and specifically relied upon the Administrative Code in support of its request for relief. *See* Respondents' Brief in the Consolidated Proceedings (filed October 22, 2021), at 12-13, 121 (specifically citing sections 272 and 801 of the Administrative Code); January 10, 2022 Memorandum, at 4 n.5. Indeed, the Respondents there argued (just as the Committee does here) that they had a right to this information both pursuant to the Subpoena and pursuant to their statutory right under the Administrative Code (Respondents' Brief, at 121).

Especially given this Court's prior ruling, and the lack of any factual development since that time, the Committee has not established, and cannot establish, a clear right to relief. *Lingenfelter v. 2013 Bucks County Board of Elections*, No. 2233 CD 2013 (Pa. Commw. March 20, 2015) (no clear right to relief where court previously rejected identical arguments). The same issues of material fact that existed in January still exist today.

Similarly, even apart from that ruling, the Committee cannot establish a clear to right to relief because the Consolidated Proceedings remain pending and no balancing of interests has yet occurred. *Baron v. Com., Dep't of Human*

*Services*, 169 A.3d 1268, 1273 (Pa. Commw. 2017) (“Petitioner admits that the Disclosure Order he seeks to enforce is the same order under attack in the Consolidated Appeals, including a cross-petition *he* filed. . . . These Consolidated Appeals were pending at the time he filed the Mandamus Petition. . . . Under these circumstances and applicable law, Petitioner cannot state a claim for mandamus.”); *Crockett v. Southeastern Pennsylvania Transp. Auth.*, No. 2068 CD 2011 (Pa. Commw. May 23, 2012) (because review of agency decision was sought and is pending, the right to documents has not been finally determined, and thus mandamus is unavailable). And the Committee cannot satisfy this balancing test in any event. *See* pp. 46-57, *infra*, of this Brief.

The Committee has not established a clear legal right, and therefore, its mandamus claim fails at the first step.

**2. The Secretary Does Not Have a “Corresponding Duty” And Any Such Duty is Not Ministerial.**

The second requirement for mandamus actions is that the defendant has a “corresponding duty to act” in response to the plaintiff’s clear legal right, and that the duty to act is ministerial, rather than discretionary. “A writ of mandamus cannot issue to ‘compel performance of a discretionary act or to govern the manner of performing [the] required act.’” *Phila. Firefighters’ Union v. City of Phila*, 119 A.3d 296, 304 (Pa. 2015) (*quoting Fagan v. Smith*, 41 A.3d 816, 817 (Pa. 2012)).

a. Duty to Consider Voters' Interests and Balance Them Against the Committee's Interest.

Here, the Secretary does not have a duty to turnover to the Committee constitutionally-protected personally-identifying information of third parties. Rather, she has an affirmative duty to protect, and NOT divulge, voters' personally-identifying information. Pursuant to Title 25, this private information is available only to the Secretary and any employees or agents she assigns to administer the Statewide Uniform Registry of Electors (SURE) system, as well as elected officials in the relevant county. 25 Pa. C.S. §1222(c) (SURE system shall “ensure the integrity” of registration records “by prohibiting unauthorized entry . . .”). Indeed, Pennsylvania law imposes criminal sanctions for accessing the SURE system without lawful authority. 25 Pa.C.S. §1707.

Although Pennsylvania statutes and regulations permit production of some information in certain voters' registration applications for certain purposes, these statutes and regulations do NOT allow access to Social Security numbers or driver's license numbers. For example, upon an authorized request, the Department of State may provide the name, address, date of birth and voting history of a voter, 4 Pa. Code §183.14, but voters' unique identifiers, driver's license number or Social Security number are *specifically excluded* from any such production. §183.14(c). Further, for certain categories of voters, home addresses likewise are excluded. §183.14(c)(4) and (5). *See also* 25 Pa.C.S. §1404. Street

lists (lists of voters arranged by street or house number or alphabetically by surname) may be compiled for individual districts, limited to names and addresses, 4 Pa. Code §183.13(a), and even this limited information is subject to safeguards. §183.13(c). This regulation specifies that a voter's signature, unique identifier, driver's license number and the last four digits of his/her Social Security number *shall not be made available*. §183.13(c)(5). *See also* 25 Pa.C.S. §1403.

Even as a matter of common law, custodians of personal information of third parties must avoid improper release of sensitive personal information. *Dittman v. UPMC*, 196 A.3d 1036, 1047 (Pa. 2018) (employer, who required employees to provide confidential information, including Social Security number, had a common law duty to exercise reasonable care to maintain the confidentiality of that data and not expose that information to others). The obligations on custodians of data that arise from Pennsylvania's right to privacy are even stronger. And the obligation to maintain the confidentiality of information applies equally to government entities and officers. As the Supreme Court has observed,

[T]he citizens of this Commonwealth . . . have a right to informational privacy, namely the right of an individual to **control access to, and dissemination of, personal information** about himself or herself. Accordingly, we ruled that before the government may release personal information, it must first conduct a balancing test to determine whether the right of informational privacy outweighs the public's interest in dissemination. In so ruling, we were clear that . . . the PSEA balancing test is applicable to all government disclosures of

personal information, including those not mandated by the RTKL or another statute.

*Reese v. Pennsylvanians for Union Reform*, 173 A.3d 1143, 1159 (Pa. 2017)

(emphasis added, citations omitted). *See also City of Harrisburg*, 219 A.3d at 618 (requiring assessment of constitutional right of privacy in context of right to know request—which by definition is seeking information held by a public entity); *PSEA*, 148 A.3d at 146, 150-52 (same); *Denoncourt*, 470 A.2d at 947-48 (same).

b. The Need to Consider Counter-vailing Interests Precludes Mandamus Relief.

Thus, in response to the Committee’s request, the Secretary must allow voters an opportunity to be heard, and then balance the voters’ rights against the rights of the Committee in deciding whether to share the voters’ personally-identifying information. Given this, the Secretary’s response to the Committee’s request for information cannot reasonably be described as “ministerial.” Rather, it involves the exercise of judgment and a balancing of interests. *Phila. Firefighters’ Union v. City of Phila.*, 119 A.3d 296, 304 (Pa. 2015) (A ministerial act admits of “no discretion in the municipal officer” (*quoting Lhormer v. Bowen*, 188 A.2d 747, 750 (Pa. 1963))).

This Court previously has held that, where a balancing of interests must be performed, mandamus is not an available remedy. *Maute v. Frank*, 670 A.2d 737 (Pa. Commw. 1996). There, an incarcerated individual sought materials that were

necessary to practice his religion, and the prison countered that allowing the individual those materials was inconsistent with the orderly administration of the prison. The Court found that “[b]ecause the purpose of mandamus is not to establish legal rights but to enforce those rights which have already been clearly established, . . . he must show that his claim for relief is so clear that the Prison Officials have no choice but to give him the materials he claims necessary . . .” 670 A.2d at 739. But given that the interests must be weighed against one another, the plaintiff could not establish the clear legal right in a mandamus action:

The mere fact that whether religious articles are permitted is balanced against the need for orderly administration of the prison makes it a discretionary act and not a ministerial one, making mandamus not maintainable.

*Id.* at 740. Similarly, acts that require some judgment or discretion cannot be the basis for a mandamus action. *Phila. Firefighters’ Union v. City of Phila.*, 119 A.3d 296, 304 (Pa. 2015) (despite requirement that “[v]acancies shall be filled by promotion whenever possible . . .,” the City retained the discretion to defer new promotions until a new promotional list was created); *McFalls v. Municipality of Norristown*, No. 737 CD 2021 (Pa. Commw. Jan. 21, 2022) (where municipality responded to right to know request, albeit with heavy redactions, mandamus would not lie); *Brown v. Wetzel*, No. 318 MD 2015 (Pa. Commw. Sept. 9, 2016) (although inmate made a right to know request for information that he otherwise

would be entitled to, jail officials maintained the discretion to deny the request based on interests of the jail).<sup>8</sup>

c. The Secretary Has Responded, Albeit Not In the Manner the Committee Would Like.

Moreover, mandamus is not available when plaintiff simply disagrees with the manner in which the defendant responded. Rather, it is only appropriate to compel a state to act when it has not acted; that is, when it is “sitting on its hands.” *Pennsylvania Dental Ass’n v. Com., Insurance Dep’t*, 516 A.2d 647, 652 (Pa. 1997). “It must not be turned into a general writ of error or writ of review lest we further encourage interlocutory and piecemeal appellate review, or multiple appeals with their attendant burdens and delays.” *Id.* See also *McFalls v. Municipality of Norristown*, No. 737 CD 2021 (Pa. Commw. Jan. 21, 2022) (where municipality responded to right to know request, albeit with heavy redactions, mandamus would not lie).

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<sup>8</sup> The Committee pretends that the word “shall” in the Administrative Code provisions is all it needs to establish its clear legal right and the Secretary’s corresponding duty (Brief, p. 15-16). Yet the Committee willfully ignores the other statutory and regulatory requirements cited above, as well as the constitutional interests at stake. The Committee’s failure to even acknowledge these other interests is remarkable, and is fatal to its motion. There were no such other interests in *Clark v. Meade*, 85 A.2d 169 (Pa. 1951) and *Clark v. Meehan*, 80 A.2d 64 (Pa. 1951), or any of the other cases cited by the Committee, so those decisions are easily distinguishable and of limited utility here.

Here, the Secretary was not sitting on her hands. Rather, she voluntarily produced some information and sought a court ruling with respect to what else she must produce. As the Committee acknowledges, the Secretary provided some information in response to six separate requests (Committee’s Brief, p. 11). The Committee takes issue with whether this response was “meaningful,” but it cannot dispute that the Secretary produced information on four separate occasions. Moreover, the Committee cannot dispute that the Secretary sought guidance from the Court as to her obligations in response to the Committee’s efforts. Thus, the Committee is challenging the manner or extent of the Secretary’s response, which is not an appropriate use of mandamus, as described above.<sup>9</sup>

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<sup>9</sup> The Committee then argues that mandamus is available “even if the existence and/or scope of the duty must be found and defined in the mandamus action itself” (Brief, p. 21). Not true. This Court has stated repeatedly that mandamus may not be used to establish rights to relief; rather, it is only available to enforce rights that already have been clearly established. *Boyer v. Pennsylvania Dep’t of Transp.*, No. 513 MD 2020 (Pa. Commw. July 26, 2022); *Brown v Wetzel*, No. 318 MD 2015 (Pa. Commw. Sept. 9, 2016). The cases cited by the Committee (*Volunteer Firemen’s Relief Ass’n of City of Reading v. Minehart*, 203 A.2d 476, 479 (Pa. 1964), and *Coppolino v. Noonan*, 102 A.3d 1254, 1263 (Pa. Commw. 2014), *aff’d*, 125 A.3d 1196 (Pa. 2015)) are not to the contrary. In each of those cases, although the right was clearly established, the defendant was misinterpreting that clear law. The Court was able to dismiss the defendant’s misinterpretation and confirm that the plaintiff’s right to relief was clear.

Here, the Secretary’s response involves the weighing of competing duties and interests rather than an erroneous or willful misinterpretation of established law. In any event, even where a misrepresentation of established law is argued, disputed issues of fact nevertheless preclude summary relief. *Volunteer Firemen’s Relief Ass’n v.*, 203 A.2d at 480 (remanding for resolution of fact disputes).



d. The Committee Has Not Established a Clear Duty to Produce Personally-Identifying Information of Third Parties.

There CANNOT be a clear legal duty to violate someone’s constitutional rights. *See Coppolino*, 102 A.3d at 1278 (cited by the Committee) (where complying with the alleged statutory duty would violate one’s constitutional rights, “the courts have no choice but to remedy such violations”). And certainly not a “ministerial” duty to do so. Rather, when individual constitutional rights are at stake, an agency must exercise some judgment in how to respond, which will include a balancing of interests. Nor is the Secretary sitting on her hands. The Committee takes exception to the manner and extent of her response, but she responded nonetheless. For these reasons, the Committee has not established the second element of its mandamus claim.

3. The Committee Has an Alternative, Adequate Remedy

The third requirement to maintain an action in mandamus is the lack of another appropriate and adequate remedy. “A want of any other adequate remedy is established when there is no alternative form of relief.” *Phila. Firefighters’ Union v. City of Phila.*, 119 A.3d 296, 304 (Pa. 2015).

The Committee’s Petition for Review (filed March 11, 2022) is entitled “Petition for Review in the Nature of a Complaint in Mandamus, ***Or, In the Alternative***, To Enforce Subpoena” (emphasis added). It includes two counts:

Count I is its purported mandamus claim, and Count II seeks enforcement of its Subpoena. Both Counts seek an order “compelling the Acting Secretary to immediately produce to the Senate Committee all records responsive to the September 15, 2021 subpoenas [sic] duces tecum, subject to the imposition of fines, costs and imprisonment” (Petition for Review, p. 19). In its Brief in Support of its Application for Summary Relief, the Committee argues that a writ of mandamus is its “only adequate and complete remedy,” yet *in the very next sentence*, it claims that it is entitled to summary relief on Count II as well, and Count II seeks the same relief (Brief, p. 30).

The Committee has an alternative remedy that would provide it the same relief as it seeks in its mandamus action—an order compelling the Secretary to respond to the Subpoena. The mere fact that the Committee asserts two counts seeking the same relief demonstrates this fact. The fact that it moved for summary relief in the Consolidated Proceedings, again seeking the same Order, further demonstrates that fact. The Senate’s power of civil contempt is yet another potential avenue for relief.<sup>10</sup>

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<sup>10</sup> The Committee argues that its ability to hold someone in criminal contempt is not an adequate remedy, without mentioning its power of civil contempt (Brief, p. 27-28). The Committee seems to have forgotten its arguments against equitable jurisdiction for the Consolidated Proceedings. There, the Committee argued that the Senate’s civil and criminal contempt powers provided an adequate, alternative remedy for the Secretary to raise any issues she would like to raise, and that adequate, alternative remedy warranted a dismissal of the claims

Realizing that it cannot meet this standard, the Committee tries to redefine its “desired relief” as the “production of subpoenaed documents *pursuant to their statutory obligation*” (Brief, p. 25 (emphasis added)), rather than simply the production of subpoenaed documents. First, that is not the Committee’s desired relief. The Committee’s desired relief is the production of records responsive to the Subpoena, as articulated in its Petition for Review. Second, parsing out different *bases* for the requested relief does not qualify as “different relief.” Otherwise, the requirement of no alternative remedy would always be overcome, by simply seeking relief “pursuant to Count I,” or “pursuant to [insert each specific claim here].”

The Pennsylvania Supreme Court already has held that mandamus is unavailable where another cause of action is pending seeking constructively the same remedy:

Appellants must demonstrate that there is no other adequate or appropriate remedy at law. We reject Appellants’ arguments for mandamus simply because there is another remedy at law: the cause of action that we have recognized earlier in this opinion. If Appellants ultimately can prove that they are entitled to injunctive relief, the remedy afforded will be the same as if a court issued a writ of mandamus: increased funding. Hence, the fact that the cause of action provides constructively the same remedy as plaintiffs seek in mandamus, as such, renders a writ of mandamus unavailable to Appellants.

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raised in equity. Respondents’ “Jurisdictional Brief” in the Consolidated Proceedings at 310 MD 2021 (filed February 15, 2022), at pp. 16-21.

*Kuren v. Luzerne County of the Commonwealth of Pennsylvania*, 146 A.3d 715, 751 (Pa. 2016). *See also Boyer v. Pennsylvania Dep’t of Transp.*, No. 513 MD 2020 (Pa. Commw. July 26, 2022) (availability of statutory appeal means mandamus not available); *Lingenfelter v. 2013 Bucks County Board of Elections*, No. 2233 CD 2013 (Pa. Commw. March 20, 2015) (“Mandamus does not lie where there are other remedies available, such as a declaratory judgment action.”); *Sewell v. Solomon*, 465 A.2d 130 (Pa. Commw. 1983) (where statutory remedy available, mandamus will not lie).

The Committee has an alternative avenue of relief in Count II. The Committee also has an alternative avenue of relief in the Consolidated Proceedings. Indeed, it moved for summary relief in those proceedings seeking the same relief it seeks here. Mandamus is not available.

**C. The Committee Is Not Entitled to Summary Relief on Count I or Count II Because It Has Not Demonstrated a Significant or Compelling Interest in the Requested Private Information, and Even if it Came Forward With Such Evidence, Any Such Interest Does Not Override Voters’ Privacy Rights**

The Committee’s Application ignores the voters’ constitutional rights. In support of its application to enforce the Subpoena, it simply argues that it has the authority to issue subpoenas generally (Brief, p. 31) and cites the general test for validity of subpoenas, as though that is all that is required (Brief, p. 32). The

Committee appears to hope that, if it doesn't mention the Voter-Intervenors or their constitutional rights, perhaps the Court will not notice them.

Whether or not the Subpoena is valid in the first instance, the Committee still must meet a higher threshold before it can override constitutional rights. In particular, before any government entity discloses, or forces the disclosure of, any private, personal information, the Pennsylvania Constitution requires a balancing of whether the right of informational privacy outweighs the public's interest in disclosure. *See, e.g., Reese*, 173 A.3d at 1145-46. *See also PSEA*, 148 A.3d at 154; *City of Harrisburg*, 219 A.3d at 618. Given Pennsylvania's zealous protection of the right to privacy, the Committee bears a heavy burden:

Privacy claims must be balanced against state interests. Our test of whether an individual may be compelled to disclose private matters, as we stated it in *Denoncourt*, is that "government's intrusion into a person's private affairs is constitutionally justified when the government interest is significant and there is no alternate reasonable method of lesser intrusiveness to accomplish the governmental purpose." 470 A.2d at 949. More recently, we have stated the test in terms of whether there is a compelling state interest. *Stenger*, 609 A.2d at 802. In reality, the two tests are not distinct. ***There must be both a compelling, i.e., "significant" state interest and no alternate reasonable method of lesser intrusiveness.***

*In re T.R.*, 731 A.2d at 1280 (1999) (emphasis added) (citing *Denoncourt*, 470 A.2d at 949; *Stenger*, 609 A.2d at 802). This balancing test is in addition to any statutory restrictions such as those pursuant to the right to know law, and applies to

any government disclosure of personal information. *Reese*, 173 A.3d at 1159 (“applicable to all government disclosures of personal information, including those not mandated by the [Right to Know Law] or another statute”).

The Committee has not met its burden described above and, for the reasons outlined below, cannot do so. The Committee has not identified *any* legitimate interest, let alone one that outweighs voters’ significant privacy interests, and has not established that there are no less-intrusive methods of satisfying any such interest. As a result, the Court should deny the Committee’s Application for Summary Relief.

**1. The Committee Cannot Satisfy Its Burden of Demonstrating Any Interest, Let Alone a Compelling or Significant Need for this Information.**

The Committee has failed to advance a coherent justification for its electoral review, much less why it needs all nine million voters’ driver’s license and partial Social Security numbers. When explaining the purpose of its investigation as a whole, Senator Dush stated: “to evaluate our election code is working and to confirm whether or not these things and their worth – if there were things that need to be changed in the law to make our elections run better for everyone” (Exhibit A to Committee’s Application, at 2:22 to 3:1). Although the Committee may have some interest in improving election laws, a general interest in examining whether the current law is working and whether changes can be made, cannot constitute a

sufficient interest to override constitutional rights. Otherwise, constitutional rights would be illusory. Under such reasoning:

-an interest in improving the tax laws would justify disclosure of every tax-paying citizen's tax returns and financial records

-an interest in improving health care at state hospitals would justify disclosure of each patient's medical records

-an interest in improving the way our justice system is administered would justify disclosure of internal court documents and communications.

In other words, the General Assembly would be entitled to any document it wanted as long as it purported to be seeking to improve the law. As demonstrated by the cases limiting legislative subpoenas discussed above, *supra*, the General Assembly's authority is not nearly so expansive.

Similarly, with respect specifically to the Subpoena's request for voters' constitutionally-protected personal information, Senator Dush stated that the Committee's purpose is to "verify the identity of individuals and their place of residence and their eligibility to vote" (Exhibit A, at 16:22-17:20). When asked why it was necessary to verify the identities of individual voters, Senator Dush responded by referring only to unspecified and unsubstantiated allegations by unidentified individuals who supposedly had raised unspecified "questions":

Because there have been questions regarding the validity of the people who have voted, whether or not they exist. Again, we are not responding to proven allegations. We

are investigating the allegations to determine whether or not they are factual.

(*Id.*, at 17:15-20). No facts have been developed, either in this action or in the Consolidated Proceedings that have been pending for close to a year, that would provide any substantiation to such “questions” or “allegations.”

Courts have cautioned against “fishing expeditions,” where there is no evidentiary basis to intrude upon privacy rights:

Anyone who respects the spirit as well as the letter of the 4th Amendment would be loath[e] to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire . . . and to direct *fishing expeditions* into private papers on the possibility that they may disclose evidence of crime . . . . It is contrary to the first principles of justice to allow a search through all the respondents’ records, relevant or irrelevant, in the hope that something will turn up.

. . . The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it . . . . Some evidence of the materiality of the papers demanded must be produced.

. . . We assume for present purposes that even some part of the presumably large mass of papers . . . may be so connected with charges . . . as to be relevant . . . , but that possibility does not warrant a demand for the whole.



*Lunderstadt*, 519 A.2d at 413 (Opinion announcing Judgment of the Court) (quoting *FTC. v. American Tobacco Co.*, 264 U.S. 298, 305-307 (1924) (emphasis added in *Lunderstadt*)).

The Committee held one evidentiary hearing, and the sole witness testified that no irregularities or anomalies had been found (Exhibit A). As discussed above, two legislative committees and a Joint State Government Commission investigated the November 2020 election and the May 2021 primary. See House Statement Government Committee (Exhibit 1); Special Committee on Election Integrity and Reform (Exhibit 2); and Joint State Government Commission created by the General Assembly (Exhibit 3). None of them produced evidence to support allegations of systematic voter fraud.

Moreover, litigants (including some Committee members) raised allegations of fraud and other election improprieties in dozens of lawsuits in 2020, none of which resulted in findings sustaining the allegations. In rejecting one of the last election challenges, Judge Bibas of the U.S Third Circuit Court of Appeals observed that, “calling an election unfair does not make it so.” *Donald J. Trump for President, Inc. v. Secretary, Com. Of Pennsylvania*, 830 Fed. Appx. 377, 381 (3d Cir. 2020). That observation also summarizes the outcome of the approximately 30 lawsuits challenging different aspects of the Pennsylvania 2020

election that were filed before, during and immediately after Election Day. *See* Exhibit 4, and discussion on pp. 7-8, *supra*, of this Brief.

Again, if allegations were sufficient to overcome constitutional rights, then constitutional rights would be illusory. Anyone can make an allegation. Indeed, one who wanted to conduct an investigation could himself make or provoke such allegations in order to justify the investigation he seeks. An allegation by itself does not justify intrusion of a single person's constitutional rights, let alone the constitutional rights of nine million Pennsylvania voters. Where the requesting entity fails to present evidence supporting its interest in constitutionally-protected information, this Court has not hesitated to prevent the disclosure of that information. *See Pennsylvania State Education Ass'n by Wilson v. Commonwealth*, 981 A.2d 383, 386 (Pa. Commw. 2009).

Nor has the Committee offered any evidence to explain why voters' constitutionally-protected personal information is necessary for any such investigation. In prior investigations, the investigating bodies did not seek the information now sought by the Committee. Moreover, any purported explanation falls flat. If the purpose is to look for duplicate registrations, that comparison can be done without transferring the information outside of the SURE system, where it currently is securely housed (Exhibit 5, ¶29). Therefore, this purpose does not justify the Subpoena. If the purpose is to look for fake registrations, that would

entail an investigation into specific voters. Unless the Committee intends to investigate each and every voter, then the Subpoena is overbroad. And if the Committee is serious about investigating all, or even a portion of, Pennsylvania's nine million registered voters, the effort would require a massive amount of staff, and for that reason alone would expose voter's private information to great risk of further disclosure (Exhibit 5, ¶29).

The mere fact that others have conducted investigations into the November 2020 election and May 2021 primary cuts against any legitimate interest in yet another investigation. And the fact that these prior investigations did not require the subpoenaed information undermines any legitimate need for that information. At least one court already has found that Social Security numbers were unnecessary for a similar investigation. *Greidinger v. Davis*, 988 F.2d 1344, 1354 n.19 (4th Cir. 1993) ("Virginia's interest in preventing voter fraud and participation could easily be met without the disclosure of SSN and the attendant possibility of a serious invasion of privacy that could result from that disclosure. Most assuredly, an address or DOB would sufficiently distinguish among voters that share a common name."). And at least one news organization was able to look for voting irregularities without this information as well. *See* C. Ullery, "We analyzed almost 30 million rows of Pennsylvania voter registration data. Here's how," Bucks County Courier Times (January 27, 2022), found at:

<https://www.buckscountycouriertimes.com/story/news/2022/01/27/explaining-our-analysis-pennsylvania-voter-registration-data/9207638002/>.

Because the Committee has no factual basis for its purported interest, and cannot establish that the subpoenaed information is necessary, the Committee fails to meet the exacting standard to justify access to this private information. The Committee has not demonstrated and cannot demonstrate ANY legitimate interest, let alone a compelling interest.

## **2. Voters' Interests Significantly Outweigh Any Interest of the Committee**

Because the Committee fails to meet its burden of showing a compelling or significant interest in the information – indeed it has shown no legitimate interest at all – no balancing of interests is even necessary. However, even if the Committee could demonstrate some minimal interest, such interest is far outweighed by the voters' privacy interests in their personally-identifying information.

The interest of the Voter-Intervenors and their members and constituents is significant – “the most comprehensive of rights and the right most valued by civilized [people].” *Denoncourt*, 470 A.2d at 948-49 (Pa. 1983) (*quoting Olmstead v. United States*, 277 U.S. 438, 478 (1928) (dissenting opinion of J. Brandeis)). Pennsylvania courts repeatedly have referenced the “strong” privacy right in

Pennsylvania, even stronger than that provided by the U.S. Constitution. *See, supra*, section II(A) of this Brief.

The disclosure of the subpoenaed information carries significant risks. Voters' private information can be disclosed through numerous mechanisms, including hacking, phishing or other Social engineering methods, breaches of physical security, bribery, extortion, or insider attacks (Exhibit 5, ¶22). The risk to individuals from disclosure of sensitive personally-identifying information is that thieves can create false accounts in individuals' names, access bank accounts or medical records, incur debt in a person's name, and cause other severe disruptions to an individual's life. The subpoenaed information allows criminals to pose as the individual and assume their identity, thus creating havoc (Exhibit 5, ¶18). In particular, a criminal could use the name, address, zip code and last 4 digits of one's Social Security number to access credit card information and bank accounts (Exhibit 5, ¶19). The Committee has provided no assurances that it can comply with standards for protecting this sensitive information (Exhibit 5, ¶¶24, 28). Further, the Committee's failure to clearly identify who would have access to this information, and its stated intention to use third party contractors, makes the risks even greater (Exhibit 5, ¶30). *See also* Darrow & Lichtenstein, *Do you Really Need My Social Security Number?*, 10 N.C.J.L. & Tech. at 17 (discussing dangers of outsourcing to contractors and business partners).

In the face of these privacy rights and risks, the Committee must come forward with something more than unsubstantiated allegations. It has not done so. A general interest in improving election law or preventing fraud, without any factual basis to show that fraud is occurring, cannot outweigh, and is not a basis for infringing, constitutional rights.

**3. Even if the Committee Musters Some Evidence to Support a Legitimate Interest, the Subpoenas Are Not Narrowly Tailored, and There are Reasonable, Less-Intrusive Means That Serve Any Such Interest.**

The Committee purportedly is requesting the personally-identifying information of all nine million registered voters in Pennsylvania in order to “verify the identity” of unidentified voters about whom it has unspecified “questions.” Even if there were a factual basis (rather than just “questions”) to believe that ineligible voters cast votes in certain voting precincts, the collection of personal information for every registered voter in the Commonwealth would be a grossly overbroad method of identifying those supposed voters. *Lunderstadt*, 519 A.2d at 413 (“We assume for present purposes that even some part of the presumably large mass of papers . . . may be so connected with charges . . . as to be relevant . . ., but that possibility does not warrant a demand for the whole”, *quoting* *FTC. v. American Tobacco Co.*, 264 U.S. 298, 305-307 (1924)). *See also* *Chester Hous. Auth. v. Polaha*, 173 A.3d 1240, 1252 (Pa. Commw. 2017) (providing information in a less intrusive manner and finding further response “not constitutionally justified”).

If the Committee were to offer evidence of voting irregularities in, for example, Precinct 1 of Dauphin County, then depending on the level of evidence presented, perhaps the Committee could argue that it had a legitimate interest in accessing private information of certain voters within that precinct. The Committee has not even tried to make such a showing. But even in that hypothetical, the Committee could pursue its purposes through less intrusive means—for example, by collecting names, addresses and dates of birth only, or by asking the Department of State to investigate. *See Ullery, supra*, at p. 53 of this Brief.

The Committee offers no basis for assessing whether the Subpoena is narrowly tailored to any purported interest. Instead, it ignores the voters' interests altogether, and has assumed blindly that it is entitled to the private information of every single registered voter in the Commonwealth. This notwithstanding the Court's earlier conclusion that the Constitution applies to the Committee's investigation and that the Committee had not established its right to this information.

This overreach is unparalleled, and is especially concerning because of the lack of factual basis for the allegations. The Committee should be required to produce the factual basis for the Subpoena. Assuming the Committee can establish some factual basis, only then can the parties and the Court determine if the Subpoena is appropriately tailored to serve that interest and does not outweigh voters' constitutional rights.

### III. CONCLUSION

The Committee has not met, and cannot meet, its burden of showing a significant or compelling interest in the constitutionally-protected personal information of nine million Pennsylvanians. The Committee has not identified any factual basis for its asserted interest, offering instead only unsubstantiated allegations, which, as a matter of law, cannot overcome constitutional rights. Nor can the Committee satisfy its burden of showing that its Subpoena is narrowly tailored to meet any legitimate interest. Therefore, the Committee is not entitled to summary relief.

Similarly, the Committee cannot establish a right to mandamus. Without balancing the interests of the Voter-Intervenors against the Committee's interests, there is no clear right to relief and there is no corresponding duty on the part of the Secretary. Moreover, the Secretary's duty is anything but ministerial, and the Committee has alternative avenues of relief. For these reasons as well, summary relief is inappropriate.

Finally, the Court already resolved this issue. The Court previously recognized that the Committee's demand for information is subject to constitutional limitations, and that the Committee had not, on the present record, established a right to relief. The record has not changed, and there is no basis for a



different result here. The Court should, consistent with its January 10, 2022,

Memorandum, once again deny the Committee's application for summary relief.

Dated: August 10, 2022

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# *House of Representatives*

Commonwealth of Pennsylvania

## **A Comprehensive Review of Pennsylvania's Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System**

May 10, 2021

Honorable Seth Grove  
Chairman  
House State Government Committee

**EXHIBIT**

**1**

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## Executive Summary

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Last session, the General Assembly passed numerous legislative proposals on elections that were

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*“I’ve tuned into a good number of the hearings, and I’ve really been impressed by the step-by-step approach that you’ve taken, focusing on actual things that happened in this past election and not getting down the rabbit hole of things that might have happened or could’ve happened or that somebody thought could’ve happened or might’ve happened. And I think it’s in that spirit that I’d like to address you all today.”*

*-David Thornburgh, President and CEO, Committee of Seventy*

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signed into law. Late in 2020, there were lawsuits filed prior to the 2020 General Election and many after the election. Further, the coronavirus pandemic presented many challenges to the 2020 election. Our job is to review the election law in its entirety and assess how our elections are administered with a base law from 1937, newly adopted updates to that law, election policy set by the Pennsylvania Supreme Court, election guidance issued by the

Department of State, and elections operated by 67 counties across the Commonwealth.

For the General Assembly to take up election reform, there must be clarity as to what our election law requires and how elections are administered in all 67 counties. As the Majority Chairman of the Pennsylvania House State Government Committee, my goal was to hold extensive hearings on the Commonwealth’s election law and administration of elections in order to fix any identified problem within the election system and to regain the voters’ trust in our elections. To achieve this, we held multiple hearings to walk the committee and the public through how elections occur and ascertain the need for changes. It is essential for legislative oversight to create a baseline of understanding and facts.

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*“We’re encouraged to see how this committee has shown its complete commitment to access and transparency in holding these hearings. Chairman Grove has ensured that each meeting is streamed and made available to the folks at home, that each meeting is recorded and posted for later access, and that Pennsylvanians are now able to participate in the process through the use of an online form. This committee has increased access for public participation because transparency encourages trust. That is what we must do with the election code moving forward.”*

*- Khalif Ali, Executive Director, Common Cause Pennsylvania*

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The House State Government Committee held ten hearings with roughly 31.5 hours of total hearing time and hearing from 52 total testifiers including 7 House Members. Several of the

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*“Well, I’ve been impressed with the questions and the line of questions from the Committee Members and the testimony. I think, you know, I feel like you’re genuinely trying to figure out what exactly is the best way to go with this. And, you know, while I know where you sit on the political spectrum on many of you, I think, too, though, you’re listening and you’re trying to figure out what is really truly the best for the Commonwealth.”*

*- Shane Fitzgerald, Executive Director, Bucks County Courier Times and The Intelligencer; PA State Editor, USA Today Network*

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testifiers participated in multiple hearings. The hearings highlighted and prioritized testimony from county election directors, the Pennsylvania Department of State, national election experts, and election experts from other states. Testifiers gave insight on the challenges they faced during the 2020 election due to the passage of Act 77 of 2019 and Act 12 of 2020. The changes to the Election Code caused a great burden on counties and county officials.

Additionally, the committee sought input from voters to garner feedback on the election hearings and topics. It is essential to be transparent and provide a voice to the people as the committee reviews the election and works to improve the election process. By doing so, the committee received approximately 280 responses, with the top five concerns being voter ID, mail-in ballots, lack of trust in voting machines, signature verification and the timeline for when mail-in ballots need to be received. These responses gave greater insight on the concerns voters have across the Commonwealth and how the committee can address these issues for future elections.

It is no secret that additional election law changes need to be made. Throughout these hearings, our counties have expressed their top priority is election reform. Both Democrats and Republicans have introduced numerous elections bills, with more being introduced almost daily. Change in our current election law and process is a bipartisan request and is a necessity moving forward. By doing nothing, the Commonwealth will continue to revisit the same issues every election, an outcome which is unacceptable for our voters, election volunteers, county election employees and the Department of State.

Furthermore, regardless of political affiliation, Pennsylvanians take their elections very seriously and are passionate about voting. As elected officials, we must complete our due diligence to provide citizens with the best possible election process that is transparent, has integrity and is accessible.

This report offers a summary of each hearing provided by the written testimony provided by each testifier and the official hearing transcripts. Along with the hearing summaries, hearing highlights and recaps are provided.

## **Report Highlights and Recaps**

### ***Department of State's Election Guidance***

1. A lack of uniformity in administration of the election led to mistrust, and these inconsistencies between counties arose in part due to the guidance process and how it was applied.
  - Restoring uniformity is crucial to improving the election process.
2. During the 2020 Election, Department of State issued guidance caused confusion among county administrators, particularly due to the volume and timing of guidance.
  - Administrative guidance should be used sparingly and issued as far in advance of an election as possible.
3. Under the current Election Code, the Department and the Secretary have a great deal of discretion in interpreting and applying the law according to their views.
  - Clearer statutory language that eliminates ambiguities would reduce the need for administrative guidance and strengthen election uniformity.

### ***SURE System, the Election Management System, and Other Election Information Technology***

1. The SURE System is unable to meet the demands of the mail-in voting system and the needs of counties.
  - A replacement for the SURE System will soon be implemented and must perform to a much higher standard to adequately operate Pennsylvania's elections moving forward.
2. The permanent mail-in ballot list both confuses voters and burdens county administrators.
  - Elimination of the permanent mail-in ballot list would ease burdens on county administrators and provide a simpler process for voters.
3. Third-party applications for voter registrations or mail-in ballots confuses voters and burdens county administrators.
  - Restricting the mailing of third-party applications for mail-in ballots and voter registrations, or requiring disclaimers on these applications, would improve voter confidence and benefit county administrators.

### ***Election Audits***

1. The post-election audits currently required by Pennsylvania's Election Code are outdated and in need of improvement.
  - Best practices in other states can serve as models for a more enhanced auditing process, including audits of all parts of the election system.
2. Results from the audits currently performed are not adequately publicized or even collected statewide.
  - Audits that are conducted transparently and consistently across the state, then released publicly could better reassure Pennsylvanians that election outcomes are accurate.

3. Audits of elections are often conducted by the same entities that oversee the elections themselves. This lack of independence is not allowed in accepted auditing standards.
  - Having an independent entity such as the Auditor General conduct post-election audits could provide additional reliability and oversight.

### ***Voter Registration***

1. Web API platforms used by third-party groups present security concerns and are unnecessary given the introduction of online voter registration through the Department of State.
  - Further codifying online voter registration would ensure its continued availability and present an opportunity for eliminating the risk inherent in third-party Web API programs.
2. A voter registration deadline only 15 days prior to an election is burdensome on counties and does not allow for proper safeguards to be applied to registration systems.
  - Returning the voter registration deadline to 30 days prior to an election, as it was prior to Act 77, would benefit counties while providing additional election integrity.
3. Counties are currently able to register a voter prior to receiving all required information for that voter, a process that introduces risk and uncertainty into the election process.
  - Requiring that all necessary biographical and citizenship information be received and verified prior to accepting a voter registration application would enhance election integrity and simplify county administrative processes.
  - Timely exchange of data from other states, including through full utilization of the ERIC system, would improve voter list accuracy.
  - New SURE system must reduce human and data entry error.

### ***Certification and Operation of Voting Machines***

1. Pre-testing of election machines should be conducted publicly and transparently, with software updates also subject to certification.
  - Certifying all systems and software used in election administration, conducting tests in public, transparent ways, and requiring pre-election testing of machines, would reassure voters of the integrity of the election process and safeguard against fraud or attacks. Florida provides a model of best practices in this area.
2. Voting machines have an inevitable shelf life and replacement date; Pennsylvania must plan to provide counties with the resources they need to update election infrastructure when necessary.
  - Pennsylvania should plan for the regular need to update election infrastructure, including for ways to provide counties the resources they need to afford new machines when necessary.
3. Although all voting machines are required to be completely disconnected from the internet, other types of technological developments can be used to enhance election administration and integrity.



- By properly utilizing emerging technology to operate and streamline elections administration, Pennsylvania can ensure election integrity while reducing the burden on county administrators.

### ***No Excuse and Mail-in and Absentee Ballots***

1. The current timeline for ballot requests does not reflect a feasible timeline for delivering and returning a ballot, failing both voters and election administrators.
  - Establishing an earlier deadline for requesting a mail-in ballot would improve election integrity and relieve the burden placed on county administrators.
2. Signature verification must be applied to mail-in and absentee ballots in an accurate, uniform manner across the Commonwealth.
  - Other states use training and enhanced technology to provide reliable ballot tracking and authenticity confirmation, as well as signature verification, gaining additional election integrity.
3. Voter ID should be implemented fairly and accessibly, with all eligible voters able to receive a free compliant identification.
  - Most states utilize voter ID requirements to ensure elections are conducted with integrity, providing Pennsylvania with many models for how such a policy can be applied fairly.
4. Any place where a ballot is being cast should be treated as a polling place, with meaningful access for bipartisan observers as well as consistent accessibility requirements.
  - The Election Code should provide uniformity in ensuring that all places where voting occurs are subject to the same regulations regarding accessibility, transparency, electioneering, and security.

### ***County Election Day Operations and Satellite Election Offices***

1. Election rules should be set far ahead of Election Day, with no last-minute changes that will likely be inconsistently applied.
  - Other states' best practices include the publication of enforceable election rule handbooks far in advance of an election, as well as adequate funding for poll worker training, providing a model for improving Pennsylvania's administration.
2. Act 77 burdened counties with an unsustainable election system, both financially and practically, as well as an impractical administrative timeline in the weeks prior to an election.
  - Easing Act 77's administrative and financial burden on counties should be at the forefront of improvements to the Election Code. This likely requires more practical timelines for the voter registration and mail-in ballot systems.
3. Transparency and uniformity across all 67 counties require enhanced training of staff as well as requirements for public access to all parts of the election process.
  - Confidence in Pennsylvania's election process would be strengthened by increased training of election administrators and clearer, uniform guidelines on transparency in election operations.



### ***Election Integrity & Accessibility Policy***

1. Cybersecurity threats to elections are ongoing and must inform election administration at every level.
  - County and state election administration should be continually guarded against new and emerging cybersecurity threats.
2. Pennsylvania's 1937 Election Code is outdated and insufficient to serve the needs of all Pennsylvanians, particularly disabled voters.
  - Modernization of the Election Code must include consideration of accessibility for disabled voters in all aspects of the election process.
3. Trust in the election process requires that all voters can have confidence that their ballots were counted as cast, and that only eligible voters participated in an election.
  - Safeguards ensuring adequate election integrity are crucial to restoring the public's confidence in the accuracy of election results.

### ***An Overview of How Other States Conduct Elections***

1. Best practices adopted by other states over recent decades provide an abundance of models for Pennsylvania to study and emulate as we look to modernize our Election Code.
  - Pennsylvania does not begin election reforms in a vacuum, but rather has models of more effective election administration in states across the country that we should learn from.
2. Kentucky shows that election reform can and should be a bipartisan endeavor, expanding voter access while streamlining election administration and protecting integrity.
  - Expanding voter access and ensuring election integrity are not opposing goals, but rather can be balanced in ways that merit bipartisan support for improvement.
3. Other states provide training manuals and standard rulebooks binding all counties in administering elections uniformly, an approach that would benefit Pennsylvania in fulfilling our constitutional requirement of uniformity.
  - Enhanced training standards, binding administration rulebooks, and other tools utilized by several states would serve Pennsylvania's constitutional mandate of uniformity in elections.
4. Election audits are not limited to post-election, result confirming audits. All aspects of the election system should be audited, including voter registration and list maintenance, operations and resource allocation, and training processes.
  - Audits of all parts of the election system can provide increased public trust and understanding of the many aspects of the election process.

## Hearing Schedule

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*Department of State's Election Guidance*  
January 21, 2021

*SURE System, the Election Management System, and other Election Information Technology*  
January 28, 2021

*Election Audits*  
February 11, 2021

*Voter Registration*  
March 4, 2021

*Certification and Operation of Voting Machines with Demonstrations*  
March 10, 2021

*No Excuse Mail-in and Absentee Ballots*  
March 18, 2021

*County Election Day Operations and Satellite Election Offices*  
March 25, 2021

*Election Integrity and Accessibility Policy*  
April 21, 2021

*Overview of How Other States Conduct Elections*  
April 8, 2021

*Stakeholders and Member Testimony*  
April 15, 2021

## Department of State's Election Guidance

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### Highlights<sup>1</sup>

- A lack of uniformity in administration of the election led to mistrust, and these inconsistencies between counties arose in part due to the guidance process and how it was applied.
- During the 2020 Election, Department of State-issued guidance caused confusion among county administrators, particularly due to the volume and timing of guidance.
- Under the current Election Code, the Department and the Secretary have a great deal of discretion in interpreting and applying the law according to their views.

### Hearing Summary

On January 21, 2021, the State Government Committee held a hearing to gain an understanding of the Department of State's election guidance and how it is used in the administration of elections.<sup>2</sup> For this hearing, the committee received testimony from former Secretary of the Commonwealth Kathy Boockvar and Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State.<sup>3</sup> At this hearing, guidance document discussion centered around three areas: process, specific guidance documents and county impact.

With respect to process, testifiers were asked to explain election guidance and to walk through the process of developing and implementing the guidance.<sup>4</sup> Ms. Boockvar explained in Pennsylvania there are certain levels of state rules, but there are other rules which are left to the discretion of the counties.<sup>5</sup> The guidance is issued to carry out these laws is for the best interest of the voters and creates consistency across the Commonwealth.<sup>6</sup> When members asked if counties have to follow the Department's guidance to the letter of the law, Boockvar informed the committee: "[t]he guidance is persuasive. It's usually not directory unless the statute that governs it says that it's directive. So sometimes you'll see the language directive. That's where it's mandated."<sup>7</sup>

A question was raised as to how to "streamline" the guidance.<sup>8</sup> The Secretary explained there "needs to be a balance between county discretion and the ability for the Department of State to direct uniformity."<sup>9</sup> However, there are also some instances which should be uniformly followed and therefore directives rather than guidance would be necessary.<sup>10</sup> When members asked what section of the law gives the Secretary the power to issue directives, Marks said the article in the Election Code on electronic voting systems states explicit authority for the Secretary to issue

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<sup>1</sup> Chairman's Recap. Jan. 21, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/656418815.mp4>

<sup>2</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 1. [012121SG \(state.pa.us\)](#)

<sup>3</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 4. [012121SG \(state.pa.us\)](#)

<sup>4</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 19. [012121SG \(state.pa.us\)](#)

<sup>5</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 23. [012121SG \(state.pa.us\)](#)

<sup>6</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 23-24. [012121SG \(state.pa.us\)](#)

<sup>7</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 24. [012121SG \(state.pa.us\)](#)

<sup>8</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 36. [012121SG \(state.pa.us\)](#)

<sup>9</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 39. [012121SG \(state.pa.us\)](#)

<sup>10</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 40. [012121SG \(state.pa.us\)](#)

directives.<sup>11</sup> Under the statute (Marks could not recall), the Secretary has the authority to demand certain reports from counties, as necessary.<sup>12</sup>

Ms. Boockvar was asked how the Department decides whether sending out official guidance is more appropriate than sending out an email containing guidance. Ms. Boockvar stated all guidance is issued uniformly to all counties, however, it comes down to the timing of when changes are made, such as court decisions being issued late at night.<sup>13</sup> In this case, an email would be sent, in order for the information to reach the county in a short amount of time.<sup>14</sup> Deputy Secretary Marks was asked about the email he had sent to counties at 9pm before election day in regard to providing “information to party and candidate representatives during the pre-canvass period that identifies voters whose ballots have been rejected.”<sup>15</sup> Deputy Secretary Marks responded that the purpose of the email was to ensure counties understood the pre-canvass process and counties knew the pre-canvass process should be done transparently and openly with representatives of campaigns and candidates present.<sup>16</sup> When asked if the Deputy Secretary had any expectations on how counties were going to implement the directive he had sent out, Marks responded: “I didn’t.”<sup>17</sup> Marks went on to say: “[t]hat really would depend on exactly the method each county used to conduct the pre-canvass.”<sup>18</sup>

There were several specific guidance documents discussed which had been developed during the 2020 election cycle. Members expressed concerns with the October 28<sup>th</sup>, 2020 Guidance to counties with regard to segregating the 10,000 ballots received after 8pm November 3<sup>rd</sup>.<sup>19</sup> Boockvar said that for election returns, ballots received after 8pm on November 3<sup>rd</sup> and before 5pm on November 6<sup>th</sup> were not counted for either the Presidential race nor Congressional races.<sup>20</sup> When asked about the rationale for not counting the segregated ballots received after November 3<sup>rd</sup> at 8pm and if she used her discretion not to count the ballots for the federal races but to do so for state races, Boockvar replied: “Correct.”<sup>21</sup>

Members asked further what would happen if the courts decided to proceed with the counting of the segregated ballots and what would happen with the certification process.<sup>22</sup> Boockvar said there is a precedent for the counties to give new certifications, but she did not know the actual process and would get back to the committee. She further stated, none of the segregated ballots would have changed the outcome of any race.<sup>23</sup> Members asked about guidance provided to counties pertaining to naked ballots or ballots which did not include a secrecy envelope.<sup>24</sup> It was

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<sup>11</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 72. [012121SG \(state.pa.us\)](#)

<sup>12</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 73. [012121SG \(state.pa.us\)](#)

<sup>13</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 25-26. [012121SG \(state.pa.us\)](#)

<sup>14</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 26. [012121SG \(state.pa.us\)](#)

<sup>15</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 40. [012121SG \(state.pa.us\)](#)

<sup>16</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 41. [012121SG \(state.pa.us\)](#)

<sup>17</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 41. [012121SG \(state.pa.us\)](#)

<sup>18</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 42. [012121SG \(state.pa.us\)](#)

<sup>19</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 55. [012121SG \(state.pa.us\)](#)

<sup>20</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 56. [012121SG \(state.pa.us\)](#)

<sup>21</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 60. [012121SG \(state.pa.us\)](#)

<sup>22</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 60. [012121SG \(state.pa.us\)](#)

<sup>23</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 61. [012121SG \(state.pa.us\)](#)

<sup>24</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 46. [012121SG \(state.pa.us\)](#)

further stated there was guidance to count those ballots, but the Supreme Court of Pennsylvania ruled the requirement for a secrecy envelope was neither ambiguous nor unreasonable.<sup>25</sup> Members pointed out the guidance was in direct contradiction with what the Court ruled. Ms. Boockvar explained the guidance was developed before the court issued that decision.<sup>26</sup> She further stated, counties were asking questions whether they should count the naked ballots and the Department determined that they should.<sup>27</sup> Boockvar said, in every state which uses secrecy envelopes, the state will count the ballot even if it does not arrive in a secrecy envelope.<sup>28</sup> When the Supreme Court of Pennsylvania ruled against the guidance, the guidance was withdrawn, and counties were told not to count the naked ballots.<sup>29</sup>

When members asked about undated ballots not being counted for elections moving forward and if this guidance will become a directive, Boockvar explained the Department: “[c]an only issue directives on things that we are statutorily given the authority to make it a directive.”<sup>30</sup> She went on to say the Guidance issued to counties on September 28<sup>th</sup> said ballots must be signed and dated.<sup>31</sup> So, unless the Department has specific statutory directive authority, it cannot be put out as a directive.<sup>32</sup> Marks said there is specific authority pertaining to voter registration but there is directive authority, authority to issue directives, on voting systems.<sup>33</sup> Marks stated there is no broad authority to issue regulations on all things involved in elections.<sup>34</sup>

Boockvar was also asked about guidance relating to satellite election offices and what statutory provisions allowed for them.<sup>35</sup> Boockvar did not give a specific provision but indicated that Act 77 allowed for “early voting.”<sup>36</sup>

Finally, questions were raised concerning county impact. Members asked how the Secretary intended to develop “continuity and uniformity across the counties” since the Secretary stated that guidance was not binding.<sup>37</sup> Ms. Boockvar explained that there are some areas where it would be “helpful to have more of a directed nature, more uniformity.”<sup>38</sup> One example mentioned was poll worker training to “give the counties time, the poll workers time, to learn those new processes.”<sup>39</sup>

Members asked the testifiers about the challenges facing counties in future elections with one-third of Pennsylvania counties’ election directors having retired or resigned prior to, during, or

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<sup>25</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 46. [012121SG \(state.pa.us\)](#)

<sup>26</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 47. [012121SG \(state.pa.us\)](#)

<sup>27</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 47. [012121SG \(state.pa.us\)](#)

<sup>28</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 47. [012121SG \(state.pa.us\)](#)

<sup>29</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 47. [012121SG \(state.pa.us\)](#)

<sup>30</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 71. [012121SG \(state.pa.us\)](#)

<sup>31</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 71. [012121SG \(state.pa.us\)](#)

<sup>32</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 71. [012121SG \(state.pa.us\)](#)

<sup>33</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 71. [012121SG \(state.pa.us\)](#)

<sup>34</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 72. [012121SG \(state.pa.us\)](#)

<sup>35</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 103. [012121SG \(state.pa.us\)](#)

<sup>36</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 104. [012121SG \(state.pa.us\)](#)

<sup>37</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 63. [012121SG \(state.pa.us\)](#)

<sup>38</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 64. [012121SG \(state.pa.us\)](#)

<sup>39</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 64. [012121SG \(state.pa.us\)](#)

after the 2020 election, due in part to the difficulty in administering that election at the county level.<sup>40</sup> Members wanted to know if the Department of State knew the exact number of election directors that have resigned or retired. Ms. Boockvar said she did not.<sup>41</sup> Deputy Secretary Marks stated: “[b]eginning January 1<sup>st</sup> of 2020 through now, I believe we just went above two dozen. And that includes election directors, chief clerks, some assistant directors.”<sup>42</sup>

Members pointed out the Department of State issued guidance pertaining to the Election Code not permitting county election officials to reject applications or voted ballots solely based on signature analysis.<sup>43</sup> Representatives asked Boockvar why she decided to ask the Supreme Court of Pennsylvania to consider ruling on the issue absent an underlying case before the courts in the state using King’s Bench jurisdiction. Members asked whether this was done out of concern counties would not follow the guidance.<sup>44</sup> Boockvar explained counties did not know what to do with the signatures and she wanted clarity for counties before the pre-canvassing period to limit confusion on election day.<sup>45</sup> She said a clear statement from the courts was not in effect and it would have taken counties longer to canvass the ballots because they were not allowed to start sooner.<sup>46</sup>

Members expressed concerns relating to private organizations, such as the Center for Technology and Civic Life (CTCL) directing money from the private entity into counties and being dispersed in ways that may favor a specific political party.<sup>47</sup> Members noted Philadelphia was allotted \$1.8 million in funds by the State and received \$10 million from a private entity.<sup>48</sup> Some representatives found this concerning because the money comes with “strings attached” and certain policy requirements to be met.<sup>49</sup> Boockvar explained the state has nothing to do with the CTCL grants and every county had the opportunity to ask for those funds.<sup>50</sup> She further stated there were private agreements between the counties and the non-profit organizations and there were no violations of the law.<sup>51</sup>

Ms. Boockvar stated various changes she would like to see made to the election process. One of the key issues Boockvar stated was a need for a longer period of time for counties to pre-canvass mail-in ballots.<sup>52</sup> This would allow for quicker results and improve the overall process.<sup>53</sup> Additionally, Boockvar suggested for the guidance to be changed to allow more flexibility in finding and filling poll worker vacancies within counties.<sup>54</sup> Boockvar insisted on creating

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<sup>40</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 95. [012121SG \(state.pa.us\)](#)

<sup>41</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 97. [012121SG \(state.pa.us\)](#)

<sup>42</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 98. [012121SG \(state.pa.us\)](#)

<sup>43</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 74. [012121SG \(state.pa.us\)](#)

<sup>44</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 74. [012121SG \(state.pa.us\)](#)

<sup>45</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 75. [012121SG \(state.pa.us\)](#)

<sup>46</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 75. [012121SG \(state.pa.us\)](#)

<sup>47</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 105. [012121SG \(state.pa.us\)](#)

<sup>48</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 106. [012121SG \(state.pa.us\)](#)

<sup>49</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 106. [012121SG \(state.pa.us\)](#)

<sup>50</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 107. [012121SG \(state.pa.us\)](#)

<sup>51</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 109. [012121SG \(state.pa.us\)](#)

<sup>52</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 37. [012121SG \(state.pa.us\)](#)

<sup>53</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 37. [012121SG \(state.pa.us\)](#)

<sup>54</sup> State Government Committee Hearing Transcripts: Dept. of State’s Guidance, Pg. 38. [012121SG \(state.pa.us\)](#)

uniformity among poll workers by providing training.<sup>55</sup> This training would be mandated for all workers and would be helpful to the counties to create a more uniform process across the Commonwealth.<sup>56</sup> Boockvar also urged the Legislature to amend the laws to provide for a notice and cure process to ensure that every vote is counted, and no voter is disenfranchised over a simple error.<sup>57</sup>

In conclusion, the committee received clarification on the Department of State's guidance sent to counties during the 2020 election.<sup>58</sup> However, we learned guidance to counties should have been more direct and provided in a timelier fashion. There is a need for more uniformity across the Commonwealth to ensure voter trust in the election process. Standardization within these guidance documents is needed to ensure all counties are conducting the election process in a uniform manner and have an appropriate timeline for implementation.

### **Recap**<sup>59</sup>

- Restoring uniformity is crucial to improving the election process.
- Administrative guidance should be used sparingly and issued as far in advance of an election as possible.
- Clearer statutory language that eliminates ambiguities would reduce the need for administrative guidance and strengthen election uniformity.

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<sup>55</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 64. [012121SG \(state.pa.us\)](#)

<sup>56</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 64. [012121SG \(state.pa.us\)](#)

<sup>57</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 84. [012121SG \(state.pa.us\)](#)

<sup>58</sup> State Government Committee Hearing Transcripts: Dept. of State's Guidance, Pg. 19-23. [012121SG \(state.pa.us\)](#)

<sup>59</sup> Chairman's Recap. Jan. 21, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/656418815.mp4>



## **SURE System, the Election Management System, and Other Election Information Technology**

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### **Highlights**<sup>60</sup>

- The SURE System is unable to meet the demands of the mail-in voting system and the broader needs of counties.
- The permanent mail-in ballot list both confuses voters and burdens county administrators.
- Third-party applications for voter registrations or mail-in ballots confuse voters and burdens county administrators.

### **Hearing Summary**

On January 28, 2021, the State Government Committee held a hearing on Pennsylvania’s Statewide Uniform Registry of Electors System (SURE).<sup>61</sup> The purpose of the hearing was to learn the shortfalls in the SURE system and how the system can be updated for future elections.<sup>62</sup>

#### ***Panel 1: Counties***

Members heard from a county commissioner and two county election directors the various ways the SURE system can be improved and the challenges they had faced with the system during the 2020 election.<sup>63</sup> Major areas discussed included: “binking,” ballot tracking, third party applications, and poll workers.

Joseph Kantz, Chairman of Snyder County Commissioners and Board of Elections, informed the committee of the many challenges his election staff faced after the passage of Act 77 of 2019 and Act 12 of 2020.<sup>64</sup> One of the main issues Kantz described was the lack of training for election directors which caused many to retire across the state.<sup>65</sup> Kantz expressed time is lost to process information when the SURE system is down.<sup>66</sup> When it goes down, the large database takes a significant amount of time to reboot, causing the processing of thousands of ballots to be delayed.<sup>67</sup> Kantz also explained the problems he faces when it comes to alternate addresses being

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<sup>60</sup> Chairman’s recap. Jan. 28, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/611714266.mp4>

<sup>61</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 1. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>62</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 6-7. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>63</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 4. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>64</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 15. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>65</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 16. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>66</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 16. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>67</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 20-21. [2021\\_0004T.pdf \(state.pa.us\)](#)



pulled by the SURE system.<sup>68</sup> When the system pulls an alternate address to send a mail-in ballot, this causes the ballot to be sent to the wrong address.<sup>69</sup>

Timothy Benyo, Chief Clerk of the Lehigh County Election Board, expressed he is very much focused on the Department of State updating the SURE system and the improvements the new system can provide the counties.<sup>70</sup>

Michael Anderson, Director of Elections of the Lebanon County Bureau of Elections and Voter Registration, informed the committee of his frustrations with the SURE system as far as trying to be productive and getting everything done without the system being slow or not working correctly.<sup>71</sup> Anderson also expressed training election directors presented its own challenges when trying to get full participation.<sup>72</sup> He does not make the training mandatory because it is a challenge recruiting and getting poll workers.<sup>73</sup> Anderson proposed lifting restrictions on state workers who would be interested in volunteering on election day.<sup>74</sup>

Members asked testifiers to explain the “binking” process of a ballot.<sup>75</sup> Benyo explained paper pollbooks signed at the polling place have a barcode next to the voter’s name and correlates with the voter’s name and record.<sup>76</sup> After an election with a paper ballot system, the SURE system requires workers to take a handheld scanner and go page by page to “bink” the barcodes, so the voter gets credit for voting.<sup>77</sup> With electronic systems this is not necessary.<sup>78</sup> Benyo explained this system is in place to ensure individuals are not voting more than one time.<sup>79</sup>

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<sup>68</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 18. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>69</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 18. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>70</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 23. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>71</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 24. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>72</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 30. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>73</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 30. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>74</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 30. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>75</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 36. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>76</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 37. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>77</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 37. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>78</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 37. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>79</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 37. [2021\\_0004T.pdf \(state.pa.us\)](#)

Members asked how it would be possible to obtain a list of voters who have voted in the past election and where that list would be pulled from.<sup>80</sup> Benyo explained these reports come from the SURE system.<sup>81</sup> When asked if voter data could be pulled from a different source, Anderson responded that he would have to go through every list of voters in every precinct and look back into the paper pollbooks.<sup>82</sup> Anderson further stated for paper pollbooks, after the “binking” process is completed with votes cast, mail-in ballots and absentee ballots, the reports are run through the system to ensure the numbers are not off from one another.<sup>83</sup> As for electronic pollbooks, Benyo explained there is no “binking” process and there is an upload to the database to ensure the numbers are exact to the system report.<sup>84</sup>

Members expressed concerns with the SURE system, with respect to implementation of mail-in ballots.<sup>85</sup> Benyo explained ballot tracking proved to be helpful but presented challenges for election directors.<sup>86</sup> The information going to voters was not interpreted correctly.<sup>87</sup> Benyo detailed when a label is printed off for the mail-in ballot, the voter received a message that the ballot was processed and sent.<sup>88</sup> The problem is, when the voter received this message, the ballot may not actually have been mailed out.<sup>89</sup> Benyo stated that there needs to be improvements in the system to ensure people are more engaged in the process.<sup>90</sup>

When the committee asked if counties are sending out mail-in ballot applications to every registered voter or just to those who requested it,<sup>91</sup> Anderson made it clear that in his county, only the people who requested the application received one, however, third parties send out applications as well.<sup>92</sup> This had caused a lot of confusion amongst voters and many had filled out

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<sup>80</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 44. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>81</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 45. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>82</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 45. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>83</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 47. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>84</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 47. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>85</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 54. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>86</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 54. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>87</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 55. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>88</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 55. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>89</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 56. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>90</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 56. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>91</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 68. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>92</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 68. [2021\\_0004T.pdf \(state.pa.us\)](#)

multiple applications and returned them to his office.<sup>93</sup> Anderson explained third parties obtain voter information from a database which they can buy from the Department of State or from a local county.<sup>94</sup> He suggested these third parties should be required to disclose who is paying for them and to make it clear it is not the county office.<sup>95</sup> Anderson further stated third parties are using an old database and are sending applications to deceased individuals and those who have moved to another address.<sup>96</sup> Kantz and Benyo agreed, stating these applications should be required to say they were not sent by the county elections office.<sup>97</sup>

Members asked if there are audits of employees who work directly with the SURE system and if their work is checked for accuracy.<sup>98</sup> Benyo stated there is not as much auditing of employees as he would like; however, he looks at the accuracy of the data which is being input.<sup>99</sup> Anderson said there is no auditing in his county, but he only gives complex tasks to employees who have been working for him for a longer period of time, while restricting access of newer employees.<sup>100</sup> Representatives asked if employees who input data in to the SURE system take an oath, Kantz said to his knowledge, he does not believe these individuals were sworn under oath and does not believe legislation requires the county to do so.<sup>101</sup>

### ***Panel 2: Department of State***

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State summarized the SURE system and explained the purpose of the system was to move all 67 counties legacy system into one statewide voter registry as a requirement of Act 3 of 2002.<sup>102</sup> Major areas discussed included: the new SURE system, the Department's role in the current process of the system, access to the existing system, Web API, and voter rolls.

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<sup>93</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 68. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>94</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 69. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>95</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 69. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>96</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 69. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>97</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 69-70. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>98</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 65. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>99</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 65. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>100</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 65. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>101</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 67. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>102</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 73. [2021\\_0004T.pdf \(state.pa.us\)](#)

Members asked if the new SURE system is in the early development stages. Marks said the new system is in the early stages and the Department is in touch with counties to gain understanding of their expectations for this system.<sup>103</sup>

In terms of the existing process and the Department's role, Marks explained that the Department is to "provide access and maintain statewide voter registry."<sup>104</sup> However, it is the county who "should be passing on the qualifications of the voter."<sup>105</sup> Marks explained the Department provides the tools, and registration occurs in a variety of ways, from online registration to paper application.<sup>106</sup> Once received, the counties perform a variety of "checks."<sup>107</sup> According to Marks: "[i]f the county determines they have incomplete information or incorrect information or if the registrant's information doesn't check out for any reason, they can reject the application. The applicant has an opportunity to appeal, but the county would reject the application, give the applicant an opportunity to appeal the decision or provide whatever missing information so they can be properly registered."<sup>108</sup> Finally, Marks noted that a registered voter receives their voter registration card with details relating to their voter registration record.<sup>109</sup>

Members asked if the Department of State personnel, Commonwealth IT support staff, contracted IT support vendors and county election personnel have direct individual access to the SURE system data.<sup>110</sup> Marks stated: "[y]es, there are different levels of access."<sup>111</sup> Marks further explained that on the county level, the election director must request access for the individual and this can be read-only access up to data entry access.<sup>112</sup> At the Department, most employees are read-only access because they are not updating voter registration records.<sup>113</sup> Members asked if individuals who are given access to the system must go through security checks.<sup>114</sup> Marks said

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<sup>103</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 99-100. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>104</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 77. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>105</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 77. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>106</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 77. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>107</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 79. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>108</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 79. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>109</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 79-80. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>110</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 81. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>111</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 81. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>112</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 81. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>113</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 81. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>114</sup> State Government Committee Hearing Transcripts: Pennsylvania's Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 81. [2021\\_0004T.pdf \(state.pa.us\)](#)

he cannot speak for the county level, but the Department conducts background checks even for the contractors that are given access to the SURE system.<sup>115</sup>

Members expressed concerns with volunteers using Web Application Programming Interface (API) to hold voter registration drives and not going through a background check.<sup>116</sup> Marks explained these volunteers must sign an agreement with the Department and there are no background checks, however, these individuals do not have access to the SURE system in any form.<sup>117</sup>

Members asked how counties verify information from those who register through organizations such as “Rock the Vote.”<sup>118</sup> Marks was asked if applications filled out through these organizations, whether they can be processed without having verification information.<sup>119</sup> Marks responded: “a simple answer is they can’t.”<sup>120</sup> He further stated the county must verify either the driver’s license number provided or the last four digits of the social security number, as well as the name and address, and if the voter doesn’t have these, the voter must affirmatively state they do not have a social security number or a driver’s license number.<sup>121</sup>

Marks clarified to the members, when a third party sends out a voter application, they are only providing a tool and in no way do they have access to the SURE system.<sup>122</sup> Marks explained third parties are using commercial mailing lists, allowing there to be error in sending out applications, even sending to those with deceased children.<sup>123</sup> In these cases, Marks recommended third parties run their lists against the Department’s list to avoid error.<sup>124</sup>

Members asked how voter registration lists are maintained within counties.<sup>125</sup> Marks explained every county is required to conduct voter list maintenance on an annual basis, in accordance with

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<sup>115</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 82. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>116</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 82. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>117</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 82. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>118</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 102. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>119</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 102. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>120</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 102. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>121</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 102-103. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>122</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 88. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>123</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 101. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>124</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 101. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>125</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 90. [2021\\_0004T.pdf \(state.pa.us\)](#)

Federal and State law.<sup>126</sup> The Electronic Registration Information Center (ERIC) assists counties in maintaining updated registration lists.<sup>127</sup> This process involves the National Change of Address program sending information indicating a voter has moved.<sup>128</sup> The county then is required to send a mailing to the voter indicating records show the voter has moved and the voter can either confirm or say no.<sup>129</sup> With deceased voters, according to Marks, this information comes from the Department of Health.<sup>130</sup> However, Marks indicated that ERIC provides this data as well and suggested: “[i]t would be helpful if we could open up that other avenue so we can fully utilize the data we get from the ERIC program.”<sup>131</sup>

When members asked if the new SURE system will be up to assist counties in the next election,<sup>132</sup> Marks stated he is “very confident” the updated SURE system will be up to assist counties within the next election cycle.<sup>133</sup>

In conclusion, the committee heard testimony from county officials and the Department of State.<sup>134</sup> The committee gained insight on the issues counties face with the SURE system and the improvements that would help counties in the next election cycle.<sup>135</sup> The SURE system is broken and should have been replaced before its coming replacement this year. Third party mailings and voter rolls that were out of date lead to much confusion with the information uploaded to the SURE system. These are areas that not only will need to see improvements in the new system, but also demonstrate another area in which the counties should have further assistance.

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<sup>126</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 90. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>127</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 90. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>128</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 90. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>129</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 90. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>130</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 91. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>131</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 92. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>132</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 104. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>133</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 104. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>134</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 4. [2021\\_0004T.pdf \(state.pa.us\)](#)

<sup>135</sup> State Government Committee Hearing Transcripts: Pennsylvania’s Statewide Uniform Registry of Electors (SURE) System/IT, Pg. 6. [2021\\_0004T.pdf \(state.pa.us\)](#)



### **Recap**<sup>136</sup>

- A replacement for the SURE System will soon be implemented and must perform to a much higher standard to adequately operate Pennsylvania's elections moving forward.
- Elimination of the permanent mail-in ballot list would ease burdens on county administrators and provide a simpler process for voters.
- Restricting the mailing of third-party applications for mail-in ballots and voter registrations, or requiring disclaimers on these applications, would improve voter confidence and benefit county administrators.

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<sup>136</sup> Chairman's recap. Jan. 28, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/611714266.mp4>

## Election Audits

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### Highlights<sup>137</sup>

- The post-election audits currently required by Pennsylvania’s Election Code are outdated and in need of improvement.
- Results from the audits currently performed are not adequately publicized or even collected statewide.
- Audits of elections are often conducted by the same entities that oversee the elections themselves. This lack of independence is not allowed in accepted auditing standards.

### Hearing Summary

On February 11, 2021, the State Government Committee held a hearing on election audits.<sup>138</sup> State law requires counties to conduct post-election audits, commonly known as two percent audits.<sup>139</sup> Pursuant to recently initiated pilot programs by the Department of State, sixty-three out of sixty-seven counties participated in risk-limiting audits.<sup>140</sup> The purpose of this hearing was to explore the current program of election audits and review changes being advanced by the Department of State and the Governor’s Office.<sup>141</sup>

#### ***Panel 1: Auditor General***

Discussions on this panel centered around the 2019 audit of the SURE system conducted by the Department of the Auditor General.

Honorable Timothy DeFoor, Auditor General of Pennsylvania, outlined the Department of the Auditor General’s 2019 audit of the Department of State’s SURE System. The audit period covered January 1, 2016 through April 16, 2019 and was conducted at the request of the Department of State.<sup>142</sup> DeFoor explained at the conclusion of the audit, there were fifty recommendations for ways to strengthen the Department’s policies and management controls.<sup>143</sup> These recommendations included resolving weaknesses in the voter registration application process and the maintenance of voter records in the SURE system.<sup>144</sup> DeFoor stated: “[d]ata analysis identified tens of thousands of potential duplicate and inaccurate voting records.”<sup>145</sup> To ensure error does not continue, DeFoor stated the Department of State must implement “information security practices and information technology controls.”<sup>146</sup>

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<sup>137</sup> Chairman’s Recap., Feb. 11, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/370280002.mp4>

<sup>138</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 1. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>139</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 5 [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>140</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 5. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>141</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 6. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>142</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 14. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>143</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 14. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>144</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 14. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>145</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 14. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>146</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 14-15. [2021\\_0010T.pdf \(state.pa.us\)](#)



Janet Ciccocioppo, Director of the Bureau of Performance Audits, answered questions from members regarding audit objectives of the 2019 audit, and whether it created an adequate understanding of the SURE system and its vulnerabilities.<sup>147</sup> Ciccocioppo explained to members she thought it was a thorough audit for the short amount of time in which it was conducted.<sup>148</sup> Anne Skorija, Director of the Bureau of Information Technology Audits, explained the kind of information the audit of the SURE system provided, such as how much work is put into the system by counties and the Department of State to maintain the system.<sup>149</sup>

Members asked what information was learned about election audits from the 2019 audit conducted and if future audits were to be conducted, would the approach be different.<sup>150</sup> DeFoor said one of the things he would like is to work very closely with the county board of elections because they are conducting elections.<sup>151</sup> All the information which comes from the SURE system is coming from counties and this is why it is essential to work closely with them.<sup>152</sup>

Members asked about audits being conducted on the new SURE system.<sup>153</sup> DeFoor said the best way to perform audits on the new system is to look at what is going into it, how it is being built and how it is being used.<sup>154</sup> He also suggested to “constantly review and audit the entire process.”<sup>155</sup>

Members questioned the lack of source documents provided for the audit, causing almost seventy percent of voter records to not be verified.<sup>156</sup> Members pointed out that the Department of State, PennDOT and county election offices denied access to critical documents and wanted to know if there are accountability measures put in place when an office denies an audit request.<sup>157</sup> DeFoor said there is none he is aware of.<sup>158</sup> He further stated in order to implement changes correctly, it is essential to have all the information, and, in this case, it did not happen.<sup>159</sup> However, DeFoor also pointed out a standard audit procedure is: “whenever you produce an audit report, if there are findings...its your responsibility six months to a year later to go back and see if those recommendations were, in fact, implemented.”<sup>160</sup>

With the new SURE system, DeFoor stated: “[a]s the new SURE system is being built...we need to assure that whatever the recommendations that this office had and any other concerns the counties may have had, that the information is not only included as part of the technical requirements of what the system can do, but also the functional requirements of what we do with

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<sup>147</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 19. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>148</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 19-20. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>149</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 27. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>150</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 21. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>151</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 21. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>152</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 21. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>153</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 26. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>154</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 26. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>155</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 26. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>156</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 28. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>157</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 28. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>158</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 28. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>159</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 28-29. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>160</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 35. [2021\\_0010T.pdf \(state.pa.us\)](#)

the system....to include the counties is extremely important.”<sup>161</sup> When members asked if the Auditor General’s office received any request from the Department of State about post-election audits or was invited to participate in the Department’s post-election audit work group, DeFoor said he was not.<sup>162</sup>

Members asked if existing registered voters are in the SURE system should be checked for duplicates or a corrupt database before information is transferred into the new system, and DeFoor said the system should be looked at before being transferred into the new system to ensure the data is not corrupted. However, this part relies on the counties having accurate and secure information.<sup>163</sup>

DeFoor was also asked the impact of the Department of the Auditor General performing a risk-limiting audit.<sup>164</sup> He suggested they were looking into it, but again would have to be something the counties would be involved in.<sup>165</sup>

### ***Panel 2: Counties***

Discussions surrounding this panel centered around questions relating to the two percent audit required by law.

Hope Verelst, Deputy Chief Clerk, Director of Election/Voter Registration in Sullivan County, explained that counties are mandated by the state to conduct an audit of randomly selected ballots equal to two percent of the votes cast, or 2,000 votes, whichever is the lesser amount.<sup>166</sup> This must be completed after each election and prior to the certification, which works for local and countywide races.<sup>167</sup> However, this may become difficult when it comes to statewide races because all sixty-seven counties may conduct the audit differently.<sup>168</sup> Verelst expressed one county may do a tally vote while another county may rescan the ballots on a machine.<sup>169</sup> Verelst stated: “[t]o assure a valid statewide outcome you would want some type of standardization.”<sup>170</sup>

Verelst addressed the committee’s concerns around the difference between a risk-limiting audit and the “two percent audit.”<sup>171</sup> Verelst explained that a risk-limiting audit draws a twenty-digit number from software.<sup>172</sup> The software then decides which ballots will be drawn and there is no way to predict which ballots would be selected.<sup>173</sup> However, a two-percent audit consists of

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<sup>161</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 38. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>162</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 31. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>163</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 42. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>164</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 44. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>165</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 44. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>166</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 46. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>167</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 46. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>168</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 47. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>169</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 47. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>170</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 47. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>171</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 65. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>172</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 66. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>173</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 66. [2021\\_0010T.pdf \(state.pa.us\)](#)

drawing the number of a precinct or number of ballots from a precinct needed to cover the two percent or 2,000 ballots.<sup>174</sup>

Dr. Thad Hall, Director of Voter Registration and Elections for Mercer County, referenced his time working as a former election director in Coconino County, Arizona. Hall explained Arizona’s way of hand counting ballots cast with the purpose of providing the public with confidence that the ballots are being counted accurately.<sup>175</sup> This process also allowed political parties to be involved in hand counting to ensure the audit was being conducted correctly.<sup>176</sup> Hall believes Pennsylvania should adopt this procedure and make it mandatory for all counties to create a “standardized reporting format.”<sup>177</sup> Hall also pointed out Pennsylvania has limited time to conduct audits because of the lack of time provided for “pre-canvassing.”<sup>178</sup> If the “pre-canvassing” period is moved back, this problem could be addressed.<sup>179</sup> Additionally, the system used for checking in voters is outdated in some voting locations.<sup>180</sup> This system needs to be updated to electronic poll books to create accuracy in counting ballots on election day.<sup>181</sup>

When members asked if the two percent audit results are shared with the public,<sup>182</sup> Verelst said “no,” but further explained there needs to be a standard way to carry out audits across all counties.<sup>183</sup> Currently, there is no statutory requirement to share the two percent audit results to the public, unless there is a Right to Know request.<sup>184</sup>

Members asked the testifiers who performs the two percent audits in their counties.<sup>185</sup> Verelst said in Sullivan County, they perform the audit but would like to have party chairs participate.<sup>186</sup> Hall said the same is true for Mercer County, but moving forward his county is going to involve the political parties in the process.<sup>187</sup> Members followed up by asking if the Department of State sends staff to assist in audits.<sup>188</sup> Verelst explained they do not and there is no standardized reporting required in the statute.<sup>189</sup> The two percent audit is filed away unless requested.<sup>190</sup> Hall said the same applied for his county, and commented that Arizona requires counties to submit a report to the state so the public can go online and read the audit reports.<sup>191</sup>

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<sup>174</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 66. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>175</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 49. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>176</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 49-50. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>177</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 50. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>178</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 51. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>179</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 51. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>180</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 51. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>181</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 51. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>182</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 57. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>183</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 58. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>184</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 58. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>185</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 52. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>186</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 52. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>187</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 52. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>188</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 53. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>189</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 53. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>190</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 53. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>191</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 53. [2021\\_0010T.pdf \(state.pa.us\)](#)

When asked by members what the legislature could do to make the election process operate as optimally as possible, Verelst would like the legislature to work hand in hand with counties and create a handbook with a standardized process.<sup>192</sup> Hall commented saying there needs to be a pre-canvassing period and statutes need to be updated, such as the part of the statute which still refers to lanterns which were clearly used a long time ago.<sup>193</sup> Clearing up aspects of the law will allow for counties to understand what needs to be done with the election process.<sup>194</sup> Additionally, Hall would like there to be better training and guidance offered to counties, including standardized training and manuals.<sup>195</sup> Hall explained during his time in Arizona, the state had a 500-page manual and required a week of training for all election directors and employees.<sup>196</sup>

### ***Panel 3: Department of State***

Together with the Brennan Center, the Department of State addressed issues relating to the risk-limiting audit model.

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State informed the committee the state work group is working on a report in regard to risk-limiting audits to make recommendations on what is the best type of audit, the best way to administer and the kind of procedures needed to be put into place.<sup>197</sup> Marks explained to the committee the biggest limitations of the current statutory process is each county is doing its statistical sample independent of every other county, which causes a lack of uniformity.<sup>198</sup> Marks said having a single procedure at the statewide level would be very beneficial from the public perception perspective and the perspective of county officials.<sup>199</sup>

Liz Howard, Senior Counsel of the Brennan Center for Justice’s Democracy Program, compared risk-limiting audits to the “two percent audit.”<sup>200</sup> Howard believes risk-limiting audits have proved to be more effective and efficient because they “use statistical methodologies coupled with a hand review of paper ballots to provide confidence in the accuracy of the outcome.”<sup>201</sup> This means, when the margin of victory is large, then the number of ballots to review is small.<sup>202</sup> Howard expressed these types of audits provide confirmation of the outcome of the election, versus two percent audits only provide confirmation of the accuracy of individual machines.<sup>203</sup>

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<sup>192</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 59. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>193</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 60. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>194</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 60. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>195</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 60-61. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>196</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 60. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>197</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 118. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>198</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 118. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>199</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 119. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>200</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 89. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>201</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 90. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>202</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 90. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>203</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 93. [2021\\_0010T.pdf \(state.pa.us\)](#)

Members asked testifiers to explain the different types of audits.<sup>204</sup> Howard explained risk-limiting audits checks for any unintentional errors in the programming of the voting equipment causes a change in the reported outcome versus how the ballots should have been counted.<sup>205</sup> Members asked if the point of origin was taken into consideration to ensure the validity of tabulated ballots, and Howard stated risk-auditing is limited to serving as a tabulation audit and is focused on whether the ballots were counted correctly.<sup>206</sup> Howard also explained ballot comparison allows for a comparison of an individual ballot and how the machine counted the individual ballot.<sup>207</sup> This type of auditing is not possible in Pennsylvania because ballots need to be kept in the same order they are scanned, and this is not possible when ballots are scanned in the precinct.<sup>208</sup> Conversely, ballot polling consists of mixing up ballots and randomly selecting ballots across the state to analyze and then determine whether the information from the sample provides sufficient statistical information.<sup>209</sup>

In conclusion, members heard from testifiers on two percent audits and risk-limiting audits.<sup>210</sup> Members gained insight on how counties conduct these audits and the recommended changes to the auditing and election process.<sup>211</sup>

### **Recap**<sup>212</sup>

- Best practices in other states can serve as models for a more enhanced auditing process, including audits of all parts of the election system.
- Audits that are conducted transparently and consistently across the state, then released publicly, could better reassure Pennsylvanians that election outcomes are accurate.
- Having an independent entity such as the Auditor General conduct post-election audits could provide additional reliability and oversight.

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<sup>204</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 94. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>205</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 94-95. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>206</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 101. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>207</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 102. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>208</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 102-103. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>209</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 103. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>210</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 65-66 [206521\\_0010T.pdf \(state.pa.us\)](#)

<sup>211</sup> State Government Committee Hearing Transcripts: Election Audits, Pg. 65-66. [2021\\_0010T.pdf \(state.pa.us\)](#)

<sup>212</sup> <sup>212</sup> Chairman's Recap., Feb. 11, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/370280002.mp4>

## Voter Registration

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### Highlights<sup>213</sup>

- Web Application Programming Interface (API) platforms used by third-party groups present security concerns and are unnecessary given the introduction of online voter registration through the Department of State.
- A voter registration deadline only 15 days prior to an election is burdensome on counties and does not allow for proper safeguards to be applied to registration systems.
- Counties are currently able to register a voter prior to receiving all required information for that voter, a process that introduces risk and uncertainty into the election process.

### Hearing Summary

On March 4, 2021, the State Government Committee held a hearing on the voter registration process within the Commonwealth.<sup>214</sup> The purpose of the hearing was to gain a better understanding of how individuals registered to vote and how the state can improve registration practices moving forward.<sup>215</sup>

#### *Panel 1: Department of State*

Discussions with this panel centered around several areas: the voter registration process, Web API, and voter rolls.

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State explained the voter registration process to members. During this process, the specified county election office will receive the voter registration form and then will start the vetting process to ensure the individual applying is eligible to vote.<sup>216</sup> This involves using the SURE system and the statewide voter registry to verify one's identification.<sup>217</sup> Marks stated: "[t]he statute is very clear. The Department does not pass on the qualifications of registrants. Counties do that. That is not the Department's role. But it is our role to ensure that they have the appropriate tools in place to do what they need to do. And sometimes that involves us making changes to the system that will prompt somebody to take the appropriate step at the appropriate time."<sup>218</sup> Marks further stated: "[s]ometimes we will put hard stops in there to make sure they don't make the wrong decision at the wrong time and allow something to slip through the cracks."<sup>219</sup> He also noted the system "tracks" all changes.<sup>220</sup>

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<sup>213</sup> Chairman's recap. March 4, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/382142364.mp4>

<sup>214</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 1. [2021\\_0037T.pdf \(state.pa.us\)](https://www.pa.gov/documents/000001/20210307/2021-0037T.pdf)

<sup>215</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 7. [2021\\_0037T.pdf \(state.pa.us\)](https://www.pa.gov/documents/000001/20210307/2021-0037T.pdf)

<sup>216</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 6-7. [2021\\_0037T.pdf \(state.pa.us\)](https://www.pa.gov/documents/000001/20210307/2021-0037T.pdf)

<sup>217</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 7. [2021\\_0037T.pdf \(state.pa.us\)](https://www.pa.gov/documents/000001/20210307/2021-0037T.pdf)

<sup>218</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 12. [2021\\_0037T.pdf \(state.pa.us\)](https://www.pa.gov/documents/000001/20210307/2021-0037T.pdf)

<sup>219</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 13. [2021\\_0037T.pdf \(state.pa.us\)](https://www.pa.gov/documents/000001/20210307/2021-0037T.pdf)

<sup>220</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 13. [2021\\_0037T.pdf \(state.pa.us\)](https://www.pa.gov/documents/000001/20210307/2021-0037T.pdf)



Marks addressed member concerns surrounding the voter registration deadline shifting from thirty days to fifteen days prior to election day.<sup>221</sup> Marks said this changed the way the Department supports county efforts.<sup>222</sup> Marks did not that believe it was a problem from the Department’s perspective and did not create any unique challenges for the Department.<sup>223</sup> However, Marks further stated it was probably: “[a] question better asked of a county election official.”<sup>224</sup> But Marks did note: “[m]oving that window, changing that window, meant that there was a lot of activity in the system during a compressed period of time.”<sup>225</sup>

Committee members brought up the standards for Web Application Programming Interface (Web API).<sup>226</sup> Marks stated the Department outlines the specific requirements which need to be met in order for Web API to be used.<sup>227</sup> After the agreement is signed and the application is developed, a testing phase ensures the data is going directly to the Department through the Web API.<sup>228</sup> Marks stated: “at no point in this process does anyone who any of the registrants who have Web API have access to the SURE database, or even to the Department’s infrastructure.”<sup>229</sup> When members asked if Web API can keep voter registration data to themselves, Marks stated: “[Y]es. Just like a paper voter registration drive, it’s not unusual for voter registration drives to keep photocopies if they’re doing it on paper.”<sup>230</sup> When members asked if voter registration forms possess the same information needed to apply for a mail-in ballot, Marks replied: “[I]t is effectively the same information.”<sup>231</sup>

Members asked about the process of the Motor Voter Registration. Marks said when an individual applies for a driver’s license, they are asked if the individual is eligible to vote.<sup>232</sup> If the individual is eligible, the screen will move through the registration process. Once completed, the Department is sent a file from PennDOT three times a week that includes the registrants.<sup>233</sup> Data is sent, along with the image of the signature captured to be placed in the SURE system.<sup>234</sup> From there, counties receive the applications from the Department of Transportation to process them.<sup>235</sup>

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<sup>221</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 14. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>222</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 14. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>223</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 15. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>224</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 15. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>225</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 14. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>226</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 17. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>227</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 17. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>228</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 18. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>229</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 18. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>230</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 22. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>231</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 23. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>232</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 19. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>233</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 19-20. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>234</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 20. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>235</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 20. [2021\\_0037T.pdf \(state.pa.us\)](#)

Marks was also asked about “internal controls” to review voter registration drives.<sup>236</sup> He explained there are “built-in systematic checks on eligibility,” as well as voter ID requirements in place for first-time voters.<sup>237</sup>

Members asked if the Department reviewed death record information and how often.<sup>238</sup> Marks said they do receive death record information from the Department of Health, and in state statute it is required to be transmitted monthly.<sup>239</sup> However, the Department transmits the data to counties every couple of weeks to make the process of inputting the data easier.<sup>240</sup> Marks commented death record information could be obtained through the ERIC program, and it would be helpful to obtain information from any authoritative source, including ERIC, which receives data from the Social Security Administration.<sup>241</sup>

Members asked if there is a law that calls for voter rolls to be cleaned up so many days before an election.<sup>242</sup> Marks replied in Federal elections there is a 90-day period prior to the election where voter list maintenance cannot be conducted, however, this does not apply to deceased voters.<sup>243</sup> In Pennsylvania’s voter registration laws, this 90-day period only applies to the November elections.<sup>244</sup>

Marks also explained the difference between removal versus cancelled voter records.<sup>245</sup> He also addressed records with out-of-date birthdates and in some instances the need for them.<sup>246</sup> He commented: “as we go into the new system we have correct, accurate birthdays for every single voter in the Commonwealth. Now you’re going to have data entry errors. That’s going to happen, and I don’t know that we’re ever going to eliminate the human element of this. But certainly, the entire system can prompt, warn, and provide messaging to users to avoid these occurrences as often as possible.”<sup>247</sup>

### ***Panel 2: Ohio Secretary of State***

Discussions in this panel with Ohio Secretary of State Frank LaRose outlined the various ways Ohio has improved the election process and highlighted what practices Pennsylvania can implement to better improve its process, in areas such as signature verification, voter identification, absentee ballots, and voter rolls.<sup>248</sup>

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<sup>236</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 23. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>237</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 23. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>238</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 24. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>239</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 25. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>240</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 25. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>241</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 25-26. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>242</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 36. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>243</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 36. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>244</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 36. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>245</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 29. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>246</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 33-34. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>247</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 34. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>248</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 39-49. [2021\\_0037T.pdf \(state.pa.us\)](#)



LaRose pointed out that Ohio has a very strict bipartisan structure which has proven to build voter confidence.<sup>249</sup> Both Republicans and Democrats must work together to ensure bipartisan oversight is a part of every aspect of elections.<sup>250</sup>

LaRose explained voter confidence is gained by allowing the Board of Elections to get the vote count to the public as quickly as possible.<sup>251</sup> This is obtained by processing absentee ballots immediately by cutting them open and verifying identification information so once polls close, votes can be tabulated right away.<sup>252</sup> LaRose pointed out it is essential to maintain accurate voter rolls.<sup>253</sup> This can be done by working with ERIC, the Department of Health to eliminate anyone who is deceased, and the U.S. Postal Service to highlight those who have moved within the state or out of state.<sup>254</sup>

Members asked what voter identification requirements are practiced in Ohio.<sup>255</sup> LaRose stated Ohio requires individuals to authenticate identity at the point of registration, requesting an absentee ballot and when voting in person.<sup>256</sup> For those which do not have a state-issued ID, Ohio provides a list of alternate identification, such as paystubs, a government document or a utility bill.<sup>257</sup> If the individual does not obtain any of these alternatives, then they are issued a provisional ballot to cast a vote. However, the individual then has ten days to provide ID for the vote to be counted.<sup>258</sup>

Members asked how Ohio handles signature verification.<sup>259</sup> LaRose explained some larger counties have the resources to have automatic scanning machines to filter out the most egregious signatures for human inspection.<sup>260</sup> However, this still creates a human element to the inspection.<sup>261</sup> LaRose explained some individual's signature can change over time due to many reasons.<sup>262</sup> He stated in this case, an individual would file a form with the county board of elections to notify them of the signature change.<sup>263</sup>

Members also asked about voter list maintenance.<sup>264</sup> LaRose explained Ohio uses the STEVE file, which is information received from the Department of Health that is passed on to the county.<sup>265</sup> Ohio also conducts an annual inspection of voter rolls for noncitizens.<sup>266</sup> With respect

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<sup>249</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 43. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>250</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 44. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>251</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 44. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>252</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 44. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>253</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 47. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>254</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 47-48. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>255</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 56. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>256</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 56. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>257</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 57. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>258</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 57. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>259</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 58. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>260</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 58. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>261</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 58. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>262</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 58-59. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>263</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 59. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>264</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 59. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>265</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 59-60. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>266</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 61. [2021\\_0037T.pdf \(state.pa.us\)](#)

to voter list maintenance/cleaning the rolls, LaRose indicated this is required in their law, but it is an “antiquated statute” and he has proposed the creation of a more “automated system.”<sup>267</sup> He also discussed how Ohio needs a “top-down voter registration system so that we truly had a statewide voter registration database.”<sup>268</sup>

LaRose also explained his state’s two identity protection systems, Safe at Home and Shielding Our Protectors, that protect the individual voter information of citizens when needed.<sup>269</sup> While Ohio lists actual birthdates to protect voters, Pennsylvania lists birthdates back to the 1800s.<sup>270</sup>

### ***Panel 3: County Election Official***

Discussions with this panel centered around implementation of voter registration at the county level.

Forrest Lehman, Director of Elections and Registration from Lycoming County, explained the SURE modernization project is very important in Pennsylvania because it is going to provide relief to counties on the voter registration system front.<sup>271</sup>

Lehman was asked how these applications are “processed,” and he explained that applications are received in “batches,” and the county is basically responsible for: “[e]very one of those is an application, a data point that we’re trying to match against someone in the SURE system to process it.”<sup>272</sup>

Members asked what process is in place if third party entities are not collecting a driver’s license or Social Security number when registering an individual.<sup>273</sup> Lehman stated these voter registration applications must be processed as a new registered voter.<sup>274</sup> He explained: “[a] voter indicates on a paper or online application that they affirmatively state, I have neither a driver’s license number nor a Social Security number, we have to process that application. That’s an affirmative selection the voter made, and the information they’re providing on that application, they’re signing off on it stating that the information is true and accurate to the best of their knowledge and belief.”<sup>275</sup> Lehman did explain later in his testimony when counties receive applications with missing information they do try and reach out to the applicant, but sometimes those applications get declined in certain circumstances.<sup>276</sup>

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<sup>267</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 64. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>268</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 68. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>269</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 71. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>270</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 70. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>271</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 76. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>272</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 80. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>273</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 80. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>274</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 81. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>275</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 81. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>276</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 94-95. [2021\\_0037T.pdf \(state.pa.us\)](#)

As a follow-up he was also asked why a person’s voter ID number could not be used as verification of their identity.<sup>277</sup> Lehman explained there are both administrative and practical as well as privacy concerns that point to reasons why it can’t be used.<sup>278</sup>

Members asked how the state ensures double votes are not being counted between states.<sup>279</sup> Lehman explained in Pennsylvania there are checks in place to ensure there are not duplicate registrations.<sup>280</sup> Lehman explained his county receives data from other states and it either comes from the counties or the Secretary of State’s office, which creates lag times.<sup>281</sup>

Lehman addressed member questions on the change in the deadline for voters to register from thirty days to fifteen days prior to the election.<sup>282</sup> Lehman described this as: “[t]he fifteen-day close of registration has created this new two-week period of what I can only describe as administrative chaos in counties.”<sup>283</sup> Counties had to keep up with large registration volumes and mail-in ballot applications, while having to prepare for the election by testing the voter equipment and preparing precinct supplies for in-person voting.<sup>284</sup>

Lehman was also asked about list maintenance.<sup>285</sup> He expressed data received from ERIC would be received more frequently and encouraged the committee to change the Election Code for counties to be allowed to utilize it.<sup>286</sup> Additionally, Lehman encouraged the committee to allow counties to utilize additional reliable data streams to update deceased voters.<sup>287</sup>

#### ***Panel 4: Electronic Registration Information Center (ERIC)***

Shane Hamlin, Executive Director of the Electronic Registration Information Center (ERIC), explained the purpose of ERIC is to provide a tool to help state and local election officials to maintain accurate voter rolls, register citizens and improve the voting process.<sup>288</sup> Hamlin suggested Pennsylvania could improve in ensuring voter lists are accurate by modernizing its SURE system.<sup>289</sup> Hamlin described the SURE system as “old” and “inefficient.”<sup>290</sup>

Members asked what Pennsylvania can improve on to ensure more accurate voter rolls.<sup>291</sup> Hamlin recommended Pennsylvania allow counties to use death record data ERIC obtains from

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<sup>277</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 83. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>278</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 83. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>279</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 84-85. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>280</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 85. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>281</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 85. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>282</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 86. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>283</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 87. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>284</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 87. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>285</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 98-99. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>286</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 99. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>287</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 99. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>288</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 108. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>289</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 116. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>290</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 116. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>291</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 115. [2021\\_0037T.pdf \(state.pa.us\)](#)

the Social Security Administration.<sup>292</sup> Additionally, Hamlin suggested to maintain safeguards to protect voters who might be misidentified as deceased or as a mover.<sup>293</sup>

Members asked whether Pennsylvania would receive voter participation reports to identify possible cases of illegal voting and the National Change of Address (NCOA) report. Hamlin replied this would be on the request of the state.<sup>294</sup> He further stated Pennsylvania requested the NCOA report and requested to participate in the voter participation report for the 2020 election.<sup>295</sup>

In conclusion, the committee gained greater insight on the voter registration process and the improvements can be made moving forward.<sup>296</sup> Members heard about the practices implemented in Ohio<sup>297</sup> and how they can learn from the registration model, while also gaining insight on the ERIC system and how this can aid counties when updating voter rolls.<sup>298</sup>

### **Recap**<sup>299</sup>

- Further codifying online voter registration would ensure its continued availability and present an opportunity for eliminating the risk inherent in third-party Web API programs.
- Returning the voter registration deadline to 30 days prior to an election, as it was prior to Act 77, would benefit counties while providing additional election integrity.
- Requiring that all necessary biographical and citizenship information be received and verified prior to accepting a voter registration application would enhance election integrity and simplify county administrative processes.
- Timely exchange of data from other states, including through full utilization of the ERIC system, would improve voter list accuracy.
- New SURE system must reduce human and data entry error.

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<sup>292</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 115-116. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>293</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 116. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>294</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 110. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>295</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 110-111. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>296</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 7. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>297</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 56-59. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>298</sup> State Government Committee Hearing Transcripts: Voter Registration, Pg. 108-109. [2021\\_0037T.pdf \(state.pa.us\)](#)

<sup>299</sup> Chairman's recap. March 4, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/382142364.mp4>

## **Certification and Operation of Voting Machines with Demonstrations**

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### **Highlights**<sup>300</sup>

- Pre-testing of election machines should be conducted publicly and transparently, with software updates also subject to certification.
- Voting machines have an inevitable shelf life and replacement date; Pennsylvania must plan to provide counties with the resources they need to update election infrastructure when necessary.
- Although all voting machines are required to be completely disconnected from the internet, other types of technological developments can be used to enhance election administration and integrity.

### **Hearing Summary**

On March 10, 2021, the State Government Committee held a hearing on the certification of voting machines and how they operate.<sup>301</sup> This hearing investigated the extensive certification process of voting machines conducted by the State and Federal Government.<sup>302</sup>

#### ***Panel 1: Election Certification Process***

Discussions in this first panel related to the process for certification of voting machines in Pennsylvania.

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State was asked by the committee to explain the difference between Federal and State certification standards when evaluating voting machines.<sup>303</sup> Marks said before a voting system vendor can bring a system to be tested at the Department of State, the system first has to be tested by an independent testing authority at the federal level, under the U.S. Election Assistance Commission (EAC).<sup>304</sup> The difference between the testing the EAC does and testing conducted by the Department of State, is the state does additional code review, penetration testing and functional testing.<sup>305</sup> The federal testing is a prerequisite to state testing, meaning the state does further testing of the voting systems before they are certified in Pennsylvania.<sup>306</sup>

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<sup>300</sup> Chairman's recap. March 10, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/808283788.mp4>

<sup>301</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 1. [2021\\_0055T.pdf \(state.pa.us\)](https://www.sos.pa.gov/Portals/0/Committee%20Hearings/2021_0055T.pdf)

<sup>302</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 5. [2021\\_0055T.pdf \(state.pa.us\)](https://www.sos.pa.gov/Portals/0/Committee%20Hearings/2021_0055T.pdf)

<sup>303</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 14. [2021\\_0055T.pdf \(state.pa.us\)](https://www.sos.pa.gov/Portals/0/Committee%20Hearings/2021_0055T.pdf)

<sup>304</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 14. [2021\\_0055T.pdf \(state.pa.us\)](https://www.sos.pa.gov/Portals/0/Committee%20Hearings/2021_0055T.pdf)

<sup>305</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 15. [2021\\_0055T.pdf \(state.pa.us\)](https://www.sos.pa.gov/Portals/0/Committee%20Hearings/2021_0055T.pdf)

<sup>306</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 16. [2021\\_0055T.pdf \(state.pa.us\)](https://www.sos.pa.gov/Portals/0/Committee%20Hearings/2021_0055T.pdf)

Marks was asked whether because Pennsylvania uses a combination of federal and state standards, this combination results in Pennsylvania's overall standards being more stringent.<sup>307</sup> Marks confirmed this and explained federal testing is the baseline required as a prerequisite to State testing, with additional security testing required before machines can be certified in Pennsylvania.<sup>308</sup> Marks further stated if a voting machine does not get cleared by the EAC, the voting machine is not assessed by the state.<sup>309</sup>

When the committee questioned the recommended life cycle of voting systems, Marks replied it depends on the individual system, but the lifespan can be from eight to twelve years.<sup>310</sup> The biggest risk with these machines is the lifespan of the hardware, if the software can be updated, and the integrity of the software being protected.<sup>311</sup> Additionally, there are two mechanisms that can be used to reevaluate these machines.<sup>312</sup> Marks explained that the first way is for voters to request a reexamination by petition and the second is the Secretary of the Commonwealth using discretion to reexamine a voting system if there is reason to believe the machine has been compromised.<sup>313</sup>

Members asked Marks to explain the transparency process with the certification of voting machines.<sup>314</sup> Marks explained pre-election logic and accuracy testing, along with post-election testing and auditing are done during the canvass and done in an open setting, allowing candidates and their representatives to be in attendance.<sup>315</sup>

Members asked what is certified within voting machines.<sup>316</sup> Marks stated every component of the machine is tested.<sup>317</sup> Each machine has an election management system used by the county and the jurisdiction to set up an election; this includes testing the hardware voters use, ballot marking

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<sup>307</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 16.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>308</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 16.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>309</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 16.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>310</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 23.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>311</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 24.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>312</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 25.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>313</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 25-26.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>314</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 22.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>315</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 22-23.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>316</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 20.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>317</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 20.

[2021\\_0055T.pdf \(state.pa.us\)](#)



device, and scanners which tabulate the ballots after being cast. Every component of the machine is tested to ensure accuracy.<sup>318</sup>

Marks addressed the concerns of the storage of ballots after an election.<sup>319</sup> Marks explained there is a retention period of eleven months, according to the Election Code for counties to keep ballots within this period.<sup>320</sup>

### ***Panel 2: How the Voting Machines work (Demonstrations)***

*The committee members watched video demonstrations of every election machine used by counties within the Commonwealth. These videos can be viewed on the Department of State's website.*<sup>321</sup>

### ***Panel 3: Election Machine Operations, Issues and Troubleshooting***

Discussions on this panel centered around election machine operations, issues and troubleshooting from the perspective of a county election official.

Timothy Benyo, Chief Clerk of the Lehigh County Election Board, explained what type of preparation goes into voting machines prior to election day.<sup>322</sup> Members asked what type of preparation is done ahead of time with voting machines.<sup>323</sup> Benyo explained the first step is to go through the logic and accuracy testing which is done by each county to identify any problems or differences in the coding of every machine.<sup>324</sup> This includes ensuring each precinct is correctly assigned and the correct cardstock is being used.<sup>325</sup>

Members asked about the security in place for these machines.<sup>326</sup> Benyo described the storage of voting machines when not in use.<sup>327</sup> In Lehigh County, the voting machines are placed in a

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<sup>318</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 20. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>319</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 31. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>320</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 31. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>321</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 34-35. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>322</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 39. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>323</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 39. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>324</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 39. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>325</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 40. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>326</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 40. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>327</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 40. [2021\\_0055T.pdf \(state.pa.us\)](#)

warehouse which has 24/7 security.<sup>328</sup> When members asked if there is a uniform standard across all counties when storing voting machines with video surveillance, Benyo stated: “[I] would assume not all 67 counties do have video surveillance, but there are locks and procedures to keep everything [safe], I’m sure.”<sup>329</sup> Benyo was asked what a “robust chain of custody” meant to him.<sup>330</sup> He responded: “[t]o me, it means I know who has access to each part of the election system.”<sup>331</sup> He also noted, however, that the interpretation of “robust” could vary across 67 counties’ opinions.<sup>332</sup>

When asked how the public is notified regarding pre-testing voting machines, Benyo explained newspaper ads and posts on social media are made to make the public aware of what is going on and to encourage voters to come and see how the process is conducted.<sup>333</sup>

During member questioning if voting machines are connected to the internet, Benyo explained to the committee: “[m]ost of the devices are never connected to the internet.”<sup>334</sup> The only web-based connection devices are the electronic poll books.<sup>335</sup> Voting machines have an encrypted USB drive which is specific to each machine and each election.<sup>336</sup> These USB drives are removed after election night and brought by poll workers to a central location to put into the tabulating machines.<sup>337</sup> Each machine is then sealed and locked up for twenty days after the election for the purpose of a recount or if the machine needs examined.<sup>338</sup> Members followed up asking about the memory cards and the chain of custody of who has the memory card at all times.<sup>339</sup> Benyo explained there is a chain to be followed and by law the memory cards need to always be kept.<sup>340</sup>

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<sup>328</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 40. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>329</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 41. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>330</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 41. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>331</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 41. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>332</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 42. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>333</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 46. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>334</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 54. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>335</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 55. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>336</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 51. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>337</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 51. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>338</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 52. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>339</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 52. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>340</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 52. [2021\\_0055T.pdf \(state.pa.us\)](#)



Members asked if any post-election audits are conducted on voting machines after polls close to ensure nothing was broken or damaged.<sup>341</sup> Benyo explained this does not occur within the time the county is restricted from touching the machines.<sup>342</sup> After this period, the machines are checked, and broken parts are fixed.<sup>343</sup>

#### ***Panel 4: Other State Voting Machine Certification and Operation***

Discussions with this panel centered around the State of Florida and its voting machine operation and certification. Paul Lux, CERA, Supervisor of Elections from Okaloosa County, Florida gave an overview of Florida's voting system certification process.<sup>344</sup> Lux explained all testing machines go through an extensive system check, such as logic, accuracy and functionality testing.<sup>345</sup> If any machine has an abnormality, the state will send an investigative team to ensure the software has not been tampered with.<sup>346</sup> One way Florida differs from Pennsylvania is the polling place procedure manual is applicable statewide.<sup>347</sup> Florida ensures every poll worker has a manual to follow in the event of a system malfunction.<sup>348</sup> With these standard procedures put in place, there is no confusion on how a situation needs to be followed.<sup>349</sup>

Members asked about Florida's voting systems certification standards and how they compare to the EAC. Lux explained Florida's guidelines go further than the EAC guidelines due to the voting process being conducted differently.<sup>350</sup> Lux further explained one difference in the ability to conduct a Universal Primary Contest.<sup>351</sup> This means if only people from one political party sign up to run for political office, then that race in the primary is open to all voters regardless of

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<sup>341</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 53.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>342</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 53.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>343</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 54.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>344</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 66-67.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>345</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 78.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>346</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 79.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>347</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 81.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>348</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 82.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>349</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 82.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>350</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 67.

[2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>351</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 68.

[2021\\_0055T.pdf \(state.pa.us\)](#)

party.<sup>352</sup> This allows for Democratic ballots to have Republicans on them and vice versa.<sup>353</sup> Lux expressed this is one example Florida law must address with voting systems.<sup>354</sup>

Members asked what types of systems are tested in Florida, and Lux stated the main testing occurs within the election management system, which includes the bank and servers which looks at ballot layouts and tabulators.<sup>355</sup> Additionally, Lux said the actual hardware itself, high-speed scanners and precinct-based scanners are part of the Bureau of Voting Systems certification tests.<sup>356</sup> Members asked how often Florida tests its machines to ensure proper function.<sup>357</sup> Lux explained their systems go through logic and accuracy testing before each election to ensure everything is working the way it should.<sup>358</sup>

In conclusion, the committee gained insight on the extensive certification process of voting machines,<sup>359</sup> while looking at the ways Florida implements system checks.<sup>360</sup> Additionally, the way voting machines are handled during and after an election was discussed.<sup>361</sup>

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<sup>352</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 68. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>353</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 69. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>354</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 69. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>355</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 71. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>356</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 72. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>357</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 78. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>358</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 78. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>359</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 14. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>360</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 66. [2021\\_0055T.pdf \(state.pa.us\)](#)

<sup>361</sup> State Government Committee Hearing Transcripts: Certification and Operation of Voting Machines, Pg. 40. [2021\\_0055T.pdf \(state.pa.us\)](#)

## **Recap**<sup>362</sup>

- Certifying all systems and software used in election administration, conducting tests in public, transparent ways, and requiring pre-election testing of machines, would reassure voters of the integrity of the election process and safeguard against fraud or attacks. Florida provides a model of best practices in this area.
- Pennsylvania should plan for the regular need to update election infrastructure, including for ways to provide counties the resources they need to afford new machines when necessary.
- By properly utilizing emerging technology to operate and streamline election administration, Pennsylvania can ensure election integrity while reducing the burden on county administrators.

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<sup>362</sup> Chairman's recap. March 10, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/808283788.mp4>

## No Excuse Mail-in and Absentee Ballots

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### Highlights<sup>363</sup>

- The current timeline for ballot requests does not reflect a feasible timeline for delivering and returning a ballot, failing both voters and election administrators.
- Signature verification must be applied to mail-in and absentee ballots in an accurate, uniform manner across the Commonwealth.
- Voter ID should be implemented fairly and accessibly, with all eligible voters able to receive a free compliant identification.
- Any place where a ballot is being cast should be treated as a polling place, with meaningful access for bipartisan observers as well as consistent accessibility requirements.

### Hearing Summary

On March 18, 2021, the State Government Committee held a hearing on no excuse mail-in ballots and absentee ballots.<sup>364</sup> This hearing reviewed the changes made through Act 77 of 2019 and Act 12 of 2020 pertaining to no excuse mail-in ballots and absentee ballots.<sup>365</sup>

#### ***Panel 1: PA Department of State***

Discussion on this panel centered around the Department's first-time implementation of mail-in ballots during the 2020 election cycle.

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State explained to the committee the significant impact Act 77 of 2019 had on the 2020 election. With no one being able to predict a global pandemic, this change allowed individuals who did not feel safe to physically vote to apply for a no-excuse mail in ballot.<sup>366</sup> Marks further discussed in a typical presidential election, prior to the 2020 election, the state would have received around 300,000 absentee ballots.<sup>367</sup> Between absentee and mail-in ballots for the 2020 election, Pennsylvania had 2.7 million absentee and mail-in ballots cast by voters in the Commonwealth.<sup>368</sup>

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<sup>363</sup> Chairman's recap. March 18, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/370367025.mp4>

<sup>364</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 1. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>365</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 4. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>366</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 17. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>367</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 17. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>368</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 17. [2021\\_0060T.pdf \(state.pa.us\)](#)

Members asked what steps are taken to verify a voter filled out their own ballot.<sup>369</sup> Marks stated the ballot is going directly to the voter's address.<sup>370</sup> They then must complete a declaration on the incoming ballot and send it back to the board of elections or deliver it in person.<sup>371</sup> Additionally, there are specific statutory requirements if an individual assists the voter in filing out the ballot.<sup>372</sup> The voter must authorize an individual to aid and then they can assist in delivering the ballot.<sup>373</sup>

Members asked what safeguards are put in place to ensure mail-in ballots are only sent to those who are eligible to vote.<sup>374</sup> Marks explained that in Pennsylvania, if a voter wants a ballot, they have to request one.<sup>375</sup> Upon request, the individual then needs to provide identification which must be verified.<sup>376</sup> If the voter cannot provide identification, they are then still issued a ballot, but their ballot will not be counted until the proper identification is provided within six days after the election.<sup>377</sup> If a voter wants to know if a request was made in their name, Pennsylvania's transparent system allows for the Department's website to display if a request was made.<sup>378</sup>

Marks was further asked why someone should be allowed to register to vote without that information being affirmed prior to vote.<sup>379</sup> Marks explained that voter registration requirements are different.<sup>380</sup> Identification is required to register to vote.<sup>381</sup> However, Marks stated: "[t]here is no explicit federal requirement or state requirement that requires that identification to be validated. So, if a voter registers to vote and they say they don't have either one of those identification numbers, the county will try to get the information. They must make reasonable efforts to get the information. They can't flat out, absolute reject the application, but they do

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<sup>369</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 25.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>370</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 25.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>371</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 25.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>372</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 25.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>373</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 25.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>374</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 21.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>375</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 21.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>376</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 22.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>377</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 22.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>378</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 29.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>379</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 26.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>380</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 26.

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<sup>381</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 26.

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mail a voter registration card to the voter at the address provided.”<sup>382</sup> Pennsylvania also has first-time voter ID requirements, which includes anyone voting for the first time in the precinct.<sup>383</sup>

Marks gave insight on the legislative recommendations received from counties on what can make the mail-in process more efficient for future elections. The top change counties would like to see is the ability to pre-canvass voted ballots.<sup>384</sup> Additionally, counties would like a more common-sense timeline to align voter registration, absentee and mail-in ballot deadlines.<sup>385</sup> Counties need ample amount of time to process the amount of work involved with mail-in balloting.<sup>386</sup>

Members asked about the security of mail-in ballots, and perhaps addressing identification issues “on the front end” rather than six days post-election.<sup>387</sup> When asked about legislative steps which could be taken to improve voters’ confidence in the security of the mail-in ballot, Marks suggested one being another step of ID being provided at the time the ballot is sent, recognizing there are logistics involved, as well as protecting the secrecy of the ballot.<sup>388</sup> Marks also expressed hope that the new SURE database has additional tools to work on some of these issues.<sup>389</sup> Members asked the process for verifying signatures. Marks explained the courts ruled that signature verification does not have to take place during the actual casting of the ballot.<sup>390</sup> In Pennsylvania, poll workers are not trained on how to compare signatures.<sup>391</sup> As Marks stated: “[s]omeone who is not an expert doing that kind of analysis is likely going to end up setting aside a lot of ballots that shouldn’t be set aside.”<sup>392</sup> States which do this take advantage of technology and use signature verification software.<sup>393</sup>

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<sup>382</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 27. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>383</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 27. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>384</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 35. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>385</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 36. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>386</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 36. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>387</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 43. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>388</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 44. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>389</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 45. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>390</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 50. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>391</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 50. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>392</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 50-51. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>393</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 51. [2021\\_0060T.pdf \(state.pa.us\)](#)

## ***Panel 2: Academic Research and Data***

Discussions with this panel related to academic findings on mail-in voting and its process.

Dr. Charles Stewart II, Professor of Political Science, Massachusetts Institute of Technology explained the trends of mail-in voting for the 2020 election and emphasized mail-in voting had no impact on voter turnout but would increase voter turnout by one to two percent in high-turnout elections.<sup>394</sup> Research also suggests vote by mail states can have a higher turnout in local elections.<sup>395</sup> Additionally, elections have shown mail-in voting does not appear to have partisan consequences.<sup>396</sup>

When members asked about signature verification, Stewart stated it can be “intuitively appealing” to individuals, however, it is hard to implement consistently.<sup>397</sup> According to Stewart, signature verification can be accomplished in two forms, training election workers and using automation.<sup>398</sup> Some states take the time and effort to train election poll workers to have forensic signature matching knowledge.<sup>399</sup> With respect to the second form of automation, some argue that computers take the human element out of it, but computers are better at conducting tedious tasks, such as signature verification.<sup>400</sup>

Members asked if there are signature requirements and integrity provisions for mail-in ballots.<sup>401</sup> Stewart stated with vote by mail states, offices will be working with voters by mail and can keep track of voter addresses more efficiently.<sup>402</sup> If a county is mailing a voter a ballot every year, then they can work directly with the postal service to make sure addresses are accurate and voter rolls are clean.<sup>403</sup>

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<sup>394</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 68-69.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>395</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 75.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>396</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 69.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>397</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 80.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>398</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 80.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>399</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 80.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>400</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 81.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>401</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 81-82.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>402</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 82.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>403</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 82.

[2021\\_0060T.pdf \(state.pa.us\)](#)



### ***Panel 3: Election Report***

Pam Anderson, Principal for Consilium Colorado, LLC gave insight on Colorado's mail-in ballot system and informed the committee of Colorado's signature verification procedure.<sup>404</sup>

Members asked about Colorado's integrated system with its states driver's license system, and how it captures an individual's driver's license signature to import into the states voter registration system.<sup>405</sup> Anderson indicated over time, these signatures are then constantly being imported into the voter system when a signature is used for a voted ballot, registration form and absentee forms.<sup>406</sup> Anderson explained this then creates a library of signatures over time and comparison is made easier.<sup>407</sup> When a signature is questionable, the three most recent signatures captured on hand will be looked over by the election judges to determine if the signatures match.<sup>408</sup>

Anderson also described drop box locations in Colorado to the members.<sup>409</sup> Voters have access to 24-hour drop box locations and have the option to drop mail-in ballots anywhere within the state.<sup>410</sup> If voters are using drop box locations, voters must have them in before 7 p.m. on election night, otherwise they will not be counted.<sup>411</sup>

Members asked about ballot tracking within Colorado.<sup>412</sup> Anderson responded ballot tracking is built into the online voter registration system.<sup>413</sup> This system notifies the voter through email or text when the ballot was mailed, when the ballot was received and if the ballot was accepted or rejected.<sup>414</sup> Anderson pointed out the ballots themselves are anonymous.<sup>415</sup> Anderson explained how Colorado uniquely codes their elections with a ballot ID, which provides a numerical

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<sup>404</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 105-106.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>405</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 106.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>406</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 106.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>407</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 106.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>408</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 107.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>409</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 122.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>410</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 122.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>411</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 123.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>412</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 102.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>413</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 102.

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<sup>414</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 103.

[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>415</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 100.

[2021\\_0060T.pdf \(state.pa.us\)](#)



number for each ballot ID.<sup>416</sup> Anderson further explained this is part of a “universal thing in election administration” called “binking.”<sup>417</sup> Anderson stated this is where a barcode scanner can tell whether the appropriate ballot was sent out in the envelope.<sup>418</sup> However, Anderson also stated that: “[a]nonymous ballots are very important, so we do not identify to a particular voter any identifying information. Voter privacy is built into our state constitution.”<sup>419</sup>

Members asked what the advantages were to requiring ballots to be mailed to voters no later than 18 days prior to an election, rather than Pennsylvania’s law of up to 7 days prior to an election.<sup>420</sup> Anderson said it creates consistency across county jurisdictions and allows the mail services to accommodate, to allow voters to receive their ballot, contemplate and mail it back.<sup>421</sup>

Anderson discussed the bipartisan nature of the process in her state and stated: “[a]ll of our operations, by statute, many by rule-for example ballot collection, transferring ballots...or collecting ballots from 24-hour drop boxes or our vote centers, must be done with by partisan teams.”<sup>422</sup>

#### ***Panel 4: County Election Official***

Discussions on this panel related to the process for mail-in ballots at the county level.

Dr. Thad Hall, Director of Voter Registration and Elections for Mercer County, discussed members’ concerns regarding drop boxes not being in secure locations.<sup>423</sup> Hall expressed drop boxes can be vandalized if not properly secured and it is essential for drop boxes to be uniformly dispersed across a jurisdiction so there is no benefit to one specific party in how the boxes are placed.<sup>424</sup> Drop boxes should have two people picking up ballots to ensure a secure chain of custody.<sup>425</sup> Additionally, Hall commented on having a uniform date for mail-in ballots to be

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<sup>416</sup>State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 101.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>417</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 101.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>418</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 102.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>419</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 102.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>420</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 120.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>421</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 121.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>422</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 128.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>423</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 136-137.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>424</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 137.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>425</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 165.  
[2021\\_0060T.pdf \(state.pa.us\)](#)

mailed to voters.<sup>426</sup> Hall said when he worked as an election official in Arizona, ballots were to be mailed between 27 and 24 days before the election, allowing for consistent messaging across the state as to when ballots would go out.<sup>427</sup> Hall also mentioned it would be very helpful if counties had better statutory guidance on how drop boxes and satellite locations should be handled.<sup>428</sup>

Members asked the financial impact mail-in voting had on Mercer County.<sup>429</sup> Hall commented it had an impact and continues to have an impact on the county.<sup>430</sup> He further stated one of the biggest issues is the requirement to do annual mailing to voters on the permanent mail-in voter list.<sup>431</sup> This mailing is very expensive and was a new cost the county incurred.<sup>432</sup> He noted these mailings require staff time to process the ballots and this is a huge cost incurred.<sup>433</sup> When members asked about the specific dollar amount, Hall explained that three staff working overtime for several weeks accrued \$100,000 in personnel cost, not including the cost associated with mail-in ballots.<sup>434</sup> He was also asked about satellite offices and he explained because of the need to make sure these are distributed fairly, if used they could also be more costly as well.<sup>435</sup>

Hall was also asked about mail-in ballots received without proper information.<sup>436</sup> Hall explained these ballots were held aside and those voters were contacted.<sup>437</sup> He further stated those ballots: “[i]n our office were kept separate and were not processed until that six-day period was up and we received their information.”<sup>438</sup>

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<sup>426</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 167. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>427</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 133. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>428</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 135. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>429</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 138. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>430</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 138. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>431</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 138-139. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>432</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 138. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>433</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 139. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>434</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 140. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>435</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 143. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>436</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 143. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>437</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 144. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>438</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 144. [2021\\_0060T.pdf \(state.pa.us\)](#)

Members asked if there were further challenges surrounding permanent mail-in lists.<sup>439</sup> Hall explained it created confusion for the 2020 election because some voters checked the box but then decided to vote in person, which caused more provisional ballots in polling places.<sup>440</sup> Hall expressed, moving forward, it would be helpful to make those voters who want to be permanent stay permanent and mailed ballots for every election.<sup>441</sup> This is because processing applications and mailing them out is very costly for the county.<sup>442</sup>

Members also discussed with Hall the use of e-poll books.<sup>443</sup> He explained they are very “helpful” and that it provides: “[g]reater assurance that the person who’s handing out ballots hands out the right ballot because they are getting a ticket.”<sup>444</sup>

Hall also expressed concerns with the conflicting timelines between petition challenges and mail-in ballots.<sup>445</sup>

In conclusion, members heard from officials on the implications of Act 77 of 2019 and the various struggles counties endured with these changes.<sup>446</sup> Members gained insight on the mail-in ballot system and how counties conducted procedures pertaining to signature verification and drop boxes.<sup>447</sup>

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<sup>439</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 149. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>440</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 149. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>441</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 149. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>442</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 149. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>443</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 158. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>444</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 159. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>445</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 166. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>446</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 5. [2021\\_0060T.pdf \(state.pa.us\)](#)

<sup>447</sup> State Government Committee Hearing Transcripts: No Excuse Mail-In and Absentee Ballots, Pg. 136-138. [2021\\_0060T.pdf \(state.pa.us\)](#)

## **Recap**<sup>448</sup>

- Establishing an earlier deadline for requesting a mail-in ballot would improve election integrity and relieve the burden placed on county administrators.
- Other states use training and enhanced technology to provide reliable ballot tracking and authenticity confirmation, as well as signature verification, gaining additional election integrity.
- Most states utilize voter ID requirements to ensure elections are conducted with integrity, providing Pennsylvania with many models for how such a policy can be applied fairly.
- The Election Code should provide uniformity in ensuring that all places where voting occurs are subject to the same regulations regarding accessibility, transparency, electioneering, and security.

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<sup>448</sup> Chairman's recap. March 18, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/370367025.mp4>

## **County Election Day Operations and Satellite Election Offices**

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### **Highlights**<sup>449</sup>

- Election rules should be set far ahead of Election Day, with no last-minute changes that will likely be inconsistently applied.
- Act 77 burdened counties with an unsustainable election system, both financially and practically, as well as an impractical administrative timeline in the weeks prior to an election.
- Transparency and uniformity across all 67 counties require enhanced training of staff as well as requirements for public access to all parts of the election process.

### **Hearing Summary**

On March 25, 2021, the State Government Committee held a hearing to discuss county election day operations and satellite election offices.<sup>450</sup> During this hearing, the committee heard from election officials and experts on their experiences during the 2020 election and how Pennsylvania can be more efficient with the election process in the future.<sup>451</sup>

#### ***Panel 1: County Election Directors***

Discussions on this panel centered around county election day operations.

Ed Allison, Director of Voter Registration and Elections of Lawrence County, informed the committee of the challenges involved with recruiting and retention of poll workers.<sup>452</sup> Allison attributed these challenges to age and the amount of work and stress that was involved in the last election, in regard to the surrendering or voting in person by individuals who had mail-in ballots issued to them or individuals who wished to vote in person who did not bother to do anything with ballots and had to vote provisionally.<sup>453</sup>

Patricia Nace, Election Consultant, Northumberland and Snyder Counties, detailed the preparation involved throughout election day, and the challenges that Act 77 of 2019 presented for the 2020 election, in terms of processing mail-in ballots.<sup>454</sup> One of the biggest challenges was the last minute, unclear directives from the Department, and election directors not having the

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<sup>449</sup> Chairman's recap. March 25, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/781607422.mp4>

<sup>450</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 1. [2021\\_0065T.pdf \(state.pa.us\)](https://www.state.pa.us/2021_0065T.pdf)

<sup>451</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 6. [2021\\_0065T.pdf \(state.pa.us\)](https://www.state.pa.us/2021_0065T.pdf)

<sup>452</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 12-13. [2021\\_0065T.pdf \(state.pa.us\)](https://www.state.pa.us/2021_0065T.pdf)

<sup>453</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 13. [2021\\_0065T.pdf \(state.pa.us\)](https://www.state.pa.us/2021_0065T.pdf)

<sup>454</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 17-19. [2021\\_0065T.pdf \(state.pa.us\)](https://www.state.pa.us/2021_0065T.pdf)

time to check emails before or the day of the election.<sup>455</sup> Nace pointed out providing funding for training for poll workers is a must.<sup>456</sup> Poll workers are constantly coming and going, due to the overwhelming atmosphere of the job, and not having the proper training to handle unique situations that may arise.<sup>457</sup> Nace also would like to see counties granted more time to pre-canvass “maybe even seven days out,” and change the deadline for absentee ballots.<sup>458</sup>

When the committee asked if the Northumberland, Snyder and Lawrence county offices had the ability or knowledge on how to establish satellite offices,<sup>459</sup> Nace explained even if counties wanted to set up satellite offices, some counties do not have the manpower or funds to do so.<sup>460</sup> Allison agreed, further stating that the Department’s guidance suggested advice on such things as hours of operation, but Allison explained for his county satellite offices were not possible, due to the lack of trained workers.<sup>461</sup>

Members asked the process involved with training election board workers and how long the process is.<sup>462</sup> Nace explained poll workers have a class right before the election.<sup>463</sup> Nace said she gives poll workers a handbook to reference throughout the training.<sup>464</sup> Allison expressed his county provides training to cover all changes since the previous election, such as standard operating procedures.<sup>465</sup>

Members asked if drop boxes were managed as far as people collecting ballots and making sure the chain of custody was not compromised, and Allison said they would send one person, along with a sheriff’s deputy to each of the locations to collect ballots.<sup>466</sup> This individual would then have to sign off on the number of ballots received and everything is placed separately in

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<sup>455</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 19. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>456</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 20. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>457</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 20. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>458</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 20. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>459</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 21. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>460</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 21-22. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>461</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 22. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>462</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 35. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>463</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 36. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>464</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 36. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>465</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 37. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>466</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 42. [2021\\_0065T.pdf \(state.pa.us\)](#)

lockboxes.<sup>467</sup> From there, election personnel sign off on the number of ballots received and will begin to process the ballots. Allison stated drop boxes need to be further clarified in language because they are not mentioned in the code.<sup>468</sup>

When members asked what happens to the ballots given to those that are not fully verified to register to vote, Allison explained per the Department of State's guidance, counties are to process the individual's registration and put them on voter rolls if they checked the box stating they do not have a Driver's License or Social Security number.<sup>469</sup>

### ***Panel 2: City of Philadelphia***

Discussions on this panel related specifically to City of Philadelphia election day operations, in particular satellite offices.

Seth Bluestein, Chief Deputy Commissioner and Chief Integrity Officer of the City of Philadelphia, commented on member questions in regard to Philadelphia County being one of the few that had the ability to offer satellite offices along with evening and weekend availability for in-person voting.<sup>470</sup> Due to the increase of individuals voting by mail, the City established seventeen elections offices geographically dispersed throughout the city, with each being staffed with an average of seven workers.<sup>471</sup> Bluestein commented on the cost of satellite sites and said they were "fairly expensive."<sup>472</sup> In order for the locations to operate, rent had to be paid for the location, computer equipment had to be obtained to use the SURE system and the most expensive cost was staffing these locations.<sup>473</sup> The costs totaled to be \$100,000 to \$150,000 per office.<sup>474</sup> These funds were provided from private grants received by the city.<sup>475</sup>

When members asked about the satellite experiences Philadelphia encountered, Bluestein said they were rolled out daily and had sufficiently trained staff.<sup>476</sup> Once the ballot was finalized and mailed out, Philadelphia's satellite offices gradually expanded and remained open until close of

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<sup>467</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 42. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>468</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 43. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>469</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 41. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>470</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 55. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>471</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 56. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>472</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 64. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>473</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 64. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>474</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 64. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>475</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 70. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>476</sup> State Government Committee Hearing Transcripts: County ElectionsDay Operations and Satellite Offices, Pg. 62. [2021\\_0065T.pdf \(state.pa.us\)](#)



election night.<sup>477</sup> When members asked how many individuals utilized these services, Bluestein said 50,000 people applied and received a ballot at these locations.<sup>478</sup>

Bluestein was also questioned regarding poll observers.<sup>479</sup> He was asked what was considered “meaningful observation” by the observer.<sup>480</sup> He explained the “activities that were clearly visible the entire time for every observer who wished to observe them.”<sup>481</sup>

Members also asked whether the 15-day voter-registration deadline and the 7-day mail-in ballot deadline created challenges for Philadelphia.<sup>482</sup> Bluestein said: “[y]es. Those deadlines are extremely challenging.”<sup>483</sup> When asked for recommendations for changes to these deadlines, Bluestein responded: “[a]t a minimum, I would say the Friday prior to the current application deadline for vote by mail so that would put it at approximately 10 or 11 days before election day. And certainly, any adjustment to the registration deadline, whether that’s back to the full 39 or even 20 or 21 days would be an improvement over the current 15 days from an administrative perspective.”<sup>484</sup>

Bluestein was also asked about further suggestions for deadline changes.<sup>485</sup> He suggested more time to pre-canvass ballots.<sup>486</sup>

Members also asked how e-pollbooks would help Philadelphia as a city of the first class.<sup>487</sup> Bluestein responded: “electronic pollbooks would allow us to have those records be even more

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<sup>477</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 63.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>478</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 63.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>479</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 72.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>480</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 72.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>481</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 73.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>482</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 74-75.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>483</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 74.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>484</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 75.

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<sup>485</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 76.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>486</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 77.

[2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>487</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 77.

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updated, providing for greater integrity.”<sup>488</sup> In addition, e-pollbooks would also allow vote centers to be possible should the Commonwealth ever wish to move to them for early voting.<sup>489</sup>

### ***Panel 3: Reporting of Election Returns***

Discussions on this panel centered around county election day operations and their impact on the reporting of election returns.

Shane Fitzgerald, Executive Director of Bucks County Courier Times and The Intelligencer; PA State Editor, USA Today Network outlined how media is essential to democracy and a democratic election.<sup>490</sup> The media acts as a watch dog to elections and acts as a safeguard to the transparency of the election.<sup>491</sup> The media also enables the public to participate in the election process by educating voters on how to exercise their democratic rights and allow candidates to communicate their message.<sup>492</sup> According to Fitzgerald: “[m]edia presence at voting and counting centers are critical to preventing electoral fraud, given the full measures protecting freedom of speech are guaranteed and the media are free to act independently and with impartiality.”<sup>493</sup> Fitzgerald encouraged the committee to consider legislation to expand media access to polling places to allow the media to witness and record events to create trust amongst voters and integrity in the election.<sup>494</sup>

Members asked the major changes in covering the 2020 election as opposed to past elections coverage.<sup>495</sup> Fitzgerald said waiting for mail-in ballots to be counted and not being able to call the election when the public was waiting on the media to do so.<sup>496</sup> Fitzgerald went on to say the data collected was actively being collected both locally and by precincts.<sup>497</sup>

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<sup>488</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 77-78. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>489</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 78. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>490</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 82. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>491</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 82. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>492</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 82. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>493</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 82. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>494</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 83. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>495</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, pg. 90. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>496</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, pg. 91. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>497</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 91. [2021\\_0065T.pdf \(state.pa.us\)](#)

#### ***Panel 4: State Best Practices***

This panel offered insight on best practices for other states and county election day operations.

Sambo Dul, State Elections Director with the Arizona Secretary of State answered member questions relating to Arizona’s procedures manual.<sup>498</sup> Dul outlined the procedures manual on election rules and procedures that the Arizona Secretary of State updates every odd-numbered year, and provides to their counties.<sup>499</sup> According to Dul: “[t]he purpose of the manual, as stated in the statute, is to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency in election administration in Arizona.”<sup>500</sup> This manual must be updated by the Secretary and then submitted to the Governor and Attorney General before October 1<sup>st</sup>.<sup>501</sup> From there the manual is reviewed and approved by December 31<sup>st</sup>.<sup>502</sup> Once officially approved, the manual has the force and effect of the law.<sup>503</sup>

Members asked about election training, and Dul informed the committee of Arizona’s election officer training and certification program.<sup>504</sup> Under Arizona Revised Statute 16-407, the Secretary of State is required to provide an election officer certification program, which is a five-day, forty-hour certification course on instruction in the technical, legal, and administrative aspects of conducting elections within Arizona.<sup>505</sup> This program is administered every odd-numbered year and election officers must be certified each year before January 1<sup>st</sup> of each general election year.<sup>506</sup> After the certification process, election officials must then attend an eight-hour recertification program to be provided information on elections updates.<sup>507</sup>

Pam Anderson, principal of Consilium Colorado, LLC, addressed election observers and informed the committee that election observers in Colorado can be trained and certified by interested parties, candidates, or issue committees.<sup>508</sup> From there, observers go through a

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<sup>498</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 102-103. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>499</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 102-103. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>500</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 102. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>501</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 103. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>502</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 103. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>503</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 103. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>504</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 104. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>505</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 104. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>506</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 105. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>507</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 105. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>508</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 130-131. [2021\\_0065T.pdf \(state.pa.us\)](#)

credentialing process and are administered an oath.<sup>509</sup> The observer is then given certificates for multiple jurisdictions to bring any issues forward which may occur during the election process.<sup>510</sup>

Anderson mentioned with Colorado's election observers: "[w]e build in the transparency...we can make sure that we're validating that the outcomes were accurate."<sup>511</sup> Anderson addressed concerns on finding poll workers and experienced election officials.<sup>512</sup> Anderson said one-third of Colorado's election officials turned over in 2018, causing a large amount of time being spent on training and implementation.<sup>513</sup>

Anderson also answered questions as to whether Colorado allows access to the ballots themselves.<sup>514</sup> Anderson explained under the Colorado Open Records Act, they are available after the conduct of the election but prior to the contest period, and after the election has been certified and audited and canvassed, their images and paper ballots are available for inspection.<sup>515</sup>

Tim Mattice, Executive Director of The Election Center, informed the committee states need to have the ability to pre-canvass ballots ahead of time.<sup>516</sup> If states are going to continue to see a large volume of mail-in ballots, then poll workers are going to need ample of amount of time to process these ballots in order to have results in when the public expects to hear them.<sup>517</sup>

Members asked if any insight can be provided from other states working through election process changes.<sup>518</sup> Mattice explained members are dealing with unprecedented times and are really focused on ensuring enough time to canvass mail-in ballots. Mattice pointed out that if mail-in voting is going to increase in the future, then states need the time to pre-canvass ballots so the public can be aware of election results at the end of election night.<sup>519</sup>

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<sup>509</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 130-131. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>510</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 131. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>511</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 128. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>512</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 121. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>513</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 121. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>514</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 139. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>515</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 140. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>516</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 125. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>517</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 125. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>518</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 125. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>519</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 125. [2021\\_0065T.pdf \(state.pa.us\)](#)

Members asked how election integrity is assured in the mail-in ballot process.<sup>520</sup> Anderson said it is important to have a registration database and election management system in building a robust system.<sup>521</sup> Anderson further stated signature verification and building election confidence amongst observers are important in validating accurate outcomes.<sup>522</sup>

In conclusion, the committee heard from testifiers pertaining to election day operations and satellite election offices.<sup>523</sup> Members heard from election officials and experts on experiences encountered during the 2020 election and recommendations on how Pennsylvania can be more efficient moving forward.<sup>524</sup>

### **Recap**<sup>525</sup>

- Other states' best practices include the publication of enforceable election rule handbooks far in advance of an election, as well as adequate funding for poll worker training, providing a model for improving Pennsylvania's administration.
- Easing Act 77's administrative and financial burden on counties should be at the forefront of improvements to the Election Code. This likely requires more practical timelines for the voter registration and mail-in ballot systems.
- Confidence in Pennsylvania's election process would be strengthened by increased training of election administrators and clearer, uniform guidelines on transparency in election operations.

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<sup>520</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 128. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>521</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 127-128. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>522</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 128. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>523</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 5-7. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>524</sup> State Government Committee Hearing Transcripts: County Election Day Operations and Satellite Offices, Pg. 6. [2021\\_0065T.pdf \(state.pa.us\)](#)

<sup>525</sup> Chairman's recap. March 25, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/781607422.mp4>

## **Election Integrity and Accessibility Policy**

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### **Highlights**<sup>526</sup>

- Cybersecurity threats to elections are ongoing and must inform election administration at every level.
- Pennsylvania’s 1937 Election Code is outdated and insufficient to serve the needs of all Pennsylvanians, particularly the disabled voters.
- Trust in the election process requires that all voters can have confidence that their ballots were counted as cast, and that only eligible voters participated in an election.

### **Hearing Summary**

On April 1, 2021, the State Government Committee held a hearing on election integrity and accessibility policy.<sup>527</sup> This hearing investigated how integrity can be grounded into the election process and how accessibility can be provided to the most vulnerable populations.<sup>528</sup> As Chairman Grove stated: “[P]ennsylvania’s election system should be easy to vote but hard to cheat.”<sup>529</sup>

#### ***Panel 1: Cybersecurity***

Discussions with this panel explained how cybersecurity protections can ensure election integrity.

Dr. Will Adler, Senior Technologist, Elections and Democracy, Center for Democracy and Technology, outlined the various steps Pennsylvania can take to secure election infrastructure.<sup>530</sup> The first way is to ensure voters can be confident their votes are being counted as intended.<sup>531</sup> The elimination of paperless voting systems was a step forward in instilling confidence in voters.<sup>532</sup> However, it is essential these voting machines have software independence, meaning if there is an undetected change to the software, there cannot be an undetected change in the election outcome.<sup>533</sup>

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<sup>526</sup> Chairman’s recap. April 1, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/477552054.mp4>

<sup>527</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 1. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>528</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 5. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>529</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 5. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>530</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 12-16. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>531</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 12. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>532</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 12-13. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>533</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 13. [2021\\_0068T.pdf \(state.pa.us\)](#)

Adler explained Pennsylvania needs to prioritize cybersecurity when looking to make procurement decisions.<sup>534</sup> Election machines may not directly connect to the internet, however, other systems needed to conduct elections are.<sup>535</sup> With this, Pennsylvania needs to avoid the possibility of breaches and tighten the security of the systems.<sup>536</sup> Lastly, it is essential for counties to follow cyber security practices and have assistance in running secure systems.<sup>537</sup> Counties often do not have the proper training in identifying when a breach has occurred, or have the ability to have an IT staff to monitor the systems.<sup>538</sup> This is why counties need funding for training courses, and an ongoing fund for election security upgrades.<sup>539</sup>

Dr. Clifford Neuman, Director, University of Southern California Center for Computer Systems Security, explained that in order for cyber components of the election to be more secure, it is essential to understand the motivation and goals of the adversaries attempting to disrupt the election.<sup>540</sup> It is also important to understand the ways adversaries could impact an election, such as a change in voter rolls, and voter polling locations.<sup>541</sup> Neuman also informed the committee one of the most important aspects to ensuring election security is the “durable record of the intent of the voter.”<sup>542</sup> This means voters need to be able to review their vote when it is being cast to make sure votes were not “switched.”<sup>543</sup> This allows confidence in the tabulation process if questions were to arise.<sup>544</sup>

Members expressed concerns with how Pennsylvania can ensure the updated SURE system will be secure from cyber threats.<sup>545</sup> Adler said there must be regular risk assessments, internet traffic must be encrypted, and there must be a strong access control to the database to know who has

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<sup>534</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 14.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>535</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 14.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>536</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 14.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>537</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 15.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>538</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 15.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>539</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 15.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>540</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 17.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>541</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 17.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>542</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 18.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>543</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 18.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>544</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 19.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>545</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 38.

[2021\\_0068T.pdf \(state.pa.us\)](#)

access at any time.<sup>546</sup> Neuman added that the system cannot be completely protected when individuals can register to vote online.<sup>547</sup> He stated that this is because cyber-attacks can be mounted to the system by an adversary impersonating an individual through their social security number, found on the dark web.<sup>548</sup> Neuman noted there is always going to be individuals who try to manipulate voter records through the system.<sup>549</sup>

Members expressed concerns over cyber security threats within counties.<sup>550</sup> Adler explained one of the easiest ways to prevent a cyber threat is to ensure domains of county websites end in .gov.<sup>551</sup> Only verified government entities have these domains.<sup>552</sup> This builds trust among voters who can know they are looking at a website with accurate information.<sup>553</sup> Currently, there are only eleven out of the sixty-seven counties that use .gov domains.<sup>554</sup> Adler encourages the General Assembly to help counties work with the federal Cybersecurity and Infrastructure Security Agency in receiving secure domains.<sup>555</sup>

### ***Panel 2: County Election Director***

Discussions on this panel centered around election integrity from the perspective of a county election director.

Nathan Savidge, Chief Registrar, Northumberland County Board of Elections, detailed the mass chaos he and his poll workers experienced due to the difficulties with drop boxes for mail-in ballots.<sup>556</sup> There was confusion with the last-minute guidance coming from the Department of State and multiple staff members reaching out explaining the guidance in different ways.<sup>557</sup>

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<sup>546</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg.38 [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>547</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 40. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>548</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 41. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>549</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 41. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>550</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 25. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>551</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 16. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>552</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 16. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>553</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 16. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>554</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 16. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>555</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 16. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>556</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 72. [2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>557</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 72. [2021\\_0068T.pdf \(state.pa.us\)](#)



Overall, Northumberland County was not able to order drop boxes, and this also was the case for several counties.<sup>558</sup>

Members asked how observers were able to witness and be involved with the election process.<sup>559</sup> Savidge explained that in a room, the Chief Clerk and members were opening ballots and checking naked ballots.<sup>560</sup> Behind the window was a viewing room for observers to watch the process unfold.<sup>561</sup> This created transparency within the election process and allowed observers to be confident in the results.<sup>562</sup>

Members asked about the training of poll workers.<sup>563</sup> Savidge explained he spent 110 hours a week for 3 weeks training individuals.<sup>564</sup> He pointed out this was a terrible labor cost for the county, but it was an integral part to running a smooth election.<sup>565</sup>

### ***Panel 3: Accessibility and Integrity***

Ray Murphy, State Coordinator of Keystone Votes, recommended ways for Pennsylvania to improve the election process.<sup>566</sup> The first key aspect to change for future elections is the deadline to return mail-in ballots.<sup>567</sup> Across the country, eighteen states allow the receipt of mail-in ballots after election day.<sup>568</sup> Kansas, North Carolina, and Virginia all allow receipt of mail-in ballots up to three days after the election, while Ohio allows ten days after the election.<sup>569</sup> Additionally, Murphy would like to see Pennsylvania have the advantage of pre-canvassing ballots to allow for faster election results and create a lesser burden for county administrators.<sup>570</sup> Currently, twenty-

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<sup>558</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 72.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>559</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 69.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>560</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 69.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>561</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 69.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>562</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 69.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>563</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 74.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>564</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 74.

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<sup>565</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 74.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>566</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 91-93.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>567</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 91-93.

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<sup>568</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 93.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>569</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 93.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>570</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 93.

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four states have implemented this procedure.<sup>571</sup> Lastly, Murphy would like to see real-time accuracy for the list of registered voters, such as implementing more efficient ways of updating poll books by having access to the National Change of Address forms in real time.<sup>572</sup>

Jennifer Garman, Director of Government Affairs of Disability Rights Pennsylvania, explained the purpose of the organization is to ensure electoral participation and educate voters with disabilities about their rights, assist in voter registration, and overcome any barriers presented on election day.<sup>573</sup> The 2020 election presented many challenges for voters with disabilities.<sup>574</sup> Even though mail-in voting gave options to vulnerable voters, the Department of State guided these individuals to utilize absentee ballots as opposed to voting by mail.<sup>575</sup> With Act 12 of 2020 and Act 77 of 2019 there is universal mail-in voting, however, on the Department’s website if an individual has a disability, they are required to fill out an absentee ballot and obtain a certification by a medical professional indicating they have a disability.<sup>576</sup>

Members asked about barriers to the election process for the disabled community.<sup>577</sup> Garman indicated that new forms allowed for one designated agent for one voter to deliver their ballot for them due to a disability.<sup>578</sup> However, Garman believed only 15 of the 67 counties had information about this on their website, in part because DOS guidance was released very close to the election.<sup>579</sup> Garman indicated those with disabilities need notice and opportunity to cure ballots, since there is a higher likelihood there could be a defect due to visual impairments or dexterity issues, and without notice from the county, according to Garman: “[t]here’s a real chance that their vote would not have counted.”<sup>580</sup> Additional barriers Garman discussed included polling locations not being wheelchair accessible, voting machines not being operational for individuals and the lack of transportation for those that live in rural areas.<sup>581</sup> Garman stated: “[p]olling places need to be both physically accessible and programmatically

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<sup>571</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 93.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>572</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 94.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>573</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 87.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>574</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 89.

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<sup>575</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 89.

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<sup>576</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg.89.

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<sup>577</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 96.

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<sup>578</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 96.

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<sup>579</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 97.

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<sup>580</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 97.

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<sup>581</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 89.

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accessible.”<sup>582</sup> Members asked if there were any states which would provide good “model legislative language” for provisions for individuals with disabilities.<sup>583</sup> Garman referenced West Virginia which recently passed a law utilizing OmniBallot, so individuals who could not access a polling location or vote at home without assistance could securely return their ballot through an online procedure.<sup>584</sup> Garman indicated there are issues with use of paper ballots for the disability community and there is a need for an alternative mechanism.<sup>585</sup> Garman did note, however, there are election security concerns around electronic returns.<sup>586</sup>

Testifiers were also asked about voter ID, and Murphy stated: “[t]his is something we deal with every day on the nonpartisan voter education front, because there’s still a lot of confusion about what the rules really are....so whether there’s a discussion about implementing voter ID, it needs to come from a place that is understanding of what the Supreme Court said the limits were and then really cognizant of how its going to impact voters.”<sup>587</sup>

When it comes to increasing access, Garman also mentioned due to transportation issues, drop boxes may be an issue for those in the disability community, and expansion of drop boxes needs to be part of the discussion.<sup>588</sup>

Members also asked about accessibility issues relating to satellite offices.<sup>589</sup> Murphy mentioned ADA and HAVA’s federal requirements for people with disabilities may not necessarily have applied to satellite offices, so: “[t]here was an extent to which they were existing in a gray area, where voters didn’t have the guarantee or protections that they normally would have at a polling place.”<sup>590</sup>

Members asked if there is any outcome information for the use of e-pollbooks in the state.<sup>591</sup> Murphy stated that there are six counties that currently use e-pollbooks and went on to say e-

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<sup>582</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 90.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>583</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 98.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>584</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 99.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>585</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 103.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>586</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 103.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>587</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 117-8.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>588</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 118-9.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>589</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 122-124.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>590</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 123.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>591</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 110.

[2021\\_0068T.pdf \(state.pa.us\)](#)

pollbooks are the future and many jurisdictions have adopted them.<sup>592</sup> Murphy referenced Philadelphia and Allegheny Counties, stating these counties must print poll books three weeks in advance.<sup>593</sup> This causes for there to be no flexibility in additional changes as last-minute applications come in. Therefore e-poll books tend to be more accurate voter roll lists on election day.<sup>594</sup>

When asked about development of a level of standardization, Garman discussed the lack of uniformity and how it impacted the disability community.<sup>595</sup>

#### ***Panel 4: Accessibility and Integrity***

Jason Snead, Executive Director of Honest Elections Project, expressed integrity and transparency need to be present in elections.<sup>596</sup> Snead believes the way to do this is to implement voter identification requirements to verify voter eligibility, and safeguards need to be put into place to secure absentee ballots against any type of fraud.<sup>597</sup> Snead addressed the need for uniformity across the Commonwealth. Uniformity ensures voting rules are consistently applied, whether in a rural or urban jurisdiction.<sup>598</sup>

Members asked how Pennsylvania can verify individuals who are registered to vote are actual citizens and not just possessing a driver's license.<sup>599</sup> Snead said generally voter ID requirements or a basic underlying document can confirm an individual's eligibility.<sup>600</sup> Snead stated this can be a challenge for states and states could be doing a better job at using the variety of information available to them to identify instances where voters are improperly registered but lack citizenship.<sup>601</sup> One of these sources of information would be jury records.<sup>602</sup> Sometimes jurors

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<sup>592</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 110.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>593</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 110.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>594</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 110.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>595</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 137-8.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>596</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 142.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>597</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 142.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>598</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 160.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>599</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 155.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>600</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 155.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>601</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 155.

[2021\\_0068T.pdf \(state.pa.us\)](#)

<sup>602</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 155.

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get called but will decline, due to the fact they are not a citizen.<sup>603</sup> That information can be useful to tracking down the registration and removing the record from the rolls.<sup>604</sup>

In conclusion, members gained insight on election integrity and how accessibility can be provided to the most vulnerable populations.<sup>605</sup> Members were able to gain knowledge on cybersecurity and how the General Assembly can guide counties to ensure a secure election process.<sup>606</sup>

### **Recap**<sup>607</sup>

- County and state election administration should be continually guarded against new and emerging cybersecurity threats.
- Modernization of the Election Code must include consideration of accessibility for disabled voters in all aspects of the election process.
- Safeguards ensuring adequate election integrity are crucial to restoring the public's confidence in the accuracy of election results.

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<sup>603</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 155.

[2021\\_0068T.pdf \(state.pa.us\)](https://www.state.pa.us/legis/comm/2021/0068T.pdf)

<sup>604</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 155.

[2021\\_0068T.pdf \(state.pa.us\)](https://www.state.pa.us/legis/comm/2021/0068T.pdf)

<sup>605</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 5.

[2021\\_0068T.pdf \(state.pa.us\)](https://www.state.pa.us/legis/comm/2021/0068T.pdf)

<sup>606</sup> State Government Committee Hearing Transcripts: Election Integrity and Accessibility Policy, Pg. 12-41.

[2021\\_0068T.pdf \(state.pa.us\)](https://www.state.pa.us/legis/comm/2021/0068T.pdf)

<sup>607</sup> Chairman's recap. April 1, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/477552054.mp4>

## An Overview of How Other States Conduct Elections

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### Highlights<sup>608</sup>

- Best practices adopted by other states over recent decades provide an abundance of models for Pennsylvania to study and emulate as we look to modernize our Election Code.
- Kentucky shows that election reform can and should be a bipartisan endeavor, expanding voter access while streamlining election administration and protecting integrity.
- Other states provide training manuals and standard rulebooks binding all counties in administering elections uniformly, an approach that would benefit Pennsylvania in fulfilling our constitutional requirement of uniformity.
- Election audits are not limited to post-election, result confirming audits. All aspects of the election system should be audited, including voter registration and list maintenance, operations and resource allocation, and training processes.

### Hearing Summary

On April 8, 2021, the State Government Committee held a hearing giving an overview of how other states conduct elections and what practices Pennsylvania could learn and adopt for future elections.<sup>609</sup>

#### ***Panel 1: Overview***

Discussions with this panel related to an overview of how other states conduct various processes relating to elections, as well as how other states conduct election audits.

Wendy Underhill, Director of Elections and Redistricting Program, National Conference of State Legislatures, explained the various ways states handle the election process.<sup>610</sup> Ms. Underhill commented: “[I]’ve watched what you all have been doing, and I don’t remember in the last 10 years another state doing this level of public work before introducing election legislation.”<sup>611</sup> Ms. Underhill also commented that, with respect to voter registration: “the cleaner the rolls are when an election begins, the better in terms of costs and accuracy.”<sup>612</sup> According to NCSL, only five states have all mail-in voting, with forty-four states processing ballots before election day.<sup>613</sup>

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<sup>608</sup> Chairman’s recap. April 8, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/407469328.mp4>

<sup>609</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 1. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>610</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 11. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>611</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 11. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>612</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 15. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>613</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 16. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

Jennifer Morrell, Partner of The Elections Group, focused on standard procedures and on testing and audits.<sup>614</sup> According to Ms. Morrell: “[s]tates that allow for administrative rulemaking by the Secretary of State, along with the power to enforce a level of compliance, create a framework to support detailed standard procedures at the local level.”<sup>615</sup> She further stated: “[i]ncreased consistency in the way that elections are administered allows voters and officials in one area of the state to have more confidence in the administration of elections in another area.”<sup>616</sup> Morrell expressed two areas would benefit from standard operating procedures were ballot accounting and ballot chain of custody.<sup>617</sup> Testing and auditing “produce evidence that the election was conducted fairly and accurately.”<sup>618</sup> She also stated: “[a]uditing is best done publicly and in a manner that prevents any conflict of interest.”<sup>619</sup>

Underhill was asked about trends or changes in election administration over the past several decades, and she highlighted four major things: more involvement from the state level, pre-election day voting (in-person voting and no-excuse absentee voting), voter ID, and voter registration.<sup>620</sup> When asked about states which balance security and accessibility, Ms. Morrell mentioned Colorado as a model.<sup>621</sup> Panel was also asked how other states handle early in-person voting.<sup>622</sup> Both testifiers indicated that the key is uniformity.<sup>623</sup> This panel was also asked about standard practice among states to clean voter rolls.<sup>624</sup> Both panelists mentioned the ERIC database as a good method to update the rolls relating to death records.<sup>625</sup>

With respect to poll watchers/observers, Ms. Morrell commented: “[t]his is where creating uniform practices across the state has a tremendous amount of value, and creating a culture of detailed, written procedures at the local level can be really instrumental in being able to create

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<sup>614</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 19. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>615</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 20. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>616</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 20. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>617</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 21. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>618</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 21. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>619</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 22. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>620</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 23. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>621</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 24-25. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>622</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 39. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>623</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 40-42. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>624</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 47. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>625</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 47-48. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

these training opportunities for watchers so that when they come to a location, they are more focused on the process and the procedure and know what they should be seeing.”<sup>626</sup>

Morrell gave the committee insight on the purpose of audits, in particular risk-limiting audits.<sup>627</sup> Audits should detect any fraudulent activity, assure votes are counted accurately, and provide accountability to voters.<sup>628</sup> However, Morrell explained audits should not only happen post-election but should also occur pre-election.<sup>629</sup> A pre-election audit consists of testing and auditing voter registration systems, signature verification systems, mail ballot sorters, online poll books, and website tools.<sup>630</sup> Pre-auditing is an essential way to ensure local officials can assess and manage risks.<sup>631</sup> This provides a way to accurately record the number of ballots in the possession of election officials at any point in time.<sup>632</sup> The ballot accounting process can consist of ballot tracking and controlling logs for absentee and mail-in ballots.<sup>633</sup> Morrell commented ballot reconciliation is the foundation of an audit’s paper trail and is the best way to ensure votes have not been lost or added because of human error or a voting equipment error.<sup>634</sup> Finally, Ms. Morrell was asked about chain of custody of mail-in ballots in other states.<sup>635</sup> She mentioned states that have some experience, such as Arizona, Utah, Nevada, California, Washington, and Oregon.<sup>636</sup> Ms. Morrell commented: “[i]t really just comes from maturity with paper and developing the labels, the logs, the checklists, the forms.”<sup>637</sup>

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<sup>626</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 51. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>627</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 21. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>628</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 21. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>629</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 21. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>630</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 21. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>631</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 21. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>632</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 60-61. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>633</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 65-66. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>634</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 61. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>635</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 66. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>636</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 67. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>637</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 67. [Microsoft Word - 4.7.21 State Government Transcript Final](#)



## ***Panel 2: Election Integrity in other States***

Discussions with this panel related to best practices in other states relating to election integrity.

Sam Adolphsen, Policy Director with The Foundation for Government Accountability, highlighted ways Pennsylvania can craft reforms for future elections.<sup>638</sup> The first reform is for Pennsylvania to consider providing election officials more time to verify new registrants, as well requiring applicants to apply thirty days before an election.<sup>639</sup> Currently, several states have deadlines twenty-five days before election day to register.<sup>640</sup> This allows states to have enough time to process information in high volumes and make sure voter registration is correct for election day.<sup>641</sup>

Adolphsen expressed that Pennsylvania needs to focus on strengthening voter registration lists.<sup>642</sup> Currently, Pennsylvania law allows cross checks with government entities; however, these checks are conducted about once a year.<sup>643</sup> There are not measures put in place to ensure these checks are occurring, causing people who need to be removed remaining on the voter roll.<sup>644</sup>

Adolphsen pointed out that there are thirty-five states who require voter ID for in-person voting and Pennsylvania is not one of them.<sup>645</sup> One practical measure states are adopting with an increase in mail-in ballots is to include personal identifying information on the ballot envelope.<sup>646</sup> This would help improve security of the ballot and eliminate problems related to a lack of training in signature matching process.<sup>647</sup> Lastly, drop boxes need to be more secured and monitored.<sup>648</sup> In Pennsylvania, there is no law on how drop boxes should be handled, creating a lack of trust.<sup>649</sup> Therefore, Pennsylvania should consider passing laws requiring any drop boxes

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<sup>638</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 70. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>639</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 70. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>640</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 70. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>641</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 70. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>642</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 71. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>643</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 71. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>644</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 71. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>645</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 93. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>646</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 72. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>647</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 73. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>648</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 74. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>649</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 74. [Microsoft Word - 4.7.21 State Government Transcript Final](#)



to be located in a government building with 24/7 monitoring.<sup>650</sup> This would create more transparency and voters can observe the process to be certain their ballots are secure.<sup>651</sup> Additionally, Adolphsen commented on the outside influence of private money on election operations.<sup>652</sup> Millions of dollars flowed from non-profit to election officials across the country.<sup>653</sup> Adolphsen said while getting out the vote is fine, having private funds going toward official channels to areas based on a political map is not fine.<sup>654</sup> States are moving forward with changes which would prohibit this type of private funding from influencing elections.<sup>655</sup>

Mr. Adolphsen also mentioned Ohio and Florida as states with best practices for cleaning of voter rolls.<sup>656</sup> Mr. Adolphsen was also asked about the impact of voter ID laws on voter turnout.<sup>657</sup> He mentioned the states with greater voter participation, for example, Maine, Wisconsin, Washington State and Michigan, all have voter ID.<sup>658</sup>

Mr. Adolphsen was asked about states which print a state ID or driver's license number on an absentee ballot, and how those states address privacy concerns.<sup>659</sup> Adolphsen responded this method would eliminate the need for signature verification analysis and it would be designed in a way to make sure privacy issues were addressed.<sup>660</sup>

### ***Panel 3: Kentucky***

Discussions on this panel related to the structure of Kentucky's administrative election functions as well as how they conduct various facets of the election process.

Jared Dearing, Executive Director of Kentucky State Board of Elections, explained Kentucky is a hybrid election administration system, consisting of the Office of the Secretary of State, the

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<sup>650</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 74-75.

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<sup>651</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 75. [Microsoft](#)

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<sup>652</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 73. [Microsoft](#)

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<sup>653</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 73. [Microsoft](#)

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<sup>654</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 73. [Microsoft](#)

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<sup>655</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 74. [Microsoft](#)

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<sup>656</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 88. [Microsoft](#)

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<sup>657</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 93. [Microsoft](#)

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<sup>658</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 93. [Microsoft](#)

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<sup>659</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 96. [Microsoft](#)

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<sup>660</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 96-97.

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State Board of Elections and the 120 County Clerks throughout the Commonwealth.<sup>661</sup> All three entities work together to create an efficient election system, and this creates a sense of checks and balances.<sup>662</sup>

Dearing was also asked about Kentucky's voter ID laws.<sup>663</sup> He explained this law has been in effect for several years, with several updates recently made, as well as the pandemic creating an impact on its use.<sup>664</sup> Dearing said the goal of the changes was to use some of the old laws, but to incorporate: "a secure level of balance of security and access."<sup>665</sup>

Dearing addressed member questions regarding Kentucky's new law (HB574), with its establishment of a signature curing process.<sup>666</sup> Dearing was also asked about cleaning of voter rolls, and he indicated: "[i]t is something you want to have an active process to clean up to the best of your ability but to do it in a way that's not impacting voters that should have access to the ballot."<sup>667</sup> With respect to signature verification, Dearing said while Kentucky does not have technology in place to check signatures, the Governor of Kentucky allotted counties CARES Act dollars which allowed counties to hire and train staff on how to verify signatures on ballots.<sup>668</sup> As part of discussions on Kentucky's new law, Dearing was asked about a bar tracking code placed on mail-in absentee ballots.<sup>669</sup> He explained these codes are on specific envelopes only and would not be on the actual ballot itself.<sup>670</sup>

Dearing was asked about the various levels and timeframes for training county election officials.<sup>671</sup> He responded: "[w]e provide training on anything we possible can that's going to help our county clerks run a better election."<sup>672</sup> In Kentucky, Dearing mentioned the ability to be "incentivized" for training, in a monetary form.<sup>673</sup> He said this: "[g]ives us, the State Board of

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<sup>661</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 104-105.

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<sup>662</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 109. [Microsoft](#)

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<sup>663</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 119. [Microsoft](#)

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<sup>664</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 119-120.

[Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>665</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 120. [Microsoft](#)

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<sup>666</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 127. [Microsoft](#)

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<sup>667</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 133. [Microsoft](#)

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<sup>668</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 139. [Microsoft](#)

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<sup>669</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 142. [Microsoft](#)

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<sup>670</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 143. [Microsoft](#)

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<sup>671</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 114. [Microsoft](#)

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<sup>672</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 114. [Microsoft](#)

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<sup>673</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 115. [Microsoft](#)

[Word - 4.7.21 State Government Transcript Final](#)

Elections, a great opportunity to go in and really get granular without training when it comes to the election process itself.”<sup>674</sup>

When asked about counties and a substantial increase in workload, Dearing did mention: “[I] think our legislatures both in Kentucky and nationally and across this country are failing to adequately fund our election systems in a way that meaningfully prepares our counties to purchase up-to-date election systems, to provide them with enough resources and staffing to be able to effectuate a good election.”<sup>675</sup>

In conclusion, members heard from stakeholders about best practices other states are implementing and what best practices Pennsylvania can adopt for future elections.<sup>676</sup>

### **Recap**<sup>677</sup>

- Pennsylvania does not begin election reforms in a vacuum, but rather has models of more effective election administration in states across the country that we should learn from.
- Expanding voter access and ensuring election integrity are not opposing goals, but rather can be balanced in ways that merit bipartisan support for improvement.
- Enhanced training standards, binding administration rulebooks, and other tools utilized by several states would serve Pennsylvania’s constitutional mandate of uniformity in elections.
- Audits of all parts of the election system can provide increased public trust and understanding of the many aspects of the election process.

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<sup>674</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 115. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>675</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 125. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>676</sup> State Government Committee Hearing Transcripts. An Overview of How Other States Conduct Elections, Pg. 4-5. [Microsoft Word - 4.7.21 State Government Transcript Final](#)

<sup>677</sup> Chairman’s recap. April 8, 2021. <https://s3.us-east-2.amazonaws.com/pagopvideo/407469328.mp4>

## Stakeholders and Member Testimony

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On April 15, 2021, the State Government Committee concluded its series of in-depth discussions of Pennsylvania's election process with testimony from stakeholders and members of the House of Representatives.<sup>678</sup> Because the committee had eighteen testifiers, members heard testimony and did not ask questions.

### *Stakeholder Testimony*

Lisa Schaefer, Executive Director of the County Commissioners Association of Pennsylvania, recommended various changes Pennsylvania can adopt for future elections to lift burdens off county officials.<sup>679</sup> One of these changes is allowing for pre-canvassing to take place in advance of an election.<sup>680</sup> Without an extended pre-canvassing period, counties will continue to face challenges in providing timely results on election night.<sup>681</sup> The second priority is to move the mail-in ballot application deadline back to fifteen days, instead of seven days under Act 77 of 2019.<sup>682</sup> This created challenges for postal services, making some voters not meet the mail-in deadline and created uncertainty if the election office would receive ballots in time.<sup>683</sup> Most importantly, Schaefer stated counties would like to urge the General Assembly to continue to bring the counties to the table to discuss and provide feedback on election related legislation to bring meaningful reforms.<sup>684</sup>

David Thornburgh, President and CEO of the Committee of Seventy, noted the two primary factors going into an election are the voters and the election directors.<sup>685</sup> Thornburgh said during the past election, election directors were put under a lot of stress and needed more time to process mail-in ballots and voters needed more of a chance to cure their ballots and be alerted if something was wrong with their ballot.<sup>686</sup> Thornburgh encouraged the committee to look at ways

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<sup>678</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 1. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>679</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 12. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>680</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 13. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>681</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 12-13. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>682</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 13. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>683</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 13. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>684</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 15. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>685</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 21. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>686</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 22. [2021\\_0075T.pdf \(state.pa.us\)](#)

to strengthen polling place staffing and to provide counties with a basic level of funding to support election efforts.<sup>687</sup>

Jonathan Bechtle, Executive Vice President of Opportunity Solutions Project, encouraged the General Assembly to look at what other states are doing with absentee ballots that could be put into practice to speed up ballot counting without reducing security.<sup>688</sup> Bechtle suggested reducing errors on the front end of the process by banning the practice of pre-filled ballot applications by third party groups.<sup>689</sup> Often, these groups will mail out pre-filled ballot applications with the incorrect information, which leads to problems with processing.<sup>690</sup> North Carolina has banned this process, with pending legislation in nine other states.<sup>691</sup> Additionally, Pennsylvania needs to clarify on whether mismatched signatures on a ballot envelope will be disqualified.<sup>692</sup> If the legislature decides to require signature matches, Bechtle recommends a signature curing process is put into place.<sup>693</sup>

Amber McReynolds, CEO of the National Vote at Home Institute, addressed the various concerns over the 2020 election.<sup>694</sup> McReynolds suggested counties should have the opportunity to process election ballots fourteen days before election day.<sup>695</sup> This would allow Pennsylvania to institute security measures such as having the time to verify signatures and give voters the chance to cure their ballots if there were to be mistakes.<sup>696</sup> Additionally, the Secretary of State should provide proper and uniform guidance to be applied in a timelier manner.<sup>697</sup>

Hans von Spakovsky, Manager of Election Law Reform Initiative and Senior Legal Fellow, Institute for Constitutional Government, The Heritage Foundation, described the various reforms Pennsylvania should enact to have a fair and equal election.<sup>698</sup> Von Spakovsky pointed out the

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<sup>687</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 24.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>688</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 32.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>689</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 32.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>690</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 32.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>691</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 32.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>692</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 33.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>693</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 33.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>694</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 38.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>695</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 44.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>696</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 40.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>697</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 44.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>698</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 38.

[2021\\_0075T.pdf \(state.pa.us\)](#)

most basic security measure states need to put in place is requiring an ID to vote in person and by absentee ballot.<sup>699</sup> Von Spakovsky stated states that have put these measures into law, such as Georgia and Indiana, have seen a dramatic increase in voter turnout.<sup>700</sup>

Khalif Ali, Executive Director with Common Cause Pennsylvania, expressed elections are not a partisan issue but rather a people issue.<sup>701</sup> Ali commended the legislature for expanding mail-in ballots and would like to see mail-in ballots be counted seven days after the election.<sup>702</sup> Ali believes this will allow a fairer process and to allow more voter participation.<sup>703</sup> Additionally, Ali would like Pennsylvania to allow early in-person voting and same day registration.<sup>704</sup>

Scott Walter, President of the Capital Research Center, discussed concerns with private grant monies with strings attached from big tech companies being sent to local government elections in Pennsylvania and other states.<sup>705</sup> Walter expressed donors or nonprofits should not be manipulating elections through gifts to government officials and pointed out this issue is “something left and right could agree on.”<sup>706</sup> Walter further stated the Center for Tech and Civic Life (CTCL) refused to disclose hundreds of millions of dollars received from a private donor, and this only became public once the donor himself revealed his nine-figure donation.<sup>707</sup> The CTCL declines to provide its donor list, and because it is a 501(C) (3) nonprofit, they have the right to legally avoid revealing any donors.<sup>708</sup>

Gadsden, State Field Director for One Pennsylvania explained Pennsylvania “lags” behind most states when it comes to making sure voters can count on 21<sup>st</sup> century convenience and security at the ballot box.<sup>709</sup> Gadsden expressed that Pennsylvania needs to focus on creating provisions which ensure satellite election offices and drop boxes are equitable.<sup>710</sup> Additionally, Gadsden

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<sup>699</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 49.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>700</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 49.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>701</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 58.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>702</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 60.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>703</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 60.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>704</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 61-62.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>705</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 64.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>706</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 64.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>707</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 65.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>708</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 65.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>709</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 73.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>710</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 73.

[2021\\_0075T.pdf \(state.pa.us\)](#)



believes there needs to be consideration of allowing early voting for those who cannot vote in-person on election day, due to busy work schedules or other priorities.<sup>711</sup>

J. Christian Adams, President and General Counsel for the Public Interest Legal Foundation, explained his foundation settled a lawsuit in regard to 20,000 deceased registrants on voter rolls going into the 2020 General Election, with no efforts being made under federal law to mitigate the problem.<sup>712</sup> The Commonwealth has yet to disclose records in regard to Pennsylvania's longstanding glitches in the PennDOT motor voter registration system which exposed numbers of foreign national driver's license customers to the voting system.<sup>713</sup>

Carol Kuniholm, Vice President of Government and Social Policy, League of Women Voters of Pennsylvania, stated election law and process should not be based on partisan priorities but should allow voters equal access and assurances that all votes are counted.<sup>714</sup> Kuniholm would like clarification on what it means to pre-canvass mail-in ballots and provide time for counties to begin opening, sorting and preparing ballots to be scanned ten to fourteen days before election day.<sup>715</sup> Additionally, Kuniholm recommends county election officials receive uniform standards for training and implementation.<sup>716</sup>

Colonel Anthony Shaffer, President, London Center for Policy Research, expressed concerns in the failure to ensure election integrity that could potentially lead to hostile adversaries learning from mistakes and using information to show weakness in the election process.<sup>717</sup> Shaffer stated the best way to create trust is to make tabulation publicly visible to the maximum extent.<sup>718</sup> It is essential Pennsylvania conducts audits, reviews processes, standardizes best practices and creates enforcement mechanisms to ensure oversight and access for observers to monitor tabulation to ensure all votes are protected.<sup>719</sup>

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<sup>711</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 74. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>712</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 79. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>713</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 80. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>714</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 84. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>715</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 85. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>716</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 86-87. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>717</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 93. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>718</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 98. [2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>719</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 100. [2021\\_0075T.pdf \(state.pa.us\)](#)

## ***Member Testimony***

Representative Pam DeLissio referenced and outlined a report called, “Building Confidence in U.S. Elections.”<sup>720</sup> In this report, the Representative detailed the various recommendations provided in the report pertaining to voter registration, identification, and the role of the state during the election process.<sup>721</sup>

Representative Doyle Heffley stated after talking to the Carbon County election officials after the 2020 election, the Representative was alarmed by their concern over the directives coming from the Department of State and the inconsistencies and confusion the directives caused.<sup>722</sup> The Representative recommended that the Secretary of State provide proper and consistent guidance to counties and common-sense voter ID laws.<sup>723</sup>

Representative Kate Klunk described the confusion surrounding a polling location in West Manheim Township during the 2020 election.<sup>724</sup> The Representative said this polling location was rather large and she worked with the county in trying to break the poll up into three different locations.<sup>725</sup> This had then caused confusion amongst voters as to where they should go to vote because the polling location on the voter card and on the county’s website, did not match up with the State’s polling location.<sup>726</sup> The Representative encouraged the Department of State and counties to check systems to ensure the proper information is being conveyed to the voter.<sup>727</sup>

Representative Donna Bullock explained Pennsylvania is one of the few states to “support voting rights for people with past felony convictions, one of the few states that allowed black free men to vote as early as the late 18<sup>th</sup> century.”<sup>728</sup> Bullock encouraged the committee to look at proposed laws with “careful examination” and with understanding of the history of voter rights.<sup>729</sup>

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<sup>720</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 101-106.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>721</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 101-106.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>722</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 108.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>723</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 110.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>724</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 112.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>725</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 112.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>726</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 113.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>727</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 114.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>728</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 117.

[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>729</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 119.

[2021\\_0075T.pdf \(state.pa.us\)](#)



Representative Malcolm Kenyatta encouraged the committee to investigate allowing counties to pre-canvass, streamline the process to allow voters to cure mail-in ballots and allow same day voter registration.<sup>730</sup> The Representative expressed the need for drop boxes to make the “process more accessible for voters.”<sup>731</sup>

Chairwoman Margo Davidson commented she viewed the committee hearings as a “mockery of our democratic process and a cynical ploy to restrict the voting rights of Pennsylvanians in this Commonwealth of Pennsylvania.”<sup>732</sup>

Representative Paul Schemel gave concluding remarks and stated: “[b]oth Republicans and Democrats can agree that there are things that we need to look within our election system.”<sup>733</sup>

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<sup>730</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 121.  
[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>731</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 121.  
[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>732</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 126.  
[2021\\_0075T.pdf \(state.pa.us\)](#)

<sup>733</sup> State Government Committee Hearing Transcripts: Stakeholder and Member Testimony, Pg. 127.  
[2021\\_0075T.pdf \(state.pa.us\)](#)

# Appendices

## Appendix I

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### Hearing Testifiers:

#### **January 21, 2021 – Department of State’s Election Guidance**

Kathy Boockvar, Former Secretary of the Commonwealth

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State

#### **January 28, 2021 - SURE System, the Election Management System, and Other Election Information Technology**

Joseph Kantz, Chairman, Snyder County Commissioners and Snyder County Board of Elections

Michael L. Anderson, Director of Elections, Lebanon County Bureau of Elections/Voter Registration

Timothy Benyo, Chief Clerk, Lehigh County Election Board

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State

#### **Additional written testimony:**

County Commissioners Association of Pennsylvania (CCAP)

#### **February 11, 2021 – Election Audits**

Honorable Timothy DeFoor, Auditor General of Pennsylvania

Janet Ciccocioppo, Director of the Bureau of Performance Audits

Anne Skorija, Director of the Bureau of Information Technology Audits

Hope Verelst, Deputy Chief Clerk, Director of Election/Voter Registration, Sullivan County

Dr. Thad Hall, Director of Voter Registration/Elections, Mercer County

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State

Liz Howard, Senior Counsel, Brennan Center for Justice’s Democracy Program

#### **March 4, 2021 – Voter Registration**

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State

Frank LaRose, Ohio Secretary of State

Forrest Lehman, Director, Lycoming County Elections and Registration

Shane Hamlin, Executive Director, Electronic Registration Information Center (ERIC)

### **March 10, 2021 – Certification and Operation of Voting Machines with Demonstrations**

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State

Timothy Benyo, Chief Clerk, Lehigh County Election Board

Paul Lux, CERA, Supervisor of Elections, Okaloosa County, Florida

### **March 18, 2021 – No Excuse Mail-in and Absentee Ballots**

Jonathan Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State

Dr. Charles Stewart III, Professor, Political Science, Massachusetts Institute of Technology

Pam Anderson, Principal, Consilium Colorado, LLC

Dr. Thad Hall, Director of Voter Registration/Elections, Mercer County

### **Additional written testimony:**

Richard Gebbie, CEO, Midwest Direct

Amber McReynolds, CEO, National Vote at Home Institute

### **March 25, 2021 – County Election Day Operations and Election Satellite Offices**

Ed Allison, County Election Director, Voter Registration and Elections, Lawrence County

Patricia Nace, Election Consultant, Northumberland, and Snyder Counties

Seth Bluestein, Chief Deputy Commissioner and Chief Integrity Officer, City of Philadelphia

Shane Fitzgerald, Executive Director, Bucks County Courier Times, and The Intelligencer; PA State Editor, USA Today Network

Sambo Dul, State Elections Director, Arizona Secretary of State

Tim Mattice, Executive Director, The Election Center

Pam Anderson, Principal, Consilium Colorado, LLC

### **April 1, 2021 – Election Integrity and Accessibility Policy**

Dr. Will Adler, Senior Technologist, Elections and Democracy, Center for Democracy and Technology

Dr. Clifford Neuman, Director, USC Center for Computer Systems Security, Assoc. Professor of Computer Science Practice, Viterbi School of Engineering, University of Southern California

Nathan Savidge, Chief Registrar, Northumberland County Board of Elections

Ray Murphy, State Coordinator, Keystone Votes

Jennifer Garman, Director of Government Affairs, Disability Rights Pennsylvania

Peri Jude Radecic, CEO, Disability Rights Pennsylvania

Jason Snead, Executive Director, Honest Elections Project

## **April 8, 2021 – An Overview of How Other States Conduct Elections**

Wendy Underhill, Director of Elections and Redistricting Program, National Conference of State Legislatures

Jennifer Morrell, Partner, The Elections Group

Sam Adolphsen, Policy Director, The Foundation for Government Accountability

Jared Dearing, Executive Director, Kentucky State Board of Elections

## **April 15, 2021 – Stakeholders and Member Testimony**

Lisa Schaefer, Executive Director, County Commissioners Association of Pennsylvania

David Thornburgh, President and CEO, Committee of Seventy

Jonathan Bechtle, Executive Vice President, Opportunity Solutions Project

Amber McReynolds, CEO, National Vote at Home Institute

Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, Institute for Constitutional Government, The Heritage Foundation

Khalif Ali, Executive Director, Common Cause Pennsylvania

Scott Walter, President, Capital Research Center

Wesley Gadsden, State Field Director, One Pennsylvania

J. Christian Adams, President and General Counsel, Public Interest Legal Foundation

Carol Kuniholm, Vice President of Government and Social Policy, League of Women Voters of Pennsylvania

Colonel Anthony Shaffer, President, London Center for Policy Research

Representative Pam DeLissio

Representative Doyle Heffley

Representative Kate Klunk

Representative Donna Bullock

Representative Malcolm Kenyatta

Chairwoman Margo Davidson

Representative Paul Schemel

## **Appendix II**

### **Summary of Election Experience Survey**

On March 11, 2021, Chairman Grove issued a survey to gather feedback from voters within the Commonwealth on their election day experiences.<sup>734</sup> Through this survey, over 280 responses were received. Within these responses, 73 respondents were “satisfied” with their election day experience when using the mail-in ballot system and encouraged the General Assembly to continue no-excuse mail-in-ballots for future elections. Additionally, 170 respondents were “not satisfied” with the 2020 election and view the election negatively, while 37 respondents shared their opinions on miscellaneous issues.

Of the 170 respondents who shared a negative view of the 2020 election, there were five common reoccurring issues. 86 respondents had concerns regarding Voter ID laws. Voters believe that anyone can go into a polling place and pose as someone else to cast a vote. Voters feel that Voter ID would ensure voter fraud is not occurring and creates more trust in the election process.

75 respondents believe “no-excuse” mail-in ballots should be eliminated moving forward. Voters would like mail-in ballots to only be mailed by the voter’s request and not automatically sent. 72 respondents commented on the lack of trust in voting machines. Constituents expressed concerns that hackers or other entities may tamper with voting machines and change election outcomes. Additionally, they believe voting machines are not being maintained properly or receiving the proper software updates.

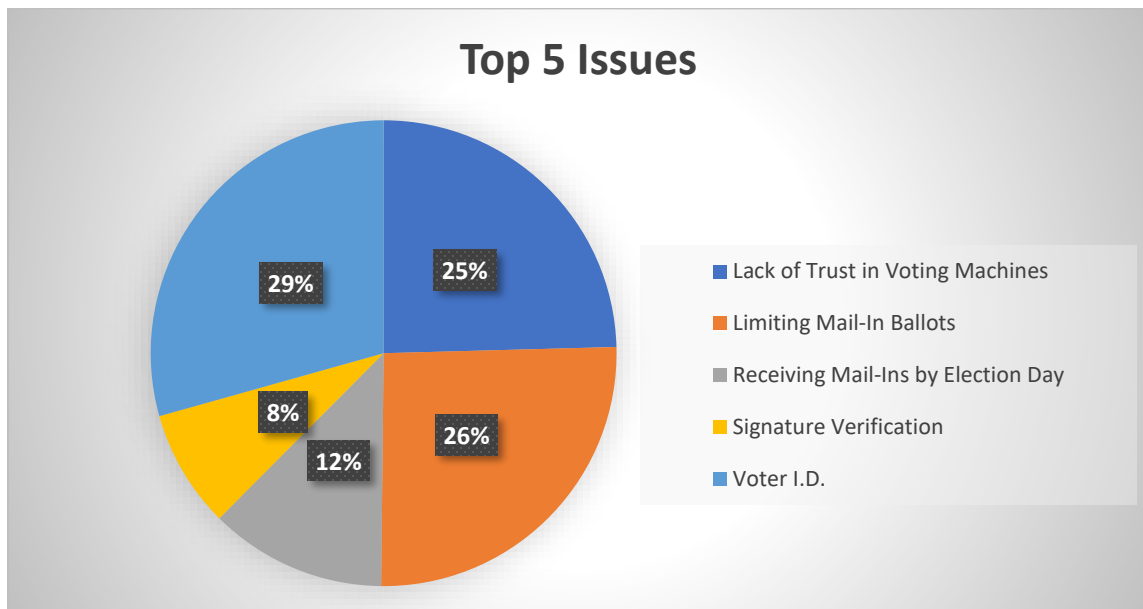
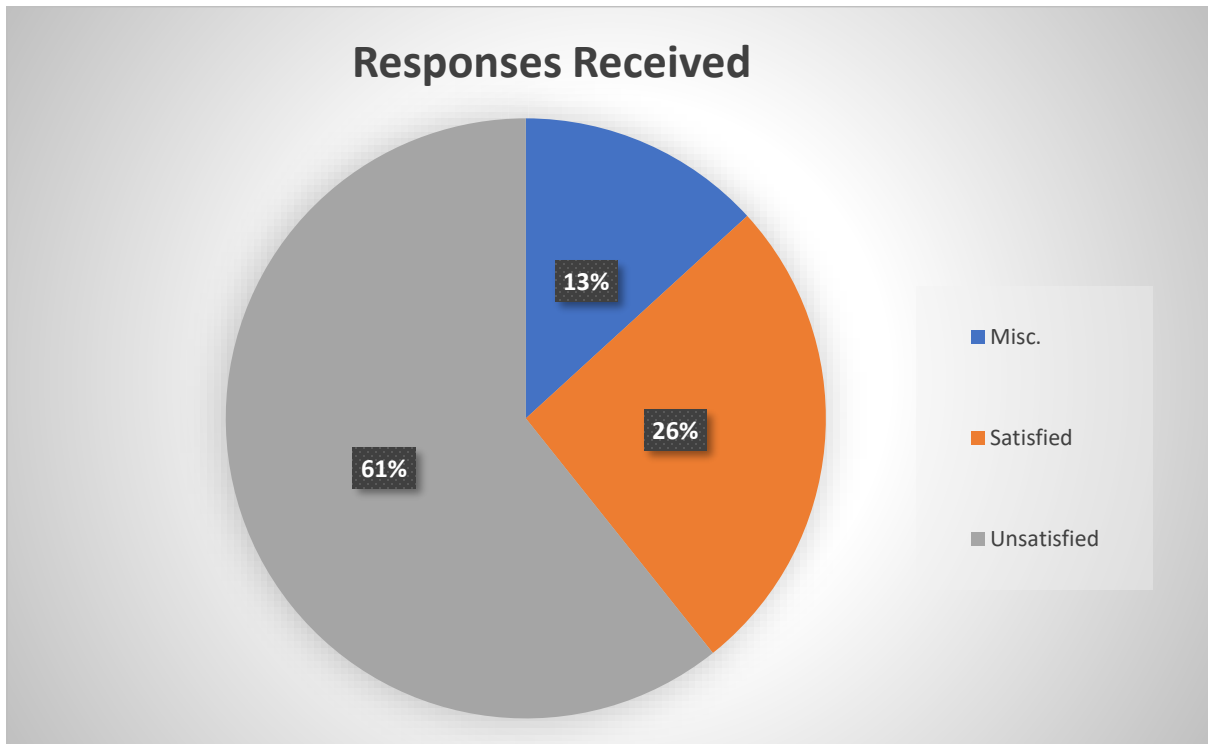
36 respondents believe mail-in ballots need to be received before election day. Most do not agree that ballots should be counted after election day and expressed that election day is “one day” and not multiple days. Because of the counting of ballots many days after the election, most felt that it crippled the integrity of the election and voters lost trust in the election outcome.

24 respondents would like there to be signature verification. Some voters expressed that due to the lack of signature verification, fraud was more likely to happen among mail-in ballots.

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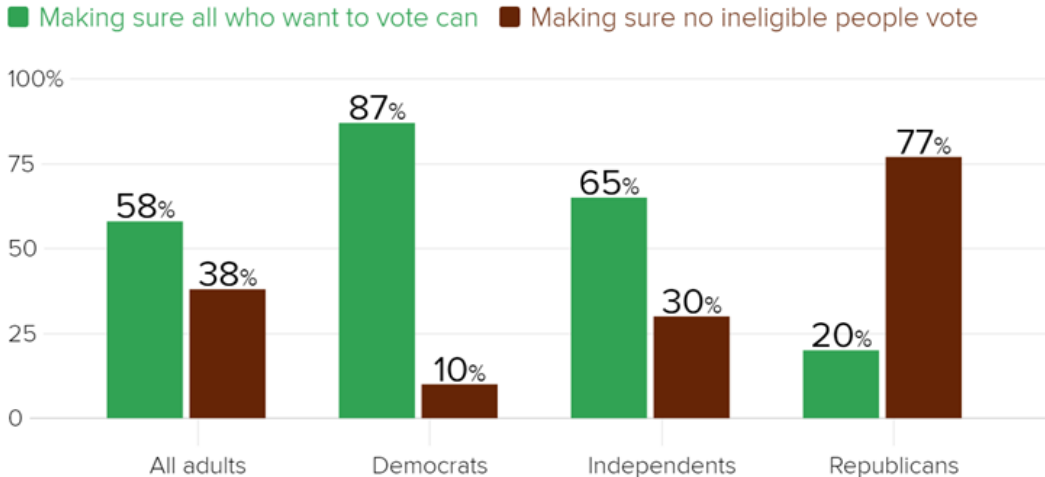
<sup>734</sup> <http://www.repgrove.com/News/19319/Latest-News/Grove-Seeking-Input-on-Election-Hearings,-Announces-New-Hearing-Schedule>

## Survey Graphs



**Appendix III**  
**Recent Election Policy Polling Data**

**Bigger concern about voting in America**



**NBC NEWS**

Data: NBC News poll. April 17-20, 2021. Margin of error +/- 3.1%

735

736

**Confidence that own state can administer a fair election**



**NBC NEWS**

Data: NBC News poll. April 17-20, 2021. Margin of error +/- 3.1%

<sup>735</sup> <https://www.nbcnews.com/politics/meet-the-press/poll-majority-americans-more-concerned-about-voter-access-ineligible-voters-n1265404>

<sup>736</sup> <https://www.nbcnews.com/politics/meet-the-press/poll-majority-americans-more-concerned-about-voter-access-ineligible-voters-n1265404>



### [UGA polls citizens on new election rules \(walb.com\)](#)

- Voter ID requirements on absentee balloting (65% approve)
- Mandating two Saturdays of early voting (75% approve)
- Optional two Sundays of early voting (74% approve)
- Moving to a four-week runoff period (52% approve)
- Securing all drop boxes around the clock (55% approve)
- Changing absentee ballot request deadline from four days to eleven days prior to Election Day (60% approve)
- Prohibiting the sending of unsolicited absentee ballot applications (54% approve)
- Additional safeguards to prevent fraud (52% support)<sup>737</sup>

### [Americans support easier voting methods but also ID requirements, UMass/WCVB poll shows - masslive.com](#)

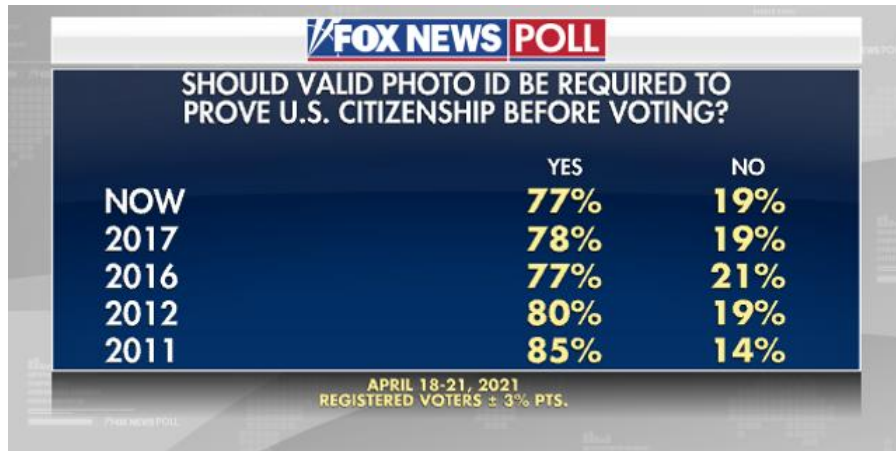
“To the chagrin of Democratic officials, the most popular reform is to require all voters to show ID to vote, with 67% of voters supporting this, and roughly a majority saying they strongly support it. It is most popular with Republicans, with an overwhelming 94% supporting it, compared to 71% of independents and 45% of Democrats.”

The poll of 1,000 respondents conducted April 21-23 found that a bare majority of Americans (51%) think it is more important to prevent fraud in elections, even if it makes it harder to vote. One-third of respondents (32%) oppose this approach, while 17% are unsure.<sup>738</sup>

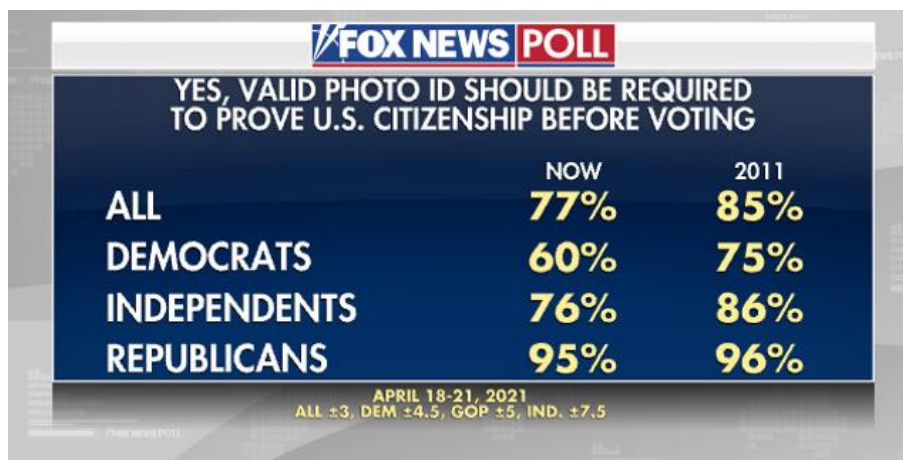
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<sup>737</sup> <https://www.walb.com/2021/04/21/uga-polls-citizens-new-election-rules/>

<sup>738</sup> <https://www.masslive.com/news/2021/04/americans-support-easier-voting-methods-but-also-id-requirements-umasswcvb-poll-shows.html>



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<sup>739</sup> <https://www.foxnews.com/politics/fox-news-poll-77-support-requiring-photo-id-for-voting>

<sup>740</sup> <https://www.foxnews.com/politics/fox-news-poll-77-support-requiring-photo-id-for-voting>

<sup>741</sup> <https://www.foxnews.com/politics/fox-news-poll-77-support-requiring-photo-id-for-voting>

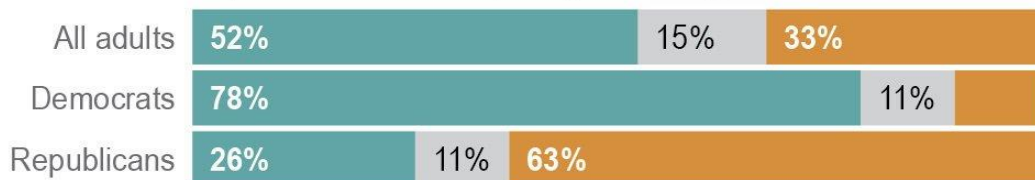
# Half of Americans favor allowing voters to cast a mail ballot without an excuse

A new AP-NORC poll finds significantly more support among Democrats than Republicans for allowing no-excuse voting by mail and for sending a mail-in ballot to all registered voters.

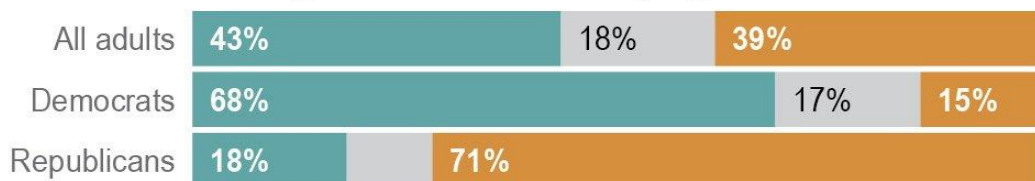
Do you favor, oppose, or neither favor nor oppose \_\_\_\_ ?

■ Favor ■ Oppose ■ Neither favor nor oppose

## Allowing people to vote by mail-in ballot instead of in-person without requiring them to give a reason



## Sending a mail-in ballot to every registered voter



Results based on interviews with 1,166 U.S. adults conducted March 25–29. The margin of error is  $\pm 3.6$  percentage points for the full sample.

Source: AP-NORC Center for Public Affairs Research



<sup>742</sup> <https://apnews.com/article/ap-norc-poll-us-majority-back-easier-voter-registration-d4c6c40628aa4ddc56fbbd372d30dd04>

# Majorities in U.S. favor automatic voter registration and photo ID requirements

A new AP-NORC poll finds about half of Republicans and three-quarters of Democrats favor automatic voter registration. Republicans overwhelmingly favor photo ID requirements to vote, as do a slim majority of Democrats.

Do you favor, oppose, or neither favor nor oppose \_\_\_\_ ?

■ Favor
 ■ Oppose
 ■ Neither favor nor oppose

## Automatically registering adult citizens to vote when they get drivers licenses or other state identification



## Requiring all voters to provide photo identification in order to vote



Results based on interviews with 1,166 U.S. adults conducted March 25–29. The margin of error is  $\pm 3.6$  percentage points for the full sample.

Source: AP-NORC Center for Public Affairs Research



<sup>743</sup> <https://apnews.com/article/ap-norc-poll-us-majority-back-easier-voter-registration-d4c6c40628aa4ddc56fbbd372d30dd04>

**Appendix IV**

**Supplemental Information**



**Election Policies:**

**Pennsylvania in Comparison to Other States**

**May 4, 2021**

**Contact: Wendy Underhill, Director**

**[Wendy.Underhill@NCSL.org](mailto:Wendy.Underhill@NCSL.org)**

# Election Policies in Pennsylvania Compared with Other States

While election officials deal with the administration of elections—and thus make decisions on logistics such as facilities, equipment, supplies, processes and personnel—state legislators set policy. In this report, NCSL compares Pennsylvania’s policies with those in the other 49 states, based on what was true in November 2020. A few things have changed since then, and we’ve noted them when we can.

The policies reviewed in this report fall into the following categories:

- [Voter registration list maintenance as the precursor to more absentee voting](#)
- [Qualifying for absentee/mail ballots](#)
- [Requesting absentee/mail ballots](#)
- [Returning absentee/mail ballots](#)
- [Processing absentee/mail ballots](#)
- [Vote-by-mail, or vote-at-home, elections](#)
- [Early In-Person Voting](#)
- [Voter ID](#)
- [Double voting](#)

## Voter Registration List Maintenance

Clean voter registration lists are the first step in running good elections in any setting, but especially so when there are absentee/mail ballots being sent out to voters. Online voter registration systems and the ability for voters to update their information online are other crucial steps toward having accurate and reliable voter lists.

### Is online voter registration and online registration updating available?

- *National Scope:* Forty states currently offer [online voter registration](#).
- *Pennsylvania:* Yes. Pennsylvania’s system allows voters to [register online](#) and update their information online. (25 Pa. C.S.A. § 1222)

### Does the state allow same day voter registration?

- *National Scope:* As of 2020, Twenty-one states offered [same day voter registration](#). In 2021, Montana has repealed its Election Day registration option, making the total 20.
- *Pennsylvania:* No.

**Does the state participate in the Electronic Registration Information Center (ERIC), which is a nationwide clearinghouse that provides states with data on potential duplicate, or defunct, registrations?**

- *National Scope:* Thirty states are members of [ERIC](#).
- *Pennsylvania:* Yes. Pennsylvania is a member of ERIC.

**Does the state use National Change of Address records for list maintenance purposes?**

- *National Scope:* [Thirty-six states](#) authorize the use of NCOA records for list maintenance.
- *Pennsylvania:* Yes. Information supplied by the United States Postal Service through its licensees is used on a periodic basis, but not less than once every calendar year, to identify registered electors who may have changed addresses. The information is incorporated in the SURE system and forwarded to the commissions in a manner determined by the secretary by regulation. (25 Pa. C.S.A. § 1901(b))

### Qualifying for an Absentee/Mail Ballot

Some states require voters to meet criteria to vote absentee, such as being out of the country on Election Day or having a disability. Others do not. And still others offer a permanent absentee list.

**Is an excuse required to vote absentee or by mail?**

- *National Scope:* [Thirty-four states](#) do not require a voter to provide a reason or excuse for requesting an absentee/mail ballot. [Sixteen states](#) continue to ask voters to identify a reason for their request.
- *Pennsylvania:* Pennsylvania is with the majority of states in that it does not require an excuse for a voter who chooses to vote by mail-in ballot. (25 P.S. § 3150.11). Voters who choose to vote by absentee ballot must provide a reason on their absentee ballot application. (25 P.S. § 3146.2)

**Does the state maintain a permanent absentee list?**

- *National Scope:* [Five states](#) maintained a permanent absentee lists in 2020 so that voters can indicate with a single sign-on that they prefer to receive a mail ballot for all future elections. Since then, Maryland has done the same, bringing the total to six. Several other states do so but only for people with disabilities or voters older than a given age.
- *Pennsylvania:* Pennsylvania does not have an option for voters to request that an absentee (or mail-in) ballot be mailed to them for all elections on an ongoing basis. However, Pennsylvania does allow any voter to request to be added to an annual mail-in ballot request list, after which the voter will receive an application to renew their request for a mail ballot each year. Voters on this list do not need to submit applications for mail ballots for additional elections within a given year. (25 P.S. § 3150.12). In addition, Pennsylvania allows permanently disabled voters to be added to an annual absentee voter list. The voter will then automatically receive an annual application to renew their request for an absentee ballot each year, without having to submit a subsequent doctor's certificate. (25 P.S. § 3146.2).



## Requesting an Absentee/Mail Ballot

States vary in the methods voters may use to request absentee/mail ballots and in how much other people can help voters acquire their ballots.

### Does the state offer an online portal for requesting an absentee/mail ballot?

- *National Scope:* At least [15 states](#) offer online portals where a voter can request an absentee/mail ballot.
- *Pennsylvania:* Yes, through the Pennsylvania [online ballot request application](#).

### Can third-party individuals or groups distribute absentee/mail ballot applications and collect completed applications?

- *National Scope:* At least [27 states](#) in some way restrict the distribution and collection of absentee/mail ballot applications, including prohibiting third-party groups from doing so or designating deadlines or turnaround times for the applications to be submitted.
- *Pennsylvania:* Pennsylvania law specifies that “nothing...shall prohibit a private organization or individual from printing blank voter applications for absentee ballots or shall prohibit the use of such applications by another individual, provided the form, content and paper quality have been approved by the Secretary of the Commonwealth.” (25 P.S. § 3146.2).

Note: in 2020, a number of states sent absentee ballot applications to all registered voters as a response to the pandemic. Some states may choose to regulate this by either prohibiting it (so that local jurisdictions cannot do so on their own as well as that the state will not do so) or making it standard practice.

## Returning a Voted Absentee/Mail Ballot

States also vary in terms of how absentee/mail ballots can be turned in.

### Does the state provide ballot drop boxes in some or all counties?

- *National Scope:* At least [thirteen states](#) have laws providing standards for ballot drop boxes. Another dozen or more states have at least some jurisdictions that used drop boxes in 2020 even though there wasn't statutory guidance.
- *Pennsylvania:* [Some counties](#) in Pennsylvania used drop boxes in the November 2020 election and also plan to do so for May 2021 primaries. State law is silent on drop boxes.

### Who can collect and drop off absentee/mail ballots on behalf of a voter, with the intent to prevent “ballot harvesting”?

- *National Scope:* [Twenty-seven states](#) allow voter to designate someone to return their ballots, and 12 states place limits on the number of ballots a person can collect or return.
- *Pennsylvania:* Pennsylvania law requires voters to return their own ballots, except for voters with disabilities who may designate another person in writing. (25 P.S. § 3146.6).



### **Does the state have a system for voters to track their absentee/mail ballots?**

- *National Scope:* At least [19 states](#) mandate an online system be available for voters to track their absentee/mail ballots. Thirteen other states maintain such a system without a requirement in statute.
- *Pennsylvania:* Yes. Pennsylvania's [ballot status tool](#) allows voters to track their ballots.

### **Does the state (or county) pay for postage to return an absentee/mail ballot?**

- *National Scope:* [Sixteen states](#) have statutes requiring local election officials to provide postage for ballots returned through the mail.
- *Pennsylvania:* State law is silent on this issue, but in 2020 the Pennsylvania Department of State [provided](#) funding for prepaid postage on ballots.

## **Processing, Verifying and Counting Absentee/Mail Ballots**

States deploy an array of options regarding verifying the authenticity of absentee/mail ballots. States also vary in terms of deadlines, correcting ballot errors and reporting results.

### **How are voted absentee/mail ballots verified by election officials?**

- *National Scope:* [Thirty-one states](#) conduct signature-verification processes. Six states verify that envelopes have been signed but do not conduct signature verification. Eight states require the signature of a witness, and three states require the envelope to be notarized.
- *Pennsylvania:* Pennsylvania law requires the elector to sign a declaration on the absentee ballot envelope. The declaration on the envelope is examined by the voter's county board of elections and information contained on the envelope is compared with the information in the "registered absentee voters file" and list of absentee voters. If an elector fails to provide proof of identification that can be verified by the county board of elections either at the time of application or by the sixth calendar day following the election, then the absentee ballot shall not be counted. (25 P.S. § 3146.4; 3146.8).

### **Does a voter have the opportunity to fix, or cure, a missing signature or signature discrepancy?**

- *National Scope:* At least [20 states](#) require that voters be notified when there is a discrepancy or missing signature and be given an opportunity to correct it.
- *Pennsylvania:* No.

### **What are the postmark and "received by" deadlines for absentee/mail ballots?**

- *National Scope:* [Thirty-four states](#) have a deadline of Election Day for absentee/mail ballots to be received, while 16 states will accept a ballot received after Election Day but postmarked on or prior to that day. Allowing ballots to be received after Election Day can slow down the release of election results.
- *Pennsylvania:* Ballots must be received by 8 p.m. on Election Day. (P.S. § 3146.8).

### **When can election officials begin to process and count absentee/mail ballots?**

- *National Scope:* At least 32 states permit election officials to begin processing absentee/mail ballots prior to the election. Eleven states permit officials to begin processing ballots on Election Day, but prior to the closing of the polls. Four states do not permit processing ballots until after the polls close.
- *Pennsylvania:* Officials can begin processing ballots at 7 a.m. on Election Day. (P.S. § 3146.8).

### **How are election results from absentee/mail ballots reported?**

- *National Scope:* States vary in how they report absentee/mail ballot results. Some reporting jurisdictions tabulate mail ballots in a single “at-large” precinct for the entire county. In other states, absentee/mail ballot results are reported by the voter’s precinct. The latter approach allows election results to be better understood at a granular level.
- *Pennsylvania:* Pennsylvania does not explicitly require county boards of elections to report election results by vote type, but county election offices do report county-level election results by vote type.

## **Vote-by-Mail (or Vote-at-Home or All-Mail) Elections**

Only a small number of states conduct all elections conducted as all-mail elections. These states also offer some provisions for in-person voting. Those provisions vary, as does the authority granted to counties.

### **Does the state mail a ballot to all voters?**

- *National Scope:* [Five states](#) use only vote-by-mail elections in which the state mails all registered voters a ballot: Colorado, Hawaii, Oregon Utah and Washington. Some in-person voting is available in each state as well. In addition to the five states that already have vote-by-mail elections, California, Nevada, and Vermont have announced they will mail ballots to all registered voters for the November 2020 election.
- *Pennsylvania:* Pennsylvania does not mail out ballots to all voters for all elections.

### **For states that send ballots to all voters, what in-person voting options, such as vote centers, are available?**

- *National Scope:* The five states with vote-by-mail elections all require that some form of in-person voting options be made available at the county level. In Colorado, there are two weeks of in-person voting available at vote centers in every county. In Oregon, voters can come to a county election office to vote on Election Day. See Part I for details.
- *Pennsylvania:* Not applicable.

### **Can small elections be conducted by mail?**

- *National Scope:* [Ten states](#) allow certain smaller elections, such as municipal, primary or special elections, to be conducted entirely by mail.
- *Pennsylvania:* Pennsylvania does not allow small elections to be conducted entirely by mail.

## Early In-Person Voting

Most states allow voters to vote in person prior to Election Day, with more states permitting this throughout the last two decades. In this category, NCSL includes states that permit “in-person absentee voting,” where the voter can request an absentee ballot, vote it, put it in an absentee envelope and return it at the same time. From the voter’s point of view, they’ve “voted early.” From an administrator’s point of view, the ballot is handled like absentee ballots and opened later.

### How many states offer early in-person voting?

- *National Scope:* 43 states currently offer some form of [early in-person voting](#).
- *Pennsylvania:* Pennsylvania offers a variation on traditional early voting known as in-person absentee or mail-in voting. Voters have the option of requesting and submitting an absentee ballot or mail-in ballot during one in-person visit to county elections offices, starting 50 days prior to Election Day or as soon as the ballots are ready. (25 P.S. § 3146.6).

### Are the times and dates for early in-person voting uniform throughout the state?

- *National Scope:* Five states + DC have uniform times. Five states offer early voting during regular business hours. Nine states do not specify when early voting is to take place. 19 states either statutorily set a minimum or allow local jurisdictions to determine early voting. Nine states do not specify. See NCSL’s [State Laws Governing Early Voting](#).
- *Pennsylvania:* Pennsylvania offers in-person absentee voting during regular office hours. (25 P.S. § 3146.2a).

## Voter ID

Voter ID requirements for in-person voting vary throughout the nation. Over the last two decades, more states have asked voters to show an ID. A key element of voter ID discussions has been, what happens if the voter does not show the ID? Must they vote a provisional ballot? Must they come back after voting to show an ID?

### Are voters required to show a physical ID for in-person voting?

- *National Scope:* 36 states ask voters to show some form of identification at the polls. The remaining 14 states use other methods to verify the identity of in-person voters. Most frequently, other identifying information, such as a signature, is checked against information on file.
- *Pennsylvania:* Pennsylvania does not currently request that all voters show an ID to vote in person. However, voters who are voting for the first time in their precinct must show ID. Pennsylvania has enacted laws in the past to require every voter to show ID, but court challenges have stopped them.
- 

### Of the 36 states that ask a voter to show a physical ID for in-person voting, what are the requirements?

- *National Scope:* 18 states request or require a photo as part of the ID; the others accept at least some forms of ID without a photo. For information on what kinds of IDs are accepted, and what happens when a voter doesn’t provide an acceptable ID at the polling place, see NCSL’s [Voter Identification Requirements](#) webpage.

## Double Voting

Under the Voting Rights act, “voting more than once” is illegal. How state law governs that prohibition varies from state to state.

### **How many states prohibit “voting twice in the same election”?**

- *National Scope:* 31 states plus D.C.
- *Pennsylvania:* Yes. See 25 P.S. §3535. See NCSL’s [Double Voting](#) webpage.

### **How many states explicitly prohibit voting in more than one state?**

- *National Scope:* 11 states.
- *Pennsylvania:* No.



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# **SENATE SPECIAL COMMITTEE ON ELECTION INTEGRITY AND REFORM**

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**REPORT ON THE SPECIAL COMMITTEE'S FINDINGS AND  
RECOMMENDATIONS TO THE SENATE AND THE SENATE STATE  
GOVERNMENT COMMITTEE**

**EXHIBIT**

**2**

**Senate Special Committee on Election Integrity and Reform**

Wayne Langerholc, Jr., Chairman

Sharif Street, Democratic Chairman

Lisa Baker

Lisa Boscola

John R. Gordner

Steve Santarsiero

Mike Regan

Lindsey Williams

Jake Corman, President Pro Tempore, *ex-officio*

**SECRETARY OF THE SENATE**

Megan Martin

**CHIEF CLERK OF THE SENATE**

Donetta M. D’Innocenzo

**SPECIAL COMMITTEE EXECUTIVE DIRECTOR**

Joshua J. Paul

**Report on the Special Committee’s Findings and Recommendations to the Senate and the  
Senate State Government Committee**

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Insight on the Administration of Elections in Philadelphia and Allegheny Counties .....Page 6

Findings from the Senate Special Committee’s Online Survey.....Page 7

Special Committee’s Legislative Recommendations.....Page 9

Recognition of All Who Testified Before the Senate Special Committee.....Page 14

Submitted Written Testimony.....Appendix A

## **Introduction**

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The bipartisan Special Committee on Election Integrity and Reform (Special Committee) was established pursuant to Rule 5(a)(2) of our Senate Rules, and Section 644(1) of Mason's Manual of Legislative Procedure.

The Special Committee's primary purpose was to focus on the review of all aspects of the 2020 General Election, including: the security of the vote before, during and after Election Day; the accuracy and security of the election process, particularly during the pre-canvassing and canvassing stages; the uniformity of the election processes across the Commonwealth; the impact and role of our judiciary on the election process; the impact and role of the former Secretary of the Commonwealth of Pennsylvania in issuing interpretations, guidance and instructions regarding the election process and the conduct of the election as a whole; and other election-related issues.

This Special Committee was comprised of four Senate Republican members and four Senate Democratic members, with the President Pro Tempore serving as an ex-officio member. Special Committee members were appointed by the President Pro Tempore, in consultation with the Senate Minority Leader.

On March 11, 2021, the Special Committee held a public hearing which focused on the best practices of election integrity and security from Colorado, Utah and Florida.

On March 22, 2021, the Special Committee held a public hearing which focused on state and local insight of the administration of elections in Pennsylvania.

On April 19, 2021, the Special Committee held a public hearing which focused on the administration of elections in Philadelphia and Allegheny Counties.

The video and audio of all three public hearings and the submitted written testimonies are available and publicly accessible on the Special Committee's website at [pasenelectioncommittee.com](http://pasenelectioncommittee.com).

In addition to holding three public hearings, the Special Committee also hosted an online survey where all persons interested could share their experiences voting by mail or in-person during the 2020 General Election. The online survey was open for over seven weeks and received 20,251 responses from Pennsylvanians residing all throughout the Commonwealth and representing all 67 counties.

Following through with the goal of the Special Committee, this report will be presented to the Senate and standing committees covering the legislative recommendations set forth by the Senate Motion establishing the Special Committee.



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## **A Review of Best Practices of Election Integrity and Security from Other States**

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On Monday, March 15, 2021, the Special Committee held a public hearing on the Review of Best Practices of Election Integrity and Security from Other States. Testifiers for this public hearing included elections officials from Colorado, Utah and Florida.

**Colorado** uses a vote by mail system exclusively and citizens can vote in person if they are registered to vote eight days prior to Election Day. The state also uses signature verification to verify all signatures and if they don't match, some are sent to the State Attorney General's Office for investigation. The Denver Elections Division has a former FBI Forensic Handwriting Analyst who provides training to their signature verification judges. Colorado also updates its voter database daily with address changes from driver's license centers, post offices, and death certificate rolls. Colorado will also cross reference voters with 30 other states to check for duplicates including the use of the ERIC system. Last year, the state prosecuted 38 voters for duplicate registrations. Colorado also uses photo identification as well as other forms of ID such as a copy of a current (within the last 60 days) utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. Colorado also allows a voter to cure their signature using a uniform procedure which includes proof of identification and a signed affidavit.

**Utah**, like Colorado, also conducts signature verification utilizing verification software and if signatures do not match, they are further reviewed by election officials. During the 2020 General Election, 93-percent of voters voted by mail in Utah. Utah also requires one of at least 23 different forms of identification in order to vote. Utah updates its voter database on a weekly basis. Like Pennsylvania, Utah utilizes secrecy envelopes for their ballots. Votes can be processed as they are received. All ballots received must be postmarked the day before the election.

**Florida**, as the fourth largest state in the country, saw 1/3 of its population vote by mail. Like Colorado and Utah, Florida has signature verification. Signatures are compared against the voter signature on file. If a signature is missing or does not match the one on file, the voter has the ability to cure the ballot up to two days after the election. Florida also utilizes ballot tracking on their website so voters can confirm their ballot was received. In order to vote in Florida, residents must present one of 12 different forms of identification. Additionally, some counties provide the return postage on the ballots for voters. Drop boxes are supervised. Florida allows ballots to be opened and tabulated beginning 22 days prior to the election but all ballots must be received by the time the polls close at 7:00 pm on Election Day.

All three states, whether they are controlled by Republicans or Democrats, share the uniform standard distinctions in their elections process:

- Voter verification is essential for voters voting by mail or in-person;
- Daily or weekly updates to voting database;
- Utilize a tracking system for all ballots; and
- Allow for pre-canvassing at least 20 days before the election.

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## State and Local Insight on the Administration of Elections in Pennsylvania

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On Tuesday, March 23, 2021, the Special Committee held a public hearing on State and Local Insight on the Administration of Elections in Pennsylvania. This hearing featured testimony from the Pennsylvania Department of State (the department), the Chair of the Elections Reform Committee of the County Commissioners Association of Pennsylvania, as well as election officials and county officials from rural and suburban counties including Lehigh, Lawrence, Wayne, Berks, Indiana, Snyder, Westmoreland, and Northampton Counties.

According to the Department of State, \$90 million from Act 77 of 2019 was reserved to reimburse counties for their voting system upgrade costs – approximately \$41.6 million have been provided to counties so far. After conducting a year-long education campaign in order to prepare voters for the 2020 General Election, the Department claimed Act 77 was a success because of record high voter engagement. The Department said approximately 76-percent of Pennsylvania voters participated in the 2020 General Election.

The county election officials testified regarding many of their experiences in the 2020 General Election, and offered the following suggestions for improvements:

- Provide approved signature verification software.
- Clarify information regarding drop boxes and allow voters to fix any issues with their ballot.
- Eliminate the option for absentee ballots and only have mail-in ballot option.
- Offer counties as much time as possible to begin pre-canvassing ballots to improve the likelihood of timely election results.
- Change voter registration application deadline to 30 days prior to primary and general election days.
- Change mail-in ballot application deadline to 30 days prior to primary and general election days.
- Make early voting process quicker but do not establish same day voter registration.
- Disallow voters from changing their minds after requesting a ballot.
- Ensure continuing education and training for election directors.

The county commissioners testified that election reform is the County Commissioners Association of Pennsylvania's top legislative priority for counties in 2021. The testifiers also suggested the following:

- Allow for pre-canvassing of ballots prior to the primary and general election.
- The mail-in application request deadline should be 15 days prior to the election.
- Clarity in the law on the counties' authority to use drop boxes for mail-in ballots.
- If drop boxes or return locations other than county government locations are permitted, language must be developed in conjunction with counties regarding any criteria on their location.
- The fatal flaws under which a mail-in ballot is not to be counted must be clearly identified.

- Should a mail-in ballot be counted if a signature or date is missing from the voter's declaration?
- Should naked ballots be counted?
- What should a county do with mail-in ballots that contain writing on the privacy envelope?
- Counties need a clear rule in the law on when or if curing of flaws may happen, and whether or not a county is required to contact a voter to cure their ballot.
- Additional discussion is needed on the number of renewal letters/applications that must be mailed out each year.
- Discussion is also needed regarding whether the responsibility for sending the renewal letters/applications should be at the county or state level.
- Upgrades/replacement of the Statewide Uniform Registry of Electors (SURE) system are under consideration, and counties must be part of these conversations as changes are made to assure they are easily understood and user-friendly.
- As the ballot tracking website is updated going forward, counties must also be part of these conversations to help identify areas of concern, either now or in the future.
- The state should consider the possibility of a state phone bank that could facilitate voter questions.
- While understanding that ongoing litigation was the underlying basis for some of the last-minute guidance changes in 2020, the department must issue guidance as far in advance as possible to avoid the confusion of having to implement new practices immediately prior to an election and to offer greater opportunity for questions and input.
- The Department must more consistently reference the sections of the Election Code on which its guidance is based, and more clearly indicate when the guidance is merely a best practice rather than based on a statutory requirement.
- Counties and the state must work together as new laws and policies are developed to assure workload needs are also considered.
- New laws and policies must be enacted with sufficient time for their implementation.
- Education and training must be available to help develop needed skill sets among election staff.
- To improve staff retention, all levels of government must work together to promote accurate information at each election. This will help reduce the level of confusion and anxiety among voters; and thus, the level of anger county elections staff must address.
- Counties and the state must work together as new laws and policies are developed to assure any increased costs and resource needs, including supplies and staffing, are also considered.
- Consistent guidance on whether to provide stamps on return mail-in ballots.
- Appropriate resources and funding support must be provided by the federal and state governments to support counties in their critical task of administering elections.

## **Insight on the Administration of Elections in Philadelphia and Allegheny Counties**

On Tuesday, April 20, 2021, the Special Committee held a public hearing titled the Insight on the Administration of Elections in Philadelphia and Allegheny Counties. This hearing featured testimony from the Philadelphia City Commissioners and the Allegheny County Executive.

According to Philadelphia Commissioner Deeley, many election officials left their positions as a result of 2020 election changes and this is one of the most pressing needs of Philadelphia County. The commissioners also expressed the need for additional time to pre-canvas ballots and the need for greater financial assistance from the General Assembly. The budget from the City of Philadelphia to administer the election was \$10 million. Commissioner Deeley also stated they received an additional \$10 million through a grant provided by Center for Civic Life. Commissioner Deeley was not positive on the origin of the grant.

Commissioner Sabir stated Philadelphia needs more funding for voter education purposes as many members of the community did not feel comfortable voting during 2020 – noting residents voted the same way for 50 years and now the process had changed. The increase in funding for voter education would allow the city to partner with a diverse group of community leaders to make sure that residents of the city feel comfortable and actively partake in the voting process.

Commissioner Schmidt expressed his opinion that counties provide secrecy envelopes, but that they shouldn't incorporate a fatal flaw that may cancel a person's vote.

Allegheny County Executive Rich Fitzgerald claimed training election workers was a priority and that CARES money from last year helped carry out the state mandates. The budget for Allegheny County for the election was \$14 million. They received \$2 million through a grant from the Center for Civic Life. He also suggested that the time to request a mail-in ballot be moved from 7 days to 15 or 17 days before an election to allow for adequate time using the mail-in election process. Executive Fitzgerald also stressed the need for more flexibility at polling places as it would better help with budgeting and could increase recruitment of election workers.

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## Findings from the Senate Special Committee's Online Survey

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In order to gain insight from the public regarding their experience during the 2020 General Election, the Special Committee provided a link on its website which was shared with constituents of all Senators and publicly advertised by news outlets and on social media.

Beginning on March 10, 2021, all interested individuals could submit their comments and provide feedback through an online survey via the committee website. The online survey was available until April 30, 2021, the last day for public comment. The volunteer survey participants chose from two options, in-person or mail-in ballot during the 2020 General Election. The total number of voters who responded to the survey was 20,251.

The survey received 10,492 responses from Pennsylvanians who voted by mail during the 2020 General Election.

- 88.2% of respondents stated their experience was satisfactory.
- 6.3% of respondents stated their experience was somewhat satisfactory.
- 2.6% of respondents stated their experience was unsatisfactory.
- 2.9% of respondents stated their experience as “other.”

The survey received 9,759 responses from Pennsylvanians who voted in-person during the 2020 General Election.

- 51.4% of respondents stated their experience was satisfactory.
- 16.8% of respondents stated their experience was somewhat satisfactory.
- 15.5% of respondents stated their experience was unsatisfactory.
- 16.3% of respondents stated their experience as “other.”

In addition, 257 election workers also answered questions pertaining to their experience during the 2020 General Election. A majority of the election workers' responses were focused around pre-canvassing, poll watchers, communications from the Department of State, drop boxes and voter registration.

- **Pre-canvassing:** Some suggested bringing the canvassing of mail-in ballots back to the polling place in which the voter would have cast their ballot in person. Individuals claimed there was a lack of transparency with the canvassing of mail-in ballots in November and this would assist in increasing transparency. Others believed establishing realistic pre-canvassing deadlines would ease the burden on County Election Officials and help regain the trust of the public in the voting process.
- **Poll Watchers:** The majority of the comments indicated that poll watchers throughout the Commonwealth were courteous, followed the rules, and did not interfere with the electoral process. Those that did not have the same interaction with their poll watchers recommended better training from the respective parties and a certificate that cannot be printed off the internet or copied by a party or candidate that ensures the poll watcher is legally credentialed.

- **Communications from the Department of State:** Most of the respondents stated that the local election office supplied all of the guidance they were to follow regarding the 2020 General Election.
- **Drop Boxes:** The respondents were divided on how the 2020 General Election utilized ballot drop boxes. Some respondents discussed how their drop boxes were guarded by local sheriffs, while others stated that they were unmanned and unmonitored. Some workers called for the elimination of drop boxes moving forward, while others encouraged the Special Committee to act to increase the amount of drop boxes in future elections.
- **Voter Registration:** Although the process of registering to vote occurs at the county elections office and not at the polls, many respondents provided feedback on the process and called for reforms. Regarding same day voter registration, some stated that it would lead to fraud and others stated that it would help enfranchise voters. A few respondents stated that voter rolls needed modernized and there needs to be a better way to keep registrations current, some even claimed that there were more issues during this election than before. One respondent stated that a young man came to vote for the first time and told the clerk that he registered to vote on Snapchat; he was not registered to vote.

All survey responses were voluntarily provided with the informed consent of each participant and contain information related to their experiences and opinions of the 2020 General Election. The results of the survey are non-scientific.

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## Special Committee's Legislative Recommendations

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As members of the Special Committee, we believe that our democratic institutions are only as strong as the faith that our citizens place in them.

Based on the testimony from the public hearings and comments submitted through the online survey, we recommend the General Assembly and the Governor should start the conversation about the following reforms to the Election Code.

- **We recommend the General Assembly consider allowing for the pre-canvassing of mail-in ballots at least three days before Election Day and not later than 8 a.m. on Election Day. It's important to note that pre-canvassing only implies that envelopes would be allowed to be opened during the allotted time and not be tabulated to count results. We also heard it is important for voters to be allowed to accurately track their mail-in ballot through a barcode system. Additionally, this information should be accessible to the voter to confirm when a ballot is received and has been counted. The counting of all mail-in ballots needs to be transparent and live-streamed for public viewing.**

“Postal tracking of voter’s ballots was requested by Counties for the new SURE system.”  
– *Chief Clerk of Lehigh County Timothy Benyo*

“First, allowing counties as much time as possible to pre-canvass ballots in advance of an election would offer a more meaningful option to complete these procedures, such as verifying the barcode number and voter’s information on the outer envelope match the information in the SURE system, opening envelopes and removing and flattening the tri-fold ballot and scanning ballots – all following appropriate security and chain of command protocols for all individuals involved in the process. It is also important to note that counties are not calling for votes to be tabulated, and certainly not released, until after the polls close on election day, simply to use our resources most effectively and efficiently to safely and securely prepare for this to happen” ~ *Indiana County Commissioner Sherene Hess, Chairwoman CCAP Elections Reform Committee*

“We have implemented ballot tracking on our website, [vote.utah.gov](http://vote.utah.gov), that allows a voter to see if a county clerk received their ballot, and if it was counted. Going forward we are going to add text and emails notifications that will let voters know the status of their ballot.”~ *Utah Director of Elections Justin Lee*

- **We recommend the General Assembly consider legislation to change the voter registration application deadline to at least 21 days prior to Election Day rather than the current 15-day deadline. However, the county election office could receive a voter registration application by an applicant up until 15 days prior to an election.**

“We need to push back the voter registration deadline to 30 days prior to elections. This gives counties the necessary time to process registration applications”~ *Wayne County Election Director Cindy Furman*

- **We recommend the General Assembly consider changing the mail-in ballot application deadline to two weeks prior to Election Day rather than the current one-week deadline. However, the county election office could receive a mail-in ballot application by an applicant up until one week prior to an election. We also heard there is a tremendous amount of confusion with the permanent status of mail-in ballots and this should be addressed.**

“Our second top request, moving the mail-in ballot application deadline back to 15 days prior to an election, will help voters by giving allowing more time for the county to process a mail-in ballot application and allow for the ballot to travel through the mail to the voter and back again, something that caused a great deal of anxiety for voters in the November election.”~ *Indiana County Commissioner Sherene Hess, Chairwoman CCAP Elections Reform Committee*

“Make the deadline to apply for an absentee or mail-in ballot earlier than 7 days before the election.” ~ *Allegheny County Executive Rich Fitzgerald*

“First, the option to request a permanent mail ballot for that election year should be eliminated. In Westmoreland County, we processed over 3,700 provisional ballots for the General Election and 1,164 provisional ballots for the Primary Election. For the primary, we heard many complaints about not understanding the mail-in ballot processing, which contributed to that number; however, for the General, the number one complaint was that provisional voters did not request a mail-in or absentee ballot, so they proceeded to attempt to vote in-person. Of course, the poll book indicated that they had voted already, so they were required to complete a provisional ballot. Our investigations revealed that in most cases, they had requested a mail-in ballot for the Primary, and the “permanent” box was checked. Whether they checked the box accidentally or it was checked by a registration clerk in the office is unknowable and immaterial. The permanent mail check-box leads to unnecessary confusion, and I recommend striking it from future elections.”~ *Westmoreland County Commissioner Douglas W. Chew*



- **We recommend the General Assembly consider legislation to establish a real-time reporting system of deceased individuals to respective county election offices from the Department of State. In addition, voter rolls should be updated on a monthly basis throughout the year, but on a daily basis for the two weeks prior to a primary or general election. Similar to the processes in other states, all voter rolls should be cross referenced with the Electronic Registration Information Center (ERIC) system and all national, state and local data.**

“I have some voters that have moved, are deceased, or have questionable status. I submitted all this info to The Department of Elections. The rolls need to be updated and cleaned up. There needs to be a better way to keep registrations current.” ~ *Online Survey Respondent Poll Worker*

“Mail balloting starts with having an accurate voter database, and Colorado updates ours every day based on changes voters make at govotecolorado.gov and a host of other sources.” ~ *Former Colorado Secretary of State Wayne Williams*

- **We recommend the General Assembly consider legislation similar to other states to require voter verification prior to voting in each election. The one-time reissuance of voter registration cards to each individual registered to vote should be considered. The cost of the reissuance of the voter registration should be funded by the Department of State and not on the voters or counties. The General Assembly should consider what other states do with signature verification for mail-in ballots with the ability for voters to modernize their signature to ensure that no voter is disenfranchised.**

"Informing voters how these processes work and providing robust signature verification training for your judges is incredibly important. In Denver, we have a former FBI Forensic Handwriting Analyst train our signature verification judges, most of whom are veterans of the process." ~ *Denver Clerk and Recorder Paul López*

“To deal with this issue our counties have a system in place that allows voters to “cure” an issue with their signature. If the county clerk finds that the signature does not match, they reach out to the voter via email, letter, phone call, or text message to have the voter verify whether or not they signed the ballot envelope, which can also provide an opportunity for a county to collect a more up-to-date signature.” ~ *Utah Director of Elections Justin Lee*

“Too many people showed up that were not registered, not in the correct precinct. IDs need to be shown.” ~ *Online Survey Respondent*

“Isn't that what our voter cards are???? When you register to vote you get a card with your information on it. I think it makes good sense to have voter id, but provide easy methods for people to get it if you want photo id.” ~ *Online Survey Respondent*

“I sent a letter to my own daughter stating that her signature did not match, my daughter had an opportunity to cure it and she did.” ~ *Former Colorado Secretary of State Wayne Williams*

- **We recommend that if the General Assembly considers permitting drop boxes, the legislation ensures proper security measures exist. Each drop box should be stationary and monitored by 24/7 video surveillance. We also heard that all counties should follow uniform procedures for the chain of custody of the ballots from the drop boxes to the counties’ official counting centers. The mail-in ballots should also be under video surveillance at all times from when the ballots are received until they are counted.**

“Florida requires secure Vote by Mail drop boxes at every Early Voting Location and at each Supervisor of Elections office and branch offices. Other sites are permitted as long as they are available during early voting hours and deemed permissible as an Early Voting Location (for example, public libraries).” ~ *Levy County, Florida, Supervisor of Elections Tammy Jones*

“Health issues and general aging make it difficult for me to vote in person. Voting by mail ensures that I can exercise my right and responsibility to vote. When I inquired about the location of drop boxes in my county, I was informed that the election official had no intention of installing a drop box and that I could hand carry my ballot inside the courthouse, which would require that I navigate broken, ragged sidewalks and risk a fall. I was also told that it would be illegal for my neighbor to deliver my ballot. I have mobility issues and walk with a cane. I very much resent that PA legislators do not trust me to choose a representative to deliver my ballot to the polls.” ~ *Online Survey Respondent*

“I worked at the drop box for several days, and found that process to be quite good. We had steady stream of people who came to vote, and had lots of comments about how people appreciated being able to turn in their ballots on their time. In the several days I sat at drop box, the only issue I encountered was when a spouse or parent tried to drop off a ballot for a someone else, not understanding that each person had to handle their own ballot. We did get a few people who got irritated when we did not allow them to drop off another ballot, but for the most part, when we explained, people got it and made arrangements for each voter to come.” ~ *Online Survey Respondent*

- **We recommend that if the General Assembly considers requiring the training of election workers, they should ensure that every election worker is trained on proper procedure and election law prior to each election. This training should be made easily available to ensure that all interested and qualified poll workers are able to work on Election Day. The Department of State should work with the counties to assist in these efforts. Such training should also include procedures which allow designated poll watchers and political observers to view the counting process which must be a completely transparent process. Electronic monitoring of the counting process would alleviate concerns regarding any potential malicious activity.**

“We had a training but I think that could have been more comprehensive especially since we all had new machines and procedures. I think the election office was overwhelmed by the amount of mail in ballots and not being able to start pre-canvassing and so were scrambling to do all they could to be ready and that the training might have taken a back seat to all that.” ~ *Online Survey Respondent*

“Continued education for election directors and those who are new in the field would be a great plus for everyone to have the same continued education for everyone including refreshers.” ~ *Assistant Director for Elections Services for Berks County Karen Barsoum*

- **We recommend further discussions within the Senate State Government Committee and Appropriations Committee regarding adequate funding for the administration of elections and establish transparent safeguards, limits, and accountability.**

“The government needs to fully fund elections, to start adding other entities could lead to issues that we don’t want to have to deal with, so I do feel that if we are going to put restrictions and mandates in place than those funding occurrences need to happen” ~ *Allegheny County Executive Rich Fitzgerald*

The task of this Special Committee was to gain a greater understanding of the deficiencies within the Commonwealth’s election system. Throughout this process, we heard from various elected officials, county election workers, and voters. We also heard from other states and gained insight on their best practices. Now, it is up to the members from both sides of the aisle of the Senate State Government Committee to work on legislation to fix the issues in our election system. The Special Committee looks forward to the legislation being deliberated by the Senate State Government Committee with the intent to accomplish meaningful reform to send to the House of Representatives for consideration, and, ultimately, the Governor for his signature.

## **Recognition of All Who Testified Before the Senate Special Committee**

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Wayne Williams, Member, Colorado Springs City Council, Former Colorado Secretary of State (2015-2019), and Clerk and Recorder, El Paso County, Colorado (2011-2015)

Paul López, Clerk and Recorder for the City and County of Denver, Colorado and Member, Denver City Council (2007-2019)

Justin Lee, Director of Elections for Utah Lt. Governor Deidre Henderson

Sherrie Swensen, Clerk for Salt Lake County, Utah

Craig Latimer, Supervisor of Elections for Hillsborough County, Florida

David Stafford, Supervisor of Elections for Escambia County, Florida

Tammy Jones, Supervisor of Elections for Levy County, Florida

Veronica Degraffenreid, Acting Secretary of the Pennsylvania Department of State

Jonathan M. Marks, Deputy Secretary for Elections and Commissions, Pennsylvania Department of State

Tim Benyo, Elections Director for Lehigh County, Pennsylvania

Ed Allison, Elections Director for Lawrence County, Pennsylvania

Cindy Furman, Elections Director for Wayne County, Pennsylvania

Karen Barsoum, Assistant Director for Elections Services for Berks County, PA

Sherene Hess, Chair of the CCAP Elections Reform Committee & Commissioner for Indiana County, Pennsylvania

Joe Kantz, Commissioner for Snyder County, Pennsylvania

Douglas Chew, Commissioner for Westmoreland County, Pennsylvania

Lamont McClure, Commissioner for Northampton County, Pennsylvania

Lisa M. Deeley, Chair of the Philadelphia City Commissioners

Al Schmidt, Vice Chair of the Philadelphia City Commissioners

Omar Sabir, Secretary of the Philadelphia City Commissioners

Rich Fitzgerald, County Executive for Allegheny County, Pennsylvania

# APPENDIX A

## Conducting Mail Ballot Elections With Integrity<sup>1</sup>

Thank you for conducting this hearing and providing me the opportunity to testify today. By way of background, I served four years as Colorado's 38<sup>th</sup> Secretary of State and as a local and county election official starting in 1997. I've overseen voting by mail at the county and state level and have worked to make a number of improvements in our laws, many of which passed our closely divided senate with unanimous support.

By way of background, Colorado has had one of the highest voter turnouts in the nation for a number of years. We have had a robust initiative process for more than a century. In 1992 we adopted a constitutional amendment requiring voter approval for new taxes and debt at every level of government. Since 2013 Colorado has mailed ballots to all active voters, but even before then we permitted no excuse absentee voting.

Voting by mail is a critical way to provide voters the opportunity to fully participate in elections but to be effective proper procedures and laws must be implemented. I want to highlight six of Colorado's election protections and why Colorado voters can be assured that the mail ballot they cast was counted accurately.

These six protections are some of the reasons why Fox News, the Washington Post and President Trump's Homeland Security Secretary all have cited Colorado's election processes as the best in the nation.

**1. Accurate Voter Lists.** Mail balloting starts with having an accurate voter database, and Colorado updates ours every day based on changes voters make at [govotecolorado.gov](http://govotecolorado.gov) and a host of other sources.

a. Voters' addresses are updated from address changes with the U.S. Postal Service and from driver's license updates.

b. Voters who are deceased are removed based on data from Colorado death certificates *and* from the Social Security Death Index.

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<sup>1</sup> Testimony before Pennsylvania Legislature by Wayne Williams on March 15, 2021. Mr. Williams currently serves as an at-large member of the Colorado Springs City Council, on the Board of Advisers for Verified Voting ([www.verifiedvoting.org](http://www.verifiedvoting.org)), and is a Senior Advisor for Runbeck Election Services ([www.runbeck.net](http://www.runbeck.net)). Prior positions include Colorado's 38<sup>th</sup> Secretary of State (2015-2019), El Paso County (EPC) Clerk & Recorder (2011-2015), EPC Commissioner, EPC Elections Canvass Board Member, and as a Designated Election Official for local governments. Mr. Williams is an active Republican and has served as chair for the state's largest county Republican Party and a National Delegate on several occasions, including to Philadelphia in 2000. Mr. Williams may be reached at [wwilliams@runbeck.net](mailto:wwilliams@runbeck.net), 719-439-1870.

c. Voters who are incarcerated for felony convictions are removed from the voter rolls based on lists received from sheriffs and the Department of Corrections.

d. We check to ensure that non-citizens are not registered.

e. When either ballots or other election mail are returned from the Post Office, the voter is made inactive. This means that they no longer are mailed ballots and after process and a period of time are removed from the rolls.

f. We cross-reference our database with the Electronic Registration Information Center (ERIC) – a voluntary organization of 30 states – to ensure voters are registered in only one state, and we refer for prosecution individuals who vote in more than one jurisdiction. I pushed for Colorado and four other states to pilot this process in 2016 and we referred 38 individuals for prosecution. It is my understanding that 16 states participated in the comparison during the 2018 election and that this year 25 states will compare post-election data to identify double voters. We need to encourage the other 26 jurisdictions to participate.

Colorado also protects the integrity of its voter database by requiring live person approval for changes and two-factor authentication for access. We work regularly with the Department of Homeland Security to ensure best practices for the security of our databases.

**2. Voter Verifiable Paper Ballots.** Colorado went through an exhaustive process to select the best voting system standards for our citizens, obtaining input from election workers, voters, and individuals with disabilities. My predecessor's Uniform Voting System Advisory Committee narrowed the list of voting system vendors to four. When I became Secretary I made the decision to pilot these four systems in the 2015 November election, with each system being piloted in two counties. I appointed a Pilot Election Review Committee to assess the four systems' performance. Its members included former EAC Commissioner Donetta Davidson and representatives from counties.

Ultimately I adopted system standards which any vendor could attempt to meet. These standards were adopted through a formal rule making process, were reviewed by the legislature, and upheld by two different courts. The standards we adopted provided for paper ballots for every voter – even those who use an assistive device. And every voter has the opportunity to verify their actual ballot to ensure their choices were accurately recorded.

These standards require counting machines to be secured and monitored, protected from tampering, and prohibit the machines from being connected to the internet.

After adopting the higher standards, we then worked with clerks and commissioners across the state to fund the purchases of the new system. So while

other states struggle, Colorado already adopted the protection of voter-verified paper ballots.

Dominion was the first company to produce a certified voting system that met these high standards. Eventually a second company, Clear Ballot, produced a certified system that met our standards. Both now are used by Colorado counties.

**3. Secure Ballot Return.** When I was running for Secretary of State in 2014, the Democratic primary for sheriff in Conejos County was decided by just a few votes. Ballots arrived after the deadline from the Postal Service and were not able to be counted. To minimize that risk, I established a grant program that helped every county obtain funding for secure 24/7 drop boxes. These secure drop-off sites also help address the geographic disparity resulting from faster postal deliveries in urban areas.

Drop-off locations open around the clock also ensure voters don't have to rely on ballot harvesters who come to your door and who may or may not actually return your ballot. Colorado also limits these harvesters to receiving no more than 10 ballots in an election.

**4. Signature Verification.** How do we assure the ballots are actually from the individual voter and not turned in by someone who just found a bunch in the dumpster? We *check the signature on every single ballot envelope* to ensure it matches the signature on file – and we update that file every election cycle. Voters are notified and given the opportunity to cure if it doesn't match. Signature verification is crucial – every year, we prevent thousands of non-matching signatures from being counted and we refer these to the district attorneys for prosecution. Colorado's signature verification protection contrasts sharply with a number of states who simply count any ballot received, regardless of whether it is from the actual voter.

**5. Procedural Protections.** Colorado's clerks are directly accountable to the voters and every major election function – from picking up ballots to making the final call on whether a signature matches – is made by a bipartisan pair of election judges. So whether the clerk is a Democrat or a Republican, the judges making the calls will be from *both* major parties. And under reforms I put in place, parties have direct input into who those judges are.

We also have video surveillance of the counting process and make it completely transparent to watchers appointed by the parties. When concerns with access arose, I issued new rules requiring access for these watchers.

In some states if there are not enough members of one party to serve as judges and watchers in a particular county, the counting proceeds without this balance. Not



in Colorado. When then-Boulder Clerk Hillary Hall approached me with a concern that she was not able to find sufficient Republican judges, I approved her using judges from another county to ensure the necessary bipartisan balance, and this ruling then was adopted in legislation.

This bipartisan balance applies to adjudication and duplication as well. Some voters make changes on their ballots and changing one race can make the entire ballot unreadable by a machine. In Colorado we have bipartisan adjudication boards who duplicate the ballot so it can be read by machines – and, again, their work is subject to monitoring by bipartisan watchers.

**6. Audited Machines and Results.** Dominion machines have been tested in 62 Colorado counties at least 868 times. They have passed every test. Clear Ballot machines also have passed every test.

First, each county in each election uses a bipartisan board to test the voting system prior to using it -- that's a total of 455 pre-election Logic and Accuracy Tests in nine elections and Dominion has passed all 455.

Second, in 2017 Colorado began conducting a Risk Limiting Audit (“RLA”) after each election. In an RLA, bipartisan teams of judges in each county compare the cast vote record from the scanners to randomly selected paper ballots (with more actual ballots compared when the race is close). In the seven elections since Colorado began RLAs, the Dominion Voting System has passed 413 of 413 times. (Clear Ballot also passed each time.)

Colorado’s tabulation systems must be air gapped from the internet and other computers, and under standards I adopted even the thumb drives used to obtain the reports from the machines must be pristine. So, short of breaking into a secure locked room that is video monitored, there is no way to change the programming of the machine during the election.

So, while I can't speak for the practices of every state, I can state that in Colorado the mail voting systems we use accurately records the votes of Coloradans -- and we've proved it more than 800 times. No one in Moscow, Beijing, Antifa, or anywhere else altered our election results.

Thank you.

*Hon. Paul D. López*

Clerk and Recorder

*Victoria Ortega*

Deputy Clerk and Recorder



*City and County of  
Denver*

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Chairman Wayne Langerholc Jr.  
Senate of Pennsylvania  
Special Committee on Election Integrity & Reform

March 15, 2021

Good morning Chairman Langerholc and distinguished Committee members.

I am the Honorable Paul D. López, Clerk and Recorder of the City and County of Denver, Colorado's capital city. Colorado is widely recognized to be the Gold Standard for voting in the country.

Colorado's groundbreaking House Bill 1303 passed while I was serving as a City Councilman in 2013; however, Denver played a vital role in drafting the landmark voting bill. We continue to innovate using 1303 as a model.

The Denver Elections Division has hosted election officials from all over the world to see how we do what we do.

Before HB-1303 reforms went into place, we had early voting in grocery stores and had to find more than 200 polling place locations for every election. Denver has many historic buildings, so finding locations that met HAVA and ADA accessibility standards was undoubtedly a challenge. Due to safety concerns, we moved away from schools, which traditionally were some of the most accessible locations. Voters frequently went to the wrong polling place, which led to scores of provisional ballots cast.

Now, fast forward to the present. For jurisdictions that encountered some bumps while implementing mail ballot-based elections in 2020, do not be too hard on yourselves. Colorado arrived at this solution after a decade-long, data-driven head start. We did not try to stand up mail ballot voting in a matter of months.

In the early 1990s, Colorado allowed absentee voting with an excuse. In the early 2000s, voters could cast mail ballots in some non-partisan elections like municipal and school board elections. Those ballots were mailed automatically. However, mail ballots had to be requested for partisan elections, which led to confusion amongst voters.

The fact that data showed more and more voters were requesting mail ballots coupled with our desire to minimize voter confusion put Colorado on the path to HB-1303.

Some of the critical components of HB-1303 are as follows:

- Ballots automatically mailed to voters
- Preservation of in-person voting option
- 24-hour ballot drop boxes under 24/7 video surveillance
- Residency requirement changed from 30 days in the precinct to 22 days in the state, driving the use of provisional ballots down to less than 1%
- Allowed proactive use of USPS National Change of Address data to keep accurate voter rolls

Of course, when jurisdictions move to mail balloting, this change may drive calls from voters wondering where their ballots are. In 2009, the Denver Clerk and Recorder's Office created BallotTRACE, allowing voters to track their ballots the same way you might follow a package. Voters receive text messages or emails, depending on preference, letting them know where their ballot is from the moment it leaves the printer to when my office accepts it for counting.

Informing voters how these processes work and providing robust signature verification training for your judges is incredibly important. In Denver, we have a former FBI Forensic Handwriting Analyst train our signature verification judges, most of whom are veterans of the process.

Transparency and communication are vital to instilling voter confidence in the mail ballot system, especially given the national narrative in 2020. We use social media, videos of our ballot processes, and a 24/7 live video feed on our website so that everyone can observe and witness how we conduct transparent and bipartisan operations.

We also use video to bring voters inside our pre-election Logic and Accuracy Test and our post-election Risk Limiting Audit. Denver had these processes in place long before the 2020 election cycle.

By forging strong partnerships with a broad coalition of external partners, my office has fostered great communication lines and gained additional eyes and ears in the community. We work with other elected officials, political parties, the senior community, voters with disabilities, language minority communities, organized labor, the League of Women Voters, America Votes, New Era Colorado, our Spanish-language advisory committee, high schools, college campuses, and local and national media outlets to get trusted information into the hands of voters.

I am immensely proud to have created a Communications and Engagement team tasked with providing accurate information to voters and ensuring that those in underserved areas have access to trusted election information regardless of zip code, socioeconomic status, language, or technological ability. We use good old-fashioned boots on the ground community engagement to inform voters about our processes and to provide Denver residents the information they need.

We recommend keeping your community informed at every step of the election process, especially when implementing new ideas, technologies, etc. Voter education cannot be a once-a-year effort.

I respect the Committee's wish to keep testimonies brief, and I look forward to answering any questions the Committee may have. Thank you, Chairman Langerholc and distinguished members, for the opportunity to address you today.

Good morning, Mr. Chair and members of the committee. My name is Justin Lee and I am the Utah Director of Elections serving Lt. Governor Deidre Henderson. In Utah, the Lt. Governor is the chief election officer of the state. I have worked in the office for about 10 ½ years now, having served 2 previous Lt. Governors, working as an Election Specialist, Deputy Director of Elections, and now as Director.

I'd like to take you back to 2010, to when I first started working in the State Elections Office, and give an overview of how Utah went from all counties running primarily traditional polling place elections, to 2020 when about 93% of Utah voters cast a by mail ballot.

I began working in the office in October 2010, about one month before the general election. When a voter called our office to ask how to vote the answers were simple. You can vote at your assigned polling place on Election Day; you can vote in-person during the early voting period 2 weeks before Election Day; or you can request to have a ballot mailed to you. In 2010 a little under 15% of voters cast their ballot by mail.

In 2012 the Utah State Legislature passed a bill that allowed any county to run their election entirely by mail. We had one small county, Duchesne County, with just under 10,000 active voters, that decided to run their election by mail. The other 28 counties in the state ran traditional elections with most voters voting in-person, although closer to 20% of voters statewide were now requesting to vote by mail.

In 2014, 10 of our 29 counties ran their elections by mail, including some of our larger counties in the state.

In 2016, 21 of our 29 counties ran their election primarily by mail, including our largest county Salt Lake County. Salt Lake County accounts for over a one third of voters in the state. At this point by mail counties had to offer at least one vote center on Election Day, where any voter could vote in-person. In-person early voting was not required, although several did offer this option. It is interesting to note that in 2016, the 21 counties that ran the election primarily by mail had better turnout rates than the 8 counties who did not run by mail elections.

In 2018, we had 27 of our 29 counties running elections by mail. The final two counties accounted for less than 1 percent of voters statewide. In 2018 we had roughly 90% of voters casting a by mail ballot. (I should note that whether a ballot is returned through the mail or dropped off in a ballot drop box we consider that a by mail ballot.)

For the March 3, 2020 Presidential Primary all 29 counties in Utah ran their election primarily by mail. I say primarily by mail, and not just by mail, because as it currently stands each county is required to offer vote centers on Election Day, where any voter can cast a ballot in-person, as well as at least four days of in-person early voting during the two weeks before the election.

In 2020, about 90% of voters voted by mail for the March Presidential Primary, 99% of voters voted by mail for our June State Primary, and about 93% of voters voted by mail for the general election.

I'd like to address some of the questions that we are most often asked about by mail voting.

Do we see any indications of voter fraud? Before I answer that question I think we need to look at what that question is really getting at, and add some additional clarifying words to the question. If the question is - do we see any indication of voters signing a ballot on behalf of someone else - the honest answer has to be, yes. We do see instances of individuals signing ballot envelopes on behalf of their spouse, partner, or child who might be away at school. How do we know? Because our county election officials catch those as they verify every single signature against the voter's signature in our database. The voter is then informed that there is an issue with their signature, and the offending party can be educated that they are committing a crime by signing on behalf of someone else.

If we rephrase the question to - do we see any indications of widespread voter fraud, or do we see any indications of enough voter fraud to change the outcome of an election - then the honest answer has to be, no. Again, we verify every single signature against the signatures in the database. Our experience in Utah is that vote by mail has proven to be safe and secure.

Over the years the larger concern from voters has been to make sure we don't discount someone's ballot because their signature on the envelope does not match the signature in our system due to injury, age, or whether or not the person used their neat or messy signature on a given day. To deal with this issue our counties have a system in place that allows voters to "cure" an issue with their signature. If the county clerk finds that the signature does not match, they reach out to the voter via email, letter, phone call, or text message to have the voter verify whether or not they signed the ballot envelope, which can also provide an opportunity for a county to collect a more up-to-date signature.

What happens if a voter never receives a ballot? This is precisely why we offer both early in-person, and Election Day in-person voting. No system is perfect, so we want to make sure we have methods in place to deal with problems as they arise.

What if a voter mails their ballot back, but the county clerk never receives it? We have implemented ballot tracking on our website, [vote.utah.gov](http://vote.utah.gov), that allows a voter to see if a county clerk received their ballot, and if it was counted. The closer we get to Election Day the more we encourage voters to drop off their ballot in a ballot dropbox, or to take the ballot to the polls and drop it off. Going forward we are going to add text and emails notifications that will let voters know the status of their ballot.

What is the biggest complaint with voting by mail? Over the years the biggest complaint we've received by far, is that voters did not get an "I voted" sticker through the mail. Several of our counties have recently figured out cost effective ways to send those stickers with the ballot.

I know my time is limited so I will sum by simply saying, vote by mail has worked well for us in Utah. I'm happy to answer any question the committee has.

Justin Lee  
Director of Elections  
Office of the Lieutenant Governor  
State of Utah

## VOTE-BY-MAIL SYSTEM IN SALT LAKE COUNTY, UTAH

Sherrie Swensen, Salt Lake County Clerk

March 11, 2021

Salt Lake County began implementing a vote-by-mail system in 2013 after the Utah Law was changed to allow for federal, state, and municipal elections to be conducted mainly by mail in conjunction with in-person voting. Prior to the law change, I had offered a Permanent Absentee Program which allowed voters to submit an application and opt to receive their ballots by mail. By 2012, about one fourth of the voters in Salt Lake County (130,000) were signed up for our Permanent Absentee Program.

We utilize the National Change of Address (NCOA) list and update addresses weekly for voters who have moved within the county, so ballots are mailed to their current address. We also use NCOA to identify voters who have moved out of the state or county so we can avoid mailing ballots to voters who are no longer eligible to vote in Salt Lake County. We change the status of those voters to “inactive” and mail them a confirmation card.

### HOW BALLOTS ARE ORDERED FOR VOTERS

All registered voters are listed in a statewide database (VISTA) which is managed by the Lt. Governor’s Office. Voters are assigned a voter ID number. Lists of eligible active registered voters are submitted to our ballot printing vendor, Runbeck of Phoenix, Arizona. They prepare a ballot packet for each voter listed on the extracts. Every ballot ordered contains a unique 9-digit ID number correlated to the voter listed in the database.

If a voter moved, misplaced, or ruined their ballot and another ballot needs to be ordered, a new ballot with a different ID number is assigned to that voter’s record. The previous ballot and coinciding ballot ID number is *spoiled* or canceled in the database before another ballot is ordered. If the voter returned the spoiled ballot, the Agilis ballot processing machine would reject the spoiled ballot. Agilis reads the bar code on the ballot return envelope and correlates it to the voter’s record in the database where it is recorded if a voter has returned their ballot. Only one ballot per voter is eligible to be counted.

Ballot packets are prepared by Runbeck. The initial batch of ballots for the majority of voters (592,000 ballots for the 2020 General Election) are trucked to the Salt Lake Post Office where they are mailed in accordance with the state law. The law does not allow us to mail ballots earlier than 21 days prior to Election Day. As voters registered or moved and their address was updated, subsequent ballot packets were ordered by submitting extracts to Runbeck ongoing until the deadline – eleven days prior to Election Day.

### HOW BALLOTS ARE PROCESSED WHEN THEY ARE RETURNED

Voters may return their ballot by mail. Ballots returned by mail must be postmarked by the day before Election Day in accordance with Utah state law. Ballots may be returned to one of our twenty-one drive-up ballot drop boxes (open 24/7), or in person at an Early Voting or Election Day vote center until 8:00 pm on Election Day. When a ballot is received at the Election Management Center (EMC), the tab on the ballot return envelope affidavit is removed so the voter’s signature is revealed. On first pass, ballots are run through the AGILIS ballot processing machine. The bar code printed on

the ballot return envelope is scanned and the ballot is correlated to the voter's record in the database where the status of the ballot is recorded.

AGILIS takes a high-speed image of the ballot envelope, including the affidavit signature. The captured signature is compared to the reference signature in the voter's record by the automated ASR system (Automated Signature Recognition). In the November General Election, about 52% of the signature verification was done with ASR. Signatures that cannot be verified using the ASR are compared manually by trained staff members. We routinely audit signature verification on both manual and ASR versions.

Staff members doing "sig ver" do not need to handle ballots since the signature on the ballot affidavit and that from the voter's record are displayed digitally. Ballots remain locked in a vault while the manual signature verification process takes place. If the signature does not match on the first pass, it is sent to a higher level of staff who can access other documents in the voter's record to use for comparison. There are usually several documents on file for voters such as previous voter registration forms, absentee applications, etc. After the higher-level signature review is complete, the second pass or audit pass is run in AGILIS. This allows ballots with signature challenge issues to be removed. For ballots where there is a signature discrepancy, a cure letter is mailed to the voter within 24 hours of the decision, and they have an opportunity to resolve the issue so their ballot can be counted. Voters for whom we have mobile phone numbers and email addresses are also notified of a signature problem by text or email.

Ballots that are verified are passed through to the OPEX machine to be opened. The OPEX machine runs ballots in a rapid assembly-line fashion. It slices open the end of ballot return envelopes. The OPEX machine operator removes the security sleeve containing the ballot from the envelope. The ballot remains folded inside the security sleeve. The ballot return envelope is dropped into a bin beneath the OPEX Machine. The secrecy of the ballot is maintained throughout this process. All identifiers to the voter are separated.

Ballot inspectors remove ballots from the security sleeves and unfold them in preparation for them to be tabulated. By-mail ballots are placed in ballot boxes in batches of 150 and are labeled and tracked. As ballots are tabulated, the ballot batches are logged into a database and they are reconciled to ensure every ballot is accounted for.





*Craig Latimer*  
**Supervisor of Elections**

Our Vision: To be the best place in America to vote

GOVERNOR'S  
STERLING  
AWARD  
RECIPIENT

**Special Committee on Election Integrity & Reform, Pennsylvania State Senate**

*Opening Statement from Hillsborough County Supervisor of Elections Craig Latimer*

March 15, 2020

Thank you for inviting me to join you today. I am happy to share information with you about the successful use of Vote By Mail in my county. Hillsborough County, Florida is the fourth largest county in the state, with more than 934,000 registered voters during the 2020 General Election.

Florida has had no-excuse Vote By Mail since 2002. Over the years, more and more voters have chosen this method of voting. In Hillsborough County, it had become common to expect that about one-third of our voters would choose Vote By Mail in any election. In the 2020 General Election, Vote By Mail made up 47% of votes cast. It was the method chosen by almost 338,000 voters. And with a two-card ballot, that meant we had approximately 675,000 ballots to scan and tabulate.

Vote By Mail was an especially attractive voting method in 2020 because of the pandemic, and we were fortunate to have laws in place designed to ensure the integrity of Vote By Mail. Those established laws set us up to be able to successfully process and tabulate mail ballots in a timely and efficient manner in 2020, a year in which we were all faced with extraordinary challenges.

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**VoteHillsborough.gov**



**(813) 744 - 5900**

**Fred B. Karl County Center**

601 E. Kennedy Blvd., 16th Floor, Tampa, FL 33602

**Robert L. Gilder Elections Service Center**

2514 N. Falkenburg Rd., Tampa, FL 33619

*See website for regional office locations.*

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Specifically, Florida law requires that registered voters must request Vote By Mail to receive mail ballots, and those requests remain in effect through two General Election cycles. Ballots are not forwardable, so if a voter moves and forgets to cancel their ballot request, the ballot will be returned undeliverable to our office.

Voted ballots are verified by matching the signature on the envelope to the signature in the voter's file, and all Supervisors must provide ballot tracking on their websites so that voters can confirm their voted ballot has been received.

Florida's laws also require that mail ballots be received by my office no later than 7 p.m. Election Day to be counted. I worked hard to educate my voters to ensure they had the information they needed to meet the deadlines for requesting and returning mail ballots.

I also made it as easy as possible for them to get those ballots back in. For years, I've paid the return postage so that voters can mail their voted ballots back to my office without having to find or pay for a stamp. That's not required by law, but I have seen many Supervisors adopting this practice, as well.

The current law does require us to provide a drop-box at each of our offices and in-person Early Voting sites, so that voters can drop their mail ballots off in person. In an effort to minimize the number of people inside our offices and Early Voting sites, and to provide voters with an easy, contactless way to return their ballot, I moved our drop-off boxes to curbside tents, so that voters could drive up and drop their ballots off. The drop-off boxes were staffed and sealed at all times and used by more than 45% of our Vote By Mail voters.

As we saw in the 2020 election, timely reporting is a critical factor in ensuring confidence in election results. Here again, we were fortunate to have strong laws in place. Florida law allows us to begin opening and tabulating Vote By Mail ballots 22 days prior to an election. In anticipation of greater Vote By Mail participation during the 2020 presidential election, the Governor issued an executive order allowing mail ballot canvassing to begin several days earlier than that.

Having the ability to open and tabulate mail ballots well in advance of Election Day is vital to timely election results reporting. As an elections administrator, I know how many mail ballots have been mailed out and how many are received each day, and can adjust my staffing plans in order to keep up with the volume of Vote By Mail ballots coming back to my office. For that reason, we never fell behind in our Vote By Mail processing in 2020, despite receiving more mail ballots than ever before. On Election Night, results from Hillsborough County's in-person Early Voting and Vote By Mail were reported shortly after 7 p.m., and those results made up 85% of our total results.

It was widely reported that Florida was a shining star on Election Night, with the vast majority of our state's election results reported that evening. I'll conclude with a quote from our Secretary of State Laurel Lee and will be happy to answer your questions later today. In the words of Secretary Lee:

*"Florida ensured a safe and efficient voting process and all Florida voters, no matter how they chose to cast a ballot, or who they voted for, could be confident in the integrity of our elections system and the security of their vote."*

Thank you.

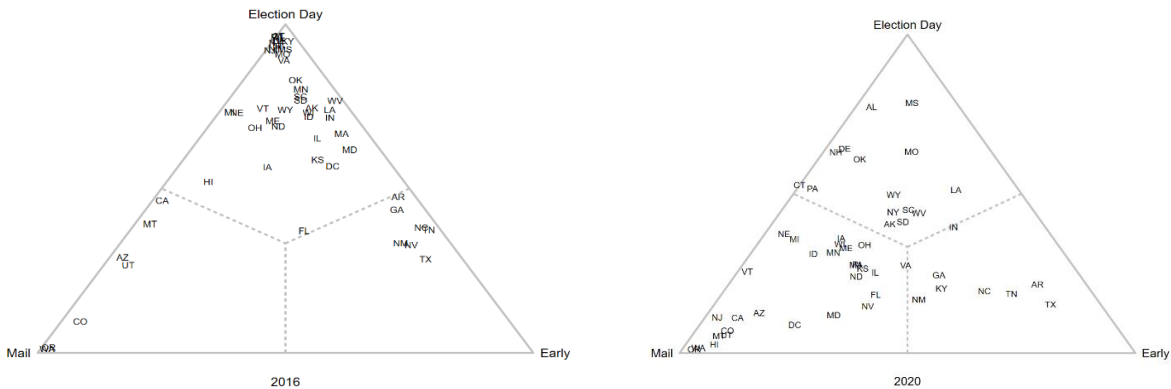
Testimony of David H. Stafford, Supervisor of Elections, Escambia County, Florida

Pennsylvania State Senate  
Special Committee on Election Integrity and Reform  
Public Hearing  
Mail-In Balloting Process of Colorado, Utah, and Florida  
March 15, 2020, 10:00 A.M.  
Senate Floor – Pennsylvania State Capitol  
Harrisburg, PA 17120

Before I begin my remarks, I ask that you indulge me for a moment while I establish my Pennsylvania bona fides. I am the son of two commonwealth natives. My mother, a proud Nittany Lion, was born and raised in Chambersburg, while my father, who holds two degrees from Temple, hails from the other side of the state in Sharon. I have fond memories of my parents loading my brothers and me into our station wagon each summer in Florida for the long trip north to visit family. Perhaps most importantly, I believe that the Comet at Hershey Park is the finest roller coaster of all time.

It is an honor to be with you today to share some perspective on the 2020 elections. I will begin with a brief overview of how Florida elections are structured, followed by the steps we took to respond to the pandemic, and end with what I believe are the most important elements of a robust and secure vote-by-mail program.

For the past two decades, Florida voters have had a choice of one of three ways to cast their ballot: early in-person, by mail, or on election day. In the 2016 general election, the distribution of those methods was roughly equal in proportion, as illustrated in the chart below from Dr. Charles Stewart III of the Stanford-MIT Healthy Elections Project. In 2020, Florida joined many states in increasing its share of voters who cast their ballot by mail, as depicted below. Of the more than 11 million ballots cast in Florida’s 2020 general election, 39% voted early, 44% voted by mail, and 18% voted on election day.



Early voting in Florida is required in federal and state elections for a minimum of eight consecutive days, up to a maximum of 14 consecutive days, for a minimum of eight hours to a maximum of 12 hours each day. Early voting is required to be held in the office of the supervisor of elections and may be held at additional locations that meet certain criteria. Within those parameters, supervisors of elections have the discretion to choose the number of days, hours, and locations that best accommodate their voters. Early voters can choose any site in their county, and votes are cast on paper ballots that are tabulated by optical scanners at each early voting site. By law, early voting results must be reported no later than 30 minutes after polls close on election day. On election day, voters who have not already cast a ballot may do so between 7 a.m. and 7 p.m. at their assigned polling location. Like early voting, voters mark paper ballots and tabulate them on optical scanners at each precinct.

No-excuse vote-by-mail has been an option for all voters in Florida since 2001. Under current law, voters can make a single request a ballot for all elections through two election cycles. For example, a voter could make a request today for all ballots through the 2024 general election. Requests can be made in writing, electronically, or by phone, and must be received no later than 10 days before the election.

Ballots for military and overseas (UOCAVA) voters are sent no later than 45 prior to election day, and ballots for all other requesters must be sent between the 40<sup>th</sup> and 33<sup>rd</sup> day before the election. UOCAVA voters can receive their balloting materials electronically but must return them by mail or hand delivery. However, overseas voters have the option of returning their ballot by fax.

Vote-by-mail ballots must be received in the supervisor of elections office no later than 7 p.m. on election day, with the exception of overseas voters whose ballots can be accepted up to 10 days after election day if postmarked or signed by election day. Voters can return their ballot by mail, or by hand delivery to the supervisor of elections office, an early voting site, or an authorized drop box. Drop boxes were utilized statewide for the first time in 2020.

Each vote-by-mail ballot is verified upon receipt by the supervisor of elections. Signatures on the ballot envelope are compared against the voter signature on file. Missing signatures or mismatched signatures are flagged, and the voter has an opportunity to cure their ballot up to two days after the election. This cure process was brought to the legislature by election officials and was utilized by voters with great success in the 2020 general election. Beginning 60 days before the primary election until 15 days after the general election, we are required to report vote-by-mail activity to the state each day, and that information is made available to candidates, political parties, and political committees.

Once received and verified, vote-by-mail ballots are held until canvassing begins. Under Florida law, vote-by-mail ballots can begin being canvassed as early as 22 days before election day. In the 2020 primary and general elections, it was expanded to up to 25 days by executive order. This pre-election day processing was first authorized in Florida in 2001 at four days prior to election day. Results may not be released until after the polls close, subject to a third-degree felony. Like early voting, the results of any vote-by-mail ballots that have been tabulated must be released no later than 30 minutes after polls close. As a result, in the 2020 general election the results of more than 75% of the total votes cast were published by 7:30 on election night.

A year ago this week, my Florida colleagues and I were struggling with holding an election in the midst of the initial global response to the emerging pandemic. Ohio had just postponed its presidential primary which coincided with ours, and many were wondering whether Florida would follow suit. Election

officials were scrambling for supplies like hand sanitizer, sanitary wipes, and masks, while replacing lost polling places and poll workers. To borrow a phrase, we were flying the plane while building it. It was a struggle, but we were able to provide voters with the opportunity participate in the presidential primary process. We learned a lot from that experience and the states who held elections after us and made significant adjustments in preparation for our August primary and November general elections.

However, one step we took pre-dated the pandemic. We made the decision in late 2019 to send vote-by-mail request forms to all voters for whom we did not already have an active request. This resulted in an increase in the number of requests but was only a portion of the increase that came after the pandemic hit. Candidates, political parties, and other groups also heavily promoted vote-by-mail in the months leading up to the general election.

Following the outbreak of COVID-19, we also made the decision to pay return postage for vote-by-mail ballots. This was a recognition that voters who would otherwise choose to vote in person may not feel safe in doing so and voting by mail was their only other option. We used CARES Act dollars to help defray this unbudgeted, added expense.

Recognizing that we would see unprecedented volume of vote-by-mail balloting, we invested in new equipment to aid in ballot processing. We purchased a new machine to automate the extraction of ballots from their envelopes, which increased throughput. We also reconfigured our physical space and added personnel to accommodate the increased volume. All the while, we had to ensure that we were following CDC guidelines for our staff and volunteers, as well as the public who were there to observe.

We also faced some additional challenges unrelated to COVID-19. For the first time ever, we had to print ballots and most materials in both English and Spanish. This resulted in a two-card ballot which significantly increases the complexity of all aspects of an election. We also were hit with two hurricanes which impacted our operations in addition to some polling places and poll workers.

In closing, I offer some general thoughts on what I believe are the most important design aspects of administering a vote-by-mail operation:

- Proper planning (supplies, equipment, people, space) is critical
- Spend time and effort on the design of materials (envelopes, instructions, etc.)
- Allow pre-election day processing of mail ballots to reduce post-election volume
- Drop boxes are popular with voters
- Build transparency into all aspects of vote-by-mail operations
- Tracking of ballots is a benefit to both election officials and voters
- Offer voters the opportunity to cure signature deficiencies
- Ensure the process is secure and auditable from beginning to end

Thank you again for the opportunity to offer testimony today. I wish you all the best in your efforts.

My name is Tammy Jones and I'm the Supervisor of Elections in Levy County, Florida. Levy County is a small rural county with a little over 30,000 voters with a total population of 40,801 residents recorded in the 2010 census. I've worked in the Levy County Supervisor of Elections office since 1994 (27 years). I have been Supervisor for 8 years and currently entering my third term in office. In Florida the Supervisor of Elections is an elected position.

Since 1994 I've seen many changes in elections. Changes in technology have shaped the way our voters choose to cast their ballots. My very first Presidential Election in the office was in 1996. At that time only 1,031 voters voted by mail. In 2020, 7,856 voters cast their vote by either mailing in their ballots or dropping them off at a secure drop box. There has been an increase of 2,673 votes since the 2016 Presidential Election. I believe that this increase was mainly due to COVID-19.

In Florida we allow three ways of voting. Early voting, voting by mail and voting on Election Day. These three options have helped with less lines on election day. Of the 23,309 voters that voted in the 2020 General we had 34% vote by mail, 34% vote early and 32% vote election day.

I believe Florida had successful elections in 2020 due to the following laws:

- 1) Our Canvassing Boards can begin opening and processing Vote by Mail ballots 22 days before an election.
- 2) Florida has a 7-day window to mail out the initial domestic Vote by Mail ballots (33 – 40 days before election). This provides flexibility for counties due to their mail out size.
- 3) Florida requires secure Vote by Mail drop boxes at every Early Voting location and at each Supervisor of Elections office and branch offices. Other sites are permitted as long as they are available during early voting hours and deemed permissible as an Early Voting Location (For example, public libraries).
- 4) Florida is a no excuse state allowing voters the flexibility to choose their method of voting without providing a reason.
- 5) If the voter wishes their Vote by Mail request can be valid for up to two election cycles. An important part of this law is that all ballots are non-forwardable. This ensures that if someone has moved away that ballot will be returned to the Supervisor of Elections office and ALL future Vote by Mail ballots will be cancelled. This prevents another individual now residing at that location to receive the voter's ballot.
- 6) If the voter forgets to sign the certificate portion on the return of their vote by mail ballot or their signature does not match, they have until the Thursday after the election at 5pm to cure their ballot.

Our office implemented the below items that helped our voters further understand the Vote by Mail process. These items are not required by Florida Statute.

- 1) Providing a ballot tracking system to automatically sign up to receive alerts when their ballot was mailed or received.
- 2) Providing videos and deadlines on our website and social media platforms to inform our voters.
- 3) Provide pre-paid postage on the return of the Vote by Mail ballot.

When passing election laws, you should consider how it will affect voter education and funding for election related programs. Flexibility should also be considered as a factor due to the size differences of each county.

I urge you to continue to seek the advice of election professionals, including the Pennsylvania elections administrators. As Supervisors, we are on the ground ensuring all laws are followed. Our offices learn what works best for our specific voters. I know from past experience that it can be heartbreaking to tell a voter that their ballot will not count due to a technical law. New laws can be costly for our offices due to the requirement of reprinting materials. When Vote by Mail laws are changed, we are left reprinting a majority of our envelopes and voter information.

The most important job we have as Supervisors is to ensure that the voters voice is heard and every legal vote is counted.





**2021 Senate Special Committee on Election Integrity & Reform Hearing,**

**March 23, 2021**

**Testimony of Acting Secretary Veronica Degraffenreid  
Pennsylvania Department of State**

**Act 77 Implementation**

Chairman Langerholc, Chairman Street and members of the Committee:

Good afternoon. Thank you for your invitation to appear before the Committee to discuss the Department of State's implementation of Act 77. Joining me today is Deputy Secretary for Elections and Commissions Jonathan Marks.

Act 77, the bipartisan election reform law signed by Governor Wolf in 2019, has ushered in an exciting new era of voting modernization in Pennsylvania and made voting easier and more accessible to millions of Pennsylvanians. Act 77 was a sea change in how Pennsylvanians vote, allowing eligible voters to cast their ballot by mail without requiring an excuse, and implementing other flexible options including same day in-person ballot requests at County Election Offices. Voters also now have the option to be placed on a list to annually receive a mail ballot application.

These changes proved to be extraordinarily prescient, given developments in 2020. Just months after the passage of Act 77, the first novel coronavirus cases were detected in Pennsylvania, and the ability to use mail-in ballots helped protect Pennsylvania voters in both the Primary and General Elections.

In addition, Act 77 authorized \$90 million in funding to reimburse counties for costs to upgrade their existing voting systems. The new systems, which were implemented in every county ahead of the 2020 election, provided enhanced security to help guard against hacking and produce an anonymous paper record so voters can verify their ballot is correctly marked when casting it. To date, \$41.6 million in reimbursements have been provided to county election offices towards this endeavor.

Prior to passage of this historic law, the Department of State launched its Ready to Vote campaign in early fall 2019 to inform Pennsylvanians about new voting systems. When Act 77 became law, Ready to Vote quickly expanded to include educating voters on election changes, such as voting by mail without an excuse and new deadlines.

The cornerstone of Ready to Vote was a year-long, multi-lingual, multi-platform advertising and messaging campaign. Department of State staff engaged counties, other commonwealth agencies and community stakeholders to help educate voters, holding more than 70 speaking engagements throughout the year and providing an online toolkit with messaging that included signage, social media posts, graphics and more. The department also worked to make voting more accessible by providing mail-in ballot forms in multiple languages, launching an accessible vote-by-mail solution for voters with disabilities, and providing postage on envelopes so that voters could return their mail ballots for free, among other projects. In addition, between April and November 2020, our staff answered 123,000 phone calls to our election hotline.

The success of Act 77 is clear from the record-high voter engagement we saw in 2020 across all areas of the Commonwealth. By the November general election, approximately 9.1 million Pennsylvanians were registered to vote, more than 300,000

more voters than ever before. Turnout in the November election included more than 6.9 million voters - 800,000 more Pennsylvanians than ever in the Commonwealth's history. Over 76 percent of registered Pennsylvania voters voted, more than any election in modern history. Pennsylvania voters have embraced the ease and convenience of voting by mail without having to provide an excuse. Thanks to the dedication of county election officials across the Commonwealth, all Pennsylvania voters can cast their ballots with confidence that their votes will be counted accurately and securely and that their voices will be heard. I look forward to working with you in the coming year to build upon last year's successes as vote-by-mail and other provisions of Act 77 continue to be implemented.

Thank you for your time and attention and the opportunity to appear before you.

**COUNTY OF LEHIGH**  
Office of the Election Board

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Thank you, Chairman Langerholc and members of the Special Committee on Election Integrity & Reform.

I'm extremely happy that both the Senate & the House are conducting these hearings regarding elections in Pennsylvania as well as having this opportunity to speak with you. These hearings have been a great tool to better educate people that there is so much more to casting a vote than just filling in an oval on a piece of paper. Although there is always room for improvement, I think these hearings have shown that the Commonwealth is moving in the right direction, in a very short time to achieve what some of the great model States have achieved over many years.

Act 77 was a huge change to the 1937 Election Code. The act was signed into law only months prior to a Presidential election year which is not the optimum time to make any changes to the process. If up to directors, this would not have happened during this time frame. In additions to last minute changes, the scrutiny and misinformation that comes with any Presidential year, there is a global pandemic. The efforts of the Department of State, County and Local election officials were heroic.

We've lost over 20 County Election Directors throughout the Commonwealth since Act 77. This loss of knowledge is very concerning.

Pennsylvania was the first state to offer absentee balloting to soldiers away from their homes during the war of 1812. We've been offering absentee ballots for a long time to Military, overseas and Federal voters without a problem. Act 77 only increased the volume of ballots for Counties to administer. With your help, we need to make these process more secure, while not adding barriers on the right to cast a vote.

Your first hearing last week was very enjoyable. There are glaring similarities between the current Pennsylvania election system and those of states participating in the hearings. Just a reminder, we had six months to implement Act 77. We do many of the exact same procedures as the model states in the country.

Below are my thoughts on the first hearing:

As soon as ballots are returned to the office, the envelope bar code, specific to that ballot is scanned and the voter's record is pulled up in the SURE system. The information is verified and the signature is compared, just like Colorado. If there is an issue with that information, the ballot is set aside for further investigation. Clarification on how signatures are scrutinized, cured and handled within the statutes would be extremely helpful and bring us closer to the systems of other States. Signature verification software is a fantastic security tool.

I can't emphasis enough, Colorado started their mail balloting and election reform in 1990s. 2013 HB1303 was the major overhaul and alterations to previous changes. As almost all testifiers indicated, reform changes have never stopped since the initial reform.

As specified in the last hearing, voters, politicians and interest groups all have mail balloting lists available to them prior to each Primary or Election. There is no burden on anyone requesting to see this information. The availability of such lists is specifically expressed in Act 77.

**COUNTY OF LEHIGH**  
Office of the Election Board

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Chief Clerk  
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Postal tracking of voter's ballots was requested by Counties for the new SURE system.

All machines used in the Commonwealth are certified by EAC & DOS. Logic & Accuracy testing is completed prior to machines being distributed to voting precincts. As in other states, 2% Audits and now Risk Limiting Audits (RLA) are being done post Primary and Election.

Adjudication of ballots is done with bipartisan observation and discrepancies are based on a document called, "What Constitutes a Vote".

These are just a few examples of the best practices Pennsylvania has been doing for years. As stated earlier, there is always room for improvement. Specifications pertaining to curing ballots and drop boxes would be extremely helpful. Additional time pre-canvassing will get timely results and increase voter satisfaction.

Thank you for inviting me. Election Directors are always available to help you better make important decisions on meaningful and logical election reform legislation. I'm happy to answer any questions.

COMMENTS ON THE STATE OF ELECTIONS  
IN THE COMMONWEALTH OF PENNSYLVANIA

PREPARED FOR THE SPECIAL COMMITTEE ON  
ELECTION INTEGRITY AND REFORM  
SENATOR WAYNE LANGERHOLC, JR., CHAIRMAN

SUBMITTED BY L. EDWARD ALLISON, JR., DIRECTOR  
LAWRENCE COUNTY VOTER SERVICES

Thank you for the opportunity to address this committee and its honorable members. I am humbled to be included with my esteemed colleagues and the representatives of the Pennsylvania Department of State.

I feel a few general statements I have learned over my career may be in order to help explain my comments to follow. Elections to an election director have absolutely nothing to do with politics or political parties. It is all about the process and the rule of law. I have spent over thirty years in a manufacturing environment in my previous life. I worked with some very learned and “street” smart administrators and managers. Through that process, I came to learn and wholly believe that process control and managing the variables in making a product were paramount to success. Also, the fewer the variables the more likely the process of manufacturing a product is successful. The same philosophy can be applied to the election process. The fewer the variables the better chance of a successful, accurate and efficient election. The same applies to adherence to the law – as written – as the law and the process go hand in hand.

Variables and the effect of multiple changes in the laws governing elections have increased dramatically and have had a measurable impact on the personnel, budgets, and logistics of carrying out elections in the Commonwealth. If you agree with my previous premise in the previous paragraph, the election process in the Commonwealth certainly needs to be revised and simplified to streamline the process.

With the advent of the mail in ballot running parallel with the absentee ballot, has in itself been a point of contention and consternation to directors and voters alike. The two should become one under a no excuse mail in ballot. The pre-canvassing timeframe for all the mail in ballots needs to be extended to at least the same time frame to request the ballots themselves which is currently seven days prior to the election. The registration and mail in ballot request cut off dates need to be moved to thirty days prior to any election to afford election personnel the time to properly examine the ballots being returned, scanning the ballots to record the return and subsequent vote for that individual and file in a manner conducive to the canvassing of said ballots.

The current process has increased the variables at all polling sites for all poll workers both elected and appointed. A combination of age and frustration over the current process has exacerbated the shortage of qualified poll workers. In Lawrence County alone, better than fifty percent of the elected positions are vacant on the 2021 Municipal ballot, an issue election directors saw coming two years ago. Returning voted ballots to be voided in order to vote in person, voters wanting to vote in person without their ballots already issued and now needing to vote provisionally, handling ballots as never before and reconciliation vote counts has become exceptionally burdensome. The provisional balloting process was totally new to many polls and was a major cause of concern and frustration. The increased number of provisional ballots also helped contribute to longer wait times. Ballots, voted, unused and voided,

returned need to be scrutinized and reconciled. This process was much more time intensive and added to the burdens at all election offices.

In order to alleviate the poll issues and any number of minute details to be encountered, a “one and done” process needs to be evaluated and adopted. A voter would have the option of voting in person or requesting and voting a consolidated mail in ballot. Period. This method would certainly eliminate a number of variables at the polling site and the election office. It would give the voter a clear understanding of the revised process. The adjusted timelines would further support this change.

Act 77 and Act 12 have added a new definition to the word ‘permanent’. Permanent, as it relates to balloting in Pennsylvania now means annual and involves thousands of tax-payer dollars to prepare and mail ballot applications to all those voters who checked the box 7 in the 2020 Presidential Primary making them ‘permanent’ mail in voters. Lawrence County with its roughly 54,000 register voters, mailed over 10,000 applications at a cost of over \$10,000. All counties have never had to deal with this process or expense for which they received no consideration of reimbursement. Permanent should mean permanent until the voter changes the status and allow election offices to prepare ballots for these individuals automatically for each election.

The 2020 election cycle, which seems as if it will never die, raised the question of the proper and legal use of drop boxes for ballot returns. Legislation needs to be adopted one way or the other in regard to the use these conveniences. Legislation should be limited, if following the court ruling on the matter, to the permitted use and no more. The usage of drop boxes should be determined at the county level and the necessary safeguards should be left to the purview of the county.

A rather unpopular concept to elections is that of personal responsibility. Voters must become cognizant of the candidates and issues to make informed choices. Completing ballots and envelopes prescribed by law is the responsibility of the voter. Improperly completed affidavits and naked ballots are fatal defects per the election code and must be treated as such. Election offices, upon examining the affidavits, do our best to offer the voters the opportunity to remedy the flaw. We must be aware, however, we open our office to criticism if we miss one or no longer have time at the runup to the election. Naked ballots are without remedy at the risk of violating the concept of the secret ballot.

The Pennsylvania Department of State, underfunded and undermanned, does an exemplary job in their part of the election process. Counties do not always agree with the Department’s guidances and interpretations of the Election Code and counties will act accordingly under the advice of the Board of Election following review with the Solicitor. All guidances and directives should be referenced at all times with the appropriate section of the Election Code and will be reviewed at the county level with consultation of the Solicitor. Directors recognize that the Department is currently engaged with the replacement of the SURE system. Until that time, all emails and other correspondence with voters must be more generic as opposed to adding more stress to election offices with target dates for mailing ballots and any other material directly to voters.

By the end of the year, better than 25% of key personnel in county offices will have left the profession for greener pastures or more relaxed lifestyles in retirement. Each personnel change is another variable to be dealt with and not just at the county level but the state level as well. Decades of experience and know-how has been lost to the profession in Pennsylvania. Newcomers have done an exceptional job at catching up but at what cost. The stress level in our profession is at the breaking point and reform to the process is absolutely necessary or the 25% will increase dramatically to the detriment of the process

and the democratic electoral process in Pennsylvania. Workshops and certifications are merely dressing to the wound but may help the bleeding in the short term.

Last but certainly not least, money! Counties have had to foot the bill for election administration far too long. The grants and other funding sources available in 2020 are gone and we see no replacement for the funding stream. A shared approach must be seriously considered with the counties covering the local races and questions and the state and federal governments sharing equally to reimburse the counties for all state and federal elections. Assets are now running short.

In closing, I have identified the growing number of variables in the election process and the need for reform to a simpler process. Counties are losing valuable assets in personnel, funding and time. Once the assets are exhausted, only liabilities remain – inexperienced personnel, depleted coffers and public distrust.

Thank you again for your kind attention.



## PUBLIC HEARING

### State and Local Insight on the Administration of Elections in Pennsylvania

March 23, 2021

Cindy Furman, Director of Elections

Wayne County, Pennsylvania

Comments.

1. **Closing of public schools**-I would like to see public schools closed on election days in order to use the buildings as polling locations. It is currently the law that we can use schools, but the schools are not in favor of this due to security issues. If the schools were closed for use on election days, most offer ADA compliant entrances, larger rooms to accommodate larger crowds and more parking areas.

Wayne County currently has eight different school buildings that we do not use for any of our 35 precincts.

2. **Early Voting**-We need to change the process for voters that walk-in expecting to "vote early". Voters have the misunderstanding that Pennsylvania has "early voting" similar to other states. They believe they can walk-in, sign-in, and be handed a ballot like the process at the polls on election day.

The current process is that a walk-in voter must complete an application for an absentee or mail-in ballot first. Then a county employee that is trained to use the SURE system, must process the application, wait for system approval and then print the labels for the envelopes. Next the employee must retrieve the correct ballot and prepare a ballot packet just like the ballot packets that are mailed to voters. The packet is handed to the voter, who then has the option to vote in person in a designated area or to take it home and return it via mail or drop off at a later time.

This is a ten minutes process per voter if the SURE system is working properly and there are no interruptions.

Counties have the option to open satellite locations but this is not feasible for most counties. My county would need to transport computer equipment, printers, large numbers of 35 different ballots and balloting materials to another building if one could be established plus provide the additional trained personnel and security.

My current location is not conducive to handle the large number of "early voters" on a daily basis. We had a sheriff's deputy outside our door handing out the applications, directing them to tables set up in the hallway, and handing out numbers to those waiting in the various stages of applying and voting. We had four full time employees plus extra personnel processing the applications and ballot packets for the walk-ins between processing voter registration applications, online applications, trays of incoming and outgoing mail and answering the endless phone calls. Many voters were angry when they were informed of the process and they had to wait longer than they expected.

If Pennsylvania is to continue with "early voting", it must change. Specific dates and times must be established at the discretion of the individual counties. The voters would be required to sign

an actual poll book and be handed a ballot to vote only while they are there, and then place it in a sealed ballot box to be opened and counted on election day.

3. **Registration and Mail-in ballot application deadlines**-The need for change stated in # 2 would change the time-lines for voter registration and applying for mail-in/absentee ballots. We need to push back the voter registration deadline to 30 days prior to elections. This gives counties the necessary time to process registration applications. We also need to push back the deadline to apply for a mail-in/absentee ballot to 15 days prior to the election. This gives the counties time to update and print poll books in time for early voting.

Requests for emergency ballots or UMOVA ballots would not be included in the 15 days prior deadline.

4. **Mail-in and Absentee Voters going to polls**-We need to eliminate the rule allowing voters that have been issued a mail-in/absentee ballot to go to the polls, void their issued ballot and vote in-person. Once a voter has requested a mail-in/absentee ballot and it has been approved and issued by the county, they must vote it and return it to the county by 8 p.m. on election day. They should not be allowed to go to the polls to vote in person. If they never receive the ballot or it is lost or damaged, they must report this anomaly directly to the Bureau of Elections prior to close of polls.

November's election caused great confusion to the poll workers and voters. Some went to the polls and wanted to drop off their voted ballots, some brought their ballot packets to be voided, and some arrived without the ballot packet because they threw it away. The latter group were angry when they could only vote a provisional ballot.

5. **Same day voter registration**-Please do not establish same day voter registration. I can visualize most of my poll workers resigning if they will be required to register voters at the polls. If voter fraud is to occur, this will be the moment of opportunity.
6. **Pre-canvass of mail-in/absentee ballots**-Allow counties to start pre-canvass of mail-in/absentee ballots at least one week prior to election day. As we watched in November, larger counties were still opening ballots three or more days after the election. The public did not understand the process and many were convinced that fraudulent counting was taking place.
7. **All mail-in ballots for small precincts**-A possibility has been discussed for the future to allow counties that have voting precincts with less than 200 voters the option to mail ballots to all the voters in those specific precincts instead of opening a polling location. This would be advantageous against finding poll workers and cost effective.

Wayne County has 3 precincts that would fall in this category. It would cost approximately \$511.00 to mail ballots to every voter in these precincts per election versus the approximate cost of \$1,785.00 for poll workers, constables, building rentals and equipment deliveries per election. Many counties could benefit from this both financially and in time consumption.

I want to thank the committee for investing time into Election Reform and for asking county election directors for their invaluable insight with the processes that actually make our elections work.

Cindy Furman, Wayne County Director of Elections

## **PUBLIC HEARING**

### **State and Local Insight on the Administration of Elections in Pennsylvania**

**March 23, 2020 | 10:00 A.M.**

**Hearing Room One – North Office Building  
Harrisburg, PA 17120**

#### **11:00 a.m. Panel Two – Elections Directors**

Tim Benyo  
Elections Director, Lehigh County

Ed Allison  
Elections Director, Lawrence County

Cindy Furman  
Elections Director, Wayne County

**Karen Barsoum**  
Assistant Director for Elections Services, Berks County

#### **WRITTEN REMARKS**

Committee: I would like to thank you for inviting me today to let me speak on subjects related to administering elections in Pennsylvania. Act 77 and Act 12 have provided several amendments to the act of June 3, 1937, changes that were necessary to move forward. There is yet a lot to be done and I'm confident that this hearing will contribute to that. I'm pleased to know that there is a dialogue and participation with the election directors of Pennsylvania as the outcome from any change in the election code will have to be implemented and administered by them.

Elections take place at least twice a year, many people only focus on that one election once in the four years. We can not wait until this one election to make changes, amend laws, and move forward. Last year was an overload of changes, not only from an administrative point of view but also for voters. The "menu" of options expended so rapidly that it become almost overwhelming and led to confusion and misinformation, which ultimately led to mistrust in the system. Any changes that are going to be presented need to be well established under the law and enough time needs to be allowed for implementation. In addition, a strong emphasis needs to be made on voter education.

There are several items I would like to bring to the floor to take into consideration.

- Eliminating absentee ballots and only have mail-in ballots
- Absentee and mail-in ballots submission cut-off
- Either voting via mail-in ballot or in person at the poll but no changing of mind and surrender ballots at the polling place
- Early canvassing
- Clear law regarding ballot boxes
- Poll Worker appointments
- Simpler method at the polling place
- A method to handle increasing costs to the Counties
- Continuing education for Election Directors

Again, I would like to thank you for allowing us to be part of this conversation.

Karen Barsoum, Assistant Director, County of Berks



**TESTIMONY ON  
ELECTIONS REFORMS**

Presented to the Senate Special Committee on Election Integrity and Reform

By  
Commissioner Sherene Hess, Indiana County

March 23, 2021

I am Sherene Hess, Indiana County commissioner, and I appreciate the opportunity to offer remarks today on election reforms. I also serve as the chair of the Elections Reforms Policy Committee, a standing policy committee of the County Commissioners Association of Pennsylvania (CCAP). CCAP is a non-profit, non-partisan association representing the commonwealth's 67 counties.

We appreciate the attention of the General Assembly on the important issue of elections, particularly in light of the lessons we learned in administering the 2020 primary and general elections as we implemented the changes created by Act 77 of 2019 while also facing the very serious and unprecedented circumstances of the global COVID-19 pandemic.

As you are aware, Pennsylvania's 67 counties have a significant responsibility in assuring elections remain fair, secure and accessible at every step of the process. Over the past several years, counties have worked closely with the General Assembly to achieve historic changes to the Pennsylvania Election Code, including the implementation of mail-in ballots under Act 77 of 2019. While we believed that mail-in ballots would be a popular option for voters, we had no idea just how popular they would become due to public health concerns, and in a year with record voter turnout. And even though mail-in ballots are carbon copies of the absentee ballots that have been available to Pennsylvanians for years – from the application to the way the applications are processed to the ballots themselves – for a large number of voters this was an entirely new experience.

Let me begin by saying that despite these challenges, counties did a tremendous job running a successful, fair and accurate election in 2020. That said, we learned a great deal from our experience implementing Act 77 during the 2020 elections and we know there are ways in which changes to the law can improve our ability to administer elections, as well as our ability to provide more efficient results. CCAP's Elections Reform Committee convened after the November election and began reviewing county experiences, ultimately resulting in a preliminary report and recommendations released in January, which is attached to this testimony for your consideration.

In addition, counties selected election reforms as their top legislative priority for 2021 and, more specifically, renew our call for additional pre-canvassing time, as well as request to move back the mail-in application deadline to 15 days prior to an election. With these two changes, counties believe that a large portion of the challenging circumstances we faced in 2020 could be resolved.

First, allowing counties as much time as possible to pre-canvass ballots in advance of an election would offer a more meaningful option to complete these procedures, such as verifying the barcode number and voter's information on the outer envelope match the information in the SURE system, opening envelopes and removing and flattening the tri-fold ballot and scanning ballots – all following appropriate security and chain of command protocols for all individuals involved in the process. It is also important to note that counties are not calling for votes to be

tabulated, and certainly not released, until after the polls close on election day, simply to use our resources most effectively and efficiently to safely and securely prepare for this to happen.

Without an extended pre-canvass period, counties will continue to face very real challenges in providing timely results following the election, especially a highly visible presidential election like we had in November where the number of ballots was far too overwhelming for counties to process on Nov. 3 alone.

Our second top request, moving the mail-in ballot application deadline back to 15 days prior to an election, will help voters by giving allowing more time for the county to process a mail-in ballot application and allow for the ballot to travel through the mail to the voter and back again, something that caused a great deal of anxiety for voters in the November election.

Act 77 of 2019 permitted voters to apply for a mail-in ballot up to seven days before an election, which created timing challenges with the postal service. This ultimately led to some voters not receiving their ballots before the deadline to submit them at 8 p.m. on Election Day or receiving them too close to the deadline to making it logistically impossible for ballots to be returned via mail by 8 p.m. on election night. Because of this, many voters faced uncertainty about whether the county would receive their ballot in time. This, in turn, led voters to come to their polling place to spoil their mail-in ballot and vote on the machines, or to vote by provisional ballot, just "to be on the safe side." The process caused timing issues that wholly undermined the flexibility and convenience mail-in ballots should provide and resulted in unnecessary lines, crowds, more time spent in the polling location and a longer wait on election results, due to the stringent process counties follow to reconcile mail-in and provisional ballots to ensure accuracy.

Furthermore, counties would like to note that receiving ballots postmarked by election day and received up to three days after the election, instead of moving back the deadline, will likely contribute to ongoing delays in results and disruption at the polls. This "solution" does nothing to discourage voters from waiting until the last minute to return ballots, requires additional clarity on what constitutes a postmark as voters seek other delivery methods, and will lead to more provisional voting at the polls. As such, we assert that moving the application deadline back is the best opportunity to enfranchise voters and assure the mail-in ballot process works smoothly for them as it was intended to do.

Again, more details about these two top county priorities and other elections topics on which counties seek meaningful reforms and statutory clarity can be found in the attached CCAP Election Reform Preliminary Report.

Finally, and perhaps most importantly, counties urge the General Assembly to bring counties to the table to discuss and provide feedback on any elections-related legislation so that we may work together to accomplish meaningful reforms before the summer legislative recess. Waiting until the fall to adopt any reforms into law will not provide enough time for counties to successfully prepare, train staff and implement new procedures prior to the November election, which is good for neither counties nor voters. Counties have valuable experience to provide in

the development of legislation to assure we can continue to administer elections that are secure and accurate, and that provide accessibility to our voters so that all have an opportunity to engage in the democratic process.

Thank you again for the opportunity to testify today and your consideration of these comments. We look forward to working with you on legislative changes to improve the administration of elections in Pennsylvania. I would be pleased to answer any questions you may have.

## **CCAP ELECTION REFORM PRELIMINARY REPORT**

### **January 2021**

Counties have a significant responsibility in assuring elections remain fair, secure and accessible at every step of the process. In 2020, this task was complicated greatly by a perfect storm of factors. First, counties had to implement the provisions of Act 77 of 2019, including expansion of absentee ballots to all eligible voters, and like many other significant legislative changes, they discovered a number of areas of the Election Code that would need further clarification. Then, election directors, county commissioners and other county officials confronted the unprecedented responsibility of considering risk to public health in holding an election during a global pandemic, as well as the resulting explosion in demand for mail-in ballots. And finally, ongoing uncertainty regarding court challenges at the state and federal level, as well as the potential for additional state legislation, in the weeks leading up to the November election left numerous questions and anxiety during a highly contested and highly visible presidential election.

While the first two elections using mail-in ballots were successfully completed, counties have been reviewing their experiences and lessons learned from the front lines to call for additional changes to the Election Code that will streamline administrative requirements and provide clarity and consistency across the commonwealth. This report outlines county priorities, with a renewed call to allow counties additional time to pre-canvass, as well as to move the deadline for mail-in ballot applications back to 15 days to coincide with the voter registration deadline. These two items alone could resolve a significant portion of the challenges counties saw during 2020.

### **Background**

Our counties and our election staff deserve our utmost respect and gratitude for administering a smooth, fair and successful election. Regardless of the challenges brought on by the pandemic, disagreements and lawsuits, these dedicated public servants have remained laser focused on their responsibility as stewards of our democracy.

But we have also learned a great deal from the 2020 elections, and this report outlines a number of additional matters for review that we hope will inform clear and prompt policy changes. These include additional Election Code amendments, particularly to tighten up those matters that became subjects of interpretation throughout the various lawsuits. However, they also include administrative issues to be addressed with the state, as well as recommendations related to county operations and administration.

CCAP stands ready to engage with the General Assembly and the administration to assess the successes and challenges of the 2020 General Election, so that we can work together to create positive, effective election policy. Counties, as the entities that administer our elections, must be at the table for these conversations to help create any changes brought forth regarding



elections, to help create language that is clear and easily understood, and identify challenges up front regarding how, or even if, certain changes can be practically and successfully implemented. And any changes to the Election Code must be enacted well in advance of an election to allow for enough time to properly implement any changes, particularly if they involve developing new protocols or procedures, retraining poll workers, and so forth.

It is our responsibility to work together in the future to promote a smoother election process in support of our democracy. Running elections should not be a partisan battle but should be about making sure that our systems are secure and accurate and that our voters can have confidence that every properly cast vote will count.

It is time to put political differences aside and resolve to make meaningful improvements to the Pennsylvania Election Code. Elections are a fundamental government function, and every level of government has a stake in assuring they are secure, fair, and accurate. We look forward to working together on this important topic.

### **Summary of Priority Recommendations**

Counties have identified the following issues as top priorities for further election reforms, which could resolve many of the challenges they faced regarding the implementation of Act 77 of 2019.

*Please note:* Given that absentee ballots and mail-in ballots are, for all intents and purposes when it comes to application, processing and voting, the same, the terms may be used interchangeably throughout this report. However, regardless of the terminology, any reforms counties propose here are intended to be applied to both absentee and mail-in ballots.

#### ***Offer counties as much time as possible to begin pre-canvassing ballots to improve the likelihood of timely election results.***

Prior to Act 77, absentee ballots were provided to each voter's precinct on Election Day, to be counted and added to that precinct's vote counts once the polls closed at 8 p.m. The small number of absentee ballots made this process reasonable and did not cause any appreciable delay in tabulating results.

However, with the increase expected once mail-in ballots were available to all registered voters, Act 77 moved the processing and counting of these ballots from the precincts to central count at the county board of elections. The Election Code continued to permit the canvassing of absentee and mail-in ballots beginning at 8 p.m. on election night.

Counties began to raise concerns early in 2020 that with the expected volume of absentee and mail-in ballots, they would not be able to complete the canvass in a timely fashion if they could not begin the process until after polls closed. In response, amendments to the Election Code in Act 12 of 2020 permitted counties to begin a pre-canvass period as early as 7 a.m. on Election Day.

While these additional hours were helpful to some counties, for most it meant the prospect of essentially conducting two elections – both an in-person election and a mail-in election – on the same day, with the same resources. As expected, even with the ability to begin at 7 a.m., it took several days in most counties to fully process all of the mail-in ballots.

Immediately following the June election, counties spent the months prior to the General Election advocating for legislation that would allow them to begin pre-canvassing – opening and preparing the mail-in and absentee ballots – prior to Election Day so that results could be available on election night or shortly thereafter. Without an extended pre-canvass period, counties expected that it could take days or weeks *following the election* to see final results, because they also needed to focus their efforts on a successful in-person election on Nov. 3, rather than on the manual labor of opening and preparing substantial numbers of mail-in ballots. While any time provided ahead of Election Day would have been a significant help, counties asked for as much time as possible to avoid the anticipation of very real challenges in providing the timely results they knew would be sought, especially in a highly contested and highly visible presidential election.

But with counties only able to begin pre-canvassing on Election Day, as predicted it took several days for the millions of mail-in ballots to be counted, delaying election results and causing confusion despite counties' best efforts. Therefore, counties renew their call for legislation to allow pre-canvassing to begin prior to Election Day, thus allowing counties to focus on administering an in-person election on Election Day, improving workload management and allowing results to be available much more efficiently.

***Move back the deadline to apply for mail-in ballots to 15 days before an election.***

Act 77 of 2019 permitted voters to apply for a mail-in ballot up to seven days before an election, which created timing challenges with the postal service. This ultimately led to some voters not receiving their ballots before the deadline to submit them at 8 p.m. on Election Day or receiving them too close to the deadline to make it logistically possible for ballots to be returned via mail by 8 p.m. on election night, so that many voters faced uncertainty about whether the county would receive their ballot in time. This in turn led voters to come to their polling place to spoil their mail-in ballot and vote on the machines, or to vote by provisional ballot, just "to be on the safe side." This wholly undermines the flexibility and convenience mail-in ballots should provide and causing unnecessary lines, crowds, more time spent in the polling location and a longer wait on election results as counties must then reconcile mail-in and provisional ballots for accuracy.

With postal delays and public health concerns, shifting this deadline to 15 days before an election (to coincide with the voter registration deadline) will benefit voters by providing more time for the ballot to be able to get from the county to the voter and back again through the mail, creating less uncertainty over whether ballots were received by 8 p.m. election night. Voters will be able to receive their confirmation email and feel confident that their ballot was received, so that they do not need to come to the polling place or find other means of returning their ballot. At the same time, counties will have more time to assure poll books are as current

as possible with those voters who have applied for, and submitted, mail-in ballots, all adding up to more efficient polling place operations as well as preventing unnecessary crowds as counties continue to implement COVID-19 risk management strategies. The emergency absentee period could also be extended accordingly to accommodate this longer deadline period.

Counties also note that changing the receipt deadline to allow ballots postmarked by election day and received up to three days after the election, instead of moving back the deadline, *will likely cause a delay in results and disruption at the polls*. This "solution" will do nothing to discourage voters from waiting until the last minute to return ballots, requires additional clarity on what constitutes a postmark as voters seek other delivery methods, and will lead to more provisional voting at the polls as, again, voters who do not yet have confirmation that their mail-in ballot was received will still show up in person to be on the safe side. Moving the application deadline back is the best opportunity to enfranchise our mail-in voters.

### **Topic Review and Discussion**

In addition to the two priority issues noted above, counties seek meaningful reforms that can address other issues that arose during the 2020 elections, in particular to promote clarity and consistency across the commonwealth. As discussions evolve, counties must continue to be at the table to provide input and perspective on how amendments can be implemented on the ground.

### **Topic: Election Code Amendments**

#### **Drop boxes:**

##### **Background**

- Questions were raised as to whether Act 77 permitted the use of drop boxes for mail-in ballots, and whether drop boxes constituted polling places.
- In *Pennsylvania Democratic Party v Boockvar*, the Pennsylvania Supreme Court determined in its Sept. 17, 2020, ruling that the Election Code permits counties to use drop boxes.
- On Oct. 10, 2020, a federal district court dismissed claims that certain election practices were unconstitutional under the federal or state constitutions, including the claim that the use of drop boxes for mail-in ballots is unconstitutional.

##### **Policy Considerations**

- Counties also seek further clarity in the law on their authority to use drop boxes for mail-in ballots.
- If drop boxes or return locations other than county government locations are permitted, language must be developed in conjunction with counties regarding any criteria on their location.
- Attention must also be paid to the staffing and other resource considerations that would be needed for implementation.

## ***Ballot signatures***

### ***Background***

- The law is unclear, or in some cases silent, on how counties should address certain situations, such as what to do with naked ballots and whether voters should be contacted to be permitted to cure defects with their mail-in ballot.
- This lack of clarity was the basis for many of the lawsuits that were filed at the state and federal level after the 2020 Primary Election
- Changing court decisions, in addition to the statutory language or lack thereof, led to a situation where counties struggled to implement the law on a consistent basis.

### ***Policy Considerations***

- The fatal flaws under which a mail-in ballot is not to be counted must be clearly identified.
  - Should a mail-in ballot be counted if a signature or date is missing from the voter's declaration?
  - Should naked ballots be counted?
  - What should a county do with mail-in ballots that contain writing on the privacy envelope?
- Counties need a clear rule in the law on when or if curing of flaws may happen, and whether or not a county is required to contact a voter to cure their ballot.

## ***Permanent status***

### ***Background***

- Act 77 allows a voter to request to be placed on a permanent mail-in voter list. These individuals will have a ballot application mailed to them by the first Monday of February each year which, if completed and returned, entitles them to receive ballots in the mail for all elections taking place during the remainder of that calendar year.
- However, this process has created frustrations for both the voter and the county.
- Experience shows that voters often did not remember checking the box for the permanent list and thought they were getting ballots they did not request.
- The number of renewal letters that must be sent out annually further add to the burdens on county workloads.

### ***Policy Considerations***

- Additional discussion is needed on the number of renewal letters/applications that must be mailed out each year
- Discussion is also needed regarding whether the responsibility for sending the renewal letters/applications should be at the county or state level.

## **Topic: Administrative issues with the state**

Beyond the law itself, counties experienced a number of challenges working with the commonwealth and the Department of State that should be addressed to improve administration of elections going forward.

### ***SURE system and ballot tracking website***

#### ***Background***

- Counties routinely experience technical difficulties with the SURE system, including slow speeds or even full system crashes that make it impossible to process voter registrations and ballot applications in a timely fashion, unnecessarily increasing county workloads.
- The ballot tracking website was often confusing to voters as they attempted to understand where their mail-in ballot was in the process.

#### ***Policy considerations***

- Upgrades/replacement of the SURE system are under consideration, and counties must be part of these conversations as changes are made to assure they are easily understood and user friendly.
- As the ballot tracking website is updated going forward, counties must also be part of these conversations to help identify areas of concern, either now or in the future.
- The state should consider the possibility of a state phone bank that could facilitate voter questions.

### ***DOS guidance to counties***

#### ***Background***

- In addition to the changing statutory and litigation landscape, counties also experienced confusion because of ever-changing guidance from the Department of State related to the administration of mail-in ballots.
- It was often unclear what statutory basis the DOS guidance had, and how much was truly guidance/best practices.

#### ***Policy considerations***

- While understanding that ongoing litigation was the underlying basis for some of the last-minute guidance changes in 2020, the Department of State must issue guidance as far in advance as possible to avoid the confusion of having to implement new practices immediately prior to an election and to offer greater opportunity for questions and input.
- The Department must more consistently reference the sections of the Election Code on which its guidance is based, and more clearly indicate when the guidance is merely a best practice rather than based on a statutory requirement.

***Election staff retention and development***

***Background***

- Since the implementation of Act 77 in 2019, more than 20 counties have experienced the loss of their election director and other top elections staff.
- The increased workloads and stress of implementing an entirely new law during a highly contentious presidential election and a global pandemic, while also having to constantly correct misinformation, respond to confused, angry and often threatening voters on a daily basis, and defend their work implementing a fair and secure election, no longer make this work environment palatable for many.
- The resulting loss of institutional knowledge is immeasurable.

***Policy considerations***

- Counties and the state must work together as new laws and policies are developed to assure workload needs are also considered.
- New laws and policies must be enacted with sufficient time for their implementation.
- Education and training must be available to help develop needed skill sets among election staff.
- To improve staff retention, all levels of government must work together to promote accurate information at each election, which can help reduce the level of confusion and anxiety among voters, and thus the level of anger county elections staff must address.

***County resource needs***

***Background***

- As counties implemented Act 77 in 2020, most counties saw their budgets for elections-related costs increase significantly, as additional supplies were needed and staffing and overtime needs grew to address workload requirements.
- These impacts fell squarely on county shoulders, as they are solely responsible for administration of elections at the local level.

***Policy considerations***

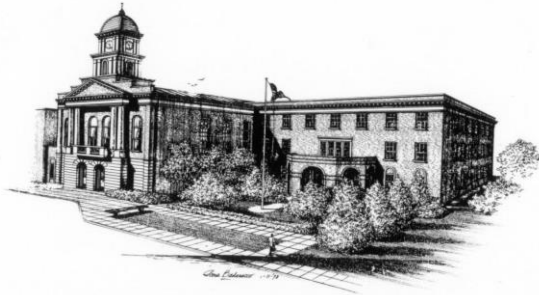
- Counties and the state must work together as new laws and policies are developed to assure any increased costs and resource needs, including supplies and staffing, are also considered.
- Appropriate resources and funding support must be provided by the federal and state governments to support counties in their critical task of administering elections.

COUNTY COMMISSIONERS

JOSEPH E. KANTZ  
Chairman

CHARLES "CHUCK"  
STEININGER, III  
Vice Chairman

ADAM D. EWIG  
Secretary



ANTHONY J. PHILLIPS  
Chief Clerk/County Administrator

ROBERT M. CRAVITZ  
Solicitor

## Snyder County Board of Commissioners

Court House, P.O. Box 217 • Middleburg, Pennsylvania 17842-0217  
(570) 837-4207 • FAX (570) 837-4282

March 23, 2021

I have been the chairman of the Snyder County Board of Commissioners since 2008. During that time, I have also served as the chairperson of our elections board in the years that I was not on the ballot. I was asked to serve as the co-chair of the County Commissioner's Association of Pennsylvania Elections Reform Committee in 2016. I have been actively involved in many discussions about elections in Pennsylvania since that time. I also had the privilege to serve on the Joint State Government Commission's Advisory Committee on Voting Technology in 2016 and 2017. Since 2016, many of the county's discussions about election reform have revolved around how we can make it easier for voters to vote and easier for elections directors to administer elections. The CCAP Elections Reform Committee had a long list of many items that could achieve many of these items. In October of 2019, I was asked to join Governor Wolf for the signing of Act 77, the first real set of reforms for elections in eight decades. This was only the third time I had ever been asked to join a Governor for a bill signing. I was excited to attend.

Now, less than two years later, I can honestly say that any excitement I experienced then has since turned to disappointment. I'm sorry we tried to do such broad reaching changes all at once and especially in a presidential election year. The uncertainty that would be in the minds of many voters could not have been expected. I believe much of this uncertainty came out of the many changes with which voters had to deal.

The main challenge is the handling of mail-in ballots. While expanding convenience for some voters, mail in ballots also created a huge unfunded mandate for counties by way of drastically increased staff time required to fulfill the many demands of mail-in ballots. In hindsight, the legislature should have just taken the time to change the Constitution and allow the voters to approve a true mail-in ballot instead of the end run around created by Act 77. In Snyder County we have one fulltime elections director and one fulltime voter registration person. Since Act 77 was passed, our workload has now required an additional part time person and countless employees from other departments to forgo their normal duties and help our elections staff. We also contracted with a former elections director to work with us as a consultant, and we utilized community service volunteers to help sort, stuff, and stamp ballot envelopes and pre-canvass ballots on election day. This all equates to thousands of extra hours we would not have needed prior to Act 77 being passed.

Since Act 77 is more than likely here to stay, counties can help to restore voter's faith in the election system by allowing counties to have results out on election night. The only way to make this happen is to give us more time to pre-canvass. Even with all the volunteer staff I have just mentioned, our county would not have

been able to report our results on election night without the help of our \$11,000 letter opener and our \$54,000 DS450 central tabulator machine, which we purchased before the November election.

Another challenge for counties involves the deadline of ballots. One way to allow Pennsylvania's county elections offices to do their jobs more efficiently is to move the deadline to apply for mail-in ballots back to fifteen days before the election. The current seven-day window, which was approved in Act 77, does not give our staffs enough time to process ballot applications, get those ballots out to the voters, and then receive the ballots before the 8:00 PM election night deadline. This is a problem even without the slowdown we've all experienced in the past six months with the postal service delays. This also caused a great many voters to have to go to their polling place to surrender their mail-in ballot and vote a new ballot in person. If this is the outcome of Act 77 seven-day deadline, we've just defeated the purpose of a mail-in ballot. Now we've made the election process more paperwork intensive, more frustrating for the voter, more work for the elections staff, lengthy wait times for all in person voters, and more opportunity for confusion for our poll workers. In addition, we've created more reasons for some voters to cast a provisional ballot "just to make sure".

By making the mail-in ballot deadline coincide with the voter registration deadline, this will benefit voters by providing more time for their ballot to get from the county to them and back again. This also allows counties the necessary time to make sure the poll books are as current as possible for all the voters who applied for a mail-in ballot.

All in all, counties know how to do their job in running a safe and secure election. If the legislature wants election results on election night, like most citizens do, it's important to remember to have commissioners and elections directors at the table as any election related legislation is being considered. I thank you for including me in this discussion.

Thank you,

*Joseph Kantz*

Chairman, Snyder County Commissioners

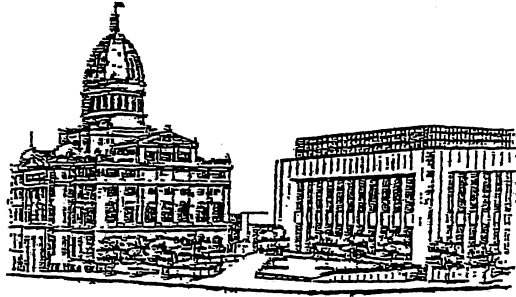


# Westmoreland County

Pennsylvania

Douglas W. Chew  
County Commissioner

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March 22, 2021

*VIA ELECTRONIC EMAIL ONLY*

Senator Wayne Langerholc Jr., Chairman  
Senator Sharif Street, Ranking Member  
Special Committee on Election Integrity and Reform  
Room 281 Main Capital  
Harrisburg, PA 17120-3035

**RE: Submission of Written Comments for the Public Hearing on State and Local Insight on the Administration of Elections in Pennsylvania held March 23, 2020 at 10:00 A.M.**

Chairman Langerholc and Ranking Member Street:

Thank you very much for the opportunity to present at the hearing tomorrow. Please find enclosed my full testimony, from which I will deliver about 5 minutes.

Due to a health emergency in my family, my comments are later than requested. Please accept my apologies for that lateness, and I look forward to congenial discussions.

Please don't hesitate to reach out if additional information is needed. Thank you very much for this opportunity.

Very Truly Yours,

A handwritten signature in black ink, appearing to be 'Douglas W. Chew'. The signature is fluid and cursive, with a large, stylized initial 'D'.

Douglas W. Chew  
Commissioner  
Vice-Chairman

**Written Comments**  
**submitted for the**  
**Public Hearing on State and Local Insight on the Administration**  
**of Elections in Pennsylvania**

**held on**  
**March 23, 2020 at 10:00 A.M.**  
**Via Virtual Meeting**

**for the**  
**Special Committee on Election Integrity and Reform**

**Senator Wayne Langerholc Jr., Chairman**  
**Senator Sharif Street, Ranking Member**

**Room 281 Main Capital**  
**Harrisburg, PA 17120-3035**

**Submitted By:**

**Douglas W. Chew**  
**Vice-Chairman**  
**Board of Commissioners**  
**Westmoreland County**  
**Pennsylvania**

Good morning, Chairman Langerholc, Ranking Member Street, honorable members of the Special Committee on Election Integrity and Reform, and those watching these proceedings. My name is Doug Chew, and I am the Vice-Chairman of the Board of Commissioners of Westmoreland County.

## **Introduction**

Thank you very much for convening this committee to examine recent activities within the Commonwealth that have eroded the public's confidence in the election process. Elections are of utmost importance under our constitutional government. They are how we, as Americans, self-govern. Each year, through elections, the majority either declares that their government is functioning well, or they petition that same government for redress by changing the people in charge. Regardless of the outcome, it is critical for citizens, including the winning and losing candidates, to have confidence in the fairness and integrity of the electoral process.

There are many areas that warrant discussion, so I'm going to limit my spoken comments today to Education and Training, Unrealistic Deadlines, Ballots and Canvassing, Exactness of Language, and Constituent Concerns.

## **Education and Training**

First and foremost, the biggest challenge has been education. Within 12 months, the electorate had to absorb Act 77 of 2019, Act 12 of 2020, and numerous court orders and challenges that resulted in election processes written by the Executive and Judicial branches of government. All of us, the Commonwealth and Counties both, need to be more cognizant of the electorate going forward. The majority of us at this hearing are familiar with running for office and the election code. As Senators, you constructed and debated Acts 77 and 12. Voting and elections have been a part of the Department of State (DOS) for as long as I can remember, so they too are familiar. In most cases, we all were able to easily see what had been changed; however, the average voter spends a short time each year considering for whom to vote, and even less time I imagine considering the rules and procedures of voting.

Consider for a moment Westmoreland County data from the Primary Election of 2020: 47,669 unique voters requested a mail-in or absentee ballot, but only 40,432 ballots were received back in SURE [1]. That's 7,237 voters who potentially did not understand the election process, but those unreturned ballots could also be attributed to postal issues, honest mistakes, or even fraud. For the primary, we also processed 1,164 provisional ballots, which again, could be attributed to voters not understanding the process.

Things didn't get better when my constituents made a second attempt for the General Election: 76,198 unique voters requested a mail-in or absentee ballot, but only 59,470 ballots were received back in SURE [1]. In the worst potential scenario, with over 3,700 provisional ballots and 16,728 unreturned ballots, 20,428 people or 7.7% of Westmoreland County's total registered voters may have been disenfranchised by a lack of understanding or information on these processes in the General Election alone.

As an educator of nearly 30 years, I feel responsible for not realizing that this past year my constituents were bombarded with so many new things, some a matter of life or death. I feel that we each have a responsibility as elected officials to help our constituents understand the laws of our Commonwealth. The Department of State needs to undertake a campaign for the next year to educate the electorate on the many changes to the Election code and to educate Precinct Election Boards (e.g., judges of election, inspectors) on the statutes governing voting. The education needs to be done using a variety of pedagogical tools, such as online sessions, recorded webinars, pamphlets and written material, and even in-person demonstrations with Q&A sessions. While the Department of State is charged by statute to take the lead in producing the necessary materials for this, I feel that each of us shares equally in a civic responsibility to educate. I suggest that the General Assembly provide funds to the Department of State and to Counties to undertake this educational objective. Before we talk about election fraud, let's confirm that the 20,000 plus unreturned ballots in Westmoreland County's General Election are not the result of gross misunderstandings of the process and that the electorate understands the electoral processes well-enough to be able to help fight fraud by "Saying Something," when they "See Something."

**Unrealistic Deadlines**

Under normal circumstances, the deadlines proposed for mail-in voting seem reasonable enough. Consider the deadlines codified by statute for the 2021 Primary Election. For the 2021 Primary Election scheduled for May 18, the last day to apply for a mail-in or absentee ballot is May 11, a mere 7 days before the ballot is due back at the Election Bureau. When I drop a first-class piece of mail at a post office in Westmoreland County, it usually makes it to the Pittsburgh sorting facility by truck that evening and is delivered to addresses in Westmoreland County within 36 hours.

| <b>Figure 1. Example of Mail Delivery in Westmoreland County.</b> |               |   |   |  |                              |   |
|---|---------------|---|---|--|------------------------------|---|
| <b>Sunday</b>   | <b>Monday</b> | <b>Tuesday</b>                                | <b>Wednesday</b>                                      | <b>Thursday</b>  | <b>Friday</b>                | <b>Saturday</b>                                 |
| <b>May 9</b>  | <b>May 10</b> | <b>May 11</b>                                 | <b>May 12</b>   | <b>May 13</b>  | <b>May 14</b>                | <b>May 15</b>                                   |
|   |               | Apply by 4pm on May 11.                       | Bureau processes application and mails ballot by 4pm. | Ballot should arrive at Pittsburgh sorting facility by midnight. | Ballot arrives at residence. | Voter votes the ballot, seals it, and mails it. |
| <b>May 16</b>   | <b>May 17</b> | <b>May 18</b>                                 | <b>May 19</b>   | <b>May 20</b>  | <b>May 21</b>                | <b>May 22</b>                                   |
|   |               | Ballot arrives back at Election Bureau by 8pm |   |  |                              |   |

In **Figure 1**, you'll see that using May 11 as the final day to apply for a mail-in or civilian absentee ballot leaves no amount of time for any delay or issue at the postal service. *In other words, the law is written in a way to instill a false sense of confidence in the voter, because they are under the impression that the May 11 deadline to request a ballot will provide time for the entire process to operate with regular, ordinary resources.* The USPS does employ high speed scanners capable of scanning 35,000 #10 envelopes per hour [2, 3], but according to Fortune.com, on November 3 at approximately 2pm [4], there were still 27.5 million mail ballots yet to be delivered. Think about those numbers for a second: 27.5 million pieces of election mail alone in a postal system that delivers on average 173.1 million pieces of First-Class Mail each day. In most states, the election mail had to be delivered on November 3. Based on this, I strongly suggest utilizing an earlier cut-off deadline for receipt of an application for a mail-in or civilian absentee ballot.

Additionally, I'd like to suggest a statutory deadline for the Department of State to offer interpretation and rules pertaining to the Election Code. I counted over 24 emails from the Department of State to all counties around the November 3 General Election. Some were sent to Commissioners and the Election Director and some were sent to only the Director. The emails were sent by no fewer than 3 DOS staff, and a few were resent with a note such as this,

“Wednesday evening, Director \_\_\_ notified counties of a mass email directed to voters .... We have received several thoughtful phone calls and emails from counties expressing concern...”

On the worst side of the range of possibilities, the Department of State abdicated its responsibilities in 2020 concerning the General Election; on the lighter side of that range, it did no planning until the last minute, despite most of the nation on lock down for the pandemic. Emails and phone calls were made to counties and voters, before any vetting of the material or text occurred. Entire ballot questions never made it on the ballot. In the middle of a pandemic, in the middle of a Presidential election year, in the middle of significant changes to the PA Election Code, the Department of State created a lot of chaos and misunderstanding by promulgating incomplete and confusing directives. I see no reason why these emails and call scripts could not have been drafted sooner, reviewed by the Department, and sent out by one person, so counties had quick and easy access to information in a consistent manner. This is exactly the type of work product that is easy to process while working remotely during a pandemic. I strongly suggest that the General Assembly consider codifying a date by which the Department of State must produce a full and complete guide for each election year, both for counties, and for the voter. Moreover, every official correspondence, for such an important activity, should only proceed after it receives the imprimatur of the acting secretary. Lastly, I ask the Department of State to consider disseminating items to counties through one email address and involving the counties in materials and calls to the voters.

### **Ballots and Canvassing**

Although most of my constituents would like to see no-excuse mail-in voting be eliminated except for reasons outlined for absentee ballots, if it is not eliminated, there are some general changes I'd recommend. First, the option to request a permanent mail ballot for that election year

should be eliminated. In Westmoreland County, we processed over 3,700 provisional ballots for the General Election and 1,164 provisional ballots for the Primary Election. For the primary, we heard many complaints about not understanding the mail-in ballot processing, which contributed to that number; however, for the General, the number one complaint was that provisional voters did not request a mail-in or absentee ballot, so they proceeded to attempt to vote in-person. Of course, the poll book indicated that they had voted already, so they were required to complete a provisional ballot. Our investigations revealed that in most cases, they had requested a mail-in ballot for the Primary, and the “permanent” box was checked. Whether they checked the box accidentally or it was checked by a registration clerk in the office is unknowable and immaterial. The permanent mail check-box leads to unnecessary confusion, and I recommend striking it from future elections.

Additionally, if 2020 is an example of how elections will proceed going forward, with many paper ballots canvassed on or after election day, then allowance needs to be made for additional watchers in several aspects of the process. When a voter goes to a polling venue to vote, he or she has a vested, personal interest in monitoring the process while they are within the venue, because they are safeguarding their own vote. When mailed or provisional ballots are canvassed, the canvassing is done by someone other than the voter him- or herself, and the person canvassing has access to more than one person’s ballot. When provisional ballots are adjudicated by provisional boards, it takes many boards to quickly and properly adjudicate nearly 3,000 provisional ballots. Therefore, because of the large square footage needed for these tasks and the large number of people involved, it is only fair that parties and candidates be allowed more than one person in these situations. Westmoreland County is the 11<sup>th</sup> most populous county in the Commonwealth, and I feel that some watchers in our county were unable to view or hear the bulk of the processes involved in canvassing or provisional adjudication. I feel strongly that the General Assembly needs to modify the statute to allow for a balanced number of watchers based on square footage or number of members on the provisional or canvassing boards. I recommend that even members of the public be allowed to view these processes, by statutorily allowing video cameras in these areas. There is no reason that transparency and privacy can’t be achieved simultaneously to ensure respect and integrity for these processes. Lastly, as some counties have demonstrated disdain for the legislation written and passed by you and your colleagues from these chambers, I would recommend attaching fines and penalties to counties and election boards that intentionally restrict access to watchers during these processes.

### **Exactness of Language**

As you study the problems before you, I encourage you to consider the exactness of your language as you craft amendments to these processes. Good contracts in the business world begin with a preamble and a definition page. Why not include niceties like that as part of any amendments or new legislation?

Justice Clarence Thomas provides a well-written dissenting opinion to docket numbers 20-542 and 20-574. He writes,

“Unclear rules threaten to undermine this system. They sow confusion and ultimately dampen confidence in the integrity and fairness of elections. ...”

“An election system lacks clear rules when, ... different officials dispute who has authority to set or change those rules. This kind of dispute brews confusion because voters may not know which rules to follow. Even worse, with more than one system of rules in place, competing candidates might each declare victory under different sets of rules.”

This couldn't be truer than what happened in the 45<sup>th</sup> PA Senate District to constituents in my county. Justice Thomas continues,

“After election day the Pennsylvania Supreme Court nullified the legislative requirement that voters write the date on mail-in ballots.”

I felt the decision of our Supreme Court was stunning because the majority of justices agreed that your legislative intent was that the date was required, but the justices declared it would only be important to date items after 2020. Justice Thomas expanded,

“...one candidate for a state senate seat claimed victory under what she [to clarify, Nicole Ziccarelli] contended was the legislative rule that dates must be included... A federal court noted that this candidate would win by 93 votes under that rule. A second candidate claimed victory under the contrary rule announced by the Pennsylvania Supreme Court. He was seated.”

“This is not a prescription for confidence. Changing the rules in the middle of the game is bad enough. Such rule changes by officials who may lack authority to do so is even worse.”

Justice Thomas is right: changing rules in the middle of the game isn't fair, and I'd ask you to consider every word and every sentence constructed as you prepare revisions and amendments to your previous legislation.

### **Select Constituent Comments**

I end with a presentation of a few comments received over the last 12 months by my office. I include some critical of the County, the State, and the process in general.

#### **Michael Pardus of Hempfield Township, Westmoreland County:**

Leadership, Voice of Westmoreland, Westmoreland County

“More robust training of judges at each [*sic*, precinct] is required to ensure uniform handling of absentee ballots surrendered at the polls. Discrepancies in the handling of surrendered absentee ballots was encountered during adjudication of absentee [*sic*, provisional] ballots. More robust training and education of the judges and all poll workers is required to avoid future problems.”

“Some judges required those that surrendered their absentee ballots and cast provisional ballots were directed to sign the poll book indicating that they had

machine voted. In other instances, judges directed voters to sign the security envelope containing their provisional ballots. These issues were ultimately resolved but resulted in unnecessary delays in the vote count.”

I appreciate his criticisms, and education will be a key focus in 2021 in Westmoreland County.

**Karen Taylor of Westmoreland County:**

Constituent

“I would really like to address why we aren’t doing a full Forensic and investigative audit like AZ, GA, and now possibly MI. We do have a petition currently with over 4500 signatures that is climbing by 200-500 daily requesting that.”

**Robert MacPherson of Sewickley Township, Westmoreland County:**

Recent past Chairman, District 4, Westmoreland County Republican Committee

“While on active duty, I had to vote using the absentee voting system set up for the Department of Defense. The integrity of my vote was of the utmost importance. I recognize that some people do not see the value of that vote the same way I do, but I stayed informed about trends and the actions of the government in order to cast a vote for the people I felt would best carry out public policy. Each absentee ballot had to go through a rigorous process in order to ensure that they would be tabulated correctly. Much of this occurred before the internet. I was so passionate about the importance of voting that I was the Voting Officer on board several of my commands.”

“Signatures and ID were required. In many cases, they needed to be witnessed by myself or another commissioned officer. It kept the system honest. I am often told that requiring people to have IDs in order to vote would disenfranchise them. The people who are really being disenfranchised are the honest citizens who want that sacred privilege to count. I would challenge opponents of a more secure election identification method to consider this. With the speed and advent of technology, are they willing to risk that their opposite party might discover some new way to bypass the system and overturn the outcome of the elections by using emerging technology? At what point would they cry foul if they lose their one and only true superpower.”

“We all know that legislatures around the country have mandated ID for purchasing alcohol, tobacco and firearms. Even travelers post 9 11 have had to endure endless lines to do something as simple as boarding a plane. We endure all of these things to ensure public and personal safety. No one can convince me that Any person in America that is a legal citizen is being denied access to any of these. I am absolutely convinced that protecting the public and individuals' rights with a streamlined and verifiable identification will protect this nation and the sacred right we have all been granted by the Founders in the Constitution.”



**Greg Stewart of Westmoreland County:**

Current Chairman, District 4, Westmoreland County Republican Committee

“How is the signature verification process going to be protected and validated?”

**William Bretz of Hempfield Township, Westmoreland County:**

Current County Chairman, Westmoreland County Republican Committee

“The impact of this early voting period is heavily favorable to incumbents with established name ID, those extremely well-funded candidates that can use mail and media to campaign, or those with large teams for canvassing. I can’t imagine a grassroots mail-in campaign being effective in this environment.”

“The permanent mail-in status also needs to be eliminated. Absentee voters must solicit for a ballot for each individual election and mail-in voters should do so as well for equity. It is a huge burden on the county to prepare and mail tens of thousands of letters each cycle to those on that list and the more automatic the ballot mailing becomes the more potential fraud creeps in as control of the process becomes more remote from the original solicitation.”

“One bonus point is the headache created by the ability to surrender mail-in ballots on Election Day. This process needs fixed because I suspect that it drove the long lines at the polls and the overwhelming number of provisional ballots.”

“Finally, direct mailings of mail-in ballot applications were a huge point of confusion to voters and should be ended. Many people thought they received multiple ballots that were applications and many that claim they didn’t receive a ballot likely threw them out inadvertently.”

I concur with Chairman Bretz, that the county cost for permanent mail status is a consideration.

**Conclusion**

In conclusion, I hope that I’ve provided an overview of some issues that didn’t make the press every day.

I leave you with a quote from John Jay, our first Supreme Court Chief Justice, “The Americans are the first people whom Heaven has favored with an opportunity of deliberating upon and choosing the forms of government under which they should live.” There is a heavy task before you in helping the voters in this great Commonwealth once again have faith that the majority is in fact choosing the form of government under which we all will live.

Thank you, Chairman Langerholc, Ranking Member Street, and the entire committee for inviting me to this hearing and listening to my humble requests.

## **Endnotes**

[1] Data accessed from SURE by Director JoAnn Sebastiani on March 22, 2021.

[2] <https://www.scientificamerican.com/article/mail-sorting-machines-are-crucial-for-the-u-s-postal-service/>, accessed March 20, 2021.

[3] <https://facts.usps.com/innovation/#fact396>, accessed March 20, 2021.

[4] <https://fortune.com/2020/11/03/early-voting-results-how-many-early-votes-mail-in-ballots-us-election-100-million-covid-19/>, accessed March 20, 2021.



**LAMONT G. MCCLURE**  
NORTHAMPTON COUNTY EXECUTIVE

## COUNTY OF NORTHAMPTON

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March 23, 2021

Senator Wayne Langerholc Jr.  
Senate of Pennsylvania  
Special Committee on Election Integrity and Reform

Good morning to Senator Langerholc Jr. and distinguished members of the committee. I'm grateful for the opportunity to address you today.

My name is Lamont McClure and I am the County Executive of the County of Northampton. Before attaining my current position, I served on the Northampton County Council for almost a decade.

The responsibility of running elections has always fallen on the shoulders of county government and it is a heavy responsibility. Voting is the cornerstone of every democracy and there is no room for error. Casting a ballot must be accessible to every eligible citizen and the process must be secure from registering to vote to the certification of the final results. The method of counting ballots must be reliable, the final tally incontestable and the entire process open to examination by the public. Plus you have to find a way to pay for it all.

Our bedrock principle in Northampton County is to put on fair, legal and accurate elections, and that's what we did in 2020. Northampton is recognized not only a bellwether of the Commonwealth, but also of the nation. Over the past one hundred years, Northampton County has differed from the national result in a presidential election only three times.

In Northampton County, we know a little something about election stress tests. Pursuant to the Commonwealth's settlement of the *Stein* case, Northampton County purchased the ES&S ExpressVote XL, a state-of-the-art touchscreen system with a paper ballot backup. In the context of election security, this was light years ahead of the DREs we had previously used. We were excited about this upgrade and paid \$2.9 million dollars believing that not only would our election security be enhanced, but the experience would be better for the voter. During our election in November 2019 it quickly became clear that something was not right. By the end of the day, we learned of not just one, but two distinct problems which imperiled the entire outcome of the election.

Throughout the day we had fielded reports of touchscreens that were “glitchy,” particularly in the margins. What we subsequently learned was that approximately 1/3 of the machines we’d purchased had not been properly calibrated at the factory before ES&S shipped them to us. Despite these worrisome reports we were heartened to discover that, when questioned about whether their selections had showed up on the paper ballot, voter after voter indicated that they had. It may have taken a few extra taps on the touchscreen but, once they finalized their selections and hit print, the names of their chosen candidates were printed out on a paper ballot that they could review.

After 8:00PM that night, I got a call that no County Executive wants to receive. An additional factory error, initiated by ES&S mis-coding caused the votes for cross-filed races to fail to be tallied on the XL’s memory stick. Using the computer results became impossible. Instead, we would have to count the paper ballots. And, we did. All night long. Using high speed scanners we counted over 60,000 ballots and, by 5AM the next morning we had results. And, while this was not our preferred method of conducting an election, we learned a very important lesson—the paper ballot backup works. Ahead of what was likely to result in unprecedented turnout in a presidential year, if the voting machines failed, the paper ballot backup would allow us to put on a fair, legal and accurate election.

(I’m happy to report that ES&S quickly investigated the matter, made the requisite fixes and we went through a very busy 2020 without a glitch.)

After our harrowing experience, Governor Wolf signed Act 77 tasking election officials with essentially implementing two voting systems—one at the polls and one by no-excuse mail-in ballots. The General Election in 2020 required nearly 1500 people to handle both systems. Our County Council added another million dollars to our election’s budget to ensure there were enough resources. Because of the dedication of our staff and volunteers and the willingness of Council to provide additional funding, I’m happy to report our Primary and General Elections were virtually flawless. During the Primary of 2020 we were one of the first three counties in the Commonwealth to report our results. In November, we were the first to report our 2020 General Election results, posting them at approximately 6:00AM Wednesday morning.

I understand that Act 77 has come under intense and withering criticism from virtually all quarters. Some the concerns are valid such as the increased volume of work the new law has imposed on Registrars across the Commonwealth. Others are nothing more than conspiracy theories. Are there aspects of the law that can be improved? I think the answer to that question is, yes. However, it is the view of Northampton County that the Legislature should be commended for Act 77. It is the most democratizing piece of legislation in the history of the Commonwealth, and it is a statute its drafters and all those who voted for it can be deeply proud of upon reflection.

Registrars across the state want to put on fair, legal and accurate elections, but they need your assistance. It is not feasible for them to conduct two separate elections on the same day. Allowing twenty-one days to pre-canvass mail-in ballots would give them more time. Permitting ballots to be mailed out twenty-eight days before an election instead of fourteen would be beneficial for both staff and voters. Sending an application to vote by mail to every voter has been shown to increase participation.

Voting is the cornerstone of our democracy. For our citizens to have confidence in the process we must increase accessibility and participation for voters and we must give our Registrars the tools and the space they need to do their work. As we saw in 2020, delays in reporting results can be weaponized and used to form conspiracy theories. As public servants, we serve the people of the Commonwealth of Pennsylvania. I encourage the committee to not go backwards on Act 77, but to improve it.

Thank you for your time.

Sincerely,

Lamont G. McClure

LGM/bb

**Remarks by Philadelphia City Commissioners Chairwoman Lisa Deeley to the Pennsylvania  
Senate Special Committee on Election Integrity and Reform**

**April 20, 2021 9:00AM**

Good morning and thank you to the members of the Senate Special Committee on Election Integrity and Reform for inviting me to share my remarks and experience with you this morning.

My name is Lisa Deeley, and I am the Chairwoman of the Philadelphia City Commissioners, the three-member board of elected officials who oversee elections and voter registration for the City of Philadelphia.

I grew up around elections. I witnessed my mother as she became actively involved in local politics and community building, and when I turned 18, I ran for and was elected by my neighbors to be the judge of elections at our local polling place. Being able to assist my neighbors exercise their right to vote, to see the community come together on Election Day, instilled values in me that shaped me to be who I am today and have led me to where I am in life. I was elected to office by the voters of Philadelphia in 2015 and was sworn into office in January of 2016. In December of 2017, I was voted Chairwoman of the City Commissioners Office.

I know it sounds like a cliché and far from the world we currently live in, but voting is more than a right - it's a revered act that has created meaningful change and has brought individuals together – even those who may not share political viewpoints. This sentiment may be easy for some to forget or to simply not believe, considering the state of our current political climate, in which hyper partisan politics rule and civility seems to be a relic of the past. The fact is this: voter registration and elections are not partisan issues. Election officials such as myself take pride in implementing elections that are non-partisan, transparent, and that encourage citizens to make their voice heard at the ballot box. This is true for all elections, including THE election that has brought us here today: the Presidential Election that occurred on November 3<sup>rd</sup>, 2020.

When I first ran for Commissioner, I thought I knew almost all there was to know about elections, but the last five plus years have exposed me to the aspects of voting and elections that are seldom seen by the average citizen. A momentous amount of time and effort goes into implementing free, fair, and secure elections every six months in a county the size of Philadelphia. Every year, our jobs seem to be getting harder and harder, and our responsibilities expanding, which is why we have seen so many elections officials retiring or leaving in the last year. To borrow an analogy from a former official from Cooke County, Illinois: running elections used to be like wedding planning. You just needed to make sure the same things happen on cue every six months. You process voter registrations, programmed and sent out the machines, printed poll books, counted and published results, picked up the machines, and onto the next election. All of that changed around Bush v Gore in 2000. Since then, every year, election officials are asked to take on a new career and wear a hat for each role. We are expected to be computer scientists, cyber security experts, handwriting experts, print and mail house operators, logistics coordinators, physical security experts, and epidemiologists. These jobs are sometimes brought on by circumstance. Russia's actions in 2016 were a serious wake up call to the importance of cyber security and the impact that COVID-19 has had on running elections and society has been

unprecedented. All too often, these changes come as rushed, unfunded mandates from the state. The legislation that created significant changes and updates to Pennsylvania's elections, Act 77 and Act 12, did not include any additional funding. The House fiscal note stated that counties could implement Act 77's changes using existing funding. It leads one to wonder if anyone read the legislation, understood the impact of the changes, and also made it easy to believe that no election officials were consulted in the crafting of these laws. The legislature needs to do a better job of researching their proposals, listening to election officials, and providing funding, so the cash strapped counties do not have to bear all of the costs. I sit on the newly formed Election Law Advisory Board and I am dismayed when I read in the news that many of the, quote, reform proposals floating around Harrisburg have not been run by the advisory board. The Election Law Advisory Board includes several county commissioners and election directors, as well as legislators with crucial experience, and I hope that the legislature and governor listen to the advice that will be coming from this board.

Funding has not kept pace with the modernization of elections, meaning staff have taken on a larger than realistic amount of duties and responsibilities to ensure that the elections run as smoothly as possible. Because changes are being implemented at breakneck speeds, while we still have to hold elections, many of the major projects you see coming out of our office are the work of just a handful of people. When the COVID-19 pandemic hit in early 2020, the city was forced to make drastic cuts that resulted in our department being flat funded. To add fuel to the fire, the legislature refused to allow the pre-canvassing of the 350,000 plus mail ballots. We could not start counting until election morning. The 2020 Primary taught us that the public, the media, and even some legislators, blamed election officials for any delays in counting. We faced a significant amount of additional mandates from the state and demands for services from voters without any additional funding from the state or city. The deck was stacked against us. For the 2020 Presidential Election, we were fortunate enough to receive private funding that allowed us to, among other things, purchase vital equipment and hire temporary staff to work twenty-four hours day to count the ballots as quickly as possible. Still, it took us until Saturday to count enough ballots for the AP to call the Presidential race. Pennsylvania's Treasurer race took even longer. Election officials in PA deserve modernized procedures such as pre-canvassing, and we should join other states that understand how important pre-canvassing is.

The 2020 Presidential Election gave election officials another new job, either Super Hero or Super Villain depending on who you supported for President. That election proved to be unprecedented in its scope, its environment, its focus on election departments, and the level of anxiety that even average citizens had just watching the news in October and November. The months before, during, and after this election have proven that misinformation is the biggest threat to our democracy, acting hand in hand with the violent polarization of our society. As we have seen, Pennsylvania is one of the leading states for citizens being arrested for storming the Capitol on January 6th. It is no secret why these hearing have been called, and that is to investigate the widespread lies surrounding Pennsylvania's election in November.

While these lies might stroke the egos of some, serve as prime fundraising content for others, and/or light a fire under an individual's future political aspirations, they are tearing the country apart. If it were not for the quick actions of law enforcement, the ballot processing center that we set up at the Pennsylvania Convention Center could have been a site of where these violent words became reality. Election officials and their families around the state were threatened, including in our department. The

political director of the Republican Party confronted me with a cell phone outside on the street. The video was posted to Twitter and later to Gab and Parler, as well as other fringe social media sites. I would like to read you just some of the things that people were saying about me: "I want to beat one of these people to death in the worst way ever.", "that is a "dead politician walking, right there", "Start executing these f-ing traitors.", "Just shoot her.", "I usually don't condone violence against women but when traitors start destroying my grand children's' future, then f it, they're fair game." They posted a screen shot of my office address, which prompted us to remove all of our office addresses from our website. After these threats and violent discourse started circulating, police protection was assigned to me - I did not request them, they were assigned. They followed me wherever I went, I couldn't drive my car, they drove me. I am not the Mayor, I run elections, and I never would have believed that I would need a cop to accompany me at all times, even if its just to stop at WAWA. To this day, I still feel the need to check my mirrors to see if anyone is following me home.

There are a significant number of citizens in not just our Commonwealth, but all over our country, who currently believe they cannot trust their government to administer an election that enables them to exercise their right to vote in an impartial and unbiased way – a requirement which all election officials must legally follow, and do. The seriousness of this issue and its consequences cannot be overstated. By making elections, voting, and election results political, we are toying with the foundation of our democracy, what this nation was founded on. This is not an issue that will go away with the next news cycle; it looks to only be getting worse. If we can step back for a moment, think of the greater good, and commit to serving our constituents to the best of our ability, we can act to restore Americans' faith in the electoral process and one of their most precious rights as American citizens, the right to vote. Let me be clear: the 2020 election was not stolen, it was conducted freely, fairly, and transparently. One party won the President and the Attorney General races, while the other won the Auditor General and Treasurer races.

Call me idealistic, but I still hold out hope that we can change the conversation surrounding voting and elections to ensure that the average voter is not debilitated with anxiety over how election day operations will play out or if their vote will be counted. For many, election days of the past bring about warm memories of a neighborhood coming together to catch up and wish each other the best. I strive to do more than simply meet the duties that are expected of me as an election official. Of course, I will continue to work tirelessly so that every eligible citizen has the right to vote. But really, I want to go beyond the simplest expectations and responsibilities. My goal is to allow the voters of Philadelphia, and of the Commonwealth, to experience an election day that acts as a source of familiarity and brings about sentiments of respect for our neighbors, and a reminder of the value for community. It has been done before, and if enough people with the power to make change – people such as ourselves – want this experience for their constituents, we can make it happen.

I would like to state the most pressing needs that Philadelphia City Commissioners Office requires to operate at our full capacity and to serve the Commonwealth to the best of its ability:

1. We require better than adequate in terms of funding. The funding we have received from the city and state has been inadequate. To ensure that Pennsylvania is considered a place in which voting, and elections are taken seriously and respected, funding is desperately needed. The



scope of duties that our department undertakes is astounding, and if more of the legislature understood the range of this scope, they would agree that the need for more funding is more than evident and justified, it is imperative.

2. I urge you, again, to draft legislation that would make the secrecy envelope a non-vital part of the vote by mail process. Currently, if a voter does not use the secrecy envelope, their vote is not counted, and I frankly find this to be blatant voter disenfranchisement. We should be encouraging people to vote and making the process simple, not tedious, prolonged, and filled with the potential for errors that result in a vote not being counted.
3. Enact a pre-canvass period to begin at-least three weeks before election day. This will allow counties to open and scan ballots at a reasonable, less stressful pace and have enough results in so that winners and losers of elections can be clearly known on election night, like our nation is accustomed to. Every county still has to standup an in-person election and it is a tremendous burden to divert needed staff from this task because of the need to begin processing mail ballots.
4. I request that elected officials and representatives such as yourselves, and your colleagues in the Senate and House, be open to crossing the aisle and learning more about election administration and all it involves. Both parties seem to have a half-painted picture of what it is that election officials are tasked with and how we do it. I welcome you to meet with me, ask me as many questions as you'd like, even if they're uncomfortable. We need to at least attempt to understand where the other is coming from and realize that the right to vote is not to be taken lightly nor toyed with. I commit to listening to your ideas and inquiries with an earnest attitude, and a willingness to partner with any official who has enough respect for Pennsylvania, its voters, and their government to restore and reinforce the message that citizens can and should trust their democracy and not fear they are being denied one of their most fundamental human rights – the right to vote.

Thank you all for your time and for hearing my remarks.

**Testimony of Al Schmidt  
City Commissioner of Philadelphia**

**Special Committee on Election Integrity & Reform  
Harrisburg, PA  
Tuesday, April 20, 2021**

Good morning Chairman Langerholc and members of the Senate Special Committee on Election Integrity & Reform. I'm Philadelphia City Commissioner Al Schmidt. In Philadelphia, the City Commissioners are three independently-elected officials responsible for oversight of elections and voter registration. In 2020, during a once-in-a-lifetime pandemic we were able to provide safe in-person voting as well as a convenient and safe vote by mail option. And I am proud to say that Philadelphia had its highest turnout since 1984.

At the heart of our electoral system is the faith Americans have in the integrity of our elections. Confidence that we do everything we can to count legitimately cast votes from eligible voters – and – that we do everything in our power to protect our elections from illegitimately cast votes. We need to come together to continue improving our election system and restore that faith. That's not to say that we will agree on every detail of every policy proposal moving forward, but that our guiding principle, as Americans, should be universal — that our Republic is better when we all have the opportunity to participate.

So how do we restore that faith in our election system? We need to have bipartisan conversations to identify policy solutions. Every proposed change to our election system needs to be discussed with two concepts in mind: *access* and *security*. With every change improving access to voting, we must account for accompanying security measures to protect the integrity of the election.

The main problem we encountered in the General Election this past November was a disinformation campaign related to mail-in ballots. The lies about the election being stolen – while completely untrue – exploited perceived imperfections and ambiguities in the Commonwealth’s new vote-by-mail process. Act 77 of 2019 layered no-excuse vote-by-mail on top of an existing in-person election infrastructure that was not built for that purpose and was already antiquated. In addition, the pandemic accelerated the use of vote-by-mail so counties were not able to gradually grow into managing this new voting method. While many improvements can be made to the Election Code, I will focus my testimony on three broad topics related to improving mail-in voting in Pennsylvania.

1. Because of the severe partisan imbalance among voters who chose to vote by mail, it appeared like President Trump was winning on election night in Pennsylvania and that now President Biden was slowly catching up. This false impression was caused entirely by the lack of pre-canvassing of mail-in ballots in advance of election day. Counties must be given the option to begin pre-canvassing mail-in ballots prior to election day. As part of the early pre-canvassing process, counties should be permitted to:
  - review the sufficiency of the declaration envelopes;
  - verify the signature on the declaration envelope to confirm the identify of the person submitting the ballot;
  - update voter registration records to indicate that the ballot was received (if Board of Elections personnel determined that the ballot can’t be counted, counties should be permitted to cancel the ballot, mark the declaration

envelope as cancelled, and allow the voter an opportunity to submit a new ballot or vote by provisional ballot); and

- extract ballots from the declaration and secrecy envelopes and unfold the ballots.

Ballots should be stored in secure ballot containers after being pre-canvassed and not scanned until 7:00 AM on election day. This entire process should utilize chain-of-custody/batch control documentation to account for every ballot and should be done in front of authorized observers from the parties or campaigns. Voters whose ballots are received prior to the poll book files being generated should be removed from the poll book's main section so they can't sign in and vote on the voting machines. Additionally, ballots that aren't returned prior to the poll books being updated and packed for shipping to the polling places should not be canvassed before they can be reconciled against the poll books to prevent double voting.

2. One of the major points of contention this past election was whether ballots received after election day should be counted. This past November, nearly 10,000 ballots from Pennsylvania voters arrived after 8:00 PM on Election Day and before 5:00 PM on Friday, November 6<sup>th</sup>. Similarly, thousands of ballots arrived after election day in the Primary. From this experience, it's clear that the current statutory timeline for applying for and returning mail ballots is insufficient. Only seven days between the application deadline and the ballot receipt deadline is not a reasonable amount of time for counties or for voters. Simply moving the receipt deadline to the Friday after election day doesn't

solve all of the concerns — there are still many voters who don't have the time to apply for, receive, vote, and place their ballot in the mail in only seven days. This is why I recommend moving the application deadline from the Tuesday before Election Day to at least the Friday before the current application deadline. Doing so would maximize the number of voters who are able to apply for, receive, vote, and return their mail-in ballots to their Board of Elections in time. Another concern with the Pennsylvania Supreme Court's ruling related to the ballot receipt deadline was the issue of accepting and counting non-postmarked ballots. Counties should never be put in the position where they may be accepting ballots not cast on or before election day.

3. The third and final topic I'd like to provide testimony on is the need for removing the requirement that voters return their ballot within the inner secrecy envelope. Secrecy envelopes no longer provide a compelling security interest now that counties centrally count thousands of ballots. The extraction equipment is used at such a high speed that the clerks would not have the ability to look at how individual voters cast their vote. Removing the requirement that voters use the second envelope would reduce the potential for voters to be unnecessarily disenfranchised and cut in half the time it would take for counties to extract ballots during the pre-canvass activities.

Chairman Langerholc and Members of the Senate Special Committee on Election Integrity & Reform, thank you for the opportunity to testify today. As I said at the beginning of my testimony, we may not end up agreeing on the details of every policy proposal, but I remain

committed to making sure that all eligible voters have the opportunity to participate in our democracy. For the sake of our Republic, I hope others will join us in working to improve both access and security in our election system.



**Testimony of Allegheny County Executive Rich Fitzgerald  
Before the Special Committee on Election Integrity & Reform  
April 20, 2021 Public Hearing**

Senator Langerholc, Senator Street, and members – thank you for the invitation to join you today. I’m delighted to be able to provide you with insight on the administration of elections in Allegheny County, specifically as it relates to the 2020 General Election, and am also happy to answer any questions that you may have.

Our preparation for this election goes back a little further than the end of 2019, so if you will indulge me, I’d like to take you back a little further. In February 2018, the Pennsylvania Department of State issued a directive concerning the purchase of electronic voting systems that required that any county purchasing new voting systems must conform to new standards concerning resiliency, auditability and security. It also required that systems must employ a voter-verifiable paper ballot, or a voter-verifiable paper record of the votes cast by a voter. At the time, Allegheny County did not intend to replace its machines and had not begun a process to purchase any new ones.

Later that year, the state’s settlement agreement in Stein v. Cortes provided that all counties in Pennsylvania implement such voting systems prior to the 2020 primary. Beginning in early 2019, the county went through an extensive process involving an internal work group and the Board of Elections (a temporary, Court appointed one, as all members of the board were candidates that year) to vet new voting systems, provide for expert review and input, allow for public review and comment, and to hear from advocates and others about the systems being considered. In September 2019, the Board of Elections voted, directing the county to enter into a contract with Election Systems & Software (ES&S) to purchase DS200 precinct scanners, express vote ballot marking devices, and DS450 high speed scanners for future elections.

The new system would utilize paper ballots at the polling place that would then be scanned by the voter into a precinct level scanner (DS200) for the vote to be cast. For voters who are unable to mark their own ballot, each precinct also had at least one ballot marking device to create a ballot through a variety of accessibility tools which would then be scanned by the voter (or an aide, if assistance was needed) into the precinct level scanner for the vote to be cast. Absentee, military, emergency and provisional ballots would be scanned in at the Elections Warehouse using high speed scanners (DS450).

**OFFICE OF THE COUNTY EXECUTIVE**

An internal team consisting of Elections, Purchasing, Computer Services, Budget and Finance, Law, Human Resources (ADA Coordinator), Administrative Services, CountyStat, Communications, Marketing and the County Manager's office began meeting weekly to re-envision the voting process. Part of its charge was to set up chains of custody, revise poll worker training, ensure accessibility, determine needs and challenges, and ensure that all supplies and resources that were necessary for a presidential election year were in place. The Board of Election also underscored that these efforts should all fortify the integrity of the new voting system. The team was also charged with communicating information about and instilling voter confidence in the new voting system.

In late 2019, as you know, the legislature amended the Election Code and made a number of significant changes. Among other things, it authorized no excuse mail-in voting, extended the deadlines to register to vote and to apply for a mail-in or absentee ballot, and requires that absentee and mail-in ballots be counted centrally and that such counting not begin until the close of polls on Election Day. While there were other changes, these provisions impacted the administration of our election the most.

In February, the division launched a new website for residents which contained information on the new voting system, voter outreach efforts, instructional videos, and more. The county had also received the 1,650 precinct scanners and ballot marking devices, and four of the eight high speed scanners that had been ordered. The division also purchased two other high-speed scanners to handle the expected volume of mail-in ballots. Poll worker recruitment was underway, public voting system demonstrations had been scheduled throughout the county, a significant marketing campaign launched with information on the new voting systems, and the county began talking about whether additional elections offices to allow for over-the-counter voting was possible.

In March 2020, the legislature again amended the Election Code. The amended bill addressed some, but not all, of the issues created by Act 77 of 2019. It allowed the county to pre-canvass absentee and mail-in ballots beginning at 7 AM on Election Day. It allowed for the surrender of a mail-in ballot at a polling place, beginning with the November Presidential Election. It also put in place emergency provisions due to the pandemic and authorized the consolidation of polling places for the primary election, and changed the date of the election itself.

Around the same time, Allegheny County began reporting its first cases of COVID-19. By the end of March, the county had reported over 300 cases of the virus. Acting on a recommendation from the Elections Division at its April meeting, the Board of Elections decided to send mail-in ballot applications with postage-paid return envelopes to all voters in the county, offering an option to in-person voting with the many mitigation measures in place. Ballots began going out mid-month with over 71,000 applications having been received at that point.

At the end of April, Elections submitted a resolution of the Board to the state asking for approval to consolidate its 1,323 polling places into 200-300 locations. That plan was approved by the PA Department of State in late May. By then, over 200,000 voters had applied to register to vote by absentee or mail-in ballot. The number was so great, that the Elections Division arranged for ballot drop



off at the office for the three days prior to and the date of the election. When polls closed on June 2, a total of 319,612 voters cast a ballot. Of those, 218,066 voted by absentee or mail-in ballot.

Over the summer, additional cases of COVID had begun to level out, but there still remained a great deal of concern around voting in person, and by poll workers of exposing themselves to others who may have the virus. There was also substantial clamor for additional information. In August, an e-newsletter was launched to provide information on what the division was doing in preparation for the election. There was also additional interest in over-the-counter voting so that voters did not have to go to the polling place on election day. While the county had always offered over-the-counter voting, many voters just became aware of the option as a result of Act 77.

In September, the Board of Election considered and approved a proposal to open additional, temporary offices throughout the county to allow for over-the-counter voting and ballot return. Later that month, ballots began going out to voters with over 314,000 people having applied for either an absentee or mail-in ballot by that time. In October, the office provided expanded hours, as well as ballot return in the lobby of the building, for voters. The fully staffed locations ensured voters were returning only their own ballot, and that ballots were secured, under lock and key, at the Elections warehouse as soon as ballot return ended.

For the November 3 election, all 1,323 polling places were open in the county. For most locations, a full complement of five poll workers were at each site with some having more or less based on registration. In addition to poll workers, another 220 staff were utilized as rovers and leadmen, assisting and support election day operations at polling places. The county issued 22,000 poll watcher certificates. Of the county's

Pursuant to Act 12 of 2020, the pre-canvassing of ballots began shortly after 7 AM at the county's elections warehouse. The entire facility was under CCTV cameras and had large display screens in the area set aside for authorized observers. It was also under constant monitoring by employees of the Allegheny County Police Department. Staff – from departments across the county – came in through metal detectors and were prohibited from carrying any bag or other large item to their seats. Instead, those items were left in a secured area at the entrance to the room where pre-canvassing and canvassing was to occur.

Pre-canvassing, and indeed canvassing, are not easy or quick processes.

Each envelope went through a declaration review with ballots that needed further attention set aside for review by Elections Division staff in consultation with the Law Department.

If no issues were noted, the declaration envelope was opened and staff extracted the security envelope from inside. If there was no security envelope, the materials were put back together and the envelope was set aside in another bin for further review by Elections Division staff in consultation with the Law Department.

Security envelopes were opened and the ballot extracted from the envelope. The ballot then had to be opened, flattened, back folded, straightened and even compressed under other items to help ensure that it would not be caught in the scanner.

Based on the reports that we provided throughout the day, with hundreds of staff helping with this process, here was our progress:

At 9 AM, only 25% of ballots had been touched, two hours after pre-canvassing began. About 13,500 had gone through the declaration review and had the declaration envelope opened and the secrecy envelopes extracted.

At 10 AM, we had about 80% of the ballots in some stage of processing. Approximately 105,000 had gone through the declaration envelope and had the secrecy envelopes extracted. A few thousand ballots had been flattened and were ready to scan.

At 11 AM, we had only scanned around 9,000 ballots. All of the ballots were in some stage of processing that were eligible to be opened that day (unsigned declaration envelope, incorrect ballot returned, other issues).

By 1 PM, we had 25,583 ballots scanned. Half of the staff were removing ballots from the envelope while the other half was flattening the ballots for scanning. This process, in particular, became very important – and was also an issue. Because the pre-canvassing could not begin until 7 AM the morning of Election Day, we had some ballots which had been folded, compressed in an envelope for over a month leaving deep creases that were jamming the scanners.

At 3 PM, there had been 43,894 ballots scanned. Our first shift of employees left and a second shift of approximately 200 were arriving which slowed down the process as staff were sworn in and shown the steps and their responsibilities.

At 5 PM, another 2,000 ballots arrived from that day's mail. The process began again for those five trays. At that time, we had 59,799 ballots scanned.

At 6:40 PM, that number increased to 82,716 ballots scanned. We estimated that there were approximately 20,000 envelopes without barcodes and assigned staff to begin manually entering the return of the ballot and then sending them along for processing.

By 8 PM, there were 95,998 ballots scanned. Processing stopped so that the first 65,000 ballots that had been scanned could be tabulated and uploaded to the county's reporting system.

At 9:15 PM, there were 111,884 ballots scanned

At 10:30 PM, 125,383 ballots had been scanned. A third shift of employees began arriving with their shift to begin at 11 PM.

At 1 AM, approximately 151,022 ballots had been scanned. Staff were still continuing to flatten ballots for scanning, work that was expected to be complete by 2:30 AM.

At 2:45 AM, the county suspended scanning. While hundreds of staff had been involved in the pre-canvassing and canvassing of ballots, a small group of staff worked through all three shifts conducting scanning and troubleshooting to address any jams of the scanners. By this point, all ballots had been opened and flattened. Of the 413,716 applications that were approved for which voters received an absentee or mail-in ballot, 348,485 had been returned. And as of 2:45 AM, 173,068 of those had been scanned and the results tabulated and uploaded.

On November 4, the staff worked from 10 AM to 11 PM. A total of 313,072 mail-in and absentee ballots had been counted. All ballots that could be counted at that point in time had been counted. In total, the full pre-canvassing and canvassing with hundreds of staff and high-speed scanners took approximately 32 hours to get to that point.

As you are probably aware, there were a large number of challenged ballots and there were also several Court actions which impacted the vote from that point. The Board of Elections convened three times after the election to vote on various matters, and provided a final, amended certification of the election results on November 25.

In all, a total of 942,849 voters were registered for the November election. Of those, 726,720 cast a ballot with 724,800 voting for President. In that race alone, 346,439 voted by absentee or mail-in ballot and 364,032 voted in-person on election day. The remaining voters cast provisional ballots.

None of this effort comes without a cost.

Our Budget and Finance office estimated that the 2020 election cost the count nearly \$14 million to run. We were fortunate to receive grant funding and CARES Act funding that allowed us to offset some of that cost, but over \$7.5 million of that was still borne by county residents. In comparison, the 2019 election cost a little under \$6 million. That's a 130% increase in just one year. While we would expect that presidential elections would be more costly due to turnout and other considerations, the increase was substantially more than we had expected.

We paid more when the counties were directed to move to new voting systems with voter verified paper ballots. We paid more in staffing to manage the absentee and mail-in process, the additional election offices to accommodate the demand for over-the-counter voting, and staff to manage the need to process and turn around applications for voter registration and for absentee and mail-in ballots. We saw our costs rise due to increased postage costs, printing costs, a marketing campaign, and training needs. Because of COVID, we spent substantial funds to cover the costs of personal protective equipment (PPE) and other items necessary to protect our poll workers and voters during these extraordinary times.

In response to extraordinary dialogue and rhetoric around voter fraud, election security and other related concerns, we incurred additional expenses to ensure that our process was transparent,

accessible, and secure. We also absorbed additional costs when the addition of absentee and mail-in voting increased the need for equipment at our warehouse to handle the demand.

We know that not every election will be like the last, but we also recognize that there are public expectations like never before related to what the Elections Division must do and provide prior to and during an election. That is only going to continue to grow. In order to meet those needs, we need legislative action on several fronts, and we also need additional funding and resources from the state, rather than unfunded mandates borne by our county taxpayers.

#### Legislative Action

We urge action by this body on several items:

1. Make the deadline to register to vote earlier than 15 days before the election.
2. In the alternative, allow for Election Day Registration so that the burden of vetting all of these prospective voters and adding them to the voter rolls, issuing voter identification cards, and adding them to the poll books does not fall on the Elections Division.
3. Make the deadline to apply for an absentee or mail-in ballot earlier than 7 days before the election.
4. Allow pre-canvassing to occur at any time following the deadline to file any challenge to absentee or mail-in ballots.
5. Set a deadline by which the Courts must rule on all challenges that impact ballots.
6. Allow flexibility and autonomy in how elections are run, including:
  - a. Allowing the county to make administrative changes to the number of required workers at a polling place based on average voting history;
  - b. Allowing the county to make administrative changes to election districts, without a Court process; and
  - c. Allowing the county to offer split shifts or other arrangements to voters who work the polls on election day to encourage increased participation.
7. Invest in an electronic voting system that recognizes all of the changes that the state has made to the Election Code in the past few years and which is flexible enough to adjust for future changes and to allow counties to be able to utilize tools in ways that make sense for them – one size does not fit all.

I am extraordinarily proud of the work that the Elections Division and all of our staff did for the 2020 election. Seventy seven percent (77%) of our voters cast a ballot in the November election. We sent out over 400,000 ballots, opened 1,323 polling places, ran a 24/7 operation that was open and transparent for the pre-canvassing and canvassing of absentee and mail-in ballots, and utilized thousands of staff and voters to hold a successful election with all eyes on us and our operation.

# JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

## ELECTION LAW IN PENNSYLVANIA

*Report of the Election Law Advisory Board  
for the Fiscal Year 2020-2021*

June 2021

EXHIBIT

3



*Serving the General Assembly of the  
Commonwealth of Pennsylvania Since 1937*

**REPORT**

*Election Law in Pennsylvania*

|   |   |
|---|---|
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| The report is also available at <a href="http://jsg.legis.state.pa.us">http://jsg.legis.state.pa.us</a> |   |

## JOINT STATE GOVERNMENT COMMISSION

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.<sup>1</sup>

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.<sup>2</sup> Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

---

<sup>1</sup> Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65–69.

<sup>2</sup> Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used to construe or apply its provisions.<sup>3</sup>

Since its inception, the Commission has published over 400 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

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<sup>3</sup> 1 Pa.C.S. § 1939.



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*General Assembly of the Commonwealth of Pennsylvania*

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June 23, 2021

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Counsel

To the Members of the General Assembly of Pennsylvania:

We are pleased to release Election Law in Pennsylvania, the first annual report of the Election Law Advisory Board established by Act 12 of 2020. This report represents the past year's work of the Advisory Board, which was created to study the election law and identify statutory language to repeal or modify, to collaborate with other agencies and political subdivisions of the Commonwealth to study election-related issues, to study the development of election technology, and to evaluate and make recommendations on improving and implementing best practices to ensure the integrity and efficiency of the electoral process in this Commonwealth.

This first report focuses on what many members believe to be of the highest priority, which is proposed amendments to address mail-in ballot processing, otherwise known in Pennsylvania as "pre-canvassing". The consensus of ELAB members is that advance mail-in ballot processing could resolve many of the problems that contributed to concerns about the validity of votes in Pennsylvania.

While the recommendations in this report are the consensus of the members of the Advisory Board, it should not be assumed by the reader that agreement was unanimous. Some provisions were the subject of much debate and concerns are noted in context.

The full report is available at <http://jsg.legis.state.pa.us>.

Respectfully submitted,

Glenn J. Pasewicz  
Executive Director



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# INTRODUCTION

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## The Constitution of the Commonwealth of Pennsylvania

### Article I, § 5. Elections.

*Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.*

The fundamental precept underlying Pennsylvania's election laws is the Constitutional guarantee of free and equal elections. Pennsylvania's laws intended to protect that constitutional right can be found in the act of June 3, 1937 (P.L. 1333, No.320), known as the Pennsylvania Election Code (Election Code) and Title 25 of the Pennsylvania Consolidated Statutes, added by the act of January 31, 2002 (P.L. 18, No. 3) (Title 25). Read together, these two statutes form Pennsylvania's election law.<sup>4</sup> Additionally, Article VII of the Pennsylvania Constitution provides further details relating to voting rights and procedures.

In 2019, revisions were made to the Election Code, most significant of which for this study are the elimination of straight ticket voting, the addition of mail-in voting, and the replacement of, and funding for, voting machines.<sup>5</sup> These amendments were specifically intended to create a fairer, more free and equal election process. New voting machines allow for the use of paper ballots so a voter can see his or her completed ballot and verify its accuracy before casting their votes. Elimination of straight ticket voting focused voters' attention on the candidate, rather than the candidate's party. Each office and its candidates must be considered separately, which allows Independents and third-party candidates a greater ability to compete against the two major parties, prevents weaker candidates from being elected simply because of their party affiliation, and encourages voters review the entire ballot, which may increase voting on ballot initiatives, constitutional amendments and referenda. Mail-in balloting similarly achieves the goals of a more deliberative voting process, as the voter using a mail-in ballot has ample time to research candidates, review the entire ballot, and vote from a more informed stance. Additionally, persons with transportation issues, including the elderly and persons with physical disabilities, and persons whose hours of employment and family responsibilities

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<sup>4</sup> Pennsylvania does not have a complete formal statutory code. Laws are found in two places – the Pamphlet Laws and the Consolidated Statutes. A commercial vendor, Purdon's, has created a compilation with titles identified by topics which can aid the legal practitioner in locating specific laws, but they do not carry the weight of legal citations. If challenged in court and there is a conflict between Purdon's and the Pamphlet Law or Consolidated Statutes, the Pamphlet Laws or Consolidated Statutes will triumph. In 1972, Pennsylvania began a consolidation process in the which the Pamphlet Laws, which address single topics only and are organized chronologically, are reorganized and codified by topic in the Consolidated Statutes. The process is on-going and more Pamphlet Laws are consolidated each year, and many new enactments are added directly to the Consolidated Statutes at the time of enactment.

<sup>5</sup> Act of October 31, 2019 (P.L. 552, No. 77), amending the Election Code (Act 77).

prevent them from reaching their polling place in the allotted hours for voting can vote from home on a schedule that is convenient to them.<sup>6</sup>

Amendments in 2020 were enacted to provide for temporary emergency general primary election procedures in response to the COVID-19 pandemic, additional revisions to the mail-in voting provisions, and creation of the Election Law Advisory Board (ELAB),<sup>7</sup> a permanent body within the Joint State Government Commission and directed to:

- Study the election law and identify statutory language to repeal, modify or update.
- Collaborate with other agencies and political subdivisions of the Commonwealth to study election-related issues.
- Study the development of new election technology and voting machines.
- Evaluate and make recommendations on:
  - improving the electoral process in this Commonwealth by amending the election law or through regulations promulgated by the Department of State; and
  - implementing best practices identified to ensure the integrity and efficiency of the electoral process in this Commonwealth.

By the end of each fiscal year, extensive and detailed findings are to be published on the Joint State Government Commission's publicly accessible Internet website and made available in electronic format to the Office of the Governor and members of the General Assembly.<sup>8</sup>

Membership of on the board consists of House and Senate leadership and the Secretary of the Commonwealth or their designees, and 18 individuals appointed by the Governor and confirmed by the Senate, one from each Congressional district in Pennsylvania. The gubernatorial appointees are to include members who represent the following groups: those advocating for individuals with disabilities, those advocating for voting rights, and those representing county commissioners or county election officials. No more than half of the appointees may be registered with the same political party.<sup>9</sup>

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<sup>6</sup> Floor debate on Senate Bill 421 (2019), which became Act 77: *see* Senate Legislative Journal June 25, 2019, pp. 721-722; House Legislative Journal October 28, 2019, pp. 1689-1713; House Legislative Journal October 29, 2019, pp. 1738-1741; and Senate Legislative Journal, October 29, 2019, pp. 999-1003.

<sup>7</sup> Act of March 27, 2020 (P.L. 41, No. 12), amending the 1937 Election Code (Act 12).

<sup>8</sup> § 1302-E(c) of Act 12.

<sup>9</sup> § 1302-E(b) of Act 12.



The gubernatorial appointees were confirmed by the Senate on September 9, 2020. The board held a web-based organizational meeting on January 28, 2021 and additional web-based meetings were held on April 8, 2021 and June 10, 2021.

Commission staff established the ELAB website in June 2020 at <http://jsg.legis.state.pa.us/act12.cfm>, and posted summaries of potential topic areas of the election law that may be suitable for repeal, modification, or update. Additionally, a summary of election law pending legislation at that time was also provided. At the close of the 2019-2020 General Assembly, these proposals died. Many have been reintroduced for the 2021-2022 General Assembly and are detailed later in this report.

Subsequent to the summer of 2020, the presidential election in November 2020 triggered a number of challenges to the 2019 and 2020 amendments, in particular relating to the interpretation and implementation of the provisions governing mail-in ballots. The COVID-19 pandemic and the public health restrictions developed to attempt to contain the spread of the virus, together with individuals' reluctance to gather publicly and risk exposure to a novel disease whose potency and lethality were evolving and being revealed incrementally, resulted in a demand for mail-in voting that was unanticipated by the drafters of the amendments and the county officials charged with implementing them. Additionally, the primary election of 2020 was the first election held using the new electronic voting systems required under the Commonwealth's settlement in a recount lawsuit stemming from the 2016 presidential election. Concerns over the age and vulnerability to hacking as well as an inability to produce paper ballots for recount and audit purposes contributed to this settlement decision.<sup>10</sup> Problems within the United States Postal Service exacerbated an already challenging surge in mail-in voting. This confluence of major changes and unanticipated delays imposed strains on the election system in Pennsylvania and identified possible shortcomings in the mail-in ballot amendments.

During the ELAB meetings and via information submitted to the Commission by interested parties, many of the problems associated with mail-in ballots were identified as the result of the law asking county election officials to run an in-person election and a mail-in election simultaneously. This produced delays in vote counts, further fueling concerns that errors and fraud were possible. The ELAB will be taking a deliberate approach to the elections laws to address and prioritize areas of the law where review, repeal and updates are needed, and given the fallout from the November 2020 election, this first report focuses on what the members believe to be of the highest priority, which is proposed amendments to address mail-in ballot processing, otherwise known in Pennsylvania as "pre-canvassing." It is the belief of many of the ELAB members that many of the problems that contributed to concerns about the validity of Pennsylvania's votes would be resolved if advanced mail-in ballot processing is permitted.

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<sup>10</sup> Jill Stein et al., v Pedro A. Cortes, Secretary of the Commonwealth et al., No. 16-CV-6287, E.D. Pa., (November 28, 2018).

While the recommendations in this report are the consensus of the members of the ELAB, it should not be assumed by the reader that agreement was unanimous. Some provisions were the subject of much debate and concerns are noted in context.

Potential areas of future study and recommendations include other aspects of mail-in voting, such as ballot verification, ballot curing, application deadlines, use of satellite offices and drop boxes, mailing lists for ballot requests, the effect of missing or illegible postmarks, treatment of naked ballots, and ballot challenges; voter registration, including verification and purging of rolls; polling places; early voting; poll worker recruitment and retention; and training for all election officials.

## **BALLOT PROCESSING: PROPOSED AMENDMENTS**

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This proposal is based on the assumption that mail-in voting in some form will continue to occur in Pennsylvania. Numerous legislative proposals are before the General Assembly that would revise or modify the statutory language governing these ballots, but only a few voices have called for the outright repeal of these provisions. Mail-in voting was very popular with Pennsylvania voters during the 2020 Presidential Election. Mail-in votes that were accepted and counted for President ranged from 370,361 in Philadelphia, the largest county by population in the Commonwealth, to 715 in Cameron County, the smallest county by population. The 10 smallest counties by population ranged from 715 to 5,074 accepted and counted mail-in votes, with an average of 1,367 mail-in votes for the three presidential candidates on the ballot.<sup>11</sup> This is not an insignificant amount of votes to process on election day, when some of these smaller county boards of elections have only a handful of employees who must be available to assist the judges of elections conducting the in-person voting in all of the county's precincts while also processing thousands of mail-in votes. The amendments proposed in this chapter are designed to address mail-in ballot processing in a manner that is secure, permits voters to fully exercise their right to vote without artificial impediments, and allows election officials to run elections using careful and deliberate procedures. Finally, the amendments would allow election results to be known within hours, rather than days, of the conclusion of in-person voting on election day.

Many issues surround mail-in ballot processing, and this chapter will attempt to address them individually and identify which provisions of the following proposed amendments relate to that issue.

### ***What is Pre-Canvassing?***

Pre-election day ballot processing occurs in a number of states. The term "pre-canvassing" appears to be unique to Pennsylvania law, can easily be confused with "canvassing," and does not have an intuitive meaning. One of the recommendations contained in the proposed amendments is to do away with this terminology and replace it with "processing," a more self-descriptive term and the term used almost universally in other states.

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<sup>11</sup> Pennsylvania Department of State, Reporting Center, Pennsylvania Elections - Report Center (pa.gov).

Pennsylvania’s Election Code defines the term “canvass” to “mean the gathering of ballots after the final pre-canvass meeting and the counting, computing, and tallying of the votes reflected on the ballots.”<sup>12</sup> Likewise, it defines the term “pre-canvass” to mean the following:

*[T]he inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the **counting, computing, and tallying of the votes reflected on the ballots.***<sup>13</sup> *[Emphasis added]*

Neither term includes the recording or publishing of the votes reflected on the ballots.<sup>14</sup> Not publishing the votes is consistent with Pennsylvania’s legitimate concern with maintaining the secrecy of the ballot and not revealing vote counts in a manner that may influence voters who have not yet voted in person before the close of the polls on election day. But it is not clear how one counts, computes, and tallies without creating some sort of record. This confusion can be remedied by creating a definition of ballot processing that specifies the processing activities to be allowed, such as opening envelopes, removing ballots, and other activities.

### ***Pre-Canvassing and Canvassing in Pennsylvania***

Pennsylvania’s Election Code requires that each county board of elections “meet no earlier than seven o’clock A.M. on election day to pre-canvass all ballots received prior to the [pre-canvass] meeting.”<sup>15</sup> Moreover, the law requires that the county board provide at least 48 hours’ notice of the pre-canvass meeting by publicly posting a notice of said meeting on its publicly accessible Internet website.<sup>16</sup>

One authorized representative of each candidate in an election and one representative from each political party must be permitted to remain in the room in which the absentee ballots and mail-in ballots are being pre-canvassed. However, the law prohibits any person who is observing, attending or participating in a pre-canvass meeting to disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.<sup>17</sup>

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<sup>12</sup> Act of June 3, 1937 (P.L.1333, No.320), § 120(a.1); 25 P.S. § 2602(a.1).

<sup>13</sup> *Ibid*; 25 P.S. § 2602(a)(1) and (q.1).

<sup>14</sup> *Ibid*.

<sup>15</sup> *Ibid*. § 1308(g)(1.1); 25 P.S. § 3146.8(g)(1.1).

<sup>16</sup> *Ibid*.

<sup>17</sup> *Ibid*.

After the pre-canvassing of ballots, county boards of elections are required to meet “no earlier than the close of polls on the day of the election and no later than the third day following the election to begin canvassing absentee ballots and mail-in ballots not included in the pre-canvass meeting.”<sup>18</sup> This meeting continues until all absentee ballots and mail-in ballots received prior to the close of the polls have been canvassed. The board is prohibited from recording or publishing any votes reflected on the ballots prior to the close of the polls. The entire canvass process then continues through the eighth day following the election for valid military-overseas ballots timely received under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot).<sup>19</sup>

Like the pre-canvass meetings, the canvass meetings require no less than 48-hour notice by publicly posting a notice on the county board of elections’ publicly accessible website. One authorized representative of each candidate in an election and one representative from each political party must be permitted to remain in the room in which the absentee ballots and mail-in ballots are canvassed.<sup>20</sup> In addition, the Election Code requires that when the board meets to pre-canvass or canvass absentee ballots and mail-in ballots, it must:

[E]xamine the declaration on the envelope of each ballot not set aside ... and shall compare the information thereon with that contained in the “Registered Absentee and Mail-in Voters File,” the absentee voters' list and/or the “Military Veterans and Emergency Civilians Absentee Voters File,” whichever is applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the “Registered Absentee and Mail-in Voters File,” the absentee voters' list and/or the “Military Veterans and Emergency Civilians Absentee Voters File” verifies his right to vote, the county board shall provide a list of the names of electors whose absentee ballots or mail-in ballots are to be pre-canvassed or canvassed.<sup>21</sup>

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<sup>18</sup> *Ibid.* § 1308(g)(2); 25 P.S. § 3146.8(g)(2).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*; 25 P.S. § 3146.8(g)(3).

All absentee ballots not challenged and all mail-in ballots not challenged and that have been verified must be counted and included with the returns of the applicable election district as follows:

- The county board must open the envelope of every unchallenged absentee elector and mail-in elector without destroying the declaration executed thereon.
- If any of the envelopes on which are printed or labeled “Official Election Ballot” contain any text, mark or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference, said envelopes and the ballots contained therein must be set aside and declared void.
- The county board must open the envelopes, remove the ballots and count, compute and tally the votes.
- Following the close of the polls, the county board must record and publish the votes reflected on the ballots.<sup>22</sup>

Alternatively, received ballots with challenged applications and ballots must be “placed unopened in a secure, safe and sealed container in the custody of the county board.” They will remain in such custody until the board fixes a time and place for a formal hearing of all such challenges, and notice shall be given where possible to all absentee electors and mail-in electors thus challenged and to every individual who made a challenge. A hearing can be held no later than seven days after the deadline for all challenges to be filed. During the hearing, the county board must hear said challenges and, in hearing the testimony, is not legally bound by the Pennsylvania Rules of Evidence. “The testimony presented must be stenographically recorded and made part of the record of the hearing.”<sup>23</sup>

County board decisions upholding or dismissing any challenge are reviewed by the court of common pleas of the county upon the filing of a petition by any person aggrieved by a board decision. The appeal must be filed within two days after the decision. Pending final determination, the county board must suspend any action in canvassing and computing all challenged ballots received. When computation of the returns of the county is completed, the votes cast upon the challenged official absentee ballots that are finally determined to be valid are added to the other votes cast within the county.<sup>24</sup>

If the proof of identification for absentee ballots or mail-in ballots is received and verified prior to the sixth calendar day following the election, then the county board of elections is legally required to canvass the absentee ballots and mail-in ballots. “If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-

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<sup>22</sup> *Ibid*; 25 P.S. § 3146.8(g)(4)(i)-(iv).

<sup>23</sup> *Ibid*. § 1308(g)(5); 25 P.S. § 3146.8(g)(5).

<sup>24</sup> *Ibid*. § 1308(g)(6), (7); 25 P.S. § 3146.8(g)(6)-(7).

in ballot shall not be counted.”<sup>25</sup> A qualified absentee elector is not required to provide proof of identification so long as the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act.<sup>26</sup>

### ***Ballot Processing in Other States***

Intuitively, the states with the largest populations would be the states mostly likely to benefit from pre-election day ballot processing, simply to accommodate the larger number of votes likely to be received in any election. With resident populations ranging from 10 million to nearly 40 million,<sup>27</sup> these states present a variety of positions on ballot processing. Some states allow for no excuse vote by mail, while others have absentee balloting that provides for a range of restrictive to broad excuses to vote via absentee ballot. All states allow mail in voting under federal law for active duty military personnel and persons serving overseas.

#### California<sup>28</sup>

As a general rule, vote by mail ballots may begin to be processed during the 29-day period running up to the election. This general rule applies only to verifying each voter’s signatures on the ballot return envelope and updating voter history.

Counties that have the “necessary computer capability” may open the envelopes, remove the ballots, duplicate any damaged ballots, prepare ballots to be machine read, or machine read them, including write-in votes so that they can be tallied by the machine beginning on the 15<sup>th</sup> day before the election. Under this process, the ballots are completely processed as received, including entered into the tabulators. Jurisdictions with computer capacity cannot engage in these activities before 5pm of the day before the election. Under either process, counts or tabulations may not be accessed or released prior to the close of the polls on election day.

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<sup>25</sup> *Ibid.* § 1308(h)(2), (3); 25 P.S. § 3146.8(h)(2)-(3).

<sup>26</sup> *Ibid.* § 1308(i); 25 P.S. § 3146.8(i).

<sup>27</sup> United States Department of Commerce, U.S. Census Bureau, 2020 Census Apportionment Results, April 26, 2021, Table 2. Resident Population for the 50 States, the District of Columbia, and Puerto Rico: 2020 Census

<sup>28</sup> Cal.. Elec. Code §15101.

## Texas<sup>29</sup>

Texas allows early voting by mail, but generally does not allow any pre-election day processing or counting of votes. The one exception to this rule is for an election in a county with a population of 100,000 or more, in which case counting of early voting ballots may begin on the 4<sup>th</sup> day before the election. This exception applies to 41 of Texas' 254 counties.<sup>30</sup> This, however, is the status of the law on May 31, 2021. As of this writing, the Texas legislature is engaged in a vociferous battle over election law changes. If the results of this battle are available before this report goes to press, staff will attempt to update this paragraph with any changes that are enacted.

## Florida<sup>31</sup>

On May 6, 2021, the Governor of Florida signed substantial amendments to Florida's mail-in voting law, including provisions that affect processing of mail-in ballots. Previously, processing of mail-in ballots could begin at 7:00 am on the 22<sup>nd</sup> day before the election. This authority has been eliminated. Processing now can only occur after the public testing of automatic tabulating equipment. Testing must occur 10 days prior to the start of early voting. In a federal election, early voting begins on the 10<sup>th</sup> day before the election. Local election officials have the discretion to offer early voting on the 15<sup>th</sup>, 14<sup>th</sup>, 12<sup>th</sup>, 11<sup>th</sup> or 2<sup>nd</sup> day before a state or federal election as well. In a federal election such as a presidential election, the earliest processing of vote by mail ballots can occur is 20 days before the election, but could vary in other elections. Processing includes all canvassing activities, which includes entering the ballots into electronic tabulation machines. No results may be released prior to the close of the polls on election day, and to do so will result in 3<sup>rd</sup> degree felony charges.

## New York<sup>32</sup>

While New York State allows early voting, it does not allow any pre-election day processing of ballots. Generally, the ballots are not to be canvassed or examined until after the close of the polls on election day, and no unofficial tabulations of election results may be printed or viewed in any manner until after the close of polls on election day. An exception exists that allows early voting tabulation to begin one hour before the close of the polls on election day, but only if the local board of elections adopts procedures to prevent the public release of election results prior to the close of polls on election day and the procedures are consistent with the regulations of the state board of elections. The

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<sup>29</sup> Tex. Elec. Code §§ 85.001, 87.0241.

<sup>30</sup> World Population Review, Population of Counties in Texas (2021) (worldpopulationreview.com).

<sup>31</sup> Fl. Stat. §§ 101.68, 101.657, and 101.5612(2) as amended by Statutes Chapter 2021-11.

<sup>32</sup> N.Y. Elec. Law § 8-600.



procedures must be filed with the state board of elections at least thirty days before they are scheduled to be effective.

### Illinois<sup>33</sup>

Illinois allows mail-in voting, and allows the processing of vote by mail ballots to be completed upon receipt by the election authority at its central ballot counting location. The results of the processing may not be counted until after 7pm on election day.

### Ohio<sup>34</sup>

Ohio has no excuse absentee voting. These ballots may be processed upon receipt. Processing includes:

- Examining the identification envelope statement of voter to verify that the ballot is eligible to be counted;
- Opening the envelope if the ballot is eligible to be counted;
- Determining the validity of the ballot;
- Preparing and sorting the ballot for scanning by automatic tabulating equipment;
- Scanning the ballot by automatic tabulating equipment if the equipment used by the board of elections permits a ballot to be scanned without tabulating or counting the votes on the ballot scanned.
- Disclosure of the count prior to the closing of polling places is prohibited.

### Georgia<sup>35</sup>

In March 2021, Georgia amended its election law to allow pre-election day processing of its no excuse absentee ballots. Previously, ballots could not be processed until election day. Under the new provisions, ballots that have been verified and accepted may be processed beginning at 8:00 a.m. on the third Monday prior election day. The election superintendent is authorized to open the outer envelope, open the inner ballot

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<sup>33</sup> Il. Cons. Stat. § 5/19-8.

<sup>34</sup> Ohio Rev. Code § 3509.

<sup>35</sup> Ga. Code § 21-2-386, as amended by Act 9 of 2021, effective March 25, 2021.

envelope and scan the absentee ballot using one or more ballot scanners. The process must be witnessed, and no one may tally, tabulate, estimate, or attempt to tally, tabulate, or estimate or cause the ballot scanner or any other equipment to produce and tally or tabulate the ballots prior to the close of the polls on election day.

#### North Carolina<sup>36</sup>

North Carolina has no excuse absentee voting. Beginning with the fifth Tuesday before the election, the county board of elections holds a weekly meeting at which it approves absentee ballot applications at and which it can begin processing completed ballots that have been received. This includes removing those ballots from their envelopes and having them read by an optical scanning machine, without printing the totals on the scanner. The actual tally of the votes is required to occur on election day.

#### Michigan<sup>37</sup>

Michigan allows for limited circumstance absentee ballots, which cannot be processed until election day. For the November general election of 2020, a law was passed to allow pre-processing of those ballots on the day before election day. While several pieces of legislation were introduced in the Michigan Legislature in the Spring of 2021, as of June 1, 2021, none of them have been enacted.

*Other states that allow substantial pre-election day ballot processing are outlined below.*

#### Arizona<sup>38</sup>

Signature verification of early ballots is to occur upon receipt of the ballot and ballot affidavit. After the ballot is verified, the ballots may be transferred to the early election board of the municipality for tallying of the ballots which may begin immediately after delivery. The release of information regarding early voting tallies before one hour after the closing of the polls or all precincts have reported, whichever occurs first, is a class 6 felony.<sup>39</sup>

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<sup>36</sup> N.C.Gen.Stat. §§ 163-230.1 and 163.234.

<sup>37</sup> Mich. Com. Laws § 168.765.

<sup>38</sup> Ariz. Rev. Stat. §§ 16-550 and 16-551, as amended by Ch. 318, signed by the Governor May 5, 2021.

<sup>39</sup> Ariz. Rev. Stat. §§ 16-550 to 16-552.

## Colorado<sup>40</sup>

Colorado permits the opening, preparation, and counting of mail ballots at designated mail counting places beginning 15 days prior to the election. The election official in charge of the mail ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7 p.m. on election day.

## Delaware<sup>41</sup>

Beginning on the Friday before election day, absent ballots may be opened and examined to determine if the ballot has been properly completed, if the elector's intent can be determined, tally write-in votes or those that must be hand counted, and if it is determined that a ballot cannot be read by the tabulating equipment, duplicate the ballot if the voter's intent can be determined. They are then sealed in carrier envelopes and delivered to the relevant election district. The results cannot be extracted or reported before the polls close in election day.

## Indiana<sup>42</sup>

In amendments adopted in 2021, effective July 1, 2021, Indiana provided for early processing of absentee ballots. A county board of election may scan voted absentee ballot cards using an optical ballot scanner no earlier than 7 calendar days before the election, but the ballots may not be tabulated before election day. An exception to this rule applies to counties that use an electronic poll book or are a vote center county, if the county board of elections unanimously adopts a resolution to allow early processing of ballots. 47 of Indiana's 92 counties were designated as vote center counties in 2021.<sup>43</sup> In those counties, absentee ballots may be partially processed. Under these provisions, beginning with the third day prior to the election and continuing daily up until noon of the day before the election, the county boards may open the outer envelopes and verify if the ballot is properly endorsed and verified but may not unfold and examine the ballot. Tabulation may not occur until election day.

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<sup>40</sup> Col. Rev. Stat. §§ 1-7.5-107.5, 1-7.5-202 and 1-7.5-203.

<sup>41</sup> 15 Del. Code §§ 5508, 5509, and 5510A.

<sup>42</sup> Ind. Code §§ 3-11.5-4-5, 3-11.5-4-6, 3-11.5-4-11 and 3-11.5-4-11.5, as amended by Public Law 108, signed by the Governor April 23, 2021.

<sup>43</sup> Indiana Department of State, accessed May 28, 2021, SOS: Voter Information: Vote Centers.

## Iowa<sup>44</sup>

Outside envelopes may be opened and affidavits verified and counting may begin the day before election day. Counting shall begin on the day before election day if, in the preceding general election, absentee ballot counts were not completed by 10pm election day. The results of tabulations are not to be released until all counts are completed on election day.

## Montana<sup>45</sup>

In Montana, signatures may be verified upon receipt and the outer envelope opened; The inner envelope may be opened three days prior to election and the ballot secured in a ballot box. Automatic tabulation using a vote-counting machine may begin day before election day, but manual tabulation may not begin until election day.

## Nebraska<sup>46</sup>

In Nebraska, verification of signature and affidavit occur upon receipt. On the second Friday before the election, verified ballots shall be opened, unfolded, flattened for purposes of using the optical scanner, and placed in a sealed container for counting. Counting boards may begin counting early ballots no earlier than twenty-four hours prior to the opening of the polls on the day of the election. No results can be released until after the polls close on election day.

## Nevada<sup>47</sup>

By new legislation enacted in June 2021, Nevada adopted permanent mail-in ballot voting. Each active registered voter in the county is to receive a mail ballot for every election. An appointed mail ballot central counting board may begin counting the received mail ballots 15 days before the day of the election. The board must complete the count of all mail ballots on or before the seventh day following the election. The counting procedure must be public. Results of the count are to be kept secret and not revealed until the end of election day.

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<sup>44</sup> Iowa Code §53.23, as amended by Acts Chapter 12, signed by the Governor March 8, 2021.

<sup>45</sup> Mont. Code Ann. § 13-13-341(7)(a).

<sup>46</sup> Neb. Rev. Stat. §32-1027(7) and (8).

<sup>47</sup> Nev. Assembly Bill 321, signed by the Governor June 2, 2021 as Chapter 248.

## New Mexico<sup>48</sup>

Upon receipt, ballots are verified and voting lists updated in New Mexico. In election in which less than 10,000 mailed ballots were sent to the voters of a county, election judges may, beginning five days before the election, open the official mailing envelope, and insert the ballot into an electronic voting machine to be registered and retained until votes are counted after the close of polls on election day. In counties where 10,000 or more ballot were mailed, this process can begin two weeks before the election.

## North Dakota<sup>49</sup>

Beginning three days before election day, the outer envelopes may be verified and voter lists updated. A different person may open the ballot, unfold it, and place in secured ballot boxes. Votes may not be tallied or tabulation reports generated until after close of polls on election day.

## Oklahoma<sup>50</sup>

In Oklahoma, outer envelopes may be opened and signatures/affidavits verified beginning at 10 a.m. on the Thursday preceding the election. Generally, the inner envelopes are opened and fed into a voting device for counting on election, with no results to be printed, or made known to any person nor announced earlier than 7:00 p.m. on the day of the election. Upon written approval by the Secretary of the State Board of Election, the process for opening and scanning the inner envelopes can begin earlier than election, subject to the same security and information release restrictions imposed on ballots opened on election day.

## Oregon<sup>51</sup>

Oregon allows ballots to be opened and scanned into a vote tallying system beginning on the seventh day before the election. Totals may not be recorded until after 8 p.m. on election day.

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<sup>48</sup> N. M. Stat. § 1-6-14.

<sup>49</sup> N.D. Cent. Code §§ 18.1-07-12 and 18.1-07-12.1, as amended by Senate Bill 2142, signed by the Governor April 12, 2021. This amended extended the processing time from the day before the election until starting three days before the election.

<sup>50</sup> Okla. Stat. §§ 26-14-123 and 25-14-125.

<sup>51</sup> Or. Rev. Stat. §§ 254.478 and 260.705.

## Rhode Island<sup>52</sup>

Rhode Island allows outer envelopes to be opened upon receipt. Ballots may be processed and certified beginning 14 days before the election. Ballots are then sorted by city and town, after which the inner envelopes may be opened and the ballots tabulated through the use of a central count optical-scan unit. Final counts may not occur until after 8p.m. on election day.

## Vermont<sup>53</sup>

No more than 30 days prior to the election, the outer envelopes of mail-in and absentee ballots may be opened and verified. If a town will be using a vote tabulator for the registering and counting of votes in the upcoming election, they ballots may be opened, processed and scanned the day before the election. Final counts will then be made on election day.

## Virginia<sup>54</sup>

Upon receipt, signatures on outer envelopes are to be verified and voting lists updated. The general registrar may open sealed ballots and insert them in optical scan counting equipment any time prior to the seventh day immediately preceding the election. This becomes a mandatory duty beginning on the seventh day immediately preceding the election. No ballot count totals shall be initiated. If the affirmation has been completed as required, the general registrar may open the sealed ballot envelope and insert the ballot in optical scan counting equipment or other secure ballot container without initiating any ballot count totals. If a general registrar does not choose to do so, the sealed ballot envelope shall be deposited into a secure container provided for such purpose, in which it shall remain until the general registrar initiates the process of opening the sealed ballot envelopes deposited into the secure container and inserting such ballots into optical scan counting equipment without initiating any ballot count totals. Such process shall be at the general registrar's discretion at any time prior to the seventh day immediately preceding the election but shall be mandatory beginning on the seventh day immediately preceding the election. Absentee ballots that need to be counted by hand can begin to be counted at noon on election day. No totals shall be generated before the close of the polls on election day.

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<sup>52</sup> R.I. Gen. Laws §§ 17-20-26 and 17-22-1.

<sup>53</sup> 17 Vt. Stat. §§ 2546 and 2546a.

<sup>54</sup> Va. Code. §§ 24.2-709.1 through 24.2-712, as amended by Acts of Assembly Chap 0471, signed by the Governor March 31, 2021.

Washington<sup>55</sup>

Verification of ballots may begin upon receipt and after they have been verified, they may begin opening and preparing the ballots for tabulation, although actually counting may not occur until 8 p.m. on election day.

| <b>Ballot Processing in Other States<br/>Current Law as of June 21, 2021</b> |  |   |  |
|--|--|---|--|
| <b>State</b>   | <b>Pre-Election Day<br/>Ballot<br/>Preparation<br/>Allowed</b> | <b>Amount of<br/>Time before<br/>Election Day</b> | <b>Activities<br/>Authorized</b>   |
| Alabama <sup>56</sup>  | No   | --  | Note receipt on absentee list only   |
| Alaska <sup>57</sup>   | Partially  | 7 days  | Verification of voter's certificate; secrecy envelope not opened or vote counted until 8pm election day  |
| Arkansas <sup>58</sup>   | Partially  | Tuesday<br>before                                 | Opening outer envelope, processing and canvassing of ballot paperwork of outer envelope only; secrecy envelope not opened or vote counted until 8am election day   |
| Connecticut <sup>59</sup>  | Partially  | 7 days  | Sort into voting districts and verify qualified voter only; all envelopes opened and ballots counted at the time on election day designated by registrar of voters |
| Hawaii <sup>60</sup>   | Yes  | Upon receipt                                      | After verification of outer envelope, may be opened and counted  |
| Idaho <sup>61</sup>  | Partially  | Upon receipt                                      | Verification of affidavit on outer envelope only   |
| Kansas <sup>62</sup>   | Partially  | Unspecified<br>date                               | Some advance ballots by mail may be processed but not counted before election day  |

<sup>55</sup> Rev. Code Wash. § 29A.40.010 et seq.

<sup>56</sup> Ala. Code § 17-11-10. Prior to 2021, absentee ballots could not be opened until noon on election day. Act #2021-364 moved that time up to 7 am on election day. Signed by the Governor May 6, 2021.

<sup>57</sup> Alaska Stat. §§ 15.20.201 and 15.20.203.

<sup>58</sup> Ark. Code § 7-5-416, as amended by Act 736-2021, approved by the Governor April 15, 2021.

<sup>59</sup> Ct. Gen. Stat. §§ 9-140(c) and 9-150a.

<sup>60</sup> Hawaii Rev. Stat. §§ 15-9 and 15-10. The statute appears to allow all aspects of vote processing and counting to occur upon receipt, but the language is not elaborative on details.

<sup>61</sup> Idaho Code §§ 1005, 10007 and 1008.

<sup>62</sup> In Kansas, the county election officer appoints a special election board to count advance ballots. In the eight counties that use paper ballots, the board meets on election day to begin the count. In the remaining 97 counties which use voting machines, optical scanners, electronic or electronic/mechanical voting systems, the boards convene on election day or at any time before election day as the county election officer deems necessary. These boards may conduct the original canvass of advance voting ballots when the board convenes, but shall not complete final tabulation prior to election day. Kan. Stat. §§ 25-1133 and 25-1134.

| <b>Ballot Processing in Other States<br/>Current Law as of June 21, 2021</b> |  |   |  |
|--|--|---|--|
| <b>State</b>   | <b>Pre-Election Day<br/>Ballot<br/>Preparation<br/>Allowed</b> | <b>Amount of<br/>Time before<br/>Election Day</b>                         | <b>Activities<br/>Authorized</b>   |
| Kentucky <sup>63</sup>   | No   | --  | --   |
| Louisiana <sup>64</sup>  | Partially  | In parishes that receive more than 1,000 absentee ballots, the day before | Activities on the day before are limited to preparation and verification of outer envelopes; no tabulation or counting may occur until election day  |
| Maine <sup>65</sup>  | Partially  | 7 <sup>th</sup> day immediately preceding                                 | Verification authorized; ballots may not be counted, voter intent may not be determined and election results may not be obtained or released until after the polls have closed on election day |
| Maryland <sup>66</sup>   | No   | --  | Date and time stamp receipt only   |
| Massachusetts <sup>67</sup>  | Partially  | Upon receipt  | May verify signature/affidavit on outer envelope, open outer envelope; inner envelope not to be opened or processed before Election Day  |
| Minnesota <sup>68</sup>  | No   | --  | Date stamped upon receipt only   |
| Mississippi <sup>69</sup>  | No   | --  | --   |
| Missouri <sup>70</sup>   | No   | --  | --   |
| New Hampshire <sup>71</sup>  | No   | --  | All processing and counting starts on election day after the polls open  |
| New Jersey <sup>72</sup>   | Partially  | At least weekly three weeks prior to election day                         | Outer envelopes to be removed, signatures verified and voters with rejected ballots are to be sent a “cure letter” within 24 hours; inner envelopes opened and ballots counted on election day |

<sup>63</sup> Ky. Rev. Stat. §§ 117.087.

<sup>64</sup> La. Rev. Stat. §§ 1313 and 1313.1.

<sup>65</sup> Maine Rev. Stat. §§ 759, and 760-B as amended by 2021 Public Law Ch. 11, approved by the Governor March 17, 2021.

<sup>66</sup> MD Code Elect. Law, § 302 and Code of Maryland Regulations (COMAR) §33.11.04.01 et seq.

<sup>67</sup> Mass. Gen. Laws 54 §§ 94 and 95.

<sup>68</sup> Minn. Stat. §§ 203B.08(subd.3), 203B.081, and 204C.20.

<sup>69</sup> Miss. Code § 23-15-639.

<sup>70</sup> Mo. Stat. § 115.299.

<sup>71</sup> N.H. Rev. Stat. §§ 659:47 to 659:61.

<sup>72</sup> N. J. Stat. §§ 63-17 to 63.22. New Jersey adopted early voting by P.L.2021, ch. 40, signed by the Governor March 30, 2021, but this addition did not change the vote counting timeline. These ballots are not to be counted until after the close of the polls on election day. N.J. Stat. § 19:15A-4.



| <b>Ballot Processing in Other States<br/>Current Law as of June 21, 2021</b> |  |   |   |
|--|--|---|---|
| <b>State</b>   | <b>Pre-Election Day<br/>Ballot<br/>Preparation<br/>Allowed</b> | <b>Amount of<br/>Time before<br/>Election Day</b> | <b>Activities<br/>Authorized</b>  |
| South Carolina <sup>73</sup>   | No   | --  | All certification and counting occurs after 9 am on election day.   |
| South Dakota <sup>74</sup>   | Partially  | Upon receipt                                      | Outer envelopes may be opened and time stamped; all other processing and counting to occur after the close of polls on election day; exception if the total number of absentee ballots justifies starting earlier on election day |
| Tennessee <sup>75</sup>  | No   | --  | All activities begin on election day; no counts released until after polls close  |
| Utah <sup>76</sup>   | Partially  | Upon receipt                                      | Signatures may be verified, eligibility checked and outer envelopes opened; all counting begins the day after election day  |
| West Virginia <sup>77</sup>  | No   | --  | All processing and counting occurs on election day  |
| Wisconsin <sup>78</sup>  | No   | --  | Time stamped only; all processing occurs on election day  |
| Wyoming <sup>79</sup>  | No   | --  | All processing occurs on election day   |

Source: National Conference of State Legislatures Elections and Campaigns databases; review of each state's election law by Commission staff.

### ***Proposed Amendments***

Revisions to the mail-in ballot processing to procedures need to answer two questions: how much time in advance of the opening of the polls on election day should be granted to begin processing, and what activities are authorized as part of the processing

<sup>73</sup> S.C. Code § 7-15-420. Amendments to allow processing to begin the day before the election were added as a Covid-19 pandemic response and lapse on December 31, 2021, reverting back to the language requiring all certification and counting to occur on election day. 2020 Act 133, signed by the Governor May 13, 2020.

<sup>74</sup> S.D. Cod. Laws §§ 12-19-10, 12-19-43 and 12-19-46. The earlier start provisions on § 12-19-43 were added by Senate Bill 184 (2021), signed by the Governor March 18, 2021.

<sup>75</sup> Tenn. Code §§ 2-6-202 and 2-6-303.

<sup>76</sup> Utah Code §§ 20A-3a-401 and 20A-3a-402.

<sup>77</sup> W. Va. Code §§ 3-3-8 and 3-3-11.

<sup>78</sup> Wisc. Stat. §§ 6.84 to 6.89; 7.52.

<sup>79</sup> Wy. Stat. §§ 22-9-101 to 22-9-125.

procedure. An additional issue is protecting the privacy of the ballots and maintaining a secure chain of custody.

Almost every state allows for an initial inspection and verification of the voter's affidavit on the outer envelope and updating and correcting lists of voters. A large subset of those states allow for a visual inspection of the inner envelopes to ensure that they are unmarked and undamaged, and then the inner envelopes are set aside. A dozen states do not allow any type of mail-in ballot preparation in advance of election day. Of the nine largest states by population reviewed above (Pennsylvania is ranked 5<sup>th</sup> overall), six of those states at least in some instances allow mail-in or absentee ballots to be verified, opened, and prepared for scanning. These six states also allow for ballots to be scanned into ballot scanners or other electronic tabulation devices. The only step not taken is to cause the scanner or tabulation machines to generate a total number of votes (in layman's terms, the only step that remains for election day is to "hit the button"). Another 16 of the remaining smaller states allow some time period before election day for ballots to be prepared and scanned, with only a machine-generated total left to be done on election day after the polls close. In other words, 22 states allow all but the final tabulation to occur some period of time before election day; 12 states prohibit any pre-processing, and the remaining 16 states (excluding Pennsylvania) allow pre-processing to some degree.

Some members of the Advisory Board have stated that processing needs to include scanning in order to be fully effective. Others have opined that Pennsylvania's newly installed (2019-2020) voting systems, found in all 67 counties, have the capacity to scan large volumes of votes and could accommodate the physical scanning of all mail-in ballots on election day. Pennsylvania's counties have security procedures in place to safeguard unopened mail-in ballots from the time they are received until election day by requiring them to be kept in sealed or locked containers, and these procedures may well be adequate to provide appropriate security for processed and scanned ballots. These amendments, however, also seek to strengthen safeguards and protect the chain of custody of opened ballots.

As to how much time should be allotted for ballot processing, states range from Georgia's 21 days to the day before election day. Possible models could be Georgia, California's 15-day period, or Florida's newly revised maximum 20-day period. Colorado, Nebraska, Nevada, and Rhode Island allow ballot preparation and, in some instances, ballot counting, to occur 14 to 15 days prior to the elections. The County Commissioners Association of Pennsylvania has advocated for additional ballot preparation time, but has not specified a particular time period.<sup>80</sup> During Advisory Board meetings, the time frames of 14 and 21 days have been suggested.

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<sup>80</sup> CCAP Election Reform Preliminary Report, January 2021, CCAPElectionsReformReportJanuary2021.pdf (pacounties.org).

AN ACT

Amending the act of June 3, 1937 (P.L.1333, No.320), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," in preliminary provisions and voting by qualified absentee electors, further providing for processing of official canvassing of official absentee ballots and mail-in ballots.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, amended March 27, 2020 (P.L.41, No.12), is amended to read:

Section 102. Definitions.--

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(a.1) The word "canvass" shall mean the gathering of ballots [after the final pre-canvass meeting] and the counting, computing and tallying of the votes reflected on the ballots.

\* \* \*

(q.1) The word "process" shall mean the inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the

envelopes and [the counting, computing and tallying of the votes reflected on the ballots] the preparation of those ballots for scanning, including unfolding, straightening and duplicating if the ballot is damaged in some way that prevents it from being scanned but where the voter's intent is still clear. It shall also include scanning the ballot into a voting machine or other automatic tabulating device, if the equipment used by the county board of elections permits a ballot to be scanned without tabulating or counting the votes on the ballot scanned. The term does not include the recording or publishing of the votes reflected on the ballots.

Section 2. Section 1308 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, amended March 27, 2020 (P.L.41, No.12), is amended to read:

Section 1308. [Canvassing] Processing of Official Absentee Ballots and Mail-in Ballots.

(a) The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D, shall safely keep the ballots in sealed or locked containers until they are to be [canvassed] processed by the county board of elections. An absentee ballot, whether issued to a civilian, military or other voter during the regular or emergency application period, shall be [canvassed] processed in accordance with subsection (g). A mail-in ballot shall be [canvassed] processed in accordance with subsection (g).

\* \* \*

(d) Whenever it shall appear by due proof that any absentee elector or mail-in elector who has returned his ballot in accordance with the provisions of this act has died prior to

the opening of the polls on the day of the primary or election, the ballot of such deceased elector shall be rejected by the [canvassers] board of elections but the counting of the ballot of an absentee elector or a mail-in elector thus deceased shall not of itself invalidate any nomination or election.

\* \* \*

(g) (1)

(i) An absentee ballot cast by any qualified absentee elector as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h) shall be canvassed in accordance with this subsection if the ballot is cast, submitted and received in accordance with the provisions of 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters).

(ii) [An] Subject to the provisions of paragraph (1.1) an absentee ballot cast by any absentee elector as defined in section 1301(i), (j), (k), (l), (m) and (n), an absentee ballot under section [1302(a.3)] 1302.1(a.3) or a mail-in ballot cast by a mail-in elector shall be canvassed in accordance with this subsection if the absentee ballot or mail-in ballot is received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

(1.1) The county board of elections [shall meet no earlier than seven o'clock A.M. on election day to pre-canvass all ballots received prior to the meeting.] may begin processing official absentee and mail-in ballots no earlier than seven o'clock A.M. on the 14th day immediately preceding the election, during the hours of seven o'clock A.M. to seven o'clock P.M. each day, including holidays and weekends, if the number of absentee and mail-in ballots sent by the county to registered voters indicates that

extra time will be needed to ensure that all such ballots can be processed, counted and tallied prior to eleven o'clock P.M. on the day of the election. A county board of elections shall provide at least forty-eight hours' notice of [a pre-canvass meeting] the first day that pre-election day ballot processing will begin by publicly posting a notice [of a pre-canvass meeting] of the dates and times processing will occur on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are [pre-canvassed] processed. No person observing, attending or participating in [a pre-canvass meeting] any ballot processing activities may disclose the results of any portion of any [pre-canvass meeting] ballot processing prior to the close of the polls on election day. A person who makes an unauthorized disclosure under this paragraph shall be guilty of a misdemeanor of the first degree.

(2) The county board of elections shall meet no earlier than the close of polls on the day of the election and no later than the third day following the election to begin canvassing absentee ballots and mail-in ballots not [included in the pre-canvass meeting] processed under paragraph (1.1). The meeting under this paragraph shall continue until all absentee ballots and mail-in ballots received prior to the close of the polls have been canvassed. The county board of elections shall not record or publish any votes reflected on the ballots prior to the close of the polls. The canvass process shall continue through the eighth day following the election for valid military-overseas ballots timely received under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot). A county board of elections shall provide at least forty-eight hours' notice of a canvass

meeting by publicly posting a notice on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are canvassed.

(3) When the county board meets to [pre-canvass] process or canvass absentee ballots and mail-in ballots under paragraphs (1), (1.1) and (2), the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the "Registered Absentee and Mail-in Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File," whichever is applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee and Mail-in Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the county board shall provide a list of the names of electors whose absentee ballots or mail-in ballots are to be [pre-canvassed] processed or canvassed.

(4) All absentee ballots which have not been challenged under section 1302.2(c) and all mail-in ballots which have not been challenged under section 1302.2-D(a)(2) and that have been verified under paragraph (3) shall be counted and included with the returns of the applicable election district as follows:

(i) The county board shall open the envelope of every unchallenged absentee elector and mail-in elector in such manner as not to destroy the declaration executed thereon.

(ii) If any of the envelopes on which are printed, stamped or endorsed the words "Official Election Ballot" contain any text, mark or symbol which reveals the identity of the elector, the elector's political affiliation or the elector's candidate preference, the envelopes and the ballots contained therein shall be set aside and declared void.

(iii)

(A) In the case of absentee and mail-in ballots processed during the time allotted in paragraph (1.1), after the ballots have been processed, they shall be locked and sealed in tamper-proof containers and secured in a locked secure location at the county board of elections physical location and otherwise retained subject to the provisions of this act regarding retention and safekeeping of canvassed ballots in general.

(B) In the case of absentee and mail-in ballots not processed under paragraph (1.1), the [The] county board shall then break the seals of such envelopes, remove the ballots and count, compute and tally the votes.

(iv) Following the close of the polls, the county board shall record and publish the votes reflected on the ballots.

\* \* \*



## IMPACT OF EXECUTIVE AND JUDICIAL DECISIONS ON PENNSYLVANIA ELECTION LAW

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Fundamental to democratic government is the concept of separation of powers and the notion of three separate but equal branches of government. At its most basic level, laws are enacted by the legislature, which also appropriates the funds necessary to operate the government, the executive branch implements and administers the law enacted by the legislature, and the judiciary interprets the Constitution and laws when controversies are brought before it. The presidential election of 2020 tested the limits of this separation and balance of powers at times; and in the minds of some, individual branches overstepped their bounds. Determinations by the Department of State and rulings by the Pennsylvania Supreme Court created temporary responses to questions raised and effectively filled in what were perceived to be gaps in primarily the mail-in ballot provisions of the law.<sup>81</sup>

The cases examined in Appendix B interpreted and modified Pennsylvania's mail-in law in the following ways:

- Act 77 was interpreted to permit counties to use drop boxes or other mobile or temporary collection sites. If this practice is not desired, the statute would need to be amended to explicitly prohibit their use and specify what constitutes an acceptable return of a mail-in ballot. Section 1306-D of the Election Code governs voting by mail-in electors. The provision states that “the elector shall send same [envelope] by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.”<sup>82</sup> The Pennsylvania Supreme Court in *Pennsylvania Democratic Party v Boockvar*<sup>83</sup> found that this provision was subject to multiple reasonable interpretations. Accordingly, the court determined that hand delivered mail-in ballots could be accepted at locations other than county board of election office addresses, finding that the legislative intent of Act 77 was to provide voters with options to vote outside of traditional polling places.
- The deadline for receipt of completed mail-in ballots was statutorily established as no later than 8:00 pm on the day of the primary or election.<sup>84</sup> This remains the state of the law in Pennsylvania in June 2021. This rule was temporarily lifted by the Pennsylvania Supreme Court for the November 2020 General Election in *Pennsylvania Democratic Party v. Boockvar*. The court granted this relief to reduce voter disenfranchisement through factors beyond their control.

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<sup>82</sup> § 1306-D(a) of the Election Code, as added by Act 77.

<sup>83</sup> *Pennsylvania Democratic Party v. Boockvar*, 238 A. 3d. 345, 361 (Pa. 2020).

<sup>84</sup> § 1306-D(c) of the 1937 Election Code, as added by Act 77.

In finding the COVID-19 pandemic and its fallout on voters seeking to exercise their franchise the equivalent of a natural disaster, conflated by the combination of U.S. Postal Service delivery standards and the timelines set forth in the Election Code for receipt and return of a mail-in ballot, the Pennsylvania Supreme Court granted temporary and extraordinary equitable relief in the form of an injunction that permitted tabulation of ballots mailed by voters via the USPS and postmarked by 8:00 p.m. on Election Day, and received by 5:00 p.m. on the Friday following the election.<sup>85</sup>

- The Pennsylvania Supreme Court in *Pennsylvania Democratic Party v. Boockvar* also held that ballots received between Election Day and the military ballot deadline that lacked a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, were presumed to have been mailed by Election Day unless a preponderance of the evidence demonstrated that it was mailed after Election Day. The Court specifically stated that “[W]e refuse, however, to disenfranchise voters for the lack or illegibility of a postmark resulting from the USPS processing system, which is undeniably outside the control of the individual voter.”<sup>86</sup> While not issuing a ruling (the case was dismissed on jurisdictional grounds), the United States Court of Appeals for the Third Circuit commented that it believed that the Pennsylvania Supreme Court’s order to presume that mail-in ballots without postmarks are valid violates the Equal Protection Clause because it creates an unequal treatment of votes.<sup>87</sup> It would be prudent to amend the Election Code to provide specific guidance on how ballots with illegal or missing postmarks should be treated. This issue was not unique to the November 2020 general election and is likely to result in further litigation in the future if not addressed.
- Pennsylvania’s requirement that pollwatchers be residents of the county in which they serve was found to not violate the United States or Pennsylvania Constitutions.<sup>88</sup>
- The ability to “cure” imperfect ballots was challenged on the basis that some counties allowed it and others did not, thus violating the equal protection rights of voters. The Pennsylvania Supreme Court sitting in the Middle District stated: “It is perfectly rational for a state to provide counties discretion to notify voters that they may cure procedurally defective mail-in ballots.”<sup>89</sup> As Pennsylvania’s statute neither allows nor prohibits ballot curing, a legislative declaration would probably be useful. Several states have specific statutes to deal with opportunities to cure mail-in ballots.

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<sup>85</sup> *Id.* at 371.

<sup>86</sup> *Id.* at 371, n.26.

<sup>87</sup> *Boguet v. Secretary Commonwealth of Pennsylvania*, 980 F.3d. 336, 354 (3d Cir. 2020).

<sup>88</sup> *Pennsylvania Democratic Party*, 238 A.3d. at 385.

<sup>89</sup> *Donald J. Trump for President, Inc., et al. v. Secretary Commonwealth of Pennsylvania*, 830 F. Appx. 377 (3d Cir 2020) (Trump II).

## *Pennsylvania Supreme Court Jurisdiction*

There has been some confusion among some observers as to how the Pennsylvania Supreme Court has been able to assume jurisdiction over some of these cases. In normal circumstances, a plaintiff or petitioner brings a case to a court of original jurisdiction. In Pennsylvania, that is usually a county court of common pleas or in matters involving government agencies, the Commonwealth Court. Decisions are made at those levels, and appeals can be sought through the Superior Court and then the Supreme Court. Act 77 of 2019 provided that the Pennsylvania Supreme Court had exclusive jurisdiction over constitutional challenges to its provisions regarding straight ticket voting and mail-in ballots, in any challenge brought before it during the 180 days following the effective date of Act 77. As Act 77 was effective upon enactment on October 31, 2019, constitutional challenges under this exclusive jurisdiction had to be commenced prior to the end of April 2020. Most of the litigation involving mail-in balloting occurred after the 180-day deadline had passed. Additionally, several constitutional challenges were brought in federal court, outside of the Pennsylvania Supreme Court's jurisdiction. To the extent litigation was brought after April 2020, the cases were usually filed in courts of common pleas and the Commonwealth Court. However, the Pennsylvania Supreme Court has what is known as extraordinary jurisdiction, or “King’s Bench” jurisdiction, which allows it to reach down to a lower court and remove a case from that court’s docket and immediately consider it, without going through the appeal process. This authority is limited to extraordinary circumstances, such as cases in which the importance of an issue to public well-being or the expediency with which action must be taken in the interest of justice requires superseding normal judicial or appellate procedures. Pennsylvania’s Supreme Court has explicitly had this authority since 1722.<sup>90</sup>

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<sup>90</sup> 42 Pa.C.S. §§ 502 and 726; Pa. R.A.P. 3309.



## ON-GOING PENNSYLVANIA LEGISLATIVE PROPOSALS

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### *House State Government Committee Public Hearings*

Between January 21 and April 15, 2021, the House State Government Committee conducted a series of 10 public hearings to gather information about Pennsylvania's election laws. On May 10, 2021, committee chair Representative Seth Grove released the committee's findings, "A Comprehensive Review of Pennsylvania's Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System."<sup>91</sup> The report addressed such issues as the Department of State's election guidance, the SURE system and other election information technology, audits, voter registration, voting machines, mail-in and absentee ballots, county election board operations and satellite offices, election integrity and accessibility policy, election laws and procedures in other states, and testimony from stakeholders and members of the House of Representatives.

### *Proposed Legislation in Pennsylvania*

Proposed legislation before the Pennsylvania General Assembly during the 2021-2022 legislative session addresses a variety of topics. Legislation introduced through June 21, 2021 has been listed below by topic. Seventy-four bills have been introduced, but as of June 21, 2021, all but two of the bills remain in the committees to which they were originally referred.

#### *Absentee Ballots*

Senate Bill 93, Printer's No. 164, allows electors who have requested permanent absentee voter status an option to revoke that status electronically.

#### *Candidates and Campaigns*

Senate Bill 140, Printer's No. 117, requires candidates' reports and statements to be filed electronically, and requires the Department of State to maintain a searchable computer database and electronic reporting system to include contributions and expenditures by candidates and political committees. Also provides for disposition of unused campaign funds.

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<sup>91</sup> [https://www.legis.state.pa.us/WU01/LI/TR/Reports/2021\\_0002R.pdf](https://www.legis.state.pa.us/WU01/LI/TR/Reports/2021_0002R.pdf).

House Bill 174, Printer's No. 141 prohibits public employees from using sick time to engage in campaign activities.

House Bill 851, Printer's No. 835 requires background checks for candidates for school district offices.

House Bill 852, Printer's No. 836 requires financial reporting of expected large political or campaign donations by nonprofit organizations by the organization and disclosure of receipts from candidates and campaigns.

House Bill 905, Printer's No. 892 calls for the mandatory disclosure of federal income tax returns of candidates for President of the United States and Governor of Pennsylvania.

### *Conduct of Elections*

House Bill 28, Printer's No. 1658 provides for immunity from liability for individuals who report election misconduct. Establishes a \$5,000 reward for information regarding election fraud leading to the arrest and conviction of an offender.

House Bill 29, Printer's No. 1659 provides for standardized requirements for all paper ballots.

Senate Bill 59, Printer's No. 36 allows for ranked-choice voting at November municipal elections.

Senate Bill 404, Printer's No. 395, creates the Voter's Bill of Rights regarding such matters as being in line to vote at the time the polls close, where voting is allowed if the person has moved to another polling district, voting via special needs ballot, taking children under the age of 18 into the voting area, voting without intimidation or force, and choosing to vote in-person even though a mail-in ballot had been requested.

Senate Bill 422, Printer's No. 422 requires voter ID to vote.

Senate Bill 735, Printer's No. 899 proposes a constitutional amendment to require voter identification at the polls. The bill received second consideration in the Senate and was re-referred to the Senate Appropriations Committee on June 16, 2021.

House Bill 737, Printer's No. 722 prohibits possession of a firearm at a polling place (exception for law enforcement).

House Bill 853, Printer's No. 837 requires voter ID to vote.

House Bill 1300, Printer's No. 1760 is a comprehensive election reform bill. For purposes of this report, the bill requires county boards of elections to meet on the first Friday and Saturday before election day to pre-canvas and may meet any other day during the five days leading up to election day. Additionally, the bill adds further responsibilities to the

Election Law Advisory Board. The bill received first consideration in the House of Representatives and was re-committed to the House Rules Committee on June 15, 2021.

### *Early Voting*

House Bill 316, Printer's No. 290 requires counties to provide early voting beginning 15 days prior to the date of the primary or election. Standards established for uniform days, times, hours of operation, and early voting sites. Counties may track votes by precinct but may not tabulate votes until close of polls on election day.

House Bill 366, Printer's No. 338 is similar to HB 316 above, except that the early voting period begins 30 days prior to the date of the primary or election, and requires a minimum number of polling places be available in the county, based on local population. The bill also extends the start of pre-canvassing to 14 days before the election.

### *Election Audits*

House Bill 1197, Printer's No. 1258, provides for Department of State audits with 90 days of each election. Within 180 days of all general elections, DOS is to compare voting records with neighboring states to ensure no discrepancies or irregularities, such as a voter voting in both Pennsylvania and another state.

House Bill 1476, Printer's No. 1593 provides for voting system performance audits of each county election results.

House Bill 1477, Printer's No. 1594 provides for county voting system audits.

### *Election Day Voter Access*

House Bill 18, Printer's No. 11 declares the first Tuesday after the first Monday in November, known as Election Day, as a legal holiday in Pennsylvania.

Senate Bill 309, Printer' No. 319 requires employers to give employees up to two hours absence from work in order to vote in-person.

House Bill 892, Printer's No. 883 requires employees to give employees up to two hours leave without loss of pay, leave or other benefits in order to vote in-person. The leave is limited to the beginning or end of the employee's shift.

### *Judicial Matters*

Senate Bill 22, Printer's No. 6 provides that when a Governor files a vacancy in the office of judge or magisterial district judge. Upon the creation of a vacancy, the Office of General

Counsel is to provide an application period of 30 days. Redacted applications are to be posted on the office's website and a 30-day public comment period must occur.

House Bill 263, Printer's No. 234 proposes a constitutional amendment to change the way number of justices and the manner of electing those justices for the Supreme and Superior Courts of Pennsylvania.

### *Mail-Ballots*

House Bill 25, Printer's No. 13 repeals mail-in ballot provisions.

House Bill 30, Printer's No. 1660 authorizes guardians, persons with power of attorney, and next of kin of qualified electors to apply for a mail-in ballot on their behalf. Creates a thumbprint identification system for those who cannot sign or mark their applications. Requires each county board to establish an election management system to track all mail-in ballots sent to electors.

House Bill 31, Printer's No. 1661 limits the locations of drop boxes and drop off locations, requires video surveillance of the site, and requires the ability to time, date and location stamp the ballots when dropped off.

Senate Bill 128, Printer's No. 100 changes Pennsylvania's voting method to all mail-in and absentee voting.

House Bill 195, Printer's No. 1189 repeals mail-in ballot provisions.

Senate Bill 322, Printer's No. 330 amends the mail-in ballot pre-canvassing provisions. It requires a judge of elections to deliver all completed absentee and mail-in ballots to the county board of elections by 2 A.M. It authorizes the chairs of the county political parties (or a designee) to remain in the room where pre-canvassing occurs. Persons allowed to watch the pre-canvassing are to be permitted to have a clear line of sight to view and hear the proceedings at a distance of six feet or less, but that does not impede the ability of the person canvassing the ballots from carrying out his or her duties.

House Bill 366, Printer's No. 338 extends the start of pre-canvassing to 14 days before the election. The bill also allows for early voting. See above.

Senate Bill 515, Printer's No. 506 repeals the permanent mail-in voter list and states that only the Department of State or the county board of election of the qualified elector's residence may send an application for a mail-in ballot to the elector.

Senate Bill 599, Printer's No. 673 extends the pre-canvassing period to 21 days before election day.

House Bill 808, Printer's No. 792 allows ballots postmarked by on or before election day and received by 8 P.M. on the 6<sup>th</sup> day following the election may be counted.



House Bill 895, Printer's No. 886 repeals the mail-in ballot application process and instead provides for automatic mailing of mail-in ballots to each qualified registered elector 60 days before the election.

House Bill 982, Printer's No. 994 extends the pre-canvassing period as follows:

- 1<sup>st</sup>, 2<sup>nd</sup>, and 2<sup>nd</sup> Class A counties begin may begin pre-canvassing 14 days prior to election day;
- 3<sup>rd</sup> Class counties may begin pre-canvassing 7 days prior to election day; and
- 4<sup>th</sup> through 8<sup>th</sup> Class counties may begin pre-canvassing 3 days prior to election day

House Bill 1266, Printer's No. 1346 provides that absentee and mail-in ballots received within three days after the election that are postmarked on or before election day shall be counted.

House Bill 1270, Printer's No. 1350 prohibits private organizations or individuals from sending an application for an absentee or mail-in ballot to an elector by mail or electronic means. The bill requires all qualified registered electors to be placed on a permanent mail-in ballot list. Electors may opt out of this list upon request.

House Bill 1498, Printer's No. 1636 repeals the ability of a person who received a mail-in ballot turning in the ballot for destruction and voting in-person on election day. The bill authorizes electors to present their completed mail-in ballots to the judge of elections at their polling place on election day.

House Bill 1499, Printer's No. 1637 specifically authorizes signature verification of absentee and mail-in ballots and grants the authority to reject ballots if the signatures are found not to match.

House Bill 1501, Printer's No. 1638 requires each mail-in ballot to include a unique scannable identification code.

House Bill 1502, Printer's No. 1639 provides that absentee and mail-in ballots (except military ballots) received after 8 P.M. on election day are void. Provides that no declared disaster emergency, executive order or court order may waive that deadline.

House Bill 1618, Printer's No. 1794 requires county boards of elections to meet at least once before election day to pre-canvass all ballots received prior to the meeting. This can occur at any point during the seven-day period prior to election day, including the day before election day. This authorization is contingent upon the board completing a pre-canvass of all ballots received prior to the Friday before election day. Pre-canvassing activities authorized are those currently present in the law.

House Bill 1619, Printer's No. 1795 extends the current pre-canvassing period to no earlier than 21 days prior to election day.

House Bill 1620, Printer's No. 1796 provides for a "notice to cure" if an absentee or mail-in ballot is received on which the signature cannot be verified to prove identity.

Senate Bill 784, Printer's No. 922 changes the application date for absentee ballots and allows additional time for precanvassing.

### *Nomination Petitions*

Senate Bill 56, Printer's No. 33 extends the provisions regarding the counting and treatment of irregular ballots to general elections (the provisions formerly applied only to primary elections). This includes a provision that irregular ballots are not to be counted unless the total number of ballots equals or exceeds the number of signatures required to file a nomination petition.

House Bill 367, Printer's No. 339 sets the minimum number of signatures need for candidates at primaries at 10 in cities of the 3<sup>rd</sup> Class.

House Bill 894, Printer's No. 990 extends the provisions regarding the counting and treatment of irregular ballots to general elections (the provisions formerly applied only to primary elections). This includes a provision that irregular ballots are not to be counted unless the total number of ballots equals or exceeds the number of signatures required to file a nomination petition. The bill also provides for open primaries.

House Bill 1425, Printer's No. 1532 waives nomination petition and affidavit requirements for incumbents seeking renomination for the same office or persons who were defeated in the immediately preceding election cycle for the same office. This waiver is inapplicable for offices that are the subject of redistricting in the first election cycle following the redistricting.

### *Pollwatchers*

Senate Bill 573, Printer's No. 612 increases the number of authorized pollwatchers, removes the requirement that pollwatchers be residents of the county within which they serve and replaces it with a requirement that they be residents of the Commonwealth, and authorizes watchers to be within the enclosed space where ballot counting occurs, but they may not interfere with the counting.

### *Poll Worker Recruitment and Retention*

House Bill 1638, Printer's No. 1813 provides an exemption from state income tax for compensation received by poll workers for the election-related duties.

### *Primaries*

Senate Bill 346, Printer's No. 369 allows an "unenrolled elector" (independent or unaffiliated) to vote at a primary by declaring which political party the elector wishes to vote in for that primary election.

Senate Bill 428 moves the date of the primary in presidential election years to the third Tuesday of March.

Senate Bill 690, Printer's No. 816 allows an "unenrolled elector" (independent or unaffiliated) to vote at a primary by declaring which political party the elector wishes to vote in for that primary election.

House Bill 894, Printer's No. 990 allows unaffiliated qualified voters to vote at a primary by declaring which political party the elector wishes to vote in for that primary election. The party designation remains until the elector changes it. See above.

House Bill 1614, Printer's No. 1788 amends the number of official election ballots to be provided at primary and general elections.

### *Voter Registration*

House Bill 24, Printer's No. 12 creates the Voter Registration Database Audit Act. The bill calls for an audit of the voter registration database and at the conclusion purging of the records of all deceased and inactive electors.

Senate Bill 30, Printer's No. 12 Senate Bill 30, Printer's No. 12 proposes a constitutional amendment to lower the voting age in Pennsylvania to 16.

Senate Bill 141, Printer's No. 118 provides for automatic voter registration upon application for a driver's license, and upon application for employment with a state agency or an application for program benefits through a state agency.

House Bill 143, Printer's No. 109 requires monthly cross-referencing of the State's database of registered voters with death record information from local registrars. The bill also provides for registration updates for person who move residence.

Senate Bill 198, Printer's No. 171, creates the Election Day Registration Act.

House Bill 205 provides for automatic registration of qualified electors. Personal information is to be collected from PennDOT, the Department of Human Services, and the Department of Military and Veterans Affairs. Electors so registered are to receive notice of the registration, the opportunity to decline, and the ability to enroll/designate a political party.

House Bill 215, Printer's No. 181 allows for same day voter registration.

House Bill 462, Printer's no. 423 provides for cancellation of a deceased persons registration. Within two days of receipt of a death certificate by a local registrar or the State Registrar of Vital Statistics, notice is to be given to local election officials.

Senate Bill 510, Printer's No. 536, allows youth between the ages of 16 and 18 to pre-register to vote.

House Bill 1053, Printer's No. 1087 authorizes same day voter registration.

House Bill 1334, Printer's No. 1432 creates the Secure and Fair Elections Act. The bill requires all persons seeking to register to vote to provide proof of U.S. citizenship. Persons registered to vote on the effective date of the act will be deemed to have provided satisfactory proof and will not be required to submit evidence of U.S. citizenship.

#### *Voting Machines*

House Bill 1663, Printer's No. 1858 requires voting machines used in Pennsylvania to be manufactured in the United States and sold by a vendor with a primary place of business in the United States.

#### *Voting Rights of Previously Incarcerated*

House Bill 1336, Printer's No. 1439 provides that the Department of State to notify inmates of the requirements of eligibility to vote after release from confinement in a penal institution in the Commonwealth.

House Bill 1337, Printer's No. 1434 provides that the Department of State shall maintain a database on its publicly accessible website to all persons to search for information about the voting habits and activities of previously incarcerated individuals.

#### *2020 Election Concerns*

Senate Bill 71, Printer's No. 53 requires the Department of State to provide a report on how complaints about the 2020 Election were handled.

Senate Bill 528, Printer's No. 602, the 2020 General Election Review and Audit Act requires the Auditor General to perform an audit of the 2020 presidential election.

## ACTIVITIES IN OTHER JURISDICTIONS

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### *United States Congress*

This subchapter provides a cursory review of proposed federal legislation known as HR1, also commonly referred to as the “For the People Act of 2021.” It is worth noting that this piece of legislation has been a polarizing subject of discussion throughout national politics, especially with respect to its proposed amendments to federal election law.

#### *Procedural History*

HR1 is currently pending before the 117<sup>th</sup> United States Congress. The bill was initially introduced before the U.S. House of Representatives on January 4, 2021, where 222 Democrats ultimately signed on as co-sponsors. No Republicans co-sponsored the bill. On March 2, 2021, HR1 was brought up for debate before the House. On March 3, 2021, the House voted 220-210 to adopt HR1, with all but one present Democratic Representative (Rep. Bennie Thompson, Miss.) voting in favor and no support from any Republican Representatives. The bill was received in the U.S. Senate on March 11, 2021, and as of May 25, 2021, the bill has yet to be taken up in the Senate and remains pending.<sup>92</sup>

The bill addresses several areas of the election process including election integrity and security, campaign finance, voter access, and ethics for the three branches of the federal government. In addition, the bill would federalize the election process by implementing nationwide mandates for the states to carry out in their election processes. For instance, the bill would require all states to universally implement early voting, automatic voter registration, no-fault absentee balloting for voters, and other requirements.

#### *Significant Provisions*

Below is a list highlighting some of the more significant provisions within the bill that will have a direct impact on state laws for federal elections.

##### Expanding Voter Registration

The bill mandates that the chief State election official of each State operate a system of automatic registration for the registration of eligible individuals to vote for elections for Federal office in the State. According to the bill, “automatic registration” is essentially a

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<sup>92</sup> Congress.Gov, “H.R. 1 – For the People Act of 2021,” <https://www.congress.gov/bill/117th-congress/house-bill/1/all-actions?overview=closed#tabs>, last accessed on May 25, 2021.

system that registers an individual to vote in elections for Federal office in a State, if eligible, by electronically transferring the information necessary for registration so that, unless the individual declines to be registered, the individual will be registered to vote.<sup>93</sup>

Specifically, the official must ensure that the individual is registered to vote in elections for Federal office in the State if the individual is eligible, not later than 15 days after a contributing agency has transmitted information. This official is also required to send written notice to the individual, in addition to other means of notice established within the bill, of the individual's voter registration status, not later than 120 days after a contributing agency has transmitted such information.<sup>94</sup> The bill further provides that a state may not refuse to treat an individual as an eligible individual on the grounds that said individual is less than 18 years of age at the time a contributing state agency receives information with respect to the individual, so long as the individual is at least 16 years of age at such time.<sup>95</sup> Agencies administering the automatic registration system mandated by the bill must ensure that an eligible individual is given the opportunity to decline the opportunity to register to vote.<sup>96</sup>

In addition, the bill requires each state to ensure the availability of internet for online registration on the official public websites of the appropriate State and local election officials. The websites must also include online assistance to applicants in applying to register to vote, a streamlined completion and submission registration application form prescribed by the Election Assistance Commission, and online receipts of completed voter registration applications.<sup>97</sup>

Each State would be required under the bill to permit same day registration for any eligible individual. In other words, an eligible individual must be permitted on the day of a Federal election and on any day when voting, including early voting, to register to vote in a Federal election and to cast a vote in such election.<sup>98</sup>

Under the bill, each state would be mandated to permit individuals to vote in an election for Federal office during an early voting period prior to the date of the election, in the same manner as voting is allowed on such date. The early voting period required would consist of a period of consecutive days (including weekends) beginning on the 15th day before the date of the election (or, at the option of the State, on a day prior to the 15th day before the date of the election) and would end on the date of the election. Each polling place permitting early voting must allow such voting for no less than 10 hours on each day; have uniform hours each day for voting; and allow such voting to be held for some period of time prior to 9:00 a.m (local time) and some period of time after 5:00 p.m. (local time).<sup>99</sup>

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<sup>93</sup> H.R. 1, 117th Cong., § 1012(a)(1)-(2) (2021).

<sup>94</sup> *Ibid.* § (b)(1)-(2).

<sup>95</sup> *Ibid.* § 1012(d).

<sup>96</sup> *Ibid.* § 1013(b)(2).

<sup>97</sup> *Ibid.* § 6A(a)(1)-(4).

<sup>98</sup> *Ibid.* § 304(a)(1)(A)-(B).

<sup>99</sup> *Ibid.* § 306(a)(1)-(2), (b)(1)-(3).

The bill also requires certain parameters for location of polling places, such as proximity to public transportation and college campuses.<sup>100</sup>

Voting by mail must be an option available to all eligible voters in every state under the requirements of the bill. No state may impose any additional requirements or conditions on the eligibility of an individual to cast a vote by absentee ballot by mail.<sup>101</sup>

#### Protection of Information

The bill prohibits contributing state agencies from collecting, retaining, transmitting, or publicly disclosing an individual's decision to decline voter registration, an individual's decision not to affirm his or her citizenship, or any information that a contributing agency transmits pursuant to pre-existing voter registration information.<sup>102</sup> Each state must establish appropriate technological security measures to prevent to the greatest extent practicable any unauthorized access to information provided by individuals using the online services for voter registration.<sup>103</sup>

#### Voter Identification

The bill appears to relax state voter ID laws by requiring states to allow those who do not have an ID to present a statement "signed by the individual under penalty of perjury, attesting to the individual's identity and attesting that the individual is eligible to vote in the election." This requirement would only be applicable for federal elections.<sup>104</sup>

#### Use of Electronic Addresses for Purposes other than Official Use

H.R. 1 would also require that a chief State election official ensure that any electronic mail address provided by an applicant is used only for purposes of carrying out official duties of election officials and is not transmitted by any State or local election official (or any agent of such an official, including a contractor) to any person who does not require the address to carry out such official duties and who is not under the direct supervision and control of a State or local election official.<sup>105</sup>

#### Congressional Redistricting

The bill establishes terms and conditions States must follow in carrying out congressional redistricting after an apportionment of Members of the House of Representatives. Specifically, the bill requires that congressional redistricting be conducted in accordance with a redistricting plan established by an independent redistricting commission established by a state pursuant to specific terms in the bill.<sup>106</sup>

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<sup>100</sup> *Ibid.* § 306(c)(1), (3).

<sup>101</sup> *Ibid.* § 307(a)(1).

<sup>102</sup> *Ibid.* § 1015(d)(1)-(4).

<sup>103</sup> *Ibid.* § 6A(f).

<sup>104</sup> *Ibid.* § 1903(a).

<sup>105</sup> *Ibid.* § 1003(c).

<sup>106</sup> *Ibid.* § 2401(a)(1).

Under the plan, the following criteria must be followed:

- Districts must comply with the U.S. Constitution.
- Districts must comply with the Voting Rights Act of 1965 (52 U.S.C. 10301 et seq.), and all applicable Federal laws.
- Districts must be drawn, to the extent that the totality of the circumstances warrant, to ensure the practical ability of a group protected under the Voting Rights Act of 1965 (52 U.S.C. 10301 et seq.) to participate in the political process is not diluted or diminished.
- Districts must respect communities of interest, neighborhoods, and political subdivisions to the extent practicable. A “community of interest” is defined as an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, cultural, geographic or historic identities. The term communities of interest may, in certain circumstances, include political subdivisions such as counties, municipalities, tribal lands and reservations, or school districts, but shall not include common relationships with political parties or political candidates.<sup>107</sup>

### Campaign Finance

The bill also addresses the issue of campaign finance by expanding the prohibition on campaign spending by foreign nationals. In addition, the bill requires additional disclosure of campaign-related fundraising and spending, along with additional disclaimers regarding certain political advertising, and establishing an alternative campaign funding system for certain federal offices.<sup>108</sup> Any covered organization that makes campaign-related disbursements aggregating more than \$10,000 in an election reporting cycle must, not later than 24 hours after each disclosure date, file a statement with the Commission disclosing its campaign-related disbursements.<sup>109</sup>

### Ethics for the Three Branches of Government

The bill addresses ethics requirements for all three branches of government. For instance, the bill provides that the Judicial Conference issue a code of conduct applicable to each justice and judge of the United States. The code of conduct may include provisions that are applicable only to certain categories of judges or justices.<sup>110</sup> The bill also prohibits Members of the House from serving on the board of a for-profit entity and establishing additional conflict-of-interest and ethics provisions for federal employees and the White House.<sup>111</sup> With respect to conflicts of interest and Covered Executive Branch employees,

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<sup>107</sup> *Ibid.* § 2401(a)(1)-(4).

<sup>108</sup> *Ibid.* § 4105.

<sup>109</sup> *Ibid.* § 342(a)(1).

<sup>110</sup> *Ibid.* § 7001(a).

<sup>111</sup> *Ibid.* Title VIII.



the bill prohibits such employees from participating “personally and substantially in a particular matter in which the covered employee knows or reasonably should have known that a former employer or former client of the covered employee has a financial interest.”<sup>112</sup>

### *Other States*

State election laws are being amended at a rapid pace, and new enactments reach the evening news with startling frequency. This subchapter will attempt to address the newest developments in other states that may be of interest to Pennsylvania as it deliberates potential changes to its election laws beyond mail-in ballot processing.

Through June 21, 2021, other states have adopted numerous statutes and amendments affecting election law. This short summary highlights those changes that are not addressed elsewhere in this report.<sup>113</sup>

#### Arizona

- Comparison of death records with the statewide voter registration database
- Security procedures for voting machines and electronic polling devices
- Prohibits the use of private monies to prepare, administer or conduct an election
- Specifies that absentee ballots cannot reveal voter’s political affiliation
- Revisions to election ballots, dates, deadlines, election boards, nomination petitions, and polling locations

#### Arkansas

- Voter ID for provisions ballots
- Requires all voting machines to operate without a connection to the internet or an external network
- Limits on absentee ballot collection

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<sup>112</sup> *Ibid.* § 602.

<sup>113</sup> Information culled from the National Conference of State Legislatures, “2021 Election Enactments,” May 24, 2021, <https://www.ncsl.org/research/elections-and-campaigns/2021-election-enactments.aspx>.

- Prohibits election officials from distributing unsolicited absentee ballot applications
- Balloting Integrity Act – complaint process
- Restricts electioneering within 100 feet of primary exterior entrance to a polling place
- Requires county board to certify to State that it has a secure electronic connection to prevent unauthorized access to electronic pollbooks, voter registration database, voting equipment, and materials

#### Hawaii

- Changes to procedures for proclamations of voter service centers and drop boxes, including days, location, and hours of operation

#### Idaho

- Training and guidance on verification of signatures of electors and petition signers

#### Illinois

- Amends drop box provisions, allows curbside voting, and allow ballots returned without postage to be accepted
- Provision of voter registration information to citizens when released from incarceration and allows Department of Corrections to participate in automatic voter registration program
- Requires cybersecurity measures by local election authorities
- Mandates that information regarding voter registration to be provided to high school students
- State Board of Elections to provide local authorities with guidance 90 days before each election
- Makes November 8, 2022 a state holiday
- Provides for permanent mail-in voting lists

## Indiana

- Removal from voter registration of persons incarcerated in another state
- Early absentee ballot voting in satellite offices
- Prohibits use of private funds for preparing, administering or conducting elections, including registering voters

## Iowa

- Reduces early voting period from 29 days to 19 days
- Requires absentee ballots to be received by the close of the polls on election day
- Requirements of nomination petitions
- Proof of ID for provisional ballots
- Absentee ballot application and ballot tracing on state website to be available by February 26, 2024
- Prohibiting ballot harvesting

## Kentucky

- Establishes three days of early voting
- Allows vote center polling places
- Creates an online absentee ballot request portal
- Allows voters to cure signatures on absentee ballots
- Provides for curing of ballots
- Establishes an online absentee ballot tracking service

## Louisiana

- Requires annual training for members of parish board of elections

- Requires persons conducting exit polls to register with the State
- Registrars of voting to complete orientation and training
- Provides for voter registration rights of persons with felony convictions if the person has not been incarcerated for the past five years and had not been convicted of an election offense

#### Maryland

- Increases the number of voting centers in some counties
- Allows for permanent absentee ballot status and list
- Establishes provisions governing locations of drop boxes
- Requires absentee ballot applications be sent to every eligible voter before the primary election in 2022 and 2024
- Provides for information and voter registration applications for individuals released from correctional facilities
- Requires Baltimore City central booking facility to provide a designated drop box for eligible voters who are incarcerated in the facility to submit voter registration and absentee ballot applications, and absentee ballots
- Expands hours at early voting centers

#### Montana

- Eliminates same day voter registration. Deadline is now noon of the day before the election.
- Prohibits any pecuniary benefit to a person in exchange for distributing, ordering, requesting, collecting, or delivering ballots
- Requires Secretary of State to adopt rules governing election security and requires election security assessments to be made every year, beginning January 1, 2023
- Requires accessible voting locations for disabled voters during elections conducted primarily by mail

- Pollwatchers are allowed to be at each drop box during the days and times they are open for mail ballot elections
- Revises identification requirements for voter registration and voting
- Requires voter list maintenance to occur annually
- Allows election officials to reduce hours of operation at polling places where less than 400 voters are expected
- Allows counties to test vote tabulation machines before automatic tabulation begins

#### Nevada

- Governs voting by electronic transmission system by voter with a disability – registration, application for absentee ballot, and casting an absentee ballot
- Establishes mail in ballot procedures for all elections. Each active registered voter to receive a mail ballot for every election

#### New Jersey

- Allows county boards of election to determine drop box locations in certain circumstances
- Requires nine days of early voting for November elections; three days for non-presidential primary elections and five days for presidential primary elections

#### New York

- Adds the State University of New York (SUNY) as a designated voter registration agency for automatic voter registration<sup>114</sup>
- Restores voting rights of formerly incarcerated persons who were convicted of a felony

#### North Dakota

- Prohibits the use of private monies for election operations or administration

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<sup>114</sup> SUNY is comprised of 64 campuses; by comparison, Penn State has 24 campuses.

## Oklahoma

- Modified the days when registered voters can apply in-person for absentee ballot
- Requires county election board to keep record of voter's preferred method of voting
- Authorizes the state to participate in multistate voter list maintenance organizations such as the Electronic Registration Information Center (ERIC)
- Authorizes purchase of equipment and software to implement electronic poll books

## North Dakota

- Persons conducting public counting of the votes received at the polls are not to leave the site until the count is complete

## Oregon

- Prohibits communication of false statements regarding voting procedures, places, dates and deadlines, etc. within 30 days of a primary or 60 days of a general elections
- Prohibits moving voters to inactive status due to not voting or updating voter registration for a period of time. Counties to notify persons of current inactive status and how to reactivate registration

## Tennessee

- Counties with permanently established convenient voting centers to provide a report within 90 days of each election to include an evaluation of the centers, issues, and suggestions for improvement
- Prohibits the use of private monies for election operations or administration

## Texas

- Requires early voting clerks to post early voting turnouts in a timely manner
- Creates felony offenses for knowingly and intentionally counting invalid votes

- Provides for persons allowed to be present at the polling place through the election day process
- Sets deadlines for local register of deaths to report to the registrar of the decedent's county of residence and the Secretary of State
- Provides for the development of an online tracking tool to all tracing of location and status of mail-in applications and ballots
- Requires voting system vendors to disclose ownership interests of persons and entities owning five percent or more of the vendor
- Provides for a standardized training program and materials for county election officers
- Provides for the withholding of certain state and federal funds from registrars who fail to timely perform duties requiring the approval, change or cancellation of a voter's registration
- Provides for risk-limiting audits after August 31, 2016, with a pilot effort to take place with the November 8, 2022 election
- Prohibits establishing false residence for purpose of influencing an election
- Requires that voting system equipment be manufactured, stored and held in the United States and sold by a company whose headquarters and parent headquarters are in the United States, beginning September 1, 2021.

## Utah

- Requires removal of deceased voters from the voter rolls
- Creates an online system for voters to track their mailed ballots and receive notice of status
- Ranked-choice voting pilot program
- Requires election officials to report an estimate of the total number of ballots in the official's custody that remain to be counted beginning on the day after the election and ending on the day before the canvass date
- Effective date of change in voter designation or political party affiliation

## Vermont

- Requires the Secretary of State to mail every active voter a postage-paid ballot for each general election

## Virginia

- If online voter registration system fails before close of registration period, Governor has authority to order the system to be open after the closing date for a commensurate time
- Requires establishment of ballot drop boxes, allows for cure of signature statements in some circumstances
- Permits early absentee in-person voting
- Permits persons 16 years of age or older to pre-register to vote
- No person convicted of a felony may vote before completion of his/her sentence, at which time voting rights are automatically restored
- Prohibits voting by incapacitated persons
- Requires the establishment of a drop off location for the return of marked absentee ballots at the general registrar's office and each voter satellite office, as well as at each polling place on election day
- Requires the state to create a tool to allow voters with a visual impairment or print disability to electronically receive and mark absentee ballots

## Washington

- Exempts election operation plans, security risk assessments and other election security records for public records disclosure law
- Restores voting rights of citizens on parole
- Misrepresentation of an unofficial ballot collection site or device as an official ballot drop box is a gross misdemeanor

## Wyoming

- Requires voter ID to vote in person



***Statutory Authority  
for Election Law Advisory Board***

PENNSYLVANIA ELECTION CODE - OMNIBUS AMENDMENTS  
Act of Mar. 27, 2020, P.L. 41, No. 12 Cl. 25  
Session of 2020  
No. 2020-12

**ARTICLE XIII-E  
PENNSYLVANIA ELECTION LAW ADVISORY BOARD**

Section 1301-E. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The Pennsylvania Election Law Advisory Board established under section 1302-E(a).

Section 1302-E. Pennsylvania Election Law Advisory Board.

(a) Establishment.--The Pennsylvania Election Law Advisory Board is established within the Joint State Government Commission.

(b) Members.--The board shall be comprised of the following members:

- (1) The Secretary of the Commonwealth or a designee.
- (2) The President pro tempore of the Senate or a designee.
- (3) The Minority Leader of the Senate or a designee.
- (4) The Speaker of the House of Representatives or a designee.
- (5) The Minority Leader of the House of Representatives or a designee.
- (6) One member from each congressional district, of whom no more than half may be registered with the same political party, appointed by the Governor and confirmed by the Senate and which shall include members who:

- (i) represent groups advocating for individuals with disabilities;<sup>22</sup>
- (ii) represent groups advocating for voting rights; and
- (iii) represent county commissioners or county election officials.

(c) Duties.--The board shall have the following duties:

- (1) Study this act and identify statutory language to repeal, modify or update.

- (2) Collaborate with other agencies and political subdivisions of the Commonwealth to study election-related issues.
- (3) Study the development of new election technology and voting machines.
- (4) Evaluate and make recommendations on:
  - (i) improving the electoral process in this Commonwealth by amending this act or through regulations promulgated by the Department of State; and
  - (ii) implementing best practices identified to ensure the integrity and efficiency of the electoral process in this Commonwealth.
- (5) By the end of each fiscal year, publish extensive and detailed findings on the Joint State Government Commission's publicly accessible Internet website and make them available in electronic format to the Office of the Governor and members of the General Assembly.
- (d) Quorum.--A majority of appointed members shall constitute a quorum for the purpose of conducting business.
- (e) Chairperson and vice chairperson.--The members shall select a member to be chairperson and another member to be vice chairperson.
- (f) Transparency and ethics.--The board shall be subject to the following laws:
  - (1) The act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.
  - (2) The act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.
  - (3) The act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.
  - (4) 65 Pa.C.S. Ch. 7 (relating to open meetings).
- (g) Information gathering.--The board may conduct hearings and otherwise gather relevant information and analysis that it considers appropriate and necessary to fulfill its duties.
- (h) Reimbursement.--Members of the board shall be reimbursed for reasonable expenses.

### *2020 Pennsylvania Election Law Litigation*

*Pennsylvania Democratic Party v. Boockvar*<sup>115</sup>

#### Posture of the Case

Initially, the Pennsylvania Democratic Party and several Democratic candidates for office filed a petition for an injunction and declaratory relief in the Commonwealth Court. The Pennsylvania Supreme Court, under its authority to exercise extraordinary jurisdiction over an issue of immediate public importance, assumed jurisdiction in this matter.

#### Issue before Pennsylvania Supreme Court:

In this case, the petitioners sought:

- A declaratory judgment to confirm that Act 77 permits county boards of elections to provide “mobile or temporary collection sites, and/or drop-boxes for the collection of mail-in ballots”;
- An injunction to lift the deadline in the Election Code statewide to allow any ballot postmarked by 8:00 p.m. on Election Night to be counted if it is received by the Boards” by 5:00 p.m. on Tuesday, November 10, which is the deadline for ballots to be received under the Federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA);
- An injunction requiring the county boards of elections to contact electors who make minor errors on their mail-in ballots and provide them the opportunity to cure the ballot defect until the UOCAVA deadline;
- A declaration that there is no statutory authority to set aside an absentee or mail-in ballot solely for failure to place it into the official ballot or “secrecy” envelope — effectively asking the court to permit the counting of “naked” ballots;
- A declaration that the Election Code’s poll watcher residency requirement does not violate the United States Constitution’s First and Fourteenth Amendments, its Equal Protection Clause, or the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution.

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<sup>115</sup> *Pennsylvania Democratic Party*, 238 A. 3d. at 361

Before the Supreme Court resolved these issues on their merits, a request to intervene was filed by Donald J. Trump for President, Inc., the Republican Party of Pennsylvania, the Republican National Committee, as well as Joseph B. Scarnati II, President Pro Tempore and Jake Corman, Majority Leader of the Pennsylvania Senate, in opposition to the petition.

The Supreme Court granted relief to the Petitioners' First, Second, and Fifth claims. Important to this litigation, to provide the relief the Petitioners sought in their Second claim, the Court fashioned its own rule which required ballots received up to three days after the election must be included so long as they are postmarked within that three-day period. If a mail-in ballot is not postmarked but received within that three-day window, it shall be presumed that the ballot was mailed within the allotted timeframe.

It denied relief as to the Third and Fourth claims, regarding ballot curing and secrecy envelopes respectively, holding that the Election Code does not permit ballot curing and that the Election Code explicitly requires that a mail-in ballot be placed inside the secrecy envelope to be considered valid.

#### Post-Ruling Procedure

On September 24, an application for a stay of its ruling was denied by the Pennsylvania Supreme Court. On September 28, stays were filed with the United States Supreme Court by the Pennsylvania Republican Party and Joseph Scarnati, respectively. On October 19, these applications for a stay of the Pennsylvania Supreme Court's ruling were denied by an equally divided United States Supreme Court.

On October 4, a petition for a writ of certiorari was filed by the Republican Party of Pennsylvania. The issue on appeal before the United States Supreme Court is whether the decision by the Pennsylvania Supreme Court requiring the state to count mail-in ballots received up to three days after Election Day, so long as they are not clearly postmarked after Election Day, violates federal election law and the Constitution.

On October 28, a motion to expedite consideration of the petition for a writ of certiorari was denied. Justice Alito, joined by Justices Thomas and Gorsuch, issued a statement disagreeing with this denial, and indicating that they consider this matter important and expressing a belief that its resolution should be expedited.

On November 6, the Republican Party of Pennsylvania filed an Emergency Application for an Injunction with the United States Supreme Court. The same day, Justice Alito ordered that all county boards of election in the Commonwealth segregate all mail-in ballots received after 8:00 PM on Election Day, to keep them in secure, safe, and sealed container separate from other voted ballots, and that all such ballots be counted separately.

However, there has been no action taken by the U.S. Supreme Court since that date. As of this date, the Court has not accepted, nor denied, the petition for a writ of certiorari in this case.

Posture

On September 28, following the Pennsylvania Supreme Court’s decision in *Pennsylvania Democratic Party v. Boockvar* permitting mail-in ballots to be counted if they are received three days after the election, the Pennsylvania Republican Party petitioned the United States Supreme Court for an Emergency Application for a Stay Pending the Filing and Disposition of a Petition for a Writ of Certiorari. On October 19, the application to stay the Pennsylvania Supreme Court’s ruling was denied. This is the same application and denial as in *Pennsylvania Democratic Party* and *Scarnati*.

On October 23, the Pennsylvania Republican Party filed a petition for a Writ of Certiorari. The same day a motion to expedite consideration of the petition for a Writ of Certiorari was filed. On October 28, the motion to expedite was denied, with Justice Alito issuing a statement in which Justices Thomas and Gorsuch joined. This is the same motion to expedite, denial of motion to expedite, and statement of Justice Alito issued in *Pennsylvania Democratic Party* and *Scarnati*.

The questions presented to the United States Supreme Court in *Pennsylvania Republican Party* are:

- “Whether the Pennsylvania Supreme Court majority violated the United States Constitution by usurping the Pennsylvania General Assembly’s plenary authority to “direct [the] Manner” for appointing electors for President and Vice President, U.S. Const. art. II, § 1, cl. 2, and its broad power to prescribe “[t]he Times, Places, and Manner” for congressional elections, id. art. I, § 4, cl. 1”; and
- Whether the majority’s extension and presumption conflict are preempted by federal statutes that establish a uniform nationwide federal Election Day. See 2 U.S.C. §§ 1, 7; 3 U.S.C. § 1.

The questions presented in this petition are identical to the ones presented in the petition of *Scarnati*. The petitions for writ of certiorari were denied on February 22, 2021.

*Scarnati v. Pennsylvania Democratic Party*

Posture

In *Pennsylvania Democratic Party v. Boockvar*, Joseph Scarnati filed a motion to intervene as President Pro Tempore of the Pennsylvania Senate. After the decision in that case, Joseph Scarnati and Jake Corman (Scarnati’s successor as President Pro Tempore)

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<sup>116</sup> This case and the Scarnati case that follows were combined into *Republican Party of Pennsylvania v. Degraffenred*, 592 U.S. \_\_\_ (2021).

filed one emergency stay and the Republican Party filed another emergency stay, as well as seeking an emergency stay under the heading of the *Pennsylvania Democratic Party*.

This case arises from Scarnati’s Emergency Application for a Stay Pending the Filing and Disposition of a Petition for a Writ of Certiorari, filed on September 28. On October 19, the stay was denied by the Court, and Justices Thomas, Alito, Gorsuch and Kavanaugh would have granted it, indicating a 4-4 split (as Justice Barrett did not take the bench until October 27).

A petition for writ of certiorari in *Scarnati* was filed on October 23, along with a motion to expedite consideration of the Petition for a Writ of Certiorari. That motion was denied on October 28. This is the same motion in *Pennsylvania Democratic Party* but it appears to apply to *Scarnati*, *Republican Party of Pennsylvania*, and *Democratic Party of Pennsylvania*.

The questions presented to the United States Supreme Court in *Scarnati* are:

- “Whether the Pennsylvania Supreme Court majority violated the United States Constitution by usurping the Pennsylvania General Assembly’s plenary authority to “direct [the] Manner” for appointing electors for President and Vice President, U.S. Const. art. II, § 1, cl. 2, and its broad power to prescribe “[t]he Times, Places, and Manner” for congressional elections, id. art. I, § 4, cl. 1”; and
- Whether the majority’s extension and presumption conflict with and are preempted by federal statutes that establish a uniform nationwide federal Election Day. See 2 U.S.C. §§ 1, 7; 3 U.S.C. § 1.

It is noted in the petition for *Scarnati* that “the questions presented in this Petition are identical to those presented by the Republican Party of Pennsylvania in its Petition for a Writ of Certiorari in *Republican Party of Pennsylvania v. Boockvar*, No. 20-542 (filed Oct. 23, 2020).

*Donald J. Trump for President, Inc. v. Boockvar*<sup>117</sup>

President Donald Trump’s campaign filed a complaint in the Federal District Court for the Western District of Pennsylvania alleging federal and state constitutional violations stemming from the Commonwealth’s implementation of mail-in voting. Between the time the campaign filed the lawsuit and the time the judge had occasion to rule on it the Pennsylvania Supreme Court decided several of the issues before the District Court, narrowing the scope of the instant litigation.

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<sup>117</sup> *Donald J. Trump for President, Inc. v. Boockvar*, 403 F. Supp. 3d 331 (W.D. Pa. 2020) (Trump I).

The three issues decided in this case were:

- “whether the use of so-called “drop boxes” for mail-in ballots is unconstitutional, given the lack of guidance or mandates that those drop boxes have security guards to man them”;
- “whether the Secretary’s guidance as to mail-in ballots—specifically, her guidance that county election boards should not reject mail-in ballots where the voter’s signature does not match the one on file—is unconstitutional”; and
- “whether Pennsylvania’s restriction that poll watchers be residents in the county for which they are assigned, as applied to the facts of this case, is unconstitutional.”

The Court entered a judgment for the defendant on all three issues. The Court concluded that the campaign lacked standing to bring the challenge, as they “have not presented a concrete injury to warrant federal-court review.” The Court further opined that even if the Court were to agree that the campaign had standing, their claims would fail on the merits because they “essentially ask this Court to second-guess the judgment of the Pennsylvania General Assembly and election officials, who are experts in creating and implementing an election plan,” explaining that “the job of an unelected federal judge isn’t to suggest election improvements, especially when those improvements contradict the reasoned judgment of democratically elected officials.” (internal citation omitted).

*Disability Rights Pennsylvania et al. v. Boockvar*<sup>118</sup>

On May 8, the Disability Rights Pennsylvania filed a complaint requesting declaratory and injunctive relief to expand the deadline for submitting mail-in votes in light of the Coronavirus pandemic. On May 15, the Pennsylvania Supreme Court entered an order *sua sponte* dismissing plaintiff’s complaint.

*Bognet v. Boockvar*<sup>119</sup>

On October 22, the plaintiffs, a candidate for federal office and private citizens, filed a complaint against Secretary Boockvar and all 67 county boards of election in federal District Court, claiming that the Pennsylvania Supreme Court decision in *Pennsylvania Democratic Party v. Boockvar* usurped the authority of the General Assembly to establish the “Time, Place and Manner” of federal elections in the federal Constitution’s Electors and Elections Clause by extending the receipt deadline for mail-in ballots to three days after Election Day.

On the same day, the plaintiffs filed a Motion for an Immediate Temporary Restraining Order and a Preliminary Injunction and an Expedited Hearing. On October 28, the Court denied the plaintiff’s motion.

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<sup>118</sup> No. 83 MM 2020 (Pa. Supreme Court).

<sup>119</sup> *Bognet*, 980 F.3d. 336.

The Court ruled that plaintiff Bognet’s “alleged injury [as a result of the Pennsylvania Supreme Court decision] is too speculative to confer standing.” The Court reasoned that for Bognet to have suffered harm, “more votes which otherwise would not have been counted must be cast in favor of Bognet’s opponent than in his favor.” The Court also found that the two private citizen plaintiffs lacked standing. Their theory of vote dilution was not a concrete and particularized injury-in-fact necessary to confer Article III standing.

However, the Court found that the Pennsylvania Supreme Court’s order to presume that mail-in ballots without postmarks are valid violates the Equal Protection Clause because it creates an unequal treatment of votes. Although the District Court found that the plaintiff had established a likelihood of success on the merits of their claim, ordinarily entitling them to a preliminary injunction, the Court cited *Republican National Committee v. Democratic National Committee*<sup>120</sup> for the principle that “lower federal courts should ordinarily not alter the election rules on the eve of an election.” On that basis, the Court denied the plaintiffs their requested relief.

The plaintiffs filed a notice of appeal on October 29. On October 30, the plaintiffs filed an Emergency Motion for an Expedited Briefing Schedule. The same day the Third Circuit denied the plaintiff appellants’ Emergency Motion. After a full briefing by both parties, the court issued an opinion affirming the District Court’s denial of Plaintiff’s Emergency Motion for Preliminary Injunction.

The Third Circuit affirmed the District Court, finding that the plaintiffs lacked standing under the Elections and Electors Clause. After some analysis of the Elections and Electors Clause, the Third Circuit concluded that only a state legislature would have standing to bring a claim under that clause, stating that “Plaintiffs’ Elections Clause claims thus ‘belong, if they belong to anyone, only to the Pennsylvania General Assembly,’” quoting *Corman v. Torres*.<sup>121</sup>

Further, the Third Circuit held that “vote dilution” by counting unlawfully cast ballots is not a concrete harm sufficient to confer standing on the plaintiffs, finding that “violation of state election laws by state officials or other unidentified third parties is not always amenable to a federal constitutional claim.” If vote dilution of lawfully cast ballots by unlawfully cast ones were a true equal protection problem, “then it would transform every violation of state election law ... into a potential federal equal-protection claim requiring scrutiny of the government’s ‘interest’ in failing to do more to stop the illegal activity.”<sup>122</sup>

Even if such a claim were enough to confer standing, the Third Circuit explained that the Equal Protection Clause’s concern regarding vote dilution was founded in circumstances where votes were weighed differently, not where, as in this instance, a state actor allegedly violates state law by counting votes it should not have counted. Here, “no

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<sup>120</sup> *Republican National Committee v. Democratic National Committee*, 140 S. Ct. 1205, 1207 (2020).

<sup>121</sup> *Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018).

<sup>122</sup> *Trump I* at 391.



Pennsylvania voter’s vote will count for less than that of any other voter as a result of the Deadline Extension and Presumption of Timeliness.”

In summation, the Third Circuit emphasized that it was not deciding whether the Deadline Extension or the Presumption of Timeliness were proper exercises of the Commonwealth’s lawmaking authority. It was deciding only the question of standing to enjoin the counting of ballots on the grounds that doing so “dilutes their votes or constitutes differential treatment of voters in violation of the Equal Protection Clause.”

*Donald J. Trump for President, Inc., et al. v. Boockvar*<sup>123</sup>

In this case, President Trump’s campaign sought to set aside ballots cast in the 2020 presidential election and enjoin the certification of the election based on the November 2<sup>nd</sup> guidance sent by Secretary Boockvar to the counties that the Pennsylvania Supreme Court decision in *Pennsylvania Democratic Party v. Boockvar* neither required nor prohibited ballot curing. Some counties chose to implement a “notice-and-cure” policy, such as Philadelphia, while others did not. In addition to the campaign, plaintiffs in the case included two voters whose votes were discarded because of a defect and whose counties (Lancaster and Fayette) did not give them the opportunity to cure their ballots.

Plaintiffs filed this claim on November 9, raising seven counts — two equal-protection claims, two due-process claims, and three claims under the Electors and Elections Clauses. On November 15, Plaintiffs filed their First Amended Complaint, withdrawing five of their claims and leaving only two claims for each the individual plaintiffs and the campaign — one equal protection claim and one Electors and Elections Clause claim under the federal Constitution each.

After the campaign filed this claim, the United States Court of Appeals for the Third Circuit in *Bognet v. Secretary Commonwealth of Pennsylvania*<sup>124</sup> determined that only the General Assembly would have standing to bring an Electors and Elections Clause claim in federal court. Relying on this case, the District Court dismissed this count on standing grounds as it applied to both the individual plaintiffs and the campaign.

The thrust of the remaining Equal Protection claim of the campaign is that “it is unconstitutional for Pennsylvania to give counties discretion to adopt a notice-and-cure policy,” on the basis that such a policy violates the Equal Protection Clause. However, even on the Equal Protection Clause claim, the District Court found that neither the campaign nor the individual plaintiffs who were not afforded the opportunity to cure their ballots had standing to challenge the November 2<sup>nd</sup> order.<sup>125</sup>

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<sup>123</sup> *Donald J. Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania*, 830 F. Appx. 377 (3d Cir. 2020) (Trump II).

<sup>124</sup> *Bognet*, 980 F.3d. 336.

<sup>125</sup> *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020).

While the District Court found that the two individual plaintiffs had established injury in fact, they “fail[ed] to establish that it was Defendants who caused these injuries and that their purported injury of vote-denial is adequately redressed by invalidating the votes of others.” The Court further reasoned that even if the Secretary of State and other counties “unconstitutionally allowed other voters to cure their ballots that alone cannot confer standing on Plaintiffs who seek to challenge the denial of their votes.”

The District Court further found that because the Defendants’ conduct imposed no burden on the individual plaintiffs’ rights, any claim brought pursuant to the Equal Protection Clause would be reviewed under the rational basis test. Reviewing the individual plaintiffs’ claims under this test, the Court held that their claims “fail because it is perfectly rational for a state to provide counties discretion to notify voters that they may cure procedurally defective mail-in ballots.”

The District Court explained that, even if it were to find that the individual plaintiffs’ Equal Protection rights were violated, it could not impose the remedy they seek — an injunction of the electoral certification. This is because “rather than requesting that their votes be counted, they seek to discredit scores of other votes” by asking the Court to issue such an injunction. The remedy sought is not proportional to the alleged violation of the individual plaintiff’s rights.

Further, “the Trump Campaign’s theory also fails because neither competitive nor associational standing applies, and it does not assert another cognizable theory of standing.” The Court also cited the recently decided *Bognet* in a footnote to clarify that that decision also foreclosed standing on the “theory that Pennsylvania’s purportedly unconstitutional failure to uniformly prohibit the notice-and-cure procedure constitutes vote-dilution[.]”

The District Court also noted that the campaign’s Brief in Opposition to the Motions to Dismiss only spent one paragraph discussing how several counties’ refusal to permit Republican poll watcher or canvass observers violated the campaign’s Equal Protection rights. The District Court stated that there is no Equal Protection issue presented because the campaign “makes no mention of disparity in treatment of observers based on which campaign they represented.” Because there is no allegation that Republican poll watchers or observers were treated differently than Democratic ones, there can be no cognizable Equal Protection claim.

On appeal to the Third Circuit, the Court upheld the dismissal of the Plaintiffs’ case on standing grounds. The Court emphasized that the number of ballots challenged — effectively all of the cured ballots “is far smaller than the roughly 81,000-vote margin of victory” for Biden. Further, the Court also held that the District Court did not abuse its discretion in not letting the Campaign amend its complaint a second time.

*In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*<sup>126</sup>  
and *In Re: 2,349 Ballots in the 2020 General Election*<sup>127</sup>

In this case, consolidating the appeals of six separate cases, the Pennsylvania Supreme Court decided that the Election Code does not require a county board of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot's outer envelope but did not handwrite their name, their address, and/or a date, where no fraud or irregularity has been alleged.

The outcome of the case hinged on whether such information is specifically required by the Election Code or whether the instruction to include the name, address, and date is merely "directory." The court concluded that, based on the unambiguous text of the Election Code as well as the principle that election laws ordinarily will be construed liberally in favor of the right to vote, such information is directory and the failure to include it does not disqualify a ballot.

*Kelly v. Pennsylvania*<sup>128</sup>

On November 21, State Representative Mike Kelly and several other plaintiffs filed a complaint for declaratory and injunctive relief against the Secretary of State of the Commonwealth, the Pennsylvania General Assembly, and Governor Wolf in the Commonwealth Court. The plaintiffs sought a declaration that the universal mail-in ballot provisions of Act 77 are unconstitutional and an injunction prohibiting the certification of the 2020 election in Pennsylvania or requiring any such certification to be rescinded.

The thrust of Rep. Kelly's legal argument is that the scheme of Act 77 to allow any elector to vote by mail violates the limitation on absentee voting prescribed in the Pennsylvania Constitution, specifically Article VII, §14. Because Act 77 had the effect of amending the Pennsylvania Constitution, but did not go through the procedural requirements for such an amendment, it should have no legal effect. Effectively, Rep. Kelly asserted that the law was void *ab initio*.

The defendants countered that Act 77 prohibits any challenge to itself if it is filed 180 days after the law's passage and that the plaintiff waited too long to challenge the law under its own terms. The defendants further argued Article VII, §4 of the Pennsylvania Constitution permits the General Assembly to make any law it wishes regarding how elections are conducted, and that Article VII §14 is irrelevant to Act 77.

On November 22, the petitioners filed a Motion for Emergency/Special Prohibitory Injunction. The petitioners hoped to enjoin the defendants from taking official action to certify or otherwise finalize the results of the 2020 General Election. On November 24, before the Court could rule on the Motion for Emergency Injunction, the Secretary of State

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<sup>126</sup> Nos. 31 EAP 2020, 32 EAP 2020, 33 EAP 2020, 34 EAP 2020, 35 EAP 2020.

<sup>127</sup> 29 WAP 2020 (Consolidated Cases).

<sup>128</sup> *Kelly v. Pennsylvania*, 2020 W.L. 7224280 (Not Reported) (Pa. Commw. Ct. 2020), vacated 240 A.3d 1255 (Pa. 2020).

of the Commonwealth certified the election results, but only for the offices of President and Vice President.

The petitioners questioned whether the respondents “might have short-circuited the certification process to purportedly avert this Courts’ determination on the merits by declaring victories in the presidential and vice-presidential elections, while leaving certification of the elections for the other offices for another time.”

Given the exigencies and time constraints, the Court felt it was necessary to preliminarily enjoin, on an emergency and temporary basis, executive branch defendants from undertaking any other actions with respect to the certification of the results of the presidential and vice-presidential elections. Further, the Court found that the plaintiffs “appear to have established a likelihood to succeed on the merits because Petitioners have asserted the Constitution does not provide a mechanism for the legislature to allow for expansion of absentee voting without a constitutional amendment.”

On November 25, the Governor and Secretary Boockvar filed an Application for Extraordinary Jurisdiction with the Pennsylvania Supreme Court, seeking to have the preliminary injunction invalidated. On November 28, the Pennsylvania Supreme Court, in a *per curiam* opinion, vacated the Commonwealth Court’s order to preliminarily enjoin the Commonwealth from taking any further action regarding the certification of the results of the 2020 General Election, and dismissed with prejudice the Petition for Review filed by Rep. Kelly and the other petitioners.

The Pennsylvania Supreme Court opined that the petitioners’ “challenge violates the doctrine of laches given their complete failure to act with due diligence in commencing their facial constitutional challenge, which was ascertainable upon Act 77’s enactment.” The Pennsylvania Supreme Court emphasized that it was relying upon the common law doctrine of laches, and not the 180-day time bar on challenges to Act 77 that is found in the text of the act.

On the same day, Rep. Kelly and the other plaintiffs filed an Emergency Application for Stay of the Pennsylvania Supreme Court’s November 28 order. On December 3, the Pennsylvania Supreme Court denied the plaintiffs’ Emergency Application for a Stay. On the same day, Rep. Kelly and the other plaintiffs filed an Emergency Application for Writ of Injunction with the United States Supreme Court. Also on December 3, Justice Alito requested responses from respondents by December 8. On December 8, the respondents filed their opposition to the Emergency Application. On February 22, 2021, SCOTUS denied the Petition for a Writ of Certiorari.<sup>129</sup>

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<sup>129</sup> *Id.*, cert. denied. 141 S.Ct. 1449 (2021).

*Donald J. Trump for President, Inc. v. Boockvar*<sup>130</sup>

On November 4, President Trump’s campaign filed a Petitioner for Review in the Commonwealth Court seeking declaratory and injunctive relief against Secretary Boockvar and each of the 67 county boards of election. The campaign in this action challenged the Secretary’s November 1 guidance to counties that voters may wait until November 12 — six days after the additional three days given by the Pennsylvania Supreme Court for voters to mail-in ballots — to provide missing proof of identification.

The campaign pointed to Election Code § 1308(h), which requires that if a voter’s identification is not received for verification “by the sixth day following the election” such ballots shall not be counted. The campaign sought declaratory relief that Secretary Boockvar’s November 1 guidance on this issue was in contravention to the statutory requirement, and a “preliminary, special, and/or permanent” injunction directing the county boards of elections to adhere to the cited provision of the Election Code.

On November 12, the Court granted the campaign the requested declaratory and injunctive relief, finding that Secretary Boockvar “lacked statutory authority to issue the November 1, 2020, guidance to Respondents County Boards of Elections insofar as that guidance purported to change the deadline in Section 1308(h) of the Pennsylvania Election Code.” The Court also enjoined the counties and the Secretary from counting ballots which have been segregated pursuant to the Court’s November 5 order in *Donald J. Trump for President v. Montgomery County Board of Elections*, discussed below.

*Donald J. Trump for President, Inc. v. Montgomery County Board of Elections*<sup>131</sup>

On November 5, President Trump’s campaign filed a Petition for Review of Decision by the Montgomery County Board of Elections. The petition was a statutory appeal to the Common Pleas Court from the county Board of Elections’ decision denying the campaign’s objection to the counting of statutorily prohibited absentee and mail-in ballots cast in Montgomery County, Pennsylvania. The campaign objected to the counting of 600 ballots on which the electors did not fill out their address immediately below their signature line. The campaign asserted that electors are required to provide this information pursuant to Election Code §§ 1308(a) and 1306-D(a).

On November 13, the Common Pleas Court issued a memorandum and order denying the campaign’s petition. The court pointed to language from Election Code § 1308(g)(3), which gives the county board of elections discretion to determine if the declaration is sufficient. Further, the Common Pleas Court held that a ballot should not be invalidated simply because an elector failed to write their address on the outer envelope. The Common Pleas Court disagreed with the campaign’s interpretation of the two sections it relied upon, pointing to other language in the Election Code that did require the address of a witness when an elector was unable to sign due to illness or physical disability. Had

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<sup>130</sup> *Donald J. Trump for President, Inc. v. Boockvar*, 602 MD 2020 (Commw. Ct.) (Trump III).

<sup>131</sup> *Donald J. Trump for President, Inc. v. Montgomery County Board of Elections*, No. 2020-18680 (Mont. Co. Common Pleas 2020).

the General Assembly intended to require an elector's address to be printed on the outer envelope, the Common Pleas Court reasoned, it would have more explicitly stated that requirement.

Further, the instructions provided by the county board of elections did not inform voters that they should write their address on the outer envelope or risk having their ballot rejected. The instructions only informed the electors that they must sign and date their ballot. Regarding the campaign's requested relief, the Common Pleas Court cited *In re Recount of Ballots Cast in General Election on November 6, 1973*, 325 A. 2d 303, 308-309 (Pa. 1974) for the proposition that invalidating a ballot "where the voter has complied with all instructions communicated to him and in the absence of any evidence of improper influence having been exerted, invalidation would necessarily amount to an unreasonable encroachment upon the franchise...."

The campaign filed a notice of appeal on November 16, but withdrew its notice of appeal on November 18.

*Barnette et al. v. Lawrence et al.*<sup>132</sup>

On November 3, Kathy Barnette, a candidate for federal political office, along with several voters, filed a complaint for declaratory and injunctive relief against Kenneth Lawrence in his capacity as a member of the Montgomery County Board of Elections, as well as two other board members.

The candidate and voters alleged that the Montgomery County Board of Elections was pre-canvassing mail-in ballots prior to the 7:00 AM November 3 time and date for canvassing, and permitting mail-in electors in that county whose ballots were illegally pre-canvassed to change their ballot if the ballot was deficient in some way. The candidate and voters sought an injunction prohibiting the Montgomery County Board of Elections from pre-canvassing ballots and contacting voters to change their ballots if those ballots are deficient, as well as a declaratory judgment that the Montgomery County Board of Elections' actions violate the Election Code.

On November 3, the plaintiff candidate and voters filed a Motion for a Temporary Restraining Order of the same conduct. On November 5, the plaintiffs and the voters withdrew their Motion for a Temporary Restraining Order, as the pendency of another hearing in the Commonwealth Court would make the TRO requested "ineffective in addressing the matters covered in their Motion." On November 6, the Court denied the initial Motion for Temporary Restraining Order in light of the plaintiff's motion to withdraw the motion for a TRO.

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<sup>132</sup> *Barnette et al. v. Lawrence et al.*, 2:20-cv-05477-PBT (E.D. Pa. 2020).

On November 12, the plaintiffs moved to withdraw their complaint without prejudice.

*Donald J. Trump for President, Inc. v. Philadelphia County Board of Elections*<sup>133</sup>

On November 5, President Trump’s campaign filed a Motion for Emergency Injunction against the Philadelphia County Board of Elections, asking the court to order the defendant to cease counting ballots until Republican canvass observers are given meaningful access to the sites where ballots are being counted.

After this motion was filed, the parties came to an agreement, and the Court dismissed the Motion for Emergency Injunction without prejudice.

*Hamm v. Boockvar*<sup>134</sup>

On November 3, Plaintiffs Hamm, a candidate for the Pennsylvania General Assembly, Kelly, a candidate for federal Congressional office, and other individual voters filed a complaint in the Commonwealth Court seeking declaratory and injunctive relief from Secretary Boockvar’s November 3 guidance to the county boards of election that they should “provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected....”

Plaintiffs claim this guidance permitting county boards of elections to give electors an opportunity to cure defects in their ballots contradicts the Election Code, specifically § 1308 and the Pennsylvania Supreme Court decision in *In re November 3, 2020 General Election*.<sup>135</sup>

On November 6, the Commonwealth court granted the Plaintiff’s requested relief, and further ordered that “all provisional ballots cast on election day where the elector’s absentee ballot or mail-in ballot was timely received by the county boards of election be segregated and secured from other provisional ballots pending compliance with procedures set forth in Section 1210 of the Election Code ....”

*In re: Allegheny County Provisional Ballots*<sup>136</sup>

On November 16, petitioner Nicole Zicarelli, a candidate for the Pennsylvania Senate, filed a Petition of Review from the Allegheny County Board of Elections seeking to set aside approximately 300 provisional ballots. The petitioner alleges that these ballots were only signed on one line but the Election Code requires signatures on two separate lines. The Board responded that if the ballots were incorrectly signed by the electors on

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<sup>133</sup> *Donald J. Trump for President, Inc. v. Philadelphia County Board of Elections*, No. 2:20-cv-05533-PD (E.D. Pa.2020).

<sup>134</sup> *Hamm v. Boockvar*, 600 M.D. 2020 (Commw. Ct. 2020).

<sup>135</sup> *Supra*, note 126.

<sup>136</sup> *In re: Allegheny County Provisional Ballots*, 1161 C.D. 2020 (Commw. Ct.), Petition for Allowance of Appeal Denied, 338 WAL 2020 (Pa. 2020).

mistaken or wrong advice of the Board, the electors should not be penalized by having their votes cancelled.

In a November 18 opinion, the Allegheny County Court of Common Pleas ruled in favor of the Allegheny County Board of Elections, finding that where no fraud is alleged the Board should favor the right to vote, and that where a voter relies on incorrect information from the Board the voter should not be penalized.

On appeal, the Commonwealth Court reversed the Allegheny County Court of Common Pleas, holding in a November 20 opinion that according to the plain language of the relevant statute — Election Code § 1210(a.4)(5(ii)(A) and (F) — the provisional ballots cannot be counted.

On November 23, the Pennsylvania Supreme Court denied the Allegheny County Board of Election’s Petition for Allowance of Appeal.

*In re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*<sup>137</sup>

On November 8, President Trump’s campaign filed a Petition for Review of the decision of the Bucks County Board of Elections denying the campaign’s objection to counting statutorily prohibited absentee and mail-in ballots. The campaign challenges ballots counted by the Bucks County Board of Elections that had no date or a partial date only; had no printed name or address; had a partial address; and had a mismatched address. These challenged ballots total 2,175. The campaign also challenges 69 mail-in ballots accepted as votes where the secrecy envelope was not sealed and 7 which had extraneous markings on them.

On November 19, the Court denied the Petition for Review. The Court began its analysis by noting that previous case law on the issue has militated in favor of enfranchising voters, not disenfranchising them, notwithstanding the canon that all provisions of the Election Code should be strictly enforced. “In an attempt to balance these two overriding principles, the Pennsylvania Supreme Court has ruled that certain provision of the Election Code are mandatory, and some are directory.” Ballots should not be disqualified if they fail to follow directory provisions of the law.

The campaign pointed to the use of the word “shall” throughout the Election Code, and particularly in the sections of the code requiring a date, printed name, and address. Regarding the ballots with a partial date handwritten on the outer envelope, the Court held that those ballots should not be invalidated as the parties stipulated that such ballots were received by Election Day.

Regarding the ballots with no date on the envelope, the Court found that the Election Code was clear in its mandate of requiring a date along with a signature on the outer envelope. However, the Court noted that the board co-mingled ballots from undated

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<sup>137</sup> *In re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, 1191 C.D. 2020 (Commw. Ct.); Petition for Allowance of Appeal denied, 676 MAL 2020 (Pa. Supreme Court).



outer envelopes with all other ballots, so it is impossible to tell which ballots came from which envelopes. Because of the co-mingling of the improper ballots with the bulk of properly-cast ones, the Court stated it would be unfair to disenfranchise these voters as a result of the Board's decision. The Court noted that although there was no case law on the issue of co-mingling improper ballots with proper ones, the act of co-mingling was done in the presence of both Republican and Democratic representatives, who could have objected at that time. Thus, the Court implied that because the complaining party could have stopped the Board from co-mingling the improper ballots, they have essentially waived the issue.

Turning to the ballots with no handwritten name or address, a partial written address, or a mismatched address on the outer envelope, the Court found that the “[f]ailure of the elector to complete this information is not an error of law...there is no requirement that filling out the declaration needs to include handwriting the elector's name and address.” These are minor irregularities which should not be a basis to invalidate ballots.

Finally, addressing the ballots enclosed but not sealed in their secrecy envelopes, the Court found that there is no evidence that the electors failed to securely seal the ballot in the privacy envelope as required by the election code. Because there is insufficient evidence to determine whether the provision of the statute mandating sealing the ballot in the secrecy envelope was violated by the elector — as opposed to simply having the seal fail — the Court found that it would be an injustice to disenfranchise these voters, and declined to overrule the Board regarding their decision to count these ballots as well.

On November 23, the campaign filed an Application for Expedited Treatment and Summary Relief with the Commonwealth Court, asking that it grant summary adjudication on an expedited basis. On November 25, the Commonwealth Court affirmed the decision of the Bucks County Court of Common Pleas as it pertained to the electors' failure to write their names, addresses, and the dates of signatures on their ballots' outer envelope. The Commonwealth Court's ruling cited the recently decided case *In re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election*, holding that the Election Code “does not require boards of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot's outer envelope but did not handwrite their name, their address, and/or date, where no fraud or irregularity has been alleged.”

As to the ballots which were placed in the secrecy envelopes but not sealed, the Commonwealth Court stated that the “legislature did not merely require the envelopes to be sealed, but specified that it be ‘securely’ sealed.” However, the Commonwealth Court noted that the instructions provided by the board of elections did not specify that the envelope needed to be securely sealed and that if it was not the ballot may not be counted. Given this, and the fact that it cannot be conclusively established that the voters failed to seal their ballots, the Court held that its ruling regarding the sealing of secrecy envelopes is to be applied prospectively only, and the 69 ballots which were unsealed in their secrecy envelopes will not be invalidated.

On December 4, the campaign filed an Emergency Petition for Allowance of Appeal to the Pennsylvania Supreme Court. On December 8, the Emergency Petition for Allowance of Appeal was denied.

*Metcalf v. Wolf*<sup>138</sup>

On December 4, State Representative Daryl Metcalfe and several other Republican state house members filed a Request for an Emergency Temporary Restraining Order and Injunctive Relief and Compliant for Writ of Mandamus against Gov. Wolf, Secretary Boockvar, and the Democratic State Electors of the Electoral College.

The complaint was premised on the assertion that the Governor and Secretary of State failed to implement the recommendations in the 2019 Auditor General’s report regarding deficiencies in the SURE system. Additionally, the complaint alleged that Secretary Boockvar had been allowing “select organizations with close ties to the Democratic Party ... direct[] access to the Commonwealth’s SURE System.” In support of this allegation, the complaint quotes Secretary Boockvar stating that she gave Rock the Vote, a Democratic NGO, access to the SURE system.

Additionally, the complaint includes an affidavit from a USPS mail carrier who transported completed Pennsylvania ballots from New York to Pennsylvania. It was estimated by the affiant that there were close to 200,000 such ballots shipped in one batch. The assertion was that these are falsified, fictitious, and illegal ballots.

Further, the complaint challenges some counties’ use of a notice-and-cure procedure for defective ballots, quoting portions of the Pennsylvania Supreme Court’s decision in *Pennsylvania Democratic Party v. Boockvar* as support for the contention that the notice-and-cure policies pursued by some counties was illegal.

Other allegations of irregularities animated this complaint. For instance, Deputy Secretary for Elections Marks announced that those who voted by mail-in or absentee and whose ballots had been rejected as defective may go in person to a polling place and re-cast their vote as a provisional ballot. It is alleged by Rep. Metcalfe that not only did this policy contradict Election Code §§ 1308 and 1210, it was timed to coincide with a Democratic Party campaign to tell voters who had voted by absentee or mail-in ballot to go in-person to their polling place and cast an additional provisional ballot. It was further alleged that this policy presumed the fact that the absentee and mail-in ballot would have to have been pre-canvassed before Election Day in order for the county Boards of Election to determine which absentee and mail-in ballots were defective or deficient prior to Election Day — another violation of the Election Code.

Based on these irregularities and others covered in separate lawsuits detailed in this memorandum, the petitioners sought a Writ of Mandamus from the Court “directing Defendant Wolf to withdraw the certification of the 2020 presidential election,” as well as

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<sup>138</sup> *Metcalf v. Wolf*, 636 MD 2020 (Commw. Ct.).

temporary and permanent injunctive relief preventing the Democratic electors from casting votes in the Electoral College.

On December 9, the Court denied the petitioners' sought-after Writ of Mandamus and Temporary and Permanent Injunctions. The Court found that the petitioners "are unable to demonstrate a clear right to relief or likelihood of prevailing on the merits because their underlying action, although styled as a complaint seeking a writ of mandamus, is really an improper and untimely election contest." In support of its ruling, the Court cited Pennsylvania Supreme Court precedent holding that the proper remedies for violations of the Election Code are to be found in the Election Code itself.

*In re: Canvassing Observation*<sup>139</sup>

On November 3, President Trump's campaign filed an appeal from the Philadelphia Board of Elections decision denying his petition to conduct a closer inspection of the ballot canvassing process at the Philadelphia Convention Center. The campaign claimed the way its canvass observers were treated by the Philadelphia Board of Elections violated its statutory right under § 1308(b) to observe the canvassing of ballots.

The Common Pleas Court held otherwise, finding that the statute relied on by the campaign merely requires that the boards of elections allow the campaign's observers to "be present" at the canvassing operation — it does not require that the canvassers permit the observers to see ballots being counted, ballots being removed from their outer envelopes, and similar actions of the canvassers. The Court stated "the watchers' purpose is not to audit the individual ballots, and 'meaningful observation' or 'meaningful access' is not a legally recognized reason for a watcher getting close enough to do so."

On November 4, the campaign appealed to the Commonwealth Court. On November 5, the Commonwealth Court issued an opinion reversing the Philadelphia Common Pleas Court. In so deciding, the Court pointed to language in Election Code § 1308(g)(1.1) that permitted campaigns to have attorneys, representatives, or watchers present "in the room" where ballots are being canvassed.

This, the Court held, implied a right in the campaign to be more than just "present." "To find otherwise would completely undercut the intent of the Election Code by reducing candidates' representatives to tourists incapable of carrying out the observations allowed by the Election Code for the purposes of reporting to the candidate they represent." The Court then found that the Philadelphia Board of Elections violated the Trump campaign's right to have observers present, discussing in some detail how his campaign's observers were kept away from the canvassing tables. The Court then pointed out that the Philadelphia Board of Elections presented no evidence to contradict the campaign's observer's testimony.

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<sup>139</sup> *In re: Canvassing Observation*, 241 A.3d 339 (Pa. 2020).

On November 5, the Philadelphia Board of Elections filed an Emergency Petition for Allowance of Appeal to the Pennsylvania Supreme Court. On November 9, the Pennsylvania Supreme Court granted the Emergency Petition, on the following three legal questions:

- Whether, as a matter of statutory construction pursuant to Pennsylvania law, the Commonwealth Court erred in reversing the trial court, which concluded that Petitioner City of Philadelphia Board of Elections' regulations regarding observer and representative access complied with applicable Election Code requirements.
- Whether the issue raised in Petitioner's petition for allowance of appeal is moot.
- If the issue raised in Petitioner's petition for allowance of appeal is moot, does there remain a substantial question that is capable of repetition yet likely to evade review, and, thus, fall within an exception to the mootness doctrine.

On November 17, the Pennsylvania Supreme Court issued its opinion, reversing the Commonwealth Court and reinstating the ruling of the Philadelphia Common Pleas Court.

As an initial matter, the Pennsylvania Supreme Court noted that after the favorable ruling from the Commonwealth Court, the campaign then filed for an injunction in the federal District Court for the Eastern District of Pennsylvania, alleging that the Philadelphia Board of Elections was not complying with the Commonwealth Court's ruling. Recognizing that there was a pending appeal to the Pennsylvania Supreme Court, the federal District Court urged the parties to work out an agreement amongst themselves.

As to the first of three legal questions the court granted the petition on, mootness, the Court held that the case was not moot because, even at that late date, ballots were still being canvassed and the campaign wanted maximal access to the process.

Addressing the merits of the case, the Court restated the Philadelphia Board of Elections' position — that it is entitled to craft rules for the canvassing process, and that is rule corraling the campaign observers into a segregated area was necessary to protect its workers from physical assault and coronavirus. On the other hand, “[t]he Campaign argues that, under the Board's interpretation, merely being in the far end of a room like the Convention Center, which is as large as a football field, would be sufficient to comport with these requirements.”

In its analysis, the Pennsylvania Supreme Court agreed with the statutory interpretation forwarded by the Philadelphia Common Pleas Court, explaining:

[T]hese provisions do not set a minimum distance between authorized representatives and canvassing activities occurring while they “remain in

the room.” The General Assembly, had it so desired, could have easily established such parameters; however, it did not. It would be improper for this Court to judicially rewrite the statute by imposing distance requirements where the legislature has, in the exercise of its policy judgment, seen fit not to do so.

Because the General Assembly did not include any language regarding distance of observation, the Philadelphia Board of Elections was within its statutory authority to craft the canvassing observation rules that it did. There was “no basis for the Commonwealth Court to have invalidated these rules.” Justices Mundy and Saylor filed a dissenting opinion.

*Texas v. Pennsylvania et al*<sup>140</sup>

On December 7, the State of Texas filed a Motion for Leave to File Bill of Complaint against the Commonwealth of Pennsylvania and the States of Georgia, Wisconsin, and Michigan in the United States Supreme Court. The complaint alleged that these states’ election irregularities cumulatively acted to deprive Texas’s and the other complaining states’ residents the right to a free and fair election. The State of Texas also filed a Motion to Expedite and a Motion for a Preliminary Injunction and Temporary Restraining Order.

The irregularities complained of in the Motion for Leave to File Bill of Complaint included:

- Non-legislative actors’ purported amendments to States’ duly enacted election laws, in violation of the Electors Clause’s vesting State legislatures with plenary authority regarding the appointment of presidential electors;
- Intrastate differences in the treatment of voters, with more favorable [treatment] allotted to voters – whether lawful or unlawful – in areas administered by local government under Democrat control and with populations with higher ratios of Democrat voters than other areas of Defendant States; and
- The appearance of voting irregularities in the Defendant States that would be consistent with the unconstitutional relaxation of ballot-integrity protections in those States’ election laws.

Texas asserted that all of these flaws in state election laws “violate one or more of the federal requirements for elections” and “cumulatively preclude knowing who legitimately won the 2020 election and threaten to cloud all future elections.” Missouri and 16 other states backed Texas by filing an *Amicus Curae* brief with the United States Supreme Court.

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<sup>140</sup> *Texas v. Pennsylvania*, 592 U.S. 155 (2020) (denying Motion for Leave to File a Bill of Complaint).

On December 14, the United States Supreme Court refused to hear the case. The Court stated that “The State of Texas’s motion for leave to file a bill of complaint is denied for lack of standing under Article III of the Constitution. Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections. All other pending motions are dismissed as moot.”

Justice Alito, with whom Justice Thomas joined, would have accepted Texas’s Bill of Complaint, as those Justices believe that the United States Supreme Court, as the court of original jurisdiction as to matters between the States, cannot reject such cases. However, even those two Justices would not have granted Texas the sought-after relief. Justice Alito stated “[i]n my view, we do not have discretion to deny the filing of a bill of complaint in a case that falls within our original jurisdiction. I would therefore grant the motion to file the bill of complaint but would not grant other relief, and I express no view on any other issue.”

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

|                        |   |                 |
|------------------------|---|-----------------|
| BOB BOLUS, SR.,        | : |                 |
|                        | : |                 |
| Plaintiff              | : |                 |
| v.                     | : | 3:20-CV-1882    |
|                        | : | (JUDGE MARIANI) |
| KATHY BOOCKVAR, et al. | : |                 |
|                        | : |                 |
| Defendants             | : |                 |

ORDER

AND NOW, THIS 23<sup>rd</sup> DAY OF NOVEMBER, 2020, upon review of

Magistrate Judge Mehalchick’s Report and Recommendation (“R&R”) (Doc. 4) for clear error or manifest injustice, **IT IS HEREBY ORDERED THAT:**

1. The R&R (Doc. 4) is **ADOPTED** for the reasons stated therein.<sup>1</sup>
2. Plaintiff’s request for a preliminary injunction (Doc. 1, at 19-20) is **DENIED**.<sup>2</sup>

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<sup>1</sup> The R&R’s reasoning with respect to Plaintiff’s lack of standing as well as Plaintiff’s inability to show any likelihood of success on the merits is further supported by the Third Circuit’s decision in *Bognet v. Sec’y of Commonwealth of Pa.*, --F.3d--, 2020 WL 6686120 (3d Cir. 2020) and the recent District Court decision in *Donald J. Trump for President, Inc. v. Boockvar*, --F.Supp.3d--, 2020 WL 6821992 (M.D.Pa. 2020).

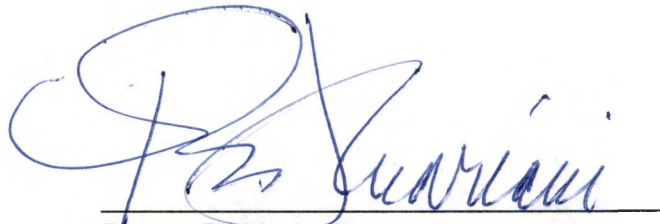
<sup>2</sup> In adopting the R&R, the Court finds the Magistrate Judge’s determinations are in accordance with recent Third Circuit case law setting forth the standard for preliminary equitable relief. Specifically,

... to obtain a preliminary injunction the moving party must show as a prerequisite (1) a reasonable probability of eventual success in the litigation, and (2) that it will be irreparably injured ... if relief is not granted.... [In addition,] the district court, in considering whether to grant a preliminary injunction, should take into account, when they are relevant, (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest.

*Del. River Port Auth. v. Transamerican Trailer Transport, Inc.*, 501 F.2d 917, 919-20 (3d Cir. 1974) (citations omitted).

*Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017). When requesting preliminary equitable relief, the movant “must meet the threshold for the first two ‘most critical’ factors: it must demonstrate that it can

3. Plaintiff's federal claims are **DISMISSED WITH PREJUDICE**.<sup>3</sup>
4. The Court declines to exercise supplemental jurisdiction over the remaining state law claims, and those claims are **DISMISSED WITHOUT PREJUDICE**.
5. The Clerk of Court is directed to **CLOSE** this action.



Robert D. Mariani  
United States District Judge

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win on the merits (which requires a showing significantly better than negligible but not necessarily more likely than not) and that it is more likely than not to suffer irreparable harm in the absence of preliminary relief." *Id.* at 179. If these two "gateway factors" are met, a court should then consider the other two factors and determine "in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief." *Id.*

<sup>3</sup> Preliminarily, the Complaint must be dismissed as Plaintiff lacks standing to bring this action. Further, even if Plaintiff did have standing, the Complaint is one for "Declaratory and Injunctive Relief". In light of Magistrate Judge Mehalchick's analysis, and this Court's Order adopting the R&R's reasoning and conclusion that the request for a preliminary injunction must be denied, nothing remains for further litigation. In addition, because Plaintiff's Complaint only requests relief pertaining to issues and events which have already taken place, Plaintiff's requests, and thus the relief sought in his complaint, are moot. (See *e.g.* Doc. 1, at ¶ 12 (requesting order/declaration/ injunction "prohibit[ing] Defendants from permitting the return of absentee and mail-in ballots to locations other than the respective offices of the county boards of elections. . ."), *id.* (requesting order/declaration/injunction "bar[ring] county election boards from counting absentee and mail-in ballots that lack a secrecy envelope or contain on that envelope any text, mark, or symbol which reveals the electors' identity, political affiliation, or candidate preference"), *id.* (requesting order/declaration/injunction "permit[ting] poll watchers . . . to be present in all locations where votes are cast. . ."); see *also*, Doc. 1, at 19-20). In any event, for the reasons set forth in the R&R and this Court's Order, Plaintiff's claims are, as a matter of law, not redressable.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR  
PRESIDENT, INC., *et al.*,

Plaintiffs,

v.

KATHY BOOCKVAR, *et al.*,

Defendants.

No. 4:20-CV-02078

(Judge Brann)

**MEMORANDUM OPINION**

**NOVEMBER 21, 2020**

Pending before this Court are various motions to dismiss Plaintiffs' First Amended Complaint. Plaintiffs in this matter are Donald J. Trump for President, Inc. (the "Trump Campaign"), and two voters, John Henry and Lawrence Roberts (the "Individual Plaintiffs").<sup>1</sup> Defendants, who filed these motions to dismiss, include seven Pennsylvania counties (the "Defendant Counties"), as well as Secretary of the Commonwealth Kathy Boockvar.<sup>2</sup>

**I. INTRODUCTION**

In this action, the Trump Campaign and the Individual Plaintiffs (collectively, the "Plaintiffs") seek to discard millions of votes legally cast by Pennsylvanians from all corners – from Greene County to Pike County, and

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<sup>1</sup> Doc. 125.

<sup>2</sup> *Id.* Since the filing of the initial complaint, there have also been several intervenors and amicus petitioners.

everywhere in between. In other words, Plaintiffs ask this Court to disenfranchise almost seven million voters. This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated. One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens.

That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more. At bottom, Plaintiffs have failed to meet their burden to state a claim upon which relief may be granted. Therefore, I grant Defendants' motions and dismiss Plaintiffs' action with prejudice.

## **II. BACKGROUND**

### **A. Legal and Factual Background**

The power to regulate and administer federal elections arises from the Constitution.<sup>3</sup> “Because any state authority to regulate election to those offices

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<sup>3</sup> *Cook v. Gralike*, 531 U.S. 510, 522 (2001).

could not precede their very creation by the Constitution, such power ‘had to be delegated to, rather than reserved to by, the States.’”<sup>4</sup> Consequently, the Elections Clause “delegated to the States the power to regulate the ‘Times, Places, and Manner of holding Elections for Senators and Representatives,’ subject to a grant of authority to Congress to ‘make or alter such Regulations.’”<sup>5</sup> Accordingly, States’ power to “regulate the incidents of such elections, including balloting” is limited to “the exclusive delegation of power under the Elections Clause.”<sup>6</sup>

Pennsylvania regulates the “times, places, and manner” of its elections through the Pennsylvania Election Code.<sup>7</sup> The Commonwealth’s Constitution mandates that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”<sup>8</sup> Recognizing this as a foundational principle, the Pennsylvania Supreme Court has declared that the purpose of the Election Code is to promote “freedom of choice, a fair election and an honest election return.”<sup>9</sup>

In October 2019, the General Assembly of Pennsylvania enacted Act 77, which, “for the first time in Pennsylvania,” extended the opportunity for all

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<sup>4</sup> *Id.* (quoting *U.S. Term Limits v. Thornton*, 514 U.S. 779, 804 (1995)).

<sup>5</sup> *Id.* (quoting U.S. Const. Art. I, § 4, cl. 1).

<sup>6</sup> *Id.* at 523.

<sup>7</sup> 25 P.S. §§ 2601, *et seq.*

<sup>8</sup> *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 356 (Pa. 2020) (quoting Pa. Const., Art. I, § 5).

<sup>9</sup> *Id.* (quoting *Perles v. Hoffman*, 213 A.2d 781, 783 (Pa. 1965)).

registered voters to vote by mail.<sup>10</sup> Following the beginning of the COVID-19 outbreak in March 2020, the General Assembly enacted laws regulating the mail-in voting system.<sup>11</sup> Section 3150.16 of the Election Code sets forth procedural requirements that voters must follow in order for their ballot to be counted.<sup>12</sup> These procedures require, for example, that voters mark their ballots in pen or pencil, place them in secrecy envelopes, and that ballots be received by the county elections board on or before 8:00 P.M. on Election Day.<sup>13</sup>

Nowhere in the Election Code is any reference to “curing” ballots, or the related practice of “notice-and-cure.” This practice involves notifying mail-in voters who submitted procedurally defective mail-in ballots of these deficiencies and allowing those voters to cure their ballots.<sup>14</sup> Notified voters can cure their ballots and have their vote counted by requesting and submitting a provisional ballot.<sup>15</sup>

Recently, the Supreme Court of Pennsylvania in *Democratic Party of Pennsylvania v. Boockvar* addressed whether counties are *required* to adopt a notice-and-cure policy under the Election Code.<sup>16</sup> Holding that they are not, the

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<sup>10</sup> *Id.* at 352 (citing 25 P.S. §§ 3150.11-3150.17). Prior to the enactment of Act 77, voters were only permitted to vote by mail if they could “demonstrate their absence from the voting district on Election Day.” *Id.* (internal citations omitted).

<sup>11</sup> *E.g.*, 25 P.S. § 3150.16.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Pa. Democratic Party*, 238 A.3d at 372.

<sup>15</sup> Doc. 93 at 9.

<sup>16</sup> *Pa. Democratic Party*, 238 A.3d at 374.

court declined to explicitly answer whether such a policy is necessarily *forbidden*.<sup>17</sup>

Following this decision, Secretary Boockvar sent an email on November 2, 2020 encouraging counties to “provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected” so those ballots could be cured.<sup>18</sup> From the face of the complaint, it is unclear which counties were sent this email, which counties received this email, or which counties ultimately followed Secretary Boockvar’s guidance.

Some counties chose to implement a notice-and-cure procedure while others did not.<sup>19</sup> Importantly, however, Plaintiffs allege only that Philadelphia County implemented such a policy.<sup>20</sup> In contrast, Plaintiffs also claim that Lancaster and York Counties (as well as others) did not adopt any cure procedures and thus rejected all ballots cast with procedural deficiencies instead of issuing these voters provisional ballots.<sup>21</sup>

Both Individual Plaintiffs had their ballots cancelled in the 2020 Presidential Election.<sup>22</sup> John Henry submitted his mail-in ballot to Lancaster County; however, it was cancelled on November 6, 2020 because he failed to place his ballot in the

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<sup>17</sup> *Id.* (holding only that the Election Code “does not provide for the ‘notice and opportunity to cure’ procedure sought by Petitioner”).

<sup>18</sup> Doc. 125 at ¶ 129.

<sup>19</sup> *Id.* at ¶¶ 124-27.

<sup>20</sup> *Id.* at ¶ 127.

<sup>21</sup> *Id.* at ¶ 130.

<sup>22</sup> *Id.* at ¶¶ 15-16.

required secrecy envelope.<sup>23</sup> Similarly, after submitting his ballot to Fayette County, Lawrence Roberts discovered on November 9, 2020 that his ballot had been cancelled for an unknown reason.<sup>24</sup> Neither was given an opportunity to cure his ballot.<sup>25</sup>

## **B. The 2020 Election Results**

In large part due to the coronavirus pandemic still plaguing our nation, the rate of mail-in voting in 2020 was expected to increase dramatically. As anticipated, millions more voted by mail this year than in past elections. For weeks before Election Day, ballots were cast and collected. Then, on November 3, 2020, millions more across Pennsylvania and the country descended upon their local voting precincts and cast ballots for their preferred candidates. When the votes were counted, the Democratic Party's candidate for President, Joseph R. Biden Jr., and his running-mate, Kamala D. Harris, were determined to have received more votes than the incumbent ticket, President Donald J. Trump and Vice President Michael R. Pence. As of the day of this Memorandum Opinion, the Biden/Harris ticket had received 3,454,444 votes, and the Trump/Pence ticket had received 3,373,488 votes, giving the Biden ticket a lead of more than 80,000 votes, per the Pennsylvania state elections return website.<sup>26</sup> These results will become

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<sup>23</sup> *Id.* at ¶ 15.

<sup>24</sup> *Id.* at ¶ 16.

<sup>25</sup> *Id.* at ¶¶ 15-16.

<sup>26</sup> Pa. Dep't of State, *Unofficial Returns, Statewide*, <https://www.electionreturns.pa.gov/> (last visited on November 21, 2020).

official when counties certify their results to Secretary Boockvar on November 23, 2020 – the result Plaintiffs seek to enjoin with this lawsuit.

### **C. Procedural History**

Although this case was initiated less than two weeks ago, it has already developed its own tortured procedural history. Plaintiffs have made multiple attempts at amending the pleadings, and have had attorneys both appear and withdraw in a matter of seventy-two hours. There have been at least two perceived discovery disputes, one oral argument, and a rude and ill-conceived voicemail which distracted the Court's attention from the significant issues at hand.<sup>27</sup> The Court finds it helpful to place events in context before proceeding further.

In the evening of November 9, 2020, Plaintiffs filed suit in this Court against Secretary Boockvar, as well as the County Boards of Elections for the following counties: Allegheny, Centre, Chester, Delaware, Montgomery, Northampton, and Philadelphia.<sup>28</sup> The original complaint raised seven counts; two equal-protection claims, two due-process claims, and three claims under the Electors and Elections Clauses.<sup>29</sup>

The following day, I convened a telephonic status conference with the parties to schedule future proceedings. During that conference, I learned that several organizations, including the Democratic National Committee, sought to file

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<sup>27</sup> Doc. 131 (denied).

<sup>28</sup> *See* Doc. 1.

<sup>29</sup> *Id.*

intervention motions with the Court. Later that day, I set a briefing schedule.<sup>30</sup>

Additionally, November 17, 2020 was set aside for oral argument on any motions to dismiss, and the Court further told the parties to reserve November 19, 2020 in their calendars in the event that the Court determined that an evidentiary hearing was necessary. Subsequent to the Court's scheduling order, the proposed-intervenors filed their motions, and the parties filed their briefings. Plaintiffs then filed a motion for a preliminary injunction on November 12, 2020.<sup>31</sup>

On November 12, 2020, Plaintiffs also underwent their first change in counsel. Attorneys Ronald L. Hicks, Jr., and Carolyn B. McGee with Porter Wright Morris & Arthur LLP filed a motion seeking to withdraw from the case. The Court granted this motion, and Plaintiffs retained two attorneys from Texas, John Scott and Douglas Brian Hughes, to serve as co-counsel to their original attorney, Linda A. Kerns.

The next day, November 13, 2020, was a relatively quiet day on the docket for this case, but an important one for the parties. That day, the United States Court of Appeals for the Third Circuit issued a decision in *Bognet v. Secretary Commonwealth of Pennsylvania*.<sup>32</sup> This decision, though not factually connected

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<sup>30</sup> See Doc. 35.

<sup>31</sup> Doc. 89.

<sup>32</sup> No. 20-3214, 2020 WL 6686120 (3d Cir. Nov. 13, 2020) (pending publication).



to this matter, addressed issues of standing and equal protection relevant to the Plaintiffs' claims.<sup>33</sup>

Thereafter, on Sunday, November 15, 2020 – the day Plaintiffs' response to Defendants' motions to dismiss was due – Plaintiffs filed a First Amended Complaint (the "FAC") with the Court. This new complaint excised five of the seven counts from the original complaint, leaving just two claims: one equal-protection claim, and one Electors and Elections Clauses claim.<sup>34</sup> In addition, a review of the redline attached to the FAC shows that Plaintiffs deleted numerous allegations that were pled in the original complaint.

Plaintiffs acknowledge that under the Third Circuit's decision in *Bognet*, this Court cannot find that Plaintiffs have standing for their Elections and Electors Clauses claim in the FAC. Plaintiffs represent that they have included this claim in the FAC to preserve the argument for appellate review. Because Plaintiffs have made this concession, and because the Third Circuit's decision in *Bognet* is clear, this Court dismisses Count II for lack of standing without further discussion.

Defendants filed new motions to dismiss and briefs in support thereof on November 16, 2020. That evening, less than 24 hours before oral argument was to begin, Plaintiffs instituted a second series of substitutions in counsel. Ms. Kerns,

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<sup>33</sup> For example, *Bognet* held that only the General Assembly had standing to raise claims under the Elections and Electors Clauses. *Id.* at \*7. This ruling effectively shut the door on Plaintiffs' allegations under those clauses of the Constitution.

<sup>34</sup> Doc. 125.

along with Mr. Scott and Mr. Hughes, requested this Court's permission to withdraw from the litigation. I granted the motions of the Texan attorneys because they had been involved with the case for approximately seventy-two hours. Because oral argument was scheduled for the following day, however, and because Ms. Kerns had been one of the original attorneys in this litigation, I denied her request. I believed it best to have some semblance of consistency in counsel ahead of the oral argument. That evening, attorney Marc A. Scaringi entered an appearance on behalf of Plaintiffs. Furthermore, Mr. Scaringi asked the Court to postpone the previously-scheduled oral argument and evidentiary hearing. The Court denied Mr. Scaringi's motion for a continuance; given the emergency nature of this proceeding, and the looming deadline for Pennsylvania counties to certify their election results, postponing those proceedings seemed imprudent.

On November 17, 2020, the Court prepared to address the parties in oral argument. That morning, attorney Rudolph W. Giuliani entered his appearance on behalf of Plaintiffs. With this last-minute appearance, Plaintiffs had made their final addition to their representation.<sup>35</sup> At the conclusion of the argument, I determined that an evidentiary hearing (previously scheduled to take place on November 19, 2020) was no longer needed and cancelled that proceeding. Instead, I imposed a new briefing schedule in light of the FAC's filing, which arguably

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<sup>35</sup> Ms. Kerns has since withdrawn from the case.

mooted the initial motions to dismiss. The parties submitted briefing on the issues.<sup>36</sup>

#### **D. Plaintiffs' Claims**

Plaintiffs' only remaining claim alleges a violation of equal protection. This claim, like Frankenstein's Monster, has been haphazardly stitched together from two distinct theories in an attempt to avoid controlling precedent. The general thrust of this claim is that it is unconstitutional for Pennsylvania to give states discretion to adopt a notice-and-cure policy. Invoking *Bush v. Gore*, Plaintiffs assert that such local control is unconstitutional because it creates an arbitrary system where some persons are allowed to cure procedurally defective mail-in ballots while others are not.

Apparently recognizing that such a broad claim is foreclosed under the Third Circuit's decision in *Bognet*, Plaintiffs try to merge it with a much simpler theory of harm based on the cancellation of Individual Plaintiffs' ballots in order to satisfy standing.<sup>37</sup> Because Individual Plaintiffs' votes were invalidated as procedurally

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<sup>36</sup> Separately, Plaintiffs filed a motion seeking leave to file a second amended complaint. Doc. 172. Having filed the FAC as of right, Plaintiffs may file a second amended complaint only with the opposing party's written consent or the court's leave. During the oral argument on November 17, 2020, Defendants indicated that they would not consent to the filing of a third pleading and did not concur in the motion for leave to file this second amended complaint.

<sup>37</sup> Plaintiffs initially appeared to base their standing under the Equal Protection Clause on the theory that the notice-and-cure policy unlawfully allowed certain ballots to be counted, and that this inclusion of illegal ballots diluted Plaintiffs' legal votes. Doc. 1. After *Bognet* expressly rejected this theory of standing, however, Plaintiffs have since reversed course and now argue that their standing is based on the cancellation of Individual Plaintiffs' votes and the Trump Campaign's "competitive standing." 2020 WL 6686120, at \*9-10; Doc. 124 at 2.

defective, Individual Plaintiffs argue, for purposes of standing, that their claim is based on the denial of their votes. But on the merits, Plaintiffs appear to have abandoned this theory of harm and instead raise their broader argument that the lack of a uniform prohibition against notice-and-cure is unconstitutional.<sup>38</sup> They assert this theory on behalf of both Individual Plaintiffs and the Trump Campaign.

That Plaintiffs are trying to mix-and-match claims to bypass contrary precedent is not lost on the Court. The Court will thus analyze Plaintiffs' claims as if they had been raised properly and asserted as one whole for purposes of standing *and* the merits. Accordingly, the Court considers Plaintiffs as alleging two equal-protection claims. The first being on behalf of Individual Plaintiffs whose ballots were cancelled. And the second being on behalf of the Trump Campaign and raising the broad *Bush v. Gore* arguments that Plaintiffs allege is the main focus of this lawsuit.<sup>39</sup> The Court analyzes both claims separately for purposes of standing and the merits analysis.

### III. STANDING

Plaintiffs lack standing to raise either of their claims. "Article III of the United States Constitution limits the power of the federal judiciary to 'cases' and

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To the extent that Plaintiffs may still argue that votes have been unconstitutionally diluted (*see*, FAC ¶ 97), those claims are barred by the Third Circuit's decision in *Bognet*.

<sup>38</sup> Plaintiffs essentially conceded that they were only setting forth the vote-denial theory for purposes of standing when they stated on the record at oral argument that they believed Individual Plaintiffs' votes were *lawfully* cancelled. Hr'g. Tr. 110:22-111:02.

<sup>39</sup> In briefing, Plaintiffs attempt to revive their previously-dismissed poll-watcher claims. Count I does not seek relief for those allegations, but the Court considers them, *infra*.

‘controversies.’”<sup>40</sup> To satisfy the case-or-controversy requirement, a plaintiff must establish that they have standing.<sup>41</sup> Standing is a “threshold” issue.<sup>42</sup> It is an “irreducible constitutional minimum,” without which a federal court lacks jurisdiction to rule on the merits of an action.<sup>43</sup> Consequently, federal courts are obligated to raise the issue of standing sua sponte.<sup>44</sup>

The plaintiff bears the burden of establishing standing.<sup>45</sup> To demonstrate standing, he must show: (1) an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.<sup>46</sup> “In assessing whether a plaintiff has carried this burden, [courts must] separate [the] standing inquiry from any assessment of the merits of the plaintiff’s claim.”<sup>47</sup> “To maintain this fundamental separation between standing and merits at the dismissal stage, [courts] assume for the purposes of [the] standing inquiry that a plaintiff has stated valid legal claims.”<sup>48</sup>

“While [the Court’s] standing inquiry may necessarily reference the ‘nature and

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<sup>40</sup> *Pa. Voters All. v. Centre Cnty.*, No. 4:20-CV-01761, 2020 WL 6158309, at \*3 (M.D. Pa. Oct. 21, 2020) (quoting *Cotrell v. Alcon Laboratories*, 874 F.3d 154, 161-62 (3d Cir. 2017)).

<sup>41</sup> *Cotrell*, 874 F.3d at 161-62.

<sup>42</sup> *Wayne Land & Mineral Grp., LLC v. Del. River Basin Comm’n*, 959 F.3d 569, 573-74 (3d Cir. 2020) (internal citations omitted).

<sup>43</sup> *Id.* at 574 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

<sup>44</sup> *Id.* (quoting *Seneca Reservation Corp. v. Twp. of Highland*, 863 F.3d 245, 252 (3d Cir. 2017)).

<sup>45</sup> *Cotrell*, 874 F.3d at 162 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)).

<sup>46</sup> *Id.* (quoting *Spokeo*, 136 S. Ct. at 1547).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* (citing *Info. Handling Servs., Inc. v. Defense Automated Printing Servs.*, 338 F.3d 1024, 1029 (D.C. Cir. 2003)).

source of the claims asserted,’ [the Court’s] focus remains on whether the plaintiff is the proper party to bring those claims.’<sup>49</sup>

As discussed above, Plaintiffs allege two possible theories of standing. First, Individual Plaintiffs argue that their votes have been unconstitutionally denied. Under this theory, Individual Plaintiffs must show that Defendant Counties’ use of the notice-and-cure procedure, as well as Secretary Boockvar’s authorization of this procedure, denied Individual Plaintiffs the right to vote.<sup>50</sup> Second, the Trump Campaign maintains that it has competitive standing.<sup>51</sup>

Both theories are unavailing. Assuming, as this Court must, that Plaintiffs state a valid equal-protection claim, the Court finds that Individual Plaintiffs have adequately established an injury-in-fact. However, they fail to establish that it was Defendants who caused these injuries and that their purported injury of vote-denial is adequately redressed by invalidating the votes of others. The Trump Campaign’s theory also fails because neither competitive nor associational standing applies, and it does not assert another cognizable theory of standing.

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<sup>49</sup> *Id.* (brackets and internal citations omitted).

<sup>50</sup> As discussed above, to the extent that Plaintiffs would have premised standing on the theory that Pennsylvania’s purportedly unconstitutional failure to uniformly prohibit the notice-and-cure procedure constitutes vote-dilution, such an assertion would be foreclosed under *Bognet*, 2020 WL 6686120, at \*9-10. Accordingly, the Court will only consider whether Individual Plaintiffs have standing under their vote-denial theory.

<sup>51</sup> In the interest of comprehensiveness, the Court also addresses whether the Trump Campaign has associational standing.

## A. Voters

### 1. Injury in Fact

Individual Plaintiffs have adequately demonstrated that they suffered an injury-in-fact. “[A] person’s right to vote is ‘individual and personal in nature.’”<sup>52</sup> Accordingly, the denial of a person’s right to vote is typically always sufficiently concrete and particularized to establish a cognizable injury.<sup>53</sup> This is true regardless of whether such a harm is widely shared.<sup>54</sup> So long as an injury is concrete, courts will find that an injury in fact exists despite the fact that such harm is felt by many.<sup>55</sup>

This is precisely the situation presented here. Individual Plaintiffs have adequately pled that their votes were denied. As discussed above, the denial of a vote is a highly personal and concrete injury. That Individual Plaintiffs had their ballots cancelled and thus invalidated is sufficiently personal to establish an injury in fact. It is of no matter that many persons across the state might also have had their votes invalidated due to their county’s failure to implement a curing

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<sup>52</sup> *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)).

<sup>53</sup> *See Gomillion v. Lightfoot*, 364 U.S. 339, 349 (1960) (Whittaker, J.) (noting the distinction between injuries caused by outright denial of the right to vote versus those caused by reducing the weight or power of an individual’s vote). The Court notes that much of standing doctrine as it relates to voting rights arises from gerrymandering or vote-dilution cases, which often involve relatively abstract harms. *See, e.g., Gill*, 138 S. Ct.; *Gaffney v. Cummings*, 412 U.S. 735 (1973); *Reynolds v. Sims*, 377 U.S. 533 (1964)).

<sup>54</sup> *See Federal Elections Comm’n v. Akins*, 524 U.S. 11, 24 (1998) (citing *Public Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 449-50 (1989)).

<sup>55</sup> *See id.* (“[W]here a harm is concrete, though widely shared, the [United States Supreme] Court has found ‘injury in fact.’”) (quoting *Public Citizen*, 491 U.S. at 449-50).

procedure. Accordingly, the Court finds that Individual Plaintiffs have established injury in fact.

## 2. Causation

However, Individual Plaintiffs fail to establish that Defendant Counties or Secretary Boockvar actually caused their injuries. First, Defendant Counties, by Plaintiffs' own pleadings, had nothing to do with the denial of Individual Plaintiffs' ability to vote. Individual Plaintiffs' ballots were rejected by Lancaster and Fayette Counties, neither of which is a party to this case. None of Defendant Counties received, reviewed, or discarded Individual Plaintiffs' ballots. Even assuming that Defendant Counties unconstitutionally allowed *other* voters to cure their ballots, that alone cannot confer standing on Plaintiffs who seek to challenge the denial of *their* votes.

Second, Individual Plaintiffs have not shown that their purported injuries are fairly traceable to Secretary Boockvar. Individual Plaintiffs have entirely failed to establish any causal relationship between Secretary Boockvar and the cancellation of their votes. The only connection the Individual Plaintiffs even attempt to draw is that Secretary Boockvar sent an email on November 2, 2020 to some number of counties, encouraging them to adopt a notice-and-cure policy. However, they fail to allege which counties received this email or what information was specifically included therein. Further, that this email encouraged counties to adopt a notice-and-cure policy does not suggest in any way that Secretary Boockvar intended or



desired Individual Plaintiffs’ votes to be cancelled. To the contrary, this email suggests that Secretary Boockvar encouraged counties to allow exactly these types of votes to be counted. Without more, this Court cannot conclude that Individual Plaintiffs have sufficiently established that their injuries are fairly traceable to Secretary Boockvar.<sup>56</sup>

### 3. Redressability

In large part because the Individual Plaintiffs cannot establish that their injury is “fairly traceable” to the Defendants’ conduct, they also cannot show that their injury could be redressed by a favorable decision from this Court.<sup>57</sup> Beyond that substantial hurdle, however, a review of the injury alleged and the relief sought plainly shows that the Individual Plaintiffs’ injury would not be redressable. The Individual Plaintiffs base their equal-protection claim on the theory that their

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<sup>56</sup> The Third Circuit has held that a party may have standing “to challenge government action that permits or authorizes third-party conduct that would otherwise be illegal in the absence of the Government’s action.” *Constitution Party of Pennsylvania v. Aichele*, 757 F.3d 347, 366 (3d Cir. 2014) (quoting *Bloomberg L.P. v. CFTC*, 949 F. Supp. 2d 91, 116 (D.D.C. 2013)). But in that case, standing was permitted to avoid a catch-22 situation where, absent standing against a third-party government actor, a plaintiff would not be able to bring suit against any responsible party. *Id.* at 367. Here, Plaintiffs allege that Secretary Boockvar is responsible for authorizing the unconstitutional actions of Defendant Counties. However, unlike the plaintiffs in *Aichele*, Plaintiffs are able to sue Defendant Counties for their allegedly unconstitutional actions. Moreover, because this Court has already concluded that Plaintiffs lack standing to sue Defendant Counties for their use of the notice-and-cure policy, it would be counterintuitive for Plaintiffs to have standing to challenge Secretary Boockvar’s authorization of this policy, which is even further removed from any purported harm that Individual Plaintiffs have suffered.

<sup>57</sup> See, e.g., *Newdow v. Roberts*, 603 F.3d 1002, 1011 (D.C. Cir. 2010) (noting that when an injury is caused by a third party not before the Court, courts cannot “redress injury . . . that results from [such] independent action.”) (ellipses and alterations in original) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)).

right to vote was denied. Their prayer for relief seeks, in pertinent part: (1) an order, declaration, or injunction from this Court prohibiting the Defendants from certifying the results of the 2020 General Election in Pennsylvania on a Commonwealth-wide basis; and (2) another order prohibiting Defendants from certifying the results which include ballots the Defendants permitted to be cured.

Neither of these orders would redress the injury the Individual Plaintiffs allege they have suffered. Prohibiting certification of the election results would not reinstate the Individual Plaintiffs' right to vote. It would simply deny more than 6.8 million people *their* right to vote. "Standing is measured based on the theory of harm and the specific relief requested."<sup>58</sup> It is not "dispensed in gross: A plaintiff's remedy must be tailored to redress the plaintiff's particular injury."<sup>59</sup> Here, the answer to invalidated ballots is not to invalidate millions more. Accordingly, Plaintiffs have not shown that their injury would be redressed by the relief sought.

## **B. Trump Campaign**

The standing inquiry as to the Trump Campaign is particularly nebulous because neither in the FAC nor in its briefing does the Trump Campaign clearly assert what its alleged injury is. Instead, the Court was required to embark on an

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<sup>58</sup> *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at \*37 (W.D. Pa. Oct. 10, 2020) (citing *Gill*, 138 S. Ct. at 1934).

<sup>59</sup> *Gill*, 138 S. Ct. at 1934 (citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)).

extensive project of examining almost every case cited to by Plaintiffs to piece together the theory of standing as to this Plaintiff – the Trump Campaign.

The Trump Campaign first posits that “as a political committee for a federal candidate,” it has “Article III standing to bring this action.”<sup>60</sup> On its face, this claim is incorrect. Simply being a political committee does not obviate the need for an injury-in-fact, nor does it automatically satisfy the other two elements of standing.

For this proposition, the Trump Campaign relies on two federal cases where courts found associational standing by a political party’s state committee. Therefore, the Court considers whether the Trump Campaign can raise associational standing, but finds that those cases are inapposite.<sup>61</sup> First, a candidate’s political committee and a political party’s state committee are not the same thing. Second, while the doctrine of associational standing is well established, the Trump Campaign overlooks a particularly relevant, very recent decision from another federal court – one where the Trump Campaign itself argued that it had associational standing. In *Donald J. Trump for President, Inc. v. Cegavske*,<sup>62</sup> the Trump Campaign asserted associational standing, and that court rejected this theory.

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<sup>60</sup> Doc. 170 at 11.

<sup>61</sup> *Texas Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006); *Orloski v. Davis*, 564 F. Supp. 526 (M.D. Pa. 1983).

<sup>62</sup> No. 2:20-CV-1445, 2020 WL 5626974 (D. Nev. Sept. 18, 2020).

Associational standing allows an entity to bring suit on behalf of members upon a showing that: (1) “its members would otherwise have standing to sue in their own right;” (2) “the interests it seeks to protect are germane to the organization's purpose;” and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”<sup>63</sup>

In *Cegavske* (another case in which the Trump Campaign alleged violations of equal protection), the court found that the Trump Campaign failed to satisfy the second prong of associational standing because it “represents only Donald J. Trump and his ‘electoral and political goals’ of reelection.”<sup>64</sup> That court noted that while the Trump Campaign might achieve its purposes through its member voters, the “constitutional interests of those voters are wholly distinct” from that of the Trump Campaign.<sup>65</sup> No different here. Even if the Individual Plaintiffs attempted to vote for President Trump, their constitutional interests are different, precluding a finding of associational standing. In any event, because the Individual Plaintiffs lack standing in this case, the Trump Campaign cannot satisfy the first prong of associational standing either.

The Trump Campaign’s second theory is that it has “‘competitive standing’ based upon disparate state action leading to the ‘potential loss of an election.’”<sup>66</sup>

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<sup>63</sup> *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977).

<sup>64</sup> *Cegavske*, 2020 WL 5626974 at \*4 (internal citations omitted).

<sup>65</sup> *Id.*

<sup>66</sup> Doc. 170 at 11 (citing *Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011)).

Pointing to a case from the United States Court of Appeals for the Ninth Circuit, *Drake v. Obama*,<sup>67</sup> the Trump Campaign claims this theory proves injury-in-fact. First, the Court finds it important to emphasize that the term “competitive standing” has specific meaning in this context. Second, the Trump Campaign’s reliance on the theory of competitive standing under *Drake v. Obama* is, at best, misguided. Subsequent case law from the Ninth Circuit has explained that competitive standing “is the notion that ‘a candidate or his political party has standing to challenge the *inclusion of an allegedly ineligible rival on the ballot*, on the theory that doing so hurts the candidate’s or party’s own chances of prevailing in the election.’”<sup>68</sup> In the present matter, there is no allegation that the Democratic Party’s candidate for President, or any other candidate, was ineligible to appear on the ballot.

Examination of the other case law cited to by Plaintiffs contradicts their theory that competitive standing is applicable here for the same reason. For example, in *Texas Democratic Party v. Benkiser*, the United States Court of Appeals for the Fifth Circuit found competitive standing in a case in which the Democratic Party petitioned against the decision to deem a candidate ineligible and

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<sup>67</sup> 664 F.3d.

<sup>68</sup> *Townley v. Miller*, 722 F.3d 1128, 1135 (9th Cir. 2013) (emphasis added) (quoting *Drake*, 664 F.3d at 782); see also *Mecinas v. Hobbs*, No. CV-19-05547, 2020 WL 3472552, at \*11-12 (D. Ariz. June 25, 2020) (explaining the current state of the doctrine of competitive standing and collecting cases).

replace him with another.<sup>69</sup> Likewise, in *Schulz v. Williams*, the United States Court of Appeals for the Second Circuit found competitive standing where the Conservative party alleged an injury in fact by arguing that a candidate from the Libertarian Party of New York was improperly placed on the ballot for the Governor's race in 1994.<sup>70</sup> By way of yet another example, Plaintiffs' citation to *Fulani v. Hogsett* makes the same point; competitive standing applies to challenges regarding the eligibility of a candidate. There, the Indiana Secretary of State was required to certify the names of candidates for President by a certain date.<sup>71</sup> When the Secretary failed to certify the Democratic and Republican candidates by that date, the New Alliance party challenged the inclusion of those candidates on the ballot, arguing that allowing these ineligible candidates constituted an injury-in-fact.<sup>72</sup> Three other cases relied on by Plaintiffs illustrate separate grounds for stating an injury in fact, all still relating to ballot provisions.<sup>73</sup>

It is telling that the only case from the Third Circuit cited to by Plaintiffs, *Marks v. Stinson*, does not contain a discussion of competitive standing or any other theory of standing applicable in federal court.<sup>74</sup> Simply pointing to another

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<sup>69</sup> 459 F.3d at 586.

<sup>70</sup> 44 F.3d 48, 53 (2d Cir. 1994).

<sup>71</sup> 917 F.2d 1028, 1029-30 (7th Cir. 1990).

<sup>72</sup> *Id.*

<sup>73</sup> See *Green Party of Tennessee v. Hargett*, 767 F.3d 533, 542-43 (6th Cir. 2014) (finding that Plaintiffs had standing to challenge Tennessee's *ballot-access* laws); see also *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 907 (8th Cir. 2020) (finding that Plaintiffs had standing to challenge the *ballot-ordering* provision in Minnesota); *Nelson v. Warner*, No. 3:19-0898, 2020 WL 4582414, at \*3 (S.D. W. Va. Aug. 10, 2020) (same).

<sup>74</sup> 19 F.3d 873 (3d Cir. 1994).

case where a competitor in an election was found to have standing does not establish *competitive standing* in this matter. Without more, this Court declines to take such an expansive view of the theory of competitive standing, particularly given the abundance of guidance from other Circuits, based on Plaintiffs' own citations, limiting the use of this doctrine.

The Trump Campaign has not offered another theory of standing, and therefore, cannot meet its burden of establishing Article III jurisdiction. To be clear, this Court is not holding that a political campaign can never establish standing to challenge the outcome of an election; rather, it merely finds that in this case, the Trump Campaign has not pled a cognizable theory.<sup>75</sup>

#### **IV. MOTION TO DISMISS 12(b)(6)**

##### **A. Legal Standard**

Under Federal Rule of Civil Procedure 12(b)(6), the Court dismisses a complaint, in whole or in part, if the plaintiff has failed to “state a claim upon which relief can be granted.” A motion to dismiss “tests the legal sufficiency of a claim”<sup>76</sup> and “streamlines litigation by dispensing with needless discovery and factfinding.”<sup>77</sup> “Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of

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<sup>75</sup> Even assuming, however, that the Trump Campaign could establish that element of standing, it would still fail to satisfy the causation and redressability requirements for the same reasons that the Voter Plaintiffs do. To the extent the Trump Campaign alleges any injury at all, its injury is attenuated from the actions challenged.

<sup>76</sup> *Richardson v. Bledsoe*, 829 F.3d 273, 289 n. 13 (3d Cir. 2016) (Smith, C.J.) (*citing Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 676 (7th Cir. 2001) (Easterbrook, J.)).

<sup>77</sup> *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989).

a dispositive issue of law.”<sup>78</sup> This is true of any claim, “without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one.”<sup>79</sup>

Following the Roberts Court’s “civil procedure revival,”<sup>80</sup> the landmark decisions of *Bell Atlantic Corporation v. Twombly*<sup>81</sup> and *Ashcroft v. Iqbal*<sup>82</sup> tightened the standard that district courts must apply to 12(b)(6) motions.<sup>83</sup> These cases “retired” the lenient “no-set-of-facts test” set forth in *Conley v. Gibson* and replaced it with a more exacting “plausibility” standard.<sup>84</sup>

Accordingly, after *Twombly* and *Iqbal*, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”<sup>85</sup> “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”<sup>86</sup> “Although the plausibility standard does not impose a probability requirement, it does require a pleading to show more than a sheer possibility that a defendant has acted

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<sup>78</sup> *Id.* at 326 (internal citations omitted).

<sup>79</sup> *Id.* at 327.

<sup>80</sup> Howard M. Wasserman, The Roberts Court and the Civil Procedure Revival, 31 Rev. Litig. 313, 316, 319-20 (2012).

<sup>81</sup> 550 U.S. 544 (2007).

<sup>82</sup> 556 U.S. 662 (2009).

<sup>83</sup> *Id.* at 670.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 678 (quoting *Twombly*, 550 U.S. at 570).

<sup>86</sup> *Id.*



unlawfully.”<sup>87</sup> Moreover, “[a]sking for plausible grounds . . . calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [wrongdoing].”<sup>88</sup>

The plausibility determination is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.”<sup>89</sup> No matter the context, however, “[w]here a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’”<sup>90</sup>

When disposing of a motion to dismiss, the Court “accept[s] as true all factual allegations in the complaint and draw[s] all inferences from the facts alleged in the light most favorable to [the plaintiff].”<sup>91</sup> However, “the tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions.”<sup>92</sup> “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”<sup>93</sup>

As a matter of procedure, the Third Circuit has instructed that:

Under the pleading regime established by *Twombly* and *Iqbal*, a court reviewing the sufficiency of a complaint must take three steps. First, it

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<sup>87</sup> *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 786 (3d Cir. 2016) (Jordan, J.) (internal quotations and citations omitted).

<sup>88</sup> *Twombly*, 550 U.S. at 556.

<sup>89</sup> *Iqbal*, 556 U.S. at 679.

<sup>90</sup> *Id.* at 678 (quoting *Twombly*, 550 U.S. at 557).

<sup>91</sup> *Phillips v. County. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008) (Nygaard, J.).

<sup>92</sup> *Iqbal*, 556 U.S. at 678;

<sup>93</sup> *Id.* (citing *Twombly*, 550 U.S. at 555); see also *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (Nygaard, J.) (“After *Iqbal*, it is clear that conclusory or ‘bare-bones’ allegations will no longer survive a motion to dismiss.”).

must tak[e] note of the elements [the] plaintiff must plead to state a claim. Second, it should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, [w]hen there are well-pleaded factual allegations, [the] court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.<sup>94</sup>

## **B. Equal Protection**

Even if Plaintiffs had standing, they fail to state an equal-protection claim.

The Equal Protection Clause of the Fourteenth Amendment commands that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”<sup>95</sup> The principle of equal protection is fundamental to our legal system because, at its core, it protects the People from arbitrary discrimination at the hands of the State.

But, contrary to Plaintiffs’ assertions, not all “unequal treatment” requires Court intervention.<sup>96</sup> The Equal Protection Clause “does not forbid classifications.”<sup>97</sup> It simply keeps governmental decisionmakers from treating similarly situated persons differently.<sup>98</sup> The government could not function if complete equality were required in all situations. Consequently, a classification resulting in “some inequality” will be upheld unless it is based on an inherently suspect characteristic or “jeopardizes the exercise of a fundamental right.”<sup>99</sup>

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<sup>94</sup> *Connelly*, 809 F.3d at 787 (internal quotations and citations omitted).

<sup>95</sup> U.S. Const. Amend. XIV, cl. 1.

<sup>96</sup> Doc. 170 at 29.

<sup>97</sup> *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (citing *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)).

<sup>98</sup> *Id.* (citing *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)).

<sup>99</sup> *Id.* (quoting *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961)).

One such fundamental right, at issue in this case, is the right to vote. Voting is one of the foundational building blocks of our democratic society, and that the Constitution firmly protects this right is “indelibly clear.”<sup>100</sup> All citizens of the United States have a constitutionally protected right to vote.<sup>101</sup> And all citizens have a constitutionally protected right to have their votes counted.<sup>102</sup>

With these background principles firmly rooted, the Court turns to the merits of Plaintiffs’ equal-protection claims. The general gist of their claims is that Secretary Boockvar, by failing to prohibit counties from implementing a notice-and-cure policy, and Defendant Counties, by adopting such a policy, have created a “standardless” system and thus unconstitutionally discriminated against Individual Plaintiffs. Though Plaintiffs do not articulate why, they also assert that this has unconstitutionally discriminated against the Trump Campaign.

As discussed above, the Court will address Individual Plaintiffs’ and the Trump Campaign’s claims separately. Because Individual Plaintiffs premised standing on the purported wrongful cancellation of their votes, the Court will only analyze whether Defendants have impermissibly burdened Individual Plaintiffs’ ability to vote. Further, the Court will consider two issues raised by the Trump Campaign; the first being whether it has stated a valid claim alleging discrimination relating to its use of poll-watchers, and the second being whether

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<sup>100</sup> *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).

<sup>101</sup> *Id.* (citing *Ex parte Yarbrough*, 110 U.S. 651 (1884)).

<sup>102</sup> *Id.* (citing *United States v. Mosley*, 238 U.S. 383 (1915)).

the General Assembly’s failure to uniformly prohibit (or permit) the notice-and-cure procedure is unconstitutional.

### 1. Individual Plaintiffs

States have “broad authority to regulate the conduct of elections, including federal ones.”<sup>103</sup> “This authority includes ‘broad powers to determine the conditions under which the right of suffrage may be exercised.’”<sup>104</sup> Because states must have freedom to regulate elections if “some sort of order, rather than chaos, is to accompany the democratic processes,”<sup>105</sup> such regulation is generally insulated from the stringent requirements of strict scrutiny.<sup>106</sup>

Instead, state regulation that burdens voting rights is normally subject to the *Anderson-Burdick* balancing test, which requires that a court “weigh the asserted injury to the right to vote against the ‘precise interests put forward by the State as justifications for the burden imposed by its rule.’”<sup>107</sup> Under this test, “any ‘law respecting the right to vote – whether it governs voter qualifications, candidate selection, or the voting process,’ is subjected to ‘a deferential ‘important

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<sup>103</sup> *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004) (citing U.S. Const. Art. I, § 4, cl. 1).

<sup>104</sup> *Donald J. Trump for President, Inc.*, 2020 WL 5997680, at \*38 (quoting *Shelby County, Ala. v. Holder*, 570 U.S. 529, 543 (2013)).

<sup>105</sup> *Id.* (quoting *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)).

<sup>106</sup> *Burdick*, 504 U.S. at 432-33.

<sup>107</sup> *Crawford v. Marion County Election Board*, 553 U.S. 181, 190 (2008) (quoting *Burdick*, 504 U.S. at 434).

regulatory interests” standard for nonsevere, nondiscriminatory restrictions, reserving strict scrutiny for laws that severely restrict the right to vote.”<sup>108</sup>

The *Anderson-Burdick* balancing test operates on a sliding scale.<sup>109</sup> Thus, more restrictive laws are subject to greater scrutiny. Conversely, “minimally burdensome and nondiscriminatory” regulations are subject to “a level of scrutiny ‘closer to rational basis.’”<sup>110</sup> “And where the state imposes no burden on the ‘right to vote’ at all, true rational basis review applies.”<sup>111</sup>

Here, because Defendants’ conduct “imposes no burden” on Individual Plaintiffs’ right to vote, their equal-protection claim is subject to rational basis review.<sup>112</sup> Defendant Counties, by implementing a notice-and-cure procedure, have in fact *lifted* a burden on the right to vote, even if only for those who live in those counties. Expanding the right to vote for some residents of a state does not burden the rights of others.<sup>113</sup> And Plaintiffs’ claim cannot stand to the extent that it complains that “the state is *not* imposing a restriction on *someone else’s* right to vote.”<sup>114</sup> Accordingly, Defendant Counties’ use of the notice-and-cure procedure

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<sup>108</sup> *Donald J. Trump for President*, 2020 WL 5997680, at \*39 (quoting *Crawford*, 533 U.S. at 204 (Scalia, J. concurring)).

<sup>109</sup> *See id.* at \*40; *see also Arizona Libertarian Party v. Hobbs*, 925 F.3d 1085, 1090 (9th Cir. 2019); *Fish v. Schwab*, 957 F.3d 1105, 1124 (10th Cir. 2020).

<sup>110</sup> *Donald J. Trump for President*, 2020 WL 5997680, at \*39 (quoting *Ohio Council 8 Am. Fed’n of State v. Husted*, 814 F.3d 329, 335 (6th Cir. 2016)).

<sup>111</sup> *Id.* (citing *Biener v. Calio*, 361 F.3d 206, 215 (3d Cir. 2004)).

<sup>112</sup> Even after questioning from this Court during oral argument regarding the appropriate standard of review for their equal-protection claim, Plaintiffs failed to discuss this key aspect of the claim in briefing. *See* Doc. 170.

<sup>113</sup> *See, e.g., Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018).

<sup>114</sup> *Donald J. Trump for President*, 2020 WL 5997680, at \*44 (emphasis in original).

(as well as Secretary Boockvar's authorization of this procedure) will be upheld unless it has no rational basis.<sup>115</sup>

Individual Plaintiffs' claims fail because it is perfectly rational for a state to provide counties discretion to notify voters that they may cure procedurally defective mail-in ballots. Though states may not discriminatorily sanction procedures that are likely to burden some persons' right to vote more than others, they need not expand the right to vote in perfect uniformity. All Plaintiffs have alleged is that Secretary Boockvar allowed counties to choose whether or not they wished to use the notice-and-cure procedure. No county was forced to adopt notice-and-cure; each county made a choice to do so, or not. Because it is not irrational or arbitrary for a state to allow counties to expand the right to vote if they so choose, Individual Plaintiffs fail to state an equal-protection claim.

Moreover, even if they could state a valid claim, the Court could not grant Plaintiffs the relief they seek. Crucially, Plaintiffs fail to understand the relationship between right and remedy. Though every injury must have its proper redress,<sup>116</sup> a court may not prescribe a remedy unhinged from the underlying right being asserted.<sup>117</sup> By seeking injunctive relief preventing certification of the Pennsylvania election results, Plaintiffs ask this Court to do exactly that. Even

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<sup>115</sup> *Biener*, 361 F.3d at 215.

<sup>116</sup> *Marbury v. Madison*, 5 U.S. 137, 147 (1803).

<sup>117</sup> *Gill*, 138 S. Ct. at 1934 ("A plaintiff's remedy must be tailored to redress the plaintiff's particular injury.") (citing *Cuno*, 547 U.S. at 353).

assuming that they can establish that their right to vote has been denied, which they cannot, Plaintiffs seek to remedy the denial of their votes by invalidating the votes of millions of others. Rather than requesting that their votes be counted, they seek to discredit scores of other votes, but only for one race.<sup>118</sup> This is simply not how the Constitution works.

When remedying an equal-protection violation, a court may either “level up” or “level down.”<sup>119</sup> This means that a court may either extend a benefit to one that has been wrongfully denied it, thus leveling up and bringing that person on par with others who already enjoy the right,<sup>120</sup> or a court may level down by withdrawing the benefit from those who currently possess it.<sup>121</sup> Generally, “the preferred rule in a typical case is to extend favorable treatment” and to level up.<sup>122</sup> In fact, leveling down is impermissible where the withdrawal of a benefit would necessarily violate the Constitution.<sup>123</sup> Such would be the case if a court were to remedy discrimination by striking down a benefit that is constitutionally guaranteed.

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<sup>118</sup> Curiously, Plaintiffs now claim that they seek only to enjoin certification of the presidential election results. Doc. 183 at 1. They suggest that their requested relief would thus not interfere with other election results in the state. But even if it were logically possible to hold Pennsylvania’s electoral system both constitutional and unconstitutional at the same time, the Court would not do so.

<sup>119</sup> *Heckler v. Matthews*, 465 U.S. 728, 740 (1984) (internal citations omitted).

<sup>120</sup> *Id.* at 741; *Califano v. Westcott*, 443 U.S. 76, 90-91 (1979).

<sup>121</sup> *E.g.*, *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1701 (2017).

<sup>122</sup> *Id.* (internal citations omitted).

<sup>123</sup> *See Palmer v. Thompson*, 403 U.S. 217, 226-27 (1971) (addressing whether a city’s decision to close pools to remedy racial discrimination violated the Thirteenth Amendment); *see also Reynolds*, 377 U.S. at 554 (citing *Mosley*, 238 U.S. at 383).

Here, leveling up to address the alleged cancellation of Plaintiffs' votes would be easy; the simple answer is that their votes would be counted. But Plaintiffs do not ask to level up. Rather, they seek to level down, and in doing so, they ask the Court to violate the rights of over 6.8 million Americans. It is not in the power of this Court to violate the Constitution.<sup>124</sup> "The disenfranchisement of even one person validly exercising his right to vote is an extremely serious matter."<sup>125</sup> "To the extent that a citizen's right to vote is debased, he is that much less a citizen."<sup>126</sup>

Granting Plaintiffs' requested relief would necessarily require invalidating the ballots of every person who voted in Pennsylvania. Because this Court has no authority to take away the right to vote of even a single person, let alone millions of citizens, it cannot grant Plaintiffs' requested relief.

## **2. Trump Campaign**

Plaintiffs' brief in opposition to the motions to dismiss spends only *one* paragraph discussing the merits of its equal-protection claim. Plaintiffs raise two arguments as to how equal protection was violated. The first is that "Defendants excluded Republican/Trump observers from the canvass so that they would not

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<sup>124</sup> *Marbury*, 5 U.S. at 147.

<sup>125</sup> *Perles v. County Return Bd. of Northumberland County*, 202 A.2d 538, 540 (Pa. 1964) (cleaned up).

<sup>126</sup> *Id.* at 567.



observe election law violations.”<sup>127</sup> The second claims that the “use of notice/cure procedures violated equal protection because it was deliberately done in counties where defendants knew that mail ballots would favor Biden/Democrats.”<sup>128</sup> The former finds no support in the operative pleading, and neither states an equal-protection violation.

Count I of the FAC makes no mention of disparity in treatment of observers based on which campaign they represented. Instead, Count I discusses the use of “standardless” procedures. These are two separate theories of an equal protection violation. That deficiency aside, to the extent this new theory is even pled, Plaintiffs fail to plausibly plead that there was “uneven treatment” of Trump and Biden watchers and representatives. Paragraphs 132-143 of the FAC are devoted to this alleged disparity. None of these paragraphs support Plaintiffs’ argument. A selection below:

- “Defendants have not allowed *watchers and representatives* to be present . . .”<sup>129</sup>
- “In Centre County, the central pre-canvassing location was a large ballroom. The set-up was such that the *poll watchers did not have meaningful access* to observe the canvassing and tabulation process of mail-in and absentee ballots, and in fact, the *poll watchers and observers* who were present could not actually observe the ballots such that they could confirm or object to the validity of the ballots.”<sup>130</sup>

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<sup>127</sup> Doc. 170 at 29. Count I makes no mention of the poll-watching allegations, nor does it seek relief for any violation of law on the basis of those allegations. Out of an abundance of caution, however, the Court considers whether these allegations state a claim.

<sup>128</sup> *Id.*

<sup>129</sup> Doc. 125 at ¶ 134 (emphasis added).

<sup>130</sup> *Id.* at ¶ 135 (emphasis added).

- “In Philadelphia County, *poll watchers and canvass representatives* were denied access altogether in some instances.”<sup>131</sup>
- “In Delaware County, *observers* were denied access to a back room counting area . . .”<sup>132</sup>

None of these allegations (or the others in this section) claim that the Trump Campaign’s watchers were treated *differently* than the Biden campaign’s watchers. Simply alleging that poll watchers did not have access or were denied access to some areas does not plausibly plead unequal treatment. Without actually alleging that one group was treated differently than another, Plaintiffs’ first argument falls flat.

Likewise, Plaintiffs cannot salvage their notice-and-cure theory by invoking *Bush v. Gore*.<sup>133</sup> Plaintiffs claim that the Equal Protection clause “imposes a ‘minimum requirement for nonarbitrary treatment of voters’ and forbids voting systems and practices that distribute resources in ‘standardless’ fashion, without ‘specific rules designed to ensure uniform treatment.’”<sup>134</sup> Plaintiffs attempt to craft a legal theory from *Bush*, but they fail because: (1) they misapprehend the issues at play in that case; and (2) the facts of this case are distinguishable.

Plaintiffs’ interpretation of *Bush v. Gore* would broaden the application of that case far beyond what the Supreme Court of the United States endorsed. In *Bush*, the Supreme Court stopped a recount of votes in Florida in the aftermath of

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<sup>131</sup> *Id.* at ¶ 136 (emphasis added).

<sup>132</sup> *Id.* at ¶ 137 (emphasis added).

<sup>133</sup> 531 U.S. 98 (2000).

<sup>134</sup> Doc. 170 at 13.

the 2000 Presidential Election. Despite Plaintiffs' assertions, *Bush* does not stand for the proposition that every rule or system must ensure uniform treatment. In fact, the Supreme Court explicitly said so, explaining: “[t]he question before the Court is *not* whether local entities, in the exercise of their expertise, may develop different systems for implementing elections.”<sup>135</sup> Instead, the Court explained that its holding concerned a “situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards.”<sup>136</sup> Where a state court has ordered such a remedy, the Supreme Court held that “there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.”<sup>137</sup> In other words, the lack of guidance from a court constituted an equal-protection violation.

In the instant matter, Plaintiffs are not challenging any court action as a violation of equal protection, and they do not allege that Secretary Boockvar's guidance differed from county to county, or that Secretary Boockvar told some counties to cure ballots and others not to. That some counties may have chosen to implement the guidance (or not), or to implement it differently, does not constitute an equal-protection violation. “[M]any courts that have recognized that counties may, consistent with equal protection, employ entirely different election

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<sup>135</sup> *Bush*, 531 U.S. at 109 (emphasis added).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

procedures and voting systems within a single state.”<sup>138</sup> “Arguable differences in how elections boards apply uniform statewide standards to the innumerable permutations of ballot irregularities, although perhaps unfortunate, are to be expected, just as judges in sentencing-guidelines cases apply uniform standards with arguably different results.”<sup>139</sup> Requiring that every single county administer elections in exactly the same way would impose untenable burdens on counties, whether because of population, resources, or a myriad of other reasonable considerations.

## V. CONCLUSION

Defendants’ motions to dismiss the First Amended Complaint are granted with prejudice. Leave to amend is denied. “Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility.”<sup>140</sup> Given that: (1) Plaintiffs have already amended once as of right; (2) Plaintiffs seek to amend simply in order to effectively reinstate their initial complaint and claims; and (3) the deadline for counties in Pennsylvania to certify their election results to Secretary Boockvar is November 23, 2020, amendment would unduly delay resolution of the issues. This is especially true because the Court would need to implement a new briefing schedule, conduct a second oral argument, and then decide the issues.

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<sup>138</sup> *Donald J. Trump for President*, 2020 WL 5997680, at \*44.

<sup>139</sup> *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612, 636 (6th Cir. 2020).

<sup>140</sup> *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1413–14 (3d Cir.1993).

An appropriate Order follows.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann

United States District Judge

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 20-3371

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DONALD J. TRUMP FOR PRESIDENT, INC.;  
LAWRENCE ROBERTS; DAVID JOHN HENRY,

Appellants

v.

SECRETARY COMMONWEALTH OF PENNSYLVANIA;  
ALLEGHENY COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD  
OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; DELAWARE  
COUNTY BOARD OF ELECTIONS; MONTGOMERY COUNTY BOARD OF  
ELECTIONS; NORTHAMPTON COUNTY BOARD OF ELECTIONS;  
PHILADELPHIA COUNTY BOARD OF ELECTIONS

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. No. 4:20-cv-02078)  
District Judge: Honorable Matthew W. Brann

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Submitted Under Third Circuit L.A.R. 34.1(a)  
on November 25, 2020

Before: SMITH, *Chief Judge*, and CHAGARES and BIBAS, *Circuit Judges*

(Filed: November 27, 2020)

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OPINION\*

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\* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

BIBAS, *Circuit Judge*.

Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.

The Trump Presidential Campaign asserts that Pennsylvania’s 2020 election was unfair. But as lawyer Rudolph Giuliani stressed, the Campaign “doesn’t plead fraud. . . . [T]his is not a fraud case.” Mot. to Dismiss Hr’g Tr. 118:19–20, 137:18. Instead, it objects that Pennsylvania’s Secretary of State and some counties restricted poll watchers and let voters fix technical defects in their mail-in ballots. It offers nothing more.

This case is not about whether those claims are true. Rather, the Campaign appeals on a very narrow ground: whether the District Court abused its discretion in not letting the Campaign amend its complaint a second time. It did not.

Most of the claims in the Second Amended Complaint boil down to issues of state law. But Pennsylvania law is willing to overlook many technical defects. It favors counting votes as long as there is no fraud. Indeed, the Campaign has already litigated and lost many of these issues in state courts.

The Campaign tries to repackage these state-law claims as unconstitutional discrimination. Yet its allegations are vague and conclusory. It never alleges that anyone treated the Trump campaign or Trump votes worse than it treated the Biden campaign or Biden votes. And federal law does not require poll watchers or specify how they may observe. It also says nothing about curing technical state-law errors in ballots. Each of these defects is fatal,

and the proposed Second Amended Complaint does not fix them. So the District Court properly denied leave to amend again.

Nor does the Campaign deserve an injunction to undo Pennsylvania's certification of its votes. The Campaign's claims have no merit. The number of ballots it specifically challenges is far smaller than the roughly 81,000-vote margin of victory. And it never claims fraud or that any votes were cast by illegal voters. Plus, tossing out millions of mail-in ballots would be drastic and unprecedented, disenfranchising a huge swath of the electorate and upsetting all down-ballot races too. That remedy would be grossly disproportionate to the procedural challenges raised. So we deny the motion for an injunction pending appeal.

## **I. BACKGROUND**

### **A. Pennsylvania election law**

In Pennsylvania, each county runs its own elections. 25 Pa. Stat. §2641(a). Counties choose and staff polling places. §2642(b), (d). They buy their own ballot boxes and voting booths and machines. §2642(c). They even count the votes and post the results. §2642(k), (l). In all this, counties must follow Pennsylvania's Election Code and regulations. But counties can, and do, adopt rules and guidance for election officers and electors. §2642(f). And they are charged with ensuring that elections are "honestly, efficiently, and uniformly conducted." §2642(g).

1. *Poll watchers and representatives.* Counties must admit qualified poll "watchers" to observe votes being tallied. 25 Pa. Stat. §2650(a). Poll watchers must be registered to vote in the county where they will serve. §2687(b). Each candidate can pick two poll watchers per election district; each political party, three. §2687(a). The poll watchers



remain at the polling place while election officials count in-person ballots. § 2687(b). They can ask to check voting lists. *Id.* And they get to be present when officials open and count all the mail-in ballots. § 3146.8(b). Likewise, candidates' and political parties' "representatives" may be present when absentee and mail-in ballots are inspected, opened, or counted, or when provisional ballots are examined. §§ 2602(a.1), (q.1), 3050(a.4)(4), 3146.8(g)(1.1) & (2); *see also* § 3050(a.4)(12) (defining provisional ballots as those cast by voters whose voter registration cannot be verified right away).

Still, counties have some control over these poll watchers and representatives. The Election Code does not tell counties how they must accommodate them. Counties need only allow them "in the polling place" or "in the room" where ballots are being inspected, opened, or counted. §§ 2687(b), 3050(a.4)(4), 3146.8(g)(1.1) & (2). Counties are expected to set up "an enclosed space" for vote counters at the polling place, and poll watchers "shall remain outside the enclosed space." § 2687(b). So the counties decide where the watchers stand and how close they get to the vote counters.

2. *Mail-in ballots.* For decades, Pennsylvania let only certain people, like members of the military and their families, vote by mail. *See, e.g.*, 25 Pa. Stat. § 3146.1. But last year, as part of a bipartisan election reform, Pennsylvania expanded mail-in voting. Act of Oct. 31, 2019, Pub. L. No. 552, sec. 8, § 1310-D, 2019 Pa. Legis. Serv. Act 2019-77 (S.B. 421). Now, any Pennsylvania voter can vote by mail for any reason. *See* 25 Pa. Stat. §§ 2602(t), 3150.11(a).

To vote by mail, a Pennsylvania voter must take several steps. First, he (or she) must ask the State (Commonwealth) or his county for a mail-in ballot. 25 Pa. Stat. § 3150.12(a).

To do that, he must submit a signed application with his name, date of birth, address, and other information. §3150.12(b)–(c). He must also provide a driver’s license number, the last four digits of his Social Security number, or the like. §§2602(z.5), 3150.12b(a), (c). Once the application is correct and complete, the county will approve it. *See* §§3150.12a(a), 3150.12b.

Close to the election, the county will mail the voter a mail-in ballot package. §3150.15. The package has a ballot and two envelopes. The smaller envelope (also called the secrecy envelope) is stamped “Official Election Ballot.” §3150.14(a). The larger envelope is stamped with the county board of election’s name and address and bears a printed voter declaration. *Id.*

Next, the voter fills out the ballot. §3150.16(a). He then folds the ballot; puts it into the first, smaller secrecy envelope; and seals it. *Id.* After that, he puts the secrecy envelope inside the larger envelope and seals that too. *Id.* He must also “fill out, date and sign the declaration printed” on the outside of the larger envelope. §§3150.16(a), 3150.14(b). The declaration for the November 2020 election read thus:

I hereby declare that I am qualified to vote from the below stated address at this election; that I have not already voted in this election; and I further declare that I marked my ballot in secret. I am qualified to vote the enclosed ballot. I understand I am no longer eligible to vote at my polling place after I return my voted ballot. However, if my ballot is not received by the county, I understand I may only vote by provisional ballot at my polling place, unless I surrender my balloting materials, to be voided, to the judge of elections at my polling place.

[BAR CODE]

Voter, sign or mark here/Votante firme o mar[q]ue aqui

**X**

\_\_\_\_\_  
Date of signing (MM/DD/YYYY)/Fecha de firme (MM/DD/YYYY)

\_\_\_\_\_  
Voter, print name/Votante, nombre en letra de impreta

*In re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, Nos. 31–35 EAP & 29 WAP 2020, \_\_\_ A.3d \_\_\_, 2020 WL 6875017, at \*4 (Pa. Nov. 23, 2020). Once the voter assembles the ballot packet, he can mail it back or deliver it in person. 25 Pa. Stat. § 3150.16(a).

Not every voter can be expected to follow this process perfectly. Some forget one of the envelopes. Others forget to sign on the dotted line. Some major errors will invalidate a ballot. For instance, counties may not count mail-in ballots that lack secrecy envelopes. *Pa. Dem. Party v. Boockvar*, 238 A.3d 345, 378–80 (Pa. 2020). But the Election Code says nothing about what should happen if a county notices these errors before election day. Some counties stay silent and do not count the ballots; others contact the voters and give them a chance to correct their errors.

## **B. Facts and procedural history**

On appeal from the dismissal of a complaint, we take the factual allegations as true:

1. *Mail-in voting*. For months, Pennsylvanians went to the polls, so to speak. The first batch of mail-in ballots went out to voters in late September. As they trickled back in, election officials noticed that some voters had not followed the rules. Some ballots were

not in secrecy envelopes, so those packages were lighter and thinner than complete ballot packages. Others had declarations that voters had not completed. Some counties did not notify voters about these defective ballots. Others, including the counties named in this suit, decided to reach out to these voters to let them cure their mistakes by voting provisionally on Election Day or asking for a replacement ballot.

2. *Election Day*. Though more than two million Pennsylvanians voted by mail, even more voted in person. On Election Day, November 3, the Campaign set up poll watchers at polling places around the Commonwealth. Appellees' election officials kept poll watchers and representatives away from where ballots were opened, counted, and tallied. In Philadelphia, for instance, poll watchers were kept six to twenty-five feet back from officials. In comparison, other, "Republican[-]controlled" counties did give the Campaign's poll watchers and representatives full access. Second Am. Compl. ¶¶ 151, 154.

In all, nearly seven million Pennsylvanians voted, more than a third of them by mail. *Unofficial Returns for the 2020 Presidential Election*, Pa. Dep't of State, <https://www.electionreturns.pa.gov/> (last visited Nov. 27, 2020). As of today, former Vice President Biden leads President Trump in Pennsylvania by 81,660 votes. *Id.*

Pennsylvania's counties certified their election results by the November 23 certification deadline. 25 Pa. Stat. § 2642(k). The next morning, the Secretary of State (technically, Secretary of the Commonwealth) certified the vote totals, and the Governor signed the Certificate of Ascertainment and sent it to the U.S. Archivist. *Department of State Certifies Presidential Election Results*, PA Media, <https://www.media.pa.gov/Pages/State-details.aspx?newsid=435> (last visited Nov. 27, 2020). The certified margin of victory was 80,555 votes. *Id.*

3. *This lawsuit.* Almost a week after the election, the Campaign (as well as two voters) sued seven Pennsylvania counties and Secretary of State Kathy Boockvar. It alleged that they had violated the Due Process, Equal Protection, and Electors and Elections Clauses of the U.S. Constitution by taking two basic actions: First, the counties (encouraged by Secretary Boockvar) identified defective mail-in ballots early and told voters how to fix them. Second, they kept poll watchers and representatives from watching officials count all ballots.

So far, the Campaign has filed or tried to file three complaints. The original Complaint, filed November 9, set out six counts (plus a duplicate). After Boockvar and the counties moved to dismiss, on November 15 the Campaign filed a First Amended Complaint as of right, dropping four of the six counts (plus the duplicate), including all the counts relating to poll watchers and representatives. The Campaign sought a preliminary injunction to block certifying the election results. Boockvar and the counties again moved to dismiss. On November 18, the Campaign sought to file a Second Amended Complaint, resurrecting four dropped claims from the original Complaint and adding three more about how Philadelphia had blocked poll watching.

The District Court ended these volleys, denying leave to file the Second Amended Complaint. Instead, it dismissed the First Amended Complaint with prejudice and denied the Campaign's motion for a preliminary injunction as moot. *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-02078, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 6821992 (M.D. Pa. Nov. 21, 2020). In doing so, it held that the individual voters lacked standing. *Id.* at \*5–

6. We commend the District Court for its fast, fair, patient handling of this demanding litigation.

4. *This appeal.* The Campaign filed this appeal on Sunday, November 22, and we granted its motion to expedite. The Campaign filed its brief and another motion November 23; opposing briefs and filings arrived the next day. We are issuing this opinion nonprecedentially so we can rule by November 27.

The Campaign does not challenge the District Court’s finding that the voters lacked standing, so we do not consider their claims. On appeal, it seeks only narrow relief: to overturn the District Court’s decision not to let it amend its complaint again. We address that claim in Part II. Separately, the Campaign asks us for an injunction to prevent the certified vote totals from taking effect. We address that claim in Part III.

## **II. THE DISTRICT COURT PROPERLY DENIED LEAVE TO AMEND THE COMPLAINT AGAIN**

After one amendment, the District Court denied the Campaign’s motion to amend the complaint a second time. We review that denial for abuse of discretion. *Premier Comp. Sol., LLC v. UPMC*, 970 F.3d 316, 318–19 (3d Cir. 2020). But on any standard of review, the court got it right.

Courts should grant leave to amend “freely ... when justice so requires.” Fed. R. Civ. P. 15(a)(2). In civil-rights cases, that means granting leave unless “amendment would be futile or inequitable.” *Vorchheimer v. Phila. Owners Ass’n*, 903 F.3d 100, 113 (3d Cir. 2018); *Cureton v. NCAA*, 252 F.3d 267, 272–73 (3d Cir. 2001) (giving undue delay as an example of inequity). Here, the Campaign’s request fails as both inequitable and futile.

**A. The Campaign’s delay was undue, given its stress on needing to resolve the case by November 23**

When the Campaign was before the District Court, it focused its arguments on the need to resolve the case by Pennsylvania’s deadline for counties to certify their votes: Monday, November 23. Indeed, all three iterations of the complaint focused their prayers for relief on blocking the certification of the vote tally. The Campaign said it could get no “meaningful remedy” after that date. Br. in Supp. of Mot. for TRO & PI, Dkt. 89-1, at 4.

The Campaign filed its First Amended Complaint on November 15, eight days before the certification deadline. In response to several pending motions to dismiss, it dropped many of the challenged counts from the original Complaint. It did not then move to file a Second Amended Complaint until November 18, when its opposition to the new motions to dismiss was due. And it did not file a brief in support of that motion until Friday, November 20. Certification was three days away.

As the District Court rightly noted, amending that close to the deadline would have delayed resolving the issues. True, delay alone is not enough to bar amendment. *Cureton*, 252 F.3d at 273. But “at some point, the delay will become ‘undue,’ placing an unwarranted burden on the court.” *Id.* (quoting *Adams v. Gould, Inc.*, 739 F.2d 858, 868 (3d Cir. 1984)). The Campaign’s motion would have done just that. It would have mooted the existing motions to dismiss and required new briefing, possibly new oral argument, and a reasoned judicial opinion within seventy-two hours over a weekend. That is too much to ask—especially since the proposed Second Amended Complaint largely repleaded many claims abandoned by the first one. *Cf. Rolo v. City Investing Co. Liquidating Tr.*, 155 F.3d 644, 654–

55 (3d Cir. 1998) (affirming denial of leave to amend because the movant sought largely to “replead facts and arguments that could have been pled much earlier”).

Having repeatedly stressed the certification deadline, the Campaign cannot now pivot and object that the District Court abused its discretion by holding the Campaign to that very deadline. It did not.

**B. Amending the Complaint again would have been futile**

The Campaign focuses on critiquing the District Court’s discussion of undue delay. Though the court properly rested on that ground, we can affirm on any ground supported by the record. Another ground also supports its denial of leave to amend: it would have been futile.

1. *The Campaign had to plead plausible facts, not just conclusory allegations.* Plaintiffs must do more than allege conclusions. Rather, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* The Second Amended Complaint does not meet *Twombly* and *Iqbal*’s baseline standard of specifics.

To start, note what it does not allege: fraud. Indeed, in oral argument before the District Court, Campaign lawyer Rudolph Giuliani conceded that the Campaign “doesn’t plead fraud.” Mot. to Dismiss Hr’g Tr. 118:19–20 (Nov. 17, 2020). He reiterated: “If we had alleged fraud, yes, but this is not a fraud case.” *Id.* at 137:18.



Though it alleges many conclusions, the Second Amended Complaint is light on facts. Take the nearly identical paragraphs introducing Counts One, Two, Four, and Six: “Democrats who controlled the Defendant County Election Boards engaged in a deliberate scheme of intentional and purposeful discrimination ... by excluding Republican and Trump Campaign observers from the canvassing of the mail ballots in order to conceal their decision not to enforce [certain ballot] requirements.” Second Am. Compl. ¶¶167, 193, 222, 252. That is conclusory. So is the claim that, “[u]pon information and belief, a substantial portion of the approximately 1.5 million absentee and mail votes in Defendant Counties should not have been counted.” *Id.* ¶¶168, 194, 223, 253. “Upon information and belief” is a lawyerly way of saying that the Campaign does not know that something is a fact but just suspects it or has heard it. “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679. Yet the Campaign offers no specific facts to back up these claims.

2. *The Campaign has already litigated and lost most of these issues.* Many of the Second Amended Complaint’s claims have already had their day in court. The Campaign cannot use this lawsuit to collaterally attack those prior rulings. On Counts One, Two, Four, and Six, the Campaign has already litigated whether ballots that lack a handwritten name, address, or date on the outer envelope must be disqualified. *See In re: Canvass of Absentee and Mail-in Ballots*, 2020 WL 6875017, at \*1. The Pennsylvania Supreme Court ruled against the Campaign, holding: “[T]he Election Code does not require boards of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot’s outer envelope but did not handwrite their name, their address,

and/or date, where no fraud or irregularity has been alleged.” *Id.* at \*1. That holding undermines the Campaign’s suggestions that defective ballots should not have been counted.

Counts One and Two also challenge the requirement that poll watchers be registered electors of the county they wish to observe and that observers be Pennsylvania lawyers. But a federal district court has already held “that the county-residency requirement for poll watching does not, as applied to the particular circumstances of this election, burden any of [the Campaign’s] fundamental constitutional rights.” *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-966, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 5997680, at \*66 (W.D. Pa. Oct. 10, 2020). The Campaign never appealed that decision, so it is bound by it.

Count Seven alleges that Philadelphia’s Board of Elections violated due process by obstructing poll watchers and representatives. But nothing in the Due Process Clause requires having poll watchers or representatives, let alone watchers from outside a county or less than eighteen feet away from the nearest table. The Campaign cites no authority for those propositions, and we know of none. (Ditto for notice-and-cure procedures.) And the Campaign litigated and lost that claim under state law too. The Pennsylvania Supreme Court held that the Election Code requires only that poll watchers be in the room, not that they be within any specific distance of the ballots. *In re Canvassing Observation Appeal of: City of Phila. Bd. of Electors*, No. 30 EAP 2020, \_\_\_ A.3d \_\_\_, 2020 WL 6737895, at \*8–9 (Pa. Nov. 17, 2020).

The Campaign does not even challenge the dismissal of Counts Three, Five, and Nine, the Electors and Elections Clause counts. It concedes that under our recent decision, it lacks standing to pursue alleged violations of those clauses. *Bognet v. Sec’y Commonwealth of*

*Pa.*, No. 20-3214, \_\_\_ F.3d \_\_\_, 2020 WL 6686120, at \*6–9 (3d Cir. Nov. 13, 2020). Given its concession, we need not consider the issue any more.

The Second Amended Complaint thus boils down to the equal-protection claims in Counts Two, Four, Six, and Eight. They require not violations of state law, but discrimination in applying it. Those claims fail too.

3. *The Campaign never pleads that any defendant treated the Trump and Biden campaigns or votes differently.* A violation of the Equal Protection Clause requires more than variation from county to county. It requires unequal treatment of similarly situated parties. But the Campaign never pleads or alleges that anyone treated it differently from the Biden campaign. Count One alleges that the counties refused to credential the Campaign’s poll watchers or kept them behind metal barricades, away from the ballots. It never alleges that other campaigns’ poll watchers or representatives were treated differently. Count Two alleges that an unnamed lawyer was able to watch all aspects of voting in York County, while poll watchers in Philadelphia were not. It also makes a claim about one Jared M. Mellott, who was able to poll watch in York County. Counts Four and Six allege that poll watcher George Gallenthin had no issues in Bucks County but was barred from watching in Philadelphia. And Count Eight alleges that Philadelphia officials kept Jeremy Mercer too far away to verify that ballots were properly filled out. None of these counts alleges facts showing improper vote counting. And none alleges facts showing that the Trump campaign was singled out for adverse treatment. The Campaign cites no authority suggesting that an actor discriminates by treating people equally while harboring a partisan motive, and we know of none.

These county-to-county variations do not show discrimination. “[C]ounties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state.” *Donald J. Trump for President, Inc.*, 2020 WL 5997680, at \*44 (collecting cases). Even when boards of elections “vary ... considerably” in how they decide to reject ballots, those local differences in implementing statewide standards do not violate equal protection. *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 635–36 (6th Cir. 2016); *see also Wexler v. Anderson*, 452 F.3d 1226, 1231–33 (11th Cir. 2006) (recognizing that equal protection lets different counties use different voting systems).

Nor does *Bush v. Gore* help the Campaign. 531 U.S. 98 (2000) (per curiam). There, the Florida Supreme Court had ratified treating ballots unequally. *Id.* at 107. That was because the principle it set forth, the “intent of the voter,” lacked *any* “specific standards to ensure its equal application.” *Id.* at 105–06. The lack of any standards at all empowered officials to treat ballots arbitrarily, violating equal protection. *Id.* Here, by contrast, Pennsylvania’s Election Code gives counties specific guidelines. To be sure, counties vary in implementing that guidance, but that is normal. Reasonable county-to-county variation is not discrimination. *Bush v. Gore* does not federalize every jot and tittle of state election law.

4. *The relief sought—throwing out millions of votes—is unprecedented.* Finally, the Second Amended Complaint seeks breathtaking relief: barring the Commonwealth from certifying its results or else declaring the election results defective and ordering the Pennsylvania General Assembly, not the voters, to choose Pennsylvania’s presidential electors. It cites no authority for this drastic remedy.

The closest the Campaign comes to justifying the relief it seeks is citing *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994). But those facts were a far cry from the ones here. In *Marks*, the district court found that the Stinson campaign had orchestrated “massive absentee ballot fraud, deception, intimidation, harassment and forgery.” *Id.* at 887 (quoting district court’s tentative findings). It had lied to voters, deceived election officials, and forged ballots. *Id.* at 877. We remanded that case, instructing that “the district court should not direct the certification of a candidate unless it finds, on the basis of record evidence, that the designated candidate would have won the election but for wrongdoing.” *Id.* at 889. And that seemed likely: the Stinson campaign had gotten about 600 net absentee-ballot applications (roughly 1000 minus 400 that were later rejected), more than the 461-vote margin of victory. *Id.* at 876–77.

Here, however, there is no clear evidence of massive absentee-ballot fraud or forgery. On the contrary, at oral argument in the District Court, the Campaign specifically disavowed any claim of fraud. And the margin of victory here is not nearly as close: not 461 votes, but roughly 81,000.

Though district courts should freely give leave to amend, they need not do so when amendment would be futile. Because the Second Amended Complaint would not survive a motion to dismiss, the District Court properly denied leave to file it.

### **III. NO STAY OR INJUNCTION IS WARRANTED**

We could stop here. Once we affirm the denial of leave to amend, this case is over. Still, for completeness, we address the Campaign’s emergency motion to stay the effect of certification. No stay or injunction is called for.

Though the Campaign styles its motion as seeking a stay or preliminary injunction, what it really wants is an injunction pending appeal. But it neither requested that from the District Court during the appeal nor showed that it could not make that request, as required by Federal Rule of Appellate Procedure 8(a)(2)(A). That failure bars the motion.

Even if we could grant relief, we would not. Injunctions pending appeal, like preliminary injunctions, are “extraordinary remed[ies] never awarded as of right.” *Winter v. NRDC*, 555 U.S. 7, 24 (2008). For a stay or injunction pending appeal, the movant must show both (1) a “strong” likelihood of success on the merits and (2) irreparable injury absent a stay or injunction. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The first two factors are “the most critical.” *Nken v. Holder*, 556 U.S. 418, 434 (2009). After that, we also balance (3) whether a stay or injunction will injure other interested parties (also called the balance of equities) and (4) the public interest. *Hilton*, 481 U.S. at 776; *In re Revel AC, Inc.*, 802 F.3d 558, 568–71 (3d Cir. 2015). None of the four factors favors taking this extraordinary step.

**A. The Campaign has no strong likelihood of success on the merits**

As discussed, the Campaign cannot win this lawsuit. It conceded that it is not alleging election fraud. It has already raised and lost most of these state-law issues, and it cannot relitigate them here. It cites no federal authority regulating poll watchers or notice and cure. It alleges no specific discrimination. And it does not contest that it lacks standing under the Elections and Electors Clauses. These claims cannot succeed.

**B. The Campaign faces no irreparable harm**

The Campaign has not shown that denying relief will injure it. “Upon information and belief,” it suspects that many of the 1.5 million mail-in ballots in the challenged counties were improperly counted. Second Am. Compl. ¶¶ 168, 194, 223, 253. But it challenges no specific ballots. The Campaign alleges only that at most three specific voters cast ballots that were not counted. *Id.* ¶ 237 (one voter); First Am. Compl. ¶¶ 15–16, 112 (three). And it never alleges that anyone except a lawful voter cast a vote. Of the seven counties whose notice-and-cure procedures are challenged, four (including the three most populous) represented that they gave notice to only about 6,500 voters who sent in defective ballot packages. Allegheny Cty. Opp. Mot. TRO & PI 7–8, D. Ct. Dkt. No. 193 (Nov. 20, 2020). The Campaign never disputed these numbers or alleged its own. Even if 10,000 voters got notice and cured their defective ballots, and every single one then voted for Biden, that is less than an eighth of the margin of victory.

Without more facts, we will not extrapolate from these modest numbers to postulate that the number of affected ballots comes close to the certified margin of victory of 80,555 votes. Denying relief will not move the needle.

Plus, states are primarily responsible for running federal elections. U.S. Const. art. I, §4, cl. 1; 3 U.S.C. §5. Pennsylvania law has detailed mechanisms for disputing election results. 25 Pa. Stat. §§ 3261–3474. Because the Campaign can raise these issues and seek relief through state courts and then the U.S. Supreme Court, any harm may not be irreparable. *Touchston v. McDermott*, 234 F.3d 1130, 1132–33 (11th Cir. 2000) (per curiam) (en banc).

**C. The balance of equities opposes disenfranchising voters**

Nor would granting relief be equitable. The Campaign has already litigated and lost most of these issues as garden-variety state-law claims. It now tries to turn them into federal constitutional claims but cannot. *See Bognet*, 2020 WL 6686120, at \*11.

Even if it could, it has delayed bringing this suit. For instance, in proposed Count Four, it challenges giving voters notice and letting them cure ballot defects as violating equal protection. The Campaign could have disputed these practices while they were happening or during the canvassing period. Instead, it waited almost a week after Election Day to file its original complaint, almost another week to amend it, and then another three days to amend it again. Its delay is inequitable, and further delay would wreak further inequity.

And the Campaign's charges are selective. Though Pennsylvanians cast 2.6 million mail-in ballots, the Campaign challenges 1.5 million of them. It cherry-picks votes cast in "Democratic-heavy counties" but not "those in Republican-heavy counties." Second Am. Compl. ¶8. Without compelling evidence of massive fraud, not even alleged here, we can hardly grant such lopsided relief.

Granting relief would harm millions of Pennsylvania voters too. The Campaign would have us set aside 1.5 million ballots without even alleging fraud. As the deadline to certify votes has already passed, granting relief would disenfranchise those voters or sidestep the expressed will of the people. Tossing out those ballots could disrupt every down-ballot race as well. There is no allegation of fraud (let alone proof) to justify harming those millions of voters as well as other candidates.



**D. The public interest favors counting all lawful voters' votes**

Lastly, relief would not serve the public interest. Democracy depends on counting all lawful votes promptly and finally, not setting them aside without weighty proof. The public must have confidence that our Government honors and respects their votes.

What is more, throwing out those votes would conflict with Pennsylvania election law. The Pennsylvania Supreme Court has long “liberally construed” its Election Code “to protect voters’ right to vote,” even when a ballot violates a technical requirement. *Shambach v. Bickhart*, 845 A.2d 793, 802 (Pa. 2004). “Technicalities should not be used to make the right of the voter insecure.” *Appeal of James*, 105 A.2d 64, 66 (Pa. 1954) (internal quotation marks omitted). That court recently reiterated: “[T]he Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice.” *Pa. Dem. Party*, 238 A.3d at 356. Thus, unless there is evidence of fraud, Pennsylvania law overlooks small ballot glitches and respects the expressed intent of every lawful voter. *In re: Canvass of Absentee and Mail-in Ballots*, 2020 WL 6875017, at \*1 (plurality opinion). In our federalist system, we must respect Pennsylvania’s approach to running elections. We will not make more of ballot technicalities than Pennsylvania itself does.

\* \* \* \* \*

Voters, not lawyers, choose the President. Ballots, not briefs, decide elections. The ballots here are governed by Pennsylvania election law. No federal law requires poll watchers or specifies where they must live or how close they may stand when votes are counted. Nor does federal law govern whether to count ballots with minor state-law defects or let voters

cure those defects. Those are all issues of state law, not ones that we can hear. And earlier lawsuits have rejected those claims.

Seeking to turn those state-law claims into federal ones, the Campaign claims discrimination. But its alchemy cannot transmute lead into gold. The Campaign never alleges that any ballot was fraudulent or cast by an illegal voter. It never alleges that any defendant treated the Trump campaign or its votes worse than it treated the Biden campaign or its votes. Calling something discrimination does not make it so. The Second Amended Complaint still suffers from these core defects, so granting leave to amend would have been futile.

And there is no basis to grant the unprecedented injunction sought here. First, for the reasons already given, the Campaign is unlikely to succeed on the merits. Second, it shows no irreparable harm, offering specific challenges to many fewer ballots than the roughly 81,000-vote margin of victory. Third, the Campaign is responsible for its delay and repetitive litigation. Finally, the public interest strongly favors finality, counting every lawful voter's vote, and not disenfranchising millions of Pennsylvania voters who voted by mail. Plus, discarding those votes could disrupt every other election on the ballot.

We will thus affirm the District Court's denial of leave to amend, and we deny an injunction pending appeal. The Campaign asked for a very fast briefing schedule, and we have granted its request. Because the Campaign wants us to move as fast as possible, we also deny oral argument. We grant all motions to file overlength responses, to file amicus briefs, and to supplement appendices. We deny all other outstanding motions as moot. This Court's mandate shall issue at once.



**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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No. 2:20-cv-966

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DONALD J. TRUMP FOR PRESIDENT, INC., *et al.*,

Plaintiffs

v.

KATHY BOOCKVAR, in her capacity as Secretary of the  
Commonwealth of Pennsylvania, *et al.*,

Defendants.

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**OPINION**

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**J. Nicholas Ranjan, United States District Judge**

Plaintiffs in this case are President Trump’s reelection campaign, the Republican National Committee, and several other Republican congressional candidates and electors. They originally filed this suit, alleging federal and state constitutional violations stemming from Pennsylvania’s implementation of a mail-in voting plan for the upcoming general election.

Since then, the Pennsylvania Supreme Court issued a decision involving similar claims, which substantially narrowed the focus of this case. And Secretary of the Commonwealth, Kathy Boockvar, issued additional election “guidance,” which further narrowed certain of the claims.

Therefore, as this case presently stands, only three claims remain. First, whether the use of so-called “drop boxes”<sup>1</sup> for mail-in ballots is unconstitutional, given the lack of guidance or mandates that those drop boxes have security guards to man them. Second, whether the Secretary’s guidance as to mail-in ballots—specifically, her guidance that county election boards should not reject mail-in ballots where the voter’s signature does not match the one on file—is unconstitutional. Third, whether Pennsylvania’s restriction that poll watchers be residents in the county for which they are assigned, as applied to the facts of this case, is unconstitutional.

In order to present these claims to the Court on a complete record, the parties engaged in extensive fact and expert discovery, and have filed cross-motions for summary judgment. No party has raised a genuine dispute of material fact that would require a trial, and the Court has found none. As such, the parties’ cross-motions for summary judgment are ready for disposition.

After a careful review of the parties’ submissions and the extensive evidentiary record, the Court will enter judgment in favor of Defendants on all of Plaintiffs’ federal-constitutional claims, decline to exercise supplemental jurisdiction over the state-constitutional claims, and dismiss this case. This is so for two main reasons.

First, the Court concludes that Plaintiffs lack Article III standing to pursue their claims. Standing, of course, is a necessary requirement to cross the threshold into federal court. Federal courts adjudicate cases and controversies, where a plaintiff’s injury is concrete and particularized. Here, however, Plaintiffs have not presented a concrete injury to warrant federal-court review. All of Plaintiffs’ remaining claims have the same theory of injury—one of “vote dilution.” Plaintiffs fear that absent implementation of the security measures that they seek (guards by drop boxes, signature comparison of mail-in ballots, and poll

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<sup>1</sup> “Drop boxes” are receptacles similar to U.S. Postal Service mailboxes. They are made of metal, and have a locking mechanism, storage compartment, and an insert or slot into which a voter can insert a ballot. *See generally* [ECF 549-9].

watchers), there is a risk of voter fraud by other voters. If another person engages in voter fraud, Plaintiffs assert that their own lawfully cast vote will, by comparison, count for less, or be diluted.

The problem with this theory of harm is that it is speculative, and thus Plaintiffs' injury is not "concrete"—a critical element to have standing in federal court. While Plaintiffs may not need to prove actual voter fraud, they must at least prove that such fraud is "certainly impending." They haven't met that burden. At most, they have pieced together a sequence of uncertain assumptions: (1) they assume potential fraudsters may attempt to commit election fraud through the use of drop boxes or forged ballots, or due to a potential shortage of poll watchers; (2) they assume the numerous election-security measures used by county election officials may not work; and (3) they assume their own security measures may have prevented that fraud.

All of these assumptions could end up being true, and these events could theoretically happen. But so could many things. The relevant question here is: are they "certainly impending"? At least based on the evidence presented, the answer to that is "no." And that is the legal standard that Plaintiffs must meet. As the Supreme Court has held, this Court cannot "endorse standing theories that rest on speculation about the decisions of independent actors." *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013).

Second, even if Plaintiffs had standing, their claims fail on the merits. Plaintiffs essentially ask this Court to second-guess the judgment of the Pennsylvania General Assembly and election officials, who are experts in creating and implementing an election plan. Perhaps Plaintiffs are right that guards should be placed near drop boxes, signature-analysis experts should examine every mail-in ballot, poll watchers should be able to man any poll regardless of location, and other security improvements should be made. But the job of an unelected federal judge isn't to suggest election improvements, especially when those improvements contradict the reasoned judgment of democratically elected officials. *See Andino v. Middleton*, --- S. Ct. ---, 2020 WL 5887393, at \*1 (Oct. 5, 2020)

(Kavanaugh, J. concurring) (state legislatures should not be subject to “second-guessing by an unelected federal judiciary,” which is “not accountable to the people”) (cleaned up).

Put differently, “[f]ederal judges can have a lot of power—especially when issuing injunctions. And sometimes we may even have a good idea or two. But the Constitution sets out our sphere of decision-making, and that sphere does not extend to second-guessing and interfering with a State’s reasonable, nondiscriminatory election rules.” *New Georgia Project v. Raffensperger*, --- F.3d ---, 2020 WL 5877588, at \*4 (11th Cir. Oct. 2, 2020).

As discussed below, the Court finds that the election regulations put in place by the General Assembly and implemented by Defendants do not significantly burden any right to vote. They are rational. They further important state interests. They align with the Commonwealth’s elaborate election-security measures. They do not run afoul of the United States Constitution. They will not otherwise be second-guessed by this Court.

## **BACKGROUND**

### **I. Procedural Background**

#### **A. Plaintiffs’ original claims.**

On June 29, 2020, Plaintiffs filed their original complaint in this case against Defendants, who are the Secretary of the Commonwealth and the 67 county boards of elections. [ECF 4]. With their lawsuit, Plaintiffs challenged a number of Pennsylvania’s procedures with respect to mail-in voting—in particular, the use of drop boxes and the counting of mail-in ballots that contained certain procedural defects. *See [id.]*. Shortly after filing their original complaint, Plaintiffs moved for expedited discovery and an expedited declaratory-judgment hearing. [ECF 6]. Defendants opposed the motion. The Court partially granted the motion, scheduled a speedy hearing, and ordered expedited discovery before that hearing. [ECF 123; ECF 124].

After Plaintiffs filed the original complaint, many non-parties sought to intervene in the action, including several organizations.<sup>2</sup> The Court granted all intervention motions. [ECF 309].

Defendants and Intervenors moved to dismiss the original complaint. In response, Plaintiffs filed an amended complaint. [ECF 234]. The amended complaint maintained the gist of the original, but added two new counts and made a variety of other drafting changes. *See* [ECF 242]. Defendants and Intervenors moved to dismiss the first amended complaint, too, primarily asking the Court to abstain and stay the case.

Plaintiffs' first amended complaint asserted nine separate counts, but they could be sorted into three overarching categories.

**1. Claims alleging vote dilution due to unlawful ballot collection and counting procedures.**

The first category covered claims related to allegedly unlawful procedures implemented by some Defendants for the collection and counting of mail-in and absentee ballots. Those included claims related to (1) Defendants' uneven use of drop boxes and other satellite ballot-collection sites, (2) procedures for verifying the qualifications of voters applying in person for mail-in or absentee ballots, and (3) rules for counting non-compliant ballots (such as ballots submitted without a secrecy envelope, without an elector declaration, or that contained stray marks on the envelope).

In Count I, Plaintiffs alleged violations of the Elections Clause and the related Presidential Electors Clause of the U.S. Constitution. [ECF 234, ¶¶ 193-205].

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<sup>2</sup> Intervenors include the Pennsylvania State Democratic Party, the League of Women Voters, the NAACP Pennsylvania State Conference, Common Cause Pennsylvania, Citizens for Pennsylvania's Future, the Sierra Club, the Pennsylvania Alliance for Retired Americans, and several affiliated individuals of these organizations.

Plaintiffs asserted that, under these provisions, only the state legislature may set the time, place, and manner of congressional elections and determine how the state chooses electors for the presidency. [*Id.* at ¶ 196].

In support of this claim, Plaintiffs alleged that Secretary Boockvar’s guidance concerning the use of mail-in ballot drop boxes, whether county boards of elections must independently verify mail-in ballot applications, and the counting of non-compliant mail-in ballots, was an executive overreach—in that the Secretary’s guidance allegedly violated certain provisions of the Election Code enacted by the Pennsylvania General Assembly. [*Id.* at ¶ 201]. Plaintiffs also claimed that the Secretary’s “unlawful guidance” increased the risk of fraudulent or unlawful voting and infringed on the right to vote, which, they said, amounted to additional violations of the 1st and 14th Amendments to the U.S. Constitution. [*Id.* at ¶¶ 202-03].

In Count II, Plaintiffs alleged a violation of the Equal-Protection Clause under the 14th Amendment. [*Id.* at ¶¶ 206-15]. Plaintiffs asserted that the implementation of the foregoing (*i.e.*, mail-in ballot drop boxes, the verification of mail-in ballot applications, and the counting of non-compliant ballots) was different in different counties, thereby treating voters across the state in an unequal fashion. [*Id.* at ¶¶ 211-13].

In Count III, Plaintiffs asserted a violation of the Pennsylvania State Constitution. [*Id.* at ¶¶ 216-22]. Plaintiffs alleged that the same actions and conduct that comprised Counts I and II also violated similar provisions of the Pennsylvania Constitution. [*Id.* at ¶ 220].

Finally, in Counts VI and VII, Plaintiffs alleged that Defendants violated provisions of the federal and state constitutions by disregarding the Election Code’s notice and selection requirements applicable to “polling places.” [*Id.* at ¶¶ 237-52]. Plaintiffs alleged that drop boxes are “polling places,” and thus subject to certain criteria for site selection and the requirement that county election boards provide 20 days’ public notice. [*Id.* at ¶¶ 239-42]. Plaintiffs asserted that Defendants’ failure to provide this notice or select appropriate “polling places” in the primary election,



if repeated in the general election, would create the risk of voter fraud and vote dilution. [*Id.* at ¶¶ 243-246].

## **2. Poll-watcher claims.**

The second category of claims in the first amended complaint consisted of challenges to the constitutionality of Election-Code provisions related to poll watchers.

In Count IV, Plaintiffs alleged violations of the 1st and 14th Amendments. These claims had both a facial and an as-applied component. [ECF 234, ¶ 230 (“On its face and as applied to the 2020 General Election . . .”).].

First, Plaintiffs alleged that 25 P.S. § 2687 was facially unconstitutional because it “arbitrarily and unreasonably” limits poll watchers to serving only in their county of residence and to monitoring only in-person voting at the polling place on election day. [*Id.* at ¶ 226]. Second, Plaintiffs alleged that the same provision was unconstitutional as applied in the context of Pennsylvania’s new vote-by-mail system, because these poll-watcher restrictions, combined with insecure voting procedures, create unacceptable risks of fraud and vote dilution. [*Id.* at ¶ 228]. Plaintiffs contended that these limitations make it “functionally impracticable” for candidates to ensure that they have poll watchers present where ballots are deposited and collected, given the widespread use of remote drop boxes and other satellite collection sites. [*Id.*].

Count V was the same as Count IV, but alleged that the same poll-watching restrictions violated the Pennsylvania Constitution, too. [*Id.* at ¶ 234].

## **3. In-person voting claims.**

The third category of claims consisted of challenges to the procedures for allowing electors to vote in person after requesting a mail-in ballot.

That is, in Counts VIII and IX, Plaintiffs asserted that the Election Code permits an elector that has requested a mail-in ballot to still vote in person so long as he remits his spoiled ballot. [ECF 234, ¶¶ 253-267].

Plaintiffs asserted that during the primary, some counties allowed such electors to vote in person, while others did not, and they fear the same will happen in the general election. [*Id.* at ¶¶ 255, 259]. Plaintiffs also asserted that some counties allowed electors who had voted by mail to vote in person, in violation of the Election Code. [*Id.* at ¶¶ 257-58]. Plaintiffs alleged that this conduct also violates the federal and state constitutional provisions concerning the right to vote and equal protection. [*Id.* at ¶¶ 261, 265].

### **B. The Court’s decision to abstain.**

Upon consideration of Defendants’ and Intervenors’ motions to dismiss the first amended complaint, on August 23, 2020, the Court issued an opinion abstaining under *R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941) and temporarily staying the case. [ECF 409, 410].

In doing so, the Court determined that the three requisite prongs for *Pullman* abstention were met, and that the discretionary considerations weighed in favor of abstention. [ECF 409, p. 3 (“[Under *Pullman*, federal courts abstain] if (1) doing so requires interpretation of ‘unsettled questions of state law’; (2) permitting resolution of the unsettled state-law questions by state courts would ‘obviate the need for, or substantially narrow the scope of adjudication of the constitutional claims’; and (3) an ‘erroneous construction of state law would be disruptive of important state policies[.]’” (citing *Chez Sez III Corp. v. Township of Union*, 945 F.2d 628, 631 (3d Cir. 1991))); *id.* at p. 30 (explaining that after the three prongs of *Pullman* abstention are met, the court must “make a discretionary determination of whether abstention is appropriate given the particular facts of this case,” which requires weighing “such factors as the availability of an adequate state remedy, the length of time the litigation has been pending, and the impact of delay on the litigants.” (cleaned up))].

The Court found that abstaining under *Pullman* was appropriate because of several unresolved ambiguities in Pennsylvania’s Election Code. Specifically, the Court found that there were significant ambiguities as to whether the Election Code (1) permitted delivery of ballots to locations other than the county election board’s headquarters, such as drop boxes, (2) permitted counties to

count ballots that were not placed within the “secrecy envelope” (*i.e.*, “naked ballots”), (3) considered drop boxes and other ballot-collection sites as “polling places,” as defined in the Election Code, and (4) required counties to automatically verify ballot applications for mail-in ballots (where the person applied for the ballot in person), even if there was no “bona fide objection” to the application. [ECF 409, pp. 17-23].

The Court explained that each of these ambiguities, if settled, would significantly narrow—or even resolve—some of Plaintiffs’ claims. As the Court explained, for example, if a state court interpreted the Election Code to disallow drop boxes, Plaintiffs would obtain their requested relief (*i.e.*, no drop boxes); alternatively, if drop boxes were authorized by the Election Code, then Plaintiffs’ allegations that drop boxes were illegal would be eliminated, which would, in turn, significantly affect the constitutional analysis of Plaintiffs’ claims. [*Id.* at pp. 25-28]. The same held true for “naked ballots,” the breadth of coverage of “polling places,” and the requisite verification for personal ballot applications.

The Court then explained that it was appropriate for it to abstain until a state court could interpret the ambiguous state law. [*Id.* at pp. 28-30]. The Court concluded that if it interpreted the ambiguous state law, there was a sufficient chance that a state court could disagree with the interpretation, which would render this Court’s interpretation not only advisory, but disruptive to state policies. The Court noted that especially in the election context, states have considerable discretion to implement their own policies without federal intervention. Accordingly, because these were questions of uninterpreted state law that were sufficiently ambiguous, federalism and comity demanded that a state court, not this Court, be the first interpreter.

Finally, the Court explained that, despite the imminence of the election, abstention was still proper. [*Id.* at pp. 30-33]. The Court noted that state-court litigation was already pending that would resolve some of the statutory ambiguities at issue. [*Id.* at p. 31]. Further, the Court highlighted three courses Plaintiffs could immediately take to resolve the statutory ambiguities:

intervene in the pending state-court litigation; file their own state-court case; or appeal this Court's abstention decision to the Third Circuit, and then seek certification of the unsettled state-law issues in the Pennsylvania Supreme Court. [*Id.* at pp. 31-33].

Additionally, the Court explained that it would stay the entire case, despite several of Plaintiffs' claims not being subject to *Pullman* abstention as they were not based on ambiguous state law. [*Id.* at pp. 34-37]. That's because, in its discretion, the Court determined it would be more efficient for this case to progress as a single proceeding, rather than in piecemeal fashion. [*Id.*]. However, the Court allowed any party to move to lift the stay as to the few claims not subject to *Pullman* abstention, if no state-court decision had been issued by October 5, 2020. [*Id.*].

On August 28, 2020, five days after the Court abstained, Plaintiffs moved to modify the Court's stay, and moved for a preliminary injunction. [ECF 414]. Plaintiffs requested, among other things, that the Court order Defendants to segregate, and not pre-canvass or canvass, all ballots that were returned in drop boxes, lacked a secrecy envelope, or were delivered by a third party. [*Id.*]. Plaintiffs also requested that the Court lift the stay by September 14, 2020, instead of October 5, 2020. [*Id.*].

The Court denied Plaintiffs' motion for preliminary injunctive relief, finding that Plaintiffs failed to show they would be irreparably harmed. [ECF 444; ECF 445]. The Court also declined to move up the date when the stay would be lifted. [*Id.*]. The Court noted that, at the request of Secretary Boockvar, the Pennsylvania Supreme Court had already exercised its extraordinary jurisdiction to consider five discrete issues and clarify Pennsylvania law in time for the general election. [*Id.* at p. 1]. Since that case appeared to be on track, the Court denied Plaintiffs' motion without prejudice, and the Court's abstention opinion and order remained in effect.

### **C. The Pennsylvania Supreme Court's decision.**

On September 17, 2020, the Pennsylvania Supreme Court issued its decision in *Pennsylvania Democratic Party*

*v. Boockvar*, --- A.3d ---, 2020 WL 5554644 (Pa. Sept. 17, 2020). The court clarified three issues of state election law that are directly relevant to this case.

**1. Counties are permitted under the Election Code to establish alternate ballot-collection sites beyond just their main county office locations.**

The Pennsylvania Supreme Court first considered whether the Election Code allowed a Pennsylvania voter to deliver his or her mail-in ballot in person to a location other than the established office address of the county's board of election. *Boockvar*, 2020 WL 5554644, at \*8. The court further considered the means by which county boards of election could accept hand-delivered mail-in ballots. *Id.*

Consistent with this Court's abstention opinion, the court found that "the parties' competing interpretations of the Election Code on [these questions] are reasonable, rendering the Code ambiguous" on these questions. *Id.* After applying traditional principles of statutory interpretation, the court held that "the Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes." *Id.* at \*9. The court reached this conclusion due to "the clear legislative intent underlying Act 77 ... to provide electors with options to vote outside of traditional polling places." *Id.*

The respondents in that case further argued that this interpretation would cause county boards of election to "employ myriad systems to accept hand-delivered mail-in ballots," which would "be unconstitutionally disparate from one another in so much as some systems will offer more legal protections to voters than others will provide" and violate the Equal-Protection Clause *Id.* The court rejected this argument. It found that "the exact manner in which each county board of election will accept these votes is entirely unknown at this point; thus, we have no metric by which to measure whether any one system offers more legal protection than another, making an equal protection analysis impossible at this time." *Id.*

**2. Ballots lacking inner secrecy envelopes should not be counted.**

The court next considered whether the boards of elections “must ‘clothe and count naked ballots,’ *i.e.*, place ballots that were returned without the secrecy envelope into a proper envelope and count them, rather than invalidate them.” *Boockvar*, 2020 WL 5554644, at \*21. The court concluded that they should not.

The court held that “the Legislature intended for the secrecy envelope provision [in the Election Code] to be mandatory.” *Id.* at \*24. In other words, the relevant provisions “make clear the General Assembly’s intention that, during the collection and canvassing processes, when the outer envelope in which the ballot arrived is unsealed and the sealed ballot removed, it should not be readily apparent who the elector is, with what party he or she affiliates, or for whom the elector has voted.” *Id.* The secrecy envelope “properly unmarked and sealed ensures that result,” and “[w]hatever the wisdom of the requirement, the command that the mail-in elector utilize the secrecy envelope and leave it unblemished by identifying information is neither ambiguous nor unreasonable.” *Id.*

As a result, the court ultimately concluded, “a mail-ballot that is not enclosed in the statutorily-mandated secrecy envelope must be disqualified.” *Id.* at \*26

**3. Pennsylvania’s county-residency requirement for poll watchers is constitutional.**

The final relevant issue the court considered was whether the poll-watcher residency requirement found in 25 P.S. § 2687(b) violates state or federal constitutional rights. *Boockvar*, 2020 WL 5554644, at \*26. Relying on *Republican Party of Pennsylvania v. Cortés*, 218 F. Supp. 3d 396 (E.D. Pa. 2016), the court concluded that the poll-watcher residency provision “impose[d] no burden on one’s constitutional right to vote and, accordingly, requires only a showing that a rational basis exists to be upheld.” *Id.* at \*30. The court found rational-basis review was appropriate for three reasons.

First, “there is no individual constitutional right to serve as a poll watcher; rather, the right to do so is conferred by statute.” *Id.* (citation omitted). Second, “poll watching is not incidental to the right of free association and, thus, has no distinct First Amendment protection.” *Id.* (cleaned up). Third, “poll watching does not implicate core political speech.” *Id.* (citation omitted).

The court went on to find that there was a “clear rational basis for the county poll watcher residency requirement[.]” *Id.* That is, given “Pennsylvania has envisioned a county-based scheme for managing elections within the Commonwealth,” it is “reasonable that the Legislature would require poll watchers, who serve within the various counties of the state, to be residents of the counties in which they serve.” *Id.*

In upholding the constitutionality of the “county poll watcher residency requirement,” the court rejected the claim that “poll watchers are vital to protect against voter fraud and that because of the distribution of voters throughout Pennsylvania, the residency requirement makes it difficult to identify poll watchers in all precincts.” *Id.* The court concluded that the claims of “heightened election fraud involving mail-in voting” were “unsubstantiated” and “specifically belied by the Act 35 report issued by [Secretary Boockvar] on August 1, 2020.” *Id.* Moreover, the court held that the “speculative claim that it is ‘difficult’ for both parties to fill poll watcher positions in every precinct, even if true, is insufficient to transform the Commonwealth’s uniform and reasonable regulation requiring that poll watchers be residents of the counties they serve into a non-rational policy choice.” *Id.*

Based on the foregoing, the court declared “that the poll-watcher residency requirement does not violate the state or federal constitutions.” *Id.* at \*31.

#### **D. Plaintiffs’ notice of remaining claims.**

Following the Pennsylvania Supreme Court’s decision, this Court lifted the stay it had imposed pursuant to the *Pullman* abstention doctrine and ordered the parties to identify the remaining viable claims and defenses in the case. [ECF 447].



In their notice, Plaintiffs took the position that nearly all their claims remained viable, with a few discrete exceptions. Plaintiffs conceded that their “federal and state constitutional claims of voter dilution solely on the basis that drop boxes and other collection sites are not statutorily authorized by the Pennsylvania Election Code [were] no longer viable.” [ECF 448, p. 4]. They also stated that their “facial challenge to the county residency requirement under 25 P.S. § 2687 is no longer a viable claim.” [*Id.* at p. 10]. Plaintiffs also moved for leave to amend their complaint a second time to add new allegations and a new claim relating to Secretary Bookvar’s recent signature-comparison guidance. [ECF 451].

Defendants and Intervenors, for their part, suggested that Plaintiffs’ claims had been substantially narrowed, if not outright mooted, by the Pennsylvania Supreme Court’s decision, and reminded the Court that their arguments for dismissal remained outstanding.

**E. The Court’s September 23, 2020, memorandum orders.**

In response to the notices filed by the parties and Plaintiffs’ motion for leave to amend the first amended complaint, the Court issued an order granting Plaintiffs’ motion, narrowing the scope of the lawsuit, and establishing the procedure for resolving the remaining claims. [ECF 459].

As to Plaintiffs’ proposed amendment to their complaint, the Court found that the new claim and allegations were relatively narrow, and thus amendment wouldn’t prejudice Defendants and Intervenors. [*Id.* at pp. 3-4]. As a result, the Court granted the motion. [*Id.* at p. 4].

The Court, however, did inform the parties that it would “continue to abstain under *Pullman* as to Plaintiffs’ claim pertaining to the notice of drop box locations and, more generally, whether the “polling place” requirements under the Election Code apply to drop-box locations.” [*Id.* at p. 5]. This was so because those claims involve still-unsettled issues of state law. The Court explained that the



“fact that the Pennsylvania Supreme Court did not address this issue in its recent decision is immaterial” because the “propriety of *Pullman* abstention does not depend on the existence of parallel state-court proceedings.” [*Id.* (citing *Stoe v. Flaherty*, 436 F.3d 209, 213 (3d Cir. 2006)]. Moreover, Plaintiffs had several other avenues to pursue prompt interpretation of state law after this Court abstained. [*Id.* at p. 6].

The Court also informed the parties, for similar reasons, that it would continue to abstain with respect to Plaintiffs’ claims regarding Secretary Boockvar’s guidance that personal applications for mail-in ballots shall be accepted absent a “bona fide objection.” [ECF 460].

The Court found that “no Article III ‘case or controversy’ remain[ed] with respect to the claims on which the Pennsylvania Supreme Court effectively ruled in Plaintiffs’ favor on state-law grounds (*e.g.*, illegality of third-party ballot delivery; excluding ‘naked ballots’ submitted without inner-secrecy envelopes).” [ECF 459, p. 6]. Because there was “no reason to believe Defendants plan to violate what they themselves now agree the law requires,” the Court held that Plaintiffs’ claims were premature and speculative. [*Id.* at p. 7]. The Court therefore dismissed those claims as falling outside of its Article III power to adjudicate. [*Id.* (citations omitted)].

To resolve the remaining claims, the Court directed the parties to file cross-motions for summary judgment presenting all arguments for dismissal or judgment under Federal Rule of Civil Procedure 56. [*Id.* at pp. 8-10]. Before briefing on those motions, the Court authorized additional expedited discovery. [*Id.* at pp. 4-5]. The parties completed discovery and timely filed their motions; they identified no material disputes of fact; and therefore, the motions are now fully briefed and ready for disposition.

#### **F. The claims now at issue.**

Based on the Pennsylvania Supreme Court’s prior ruling, this Court’s prior decisions, Plaintiffs’ nine-count Second Amended Complaint, and recent guidance issued by Secretary Boockvar, the claims remaining in this case

are narrow and substantially different than those asserted at the outset of the case.

**Drop Boxes (Counts I-III).** Plaintiffs still advance a claim that drop boxes are unconstitutional, but in a different way. Now that the Pennsylvania Supreme Court has expressly held that drop boxes are authorized under the Election Code, Plaintiffs now assert that the use of “unmanned” drop boxes is unconstitutional under the federal and state constitutions, for reasons discussed in more detail below.

**Signature Comparison (Counts I-III).** Plaintiffs’ newly added claim relates to signature comparison. Secretary Boockvar’s September 2020 guidance informs the county boards that they are not to engage in a signature analysis of mail-in ballots and applications, and they must count those ballots, even if the signature on the ballot does not match the voter’s signature on file. Plaintiffs assert that this guidance is unconstitutional under the federal and state constitutions.

**Poll Watching (Counts IV, V).** The Pennsylvania Supreme Court already declared that Pennsylvania’s county-residency requirement for poll watchers is *facially* constitutional. Plaintiffs now only assert that the requirement, *as applied*, is unconstitutional under the federal and state constitutions.

The counts that remain in the Second Amended Complaint, but which are *not* at issue, are the counts related to where poll watchers can be located. That is implicated mostly by Counts VI and VII, and by certain allegations in Counts IV and V. The Court continues to abstain from reaching that issue. Plaintiffs have filed a separate state lawsuit that would appear to address many of those issues, in any event. [ECF 549-22; ECF 573-1]. Counts VIII and IX concern challenges related to voters that have requested mail-in ballots, but that instead seek to vote in person. The Secretary issued recent guidance, effectively mooting those claims, and, based on Plaintiffs’ positions taken in the course of this litigation, the Court deems Plaintiffs to have withdrawn Counts VIII and IX. [ECF 509, p. 15 n.4 (“[I]n the September 28 guidance memo, the Secretary corrected [her] earlier guidance to

conform to the Election Code and states that any mail-in voter who spoils his/her ballot and the accompanying envelopes and signs a declaration that they did not vote by mail-in ballot will be allowed to vote a regular ballot. Therefore, Plaintiffs agree to withdraw this claim from those that still are being pursued.”)].

## **II. Factual Background**

### **A. Pennsylvania’s Election Code, and the adoption of Act 77.**

#### **1. The county-based election system.**

Pennsylvania’s Election Code, first enacted in 1937, established a county-based system for administering elections. *See* 25 P.S. § 2641(a) (“There shall be a county board of elections in and for each county of this Commonwealth, which shall have jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of [the Election Code].”). The Election Code vests county boards of elections with discretion to conduct elections and implement procedures intended to ensure the honesty, efficiency, and uniformity of Pennsylvania’s elections. *Id.* §§ 2641(a), 2642(g).

#### **2. The adoption of Act 77.**

On October 31, 2019, the Pennsylvania General Assembly passed “Act 77,” a bipartisan reform of Pennsylvania’s Election Code. *See* [ECF 461, ¶¶ 91]; 2019 Pa. Legis. Serv. Act 2019-77 (S.B. 421).

Among other things, by passing Act 77, Pennsylvania joined 34 other states in authorizing “no excuse” mail-in voting by all qualified electors. *See* [ECF 461, ¶¶ 92]; 25 P.S. §§ 3150.11-3150.17; [ECF 549-11, p. 5 (“The largest number of states (34), practice no-excuse mail-in voting, allowing any persons to vote by mail regardless of whether they have a reason or whether they will be out of their jurisdiction on Election Day.”)]. Previously, a voter could only cast an “absentee” ballot if certain criteria were met, such as that the voter would be away from the election district on election day. *See* 1998 Pa. Legis. Serv. Act. 1998-18 (H.B. 1760), § 14.

Like the previous absentee voting system, Pennsylvania’s mail-in voting system requires voters to “opt-in” by requesting a ballot from either the Secretary or the voter’s county board of elections. *See* 25 P.S. §§ 3146.2(a), 3150.12(a). When requesting a ballot, the voter must provide, among other things, his or her name, date of birth, voting district, length of time residing in the voting district, and party choice for primary elections. *See* 25 P.S. §§ 3146.2(b), 3150.12(b). A voter must also provide proof of identification; namely, either a driver’s license number or, in the case of a voter who does not have a driver’s license, the last four digits of the voter’s Social Security number, or, in the case of a voter who has neither a driver’s license nor a Social Security number, another form of approved identification. 25 P.S. § 2602(z.5)(3). In this respect, Pennsylvania differs from states that automatically mail each registered voter a ballot—a practice known as “universal mail-in voting.” [ECF 549-11, p. 6] (“[N]ine states conduct universal vote-by-mail elections in which the state (or a local entity, such [as] a county or municipality) mails all registered voters a ballot before each election without voters’ [sic] having to request them.”).

### **3. The COVID-19 pandemic.**

Since early 2020, the United States, and Pennsylvania, have been engulfed in a viral pandemic of unprecedented scope and scale. [ECF 549-8, ¶ 31]. In that time, COVID-19 has spread to every corner of the globe, including Pennsylvania, and jeopardized the safety and health of many people. [*Id.* at ¶¶ 31, 38-39, 54-55, 66]. As of this date, more than 200,000 Americans have died, including more than 8,000 Pennsylvanians. *See* Covid in the U.S.: Latest Map and Case Count, The New York Times, available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited Oct. 10, 2020); COVID-19 Data for Pennsylvania, Pennsylvania Department of Health, available at <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx> (last visited Oct. 10, 2020).

There have been many safety precautions that Pennsylvanians have been either required or urged to take, such as limiting participation in large gatherings,

maintaining social distance, and wearing face coverings. [ECF 549-8, ¶¶ 58, 63-65]. The threat of COVID-19 is likely to persist through the November general election. [*Id.* at ¶¶ 53-56, 66-68].

**B. Facts relevant to drop boxes.**

Pennsylvania’s county-based election system vests county boards of elections with “jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions” of the Election Code. 25 P.S. § 2641(a). The Election Code further empowers the county boards to “make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors.” *Id.* at § 2642(f). The counties are also charged with the responsibility to “purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines.” *Id.* at § 2642(c).

As noted above, in *Pennsylvania Democratic Party v. Boockvar*, the Pennsylvania Supreme Court interpreted the Election Code, which allows for mail-in and absentee ballots to be returned to the “county board of election,” to “permit[] county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes.” 2020 WL 5554644, at \*10.

Thus, it is now settled that the Election Code permits (but does not require) counties to authorize drop boxes and other satellite-collection locations for mailed ballots. 25 P.S. § 3150.16(a). Pennsylvania is not alone in this regard—as many as 34 other states and the District of Columbia authorize the use of drop boxes or satellite ballot collection sites to one degree or another. [ECF 549-11, p. 8, fig. 4]. Indeed, Secretary Boockvar stated that as many as 16% of voters nationwide had cast their ballots using drop boxes in the 2016 general election, including the majority of voters in Colorado (75%) and Washington (56.9%). [ECF 547, p. 18 (citing ECF 549-16)].

**1. Secretary Boockvar's guidance with respect to drop boxes.**

Since the passage of Act 77, Secretary Boockvar has issued several guidance documents to the counties regarding the counties' implementation of mail-in voting, including guidance with respect to the use of drop boxes. [ECF 504-21; 504-22; 504-23; 504-24; 504-25; 571-1, Ex. E]. In general terms, the Secretary's guidance as to drop boxes informed the counties that the use of drop boxes was authorized by the Election Code and recommended "best practices" for their use. Her latest guidance offered standards for (1) where drop boxes should be located, [ECF 504-23, § 1.2], (2) how drop boxes should be designed and what signage should accompany them, [*id.* at §§ 2.2-2.3], (3) what security measures should be employed, [*id.* at § 2.5], and (4) what procedures should be implemented for collecting and returning ballots to the county election office, [*id.* at §§ 3.1-3.3, 4].

As to the location of drop boxes, the Secretary recommended that counties consider the following criteria, [*id.* at § 1.2]:

- Locations that serve heavily populated urban/suburban areas, as well as rural areas;
- Locations near heavy traffic areas such as commercial corridors, large residential areas, major employers and public transportation routes;
- Locations that are easily recognizable and accessible within the community;
- Locations in areas in which there have historically been delays at existing polling locations, and areas with historically low turnout;
- Proximity to communities with historically low vote by mail usage;
- Proximity to language minority communities;
- Proximity to voters with disabilities;

- Proximity to communities with low rates of household vehicle ownership;
- Proximity to low-income communities;
- Access to accessible and free parking; and
- The distance and time a voter must travel by car or public transportation.

With respect to drop-box design criteria, the Secretary recommended to counties, [*id.* at § 2.2]:

- Hardware should be operable without any tight grasping, pinching, or twisting of the wrist;
- Hardware should require no more than 5 lbs. of pressure for the voter to operate;
- Receptacle should be operable within reach-range of 15 to 48 inches from the floor or ground for a person utilizing a wheelchair;
- The drop-box should provide specific points identifying the slot where ballots are inserted;
- The drop-box may have more than one ballot slot (e.g. one for drive-by ballot return and one for walk-up returns);
- To ensure that only ballot material can be deposited and not be removed by anyone but designated county board of election officials, the opening slot of a drop-box should be too small to allow tampering or removal of ballots; and
- The opening slot should also minimize the ability for liquid to be poured into the drop-box or rainwater to seep in.

The Secretary's guidance as to signage recommended, [*id.* at § 2.3]:

- Signage should be in all languages required under the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503);

- Signage should display language stating that counterfeiting, forging, tampering with, or destroying ballots is a second-degree misdemeanor pursuant to sections 1816 and 1817 of the Pennsylvania Election Code (25 P.S. §§ 3516 and 3517);
- Signage should also provide a statement that third-party return of ballots is prohibited unless the person returning the ballot is rendering assistance to a disabled voter or an emergency absentee voter. Such assistance requires a declaration signed by the voter and the person rendering assistance; and
- Signage should provide a statement requesting that the designated county elections official should be notified immediately in the event the receptacle is full, not functioning, or is damaged in any fashion, and should provide a phone number and email address for such purpose.

With respect to ballot security, the Secretary stated that county boards should implement the following security measures, [*id.* at § 2.5]:

- Only personnel authorized by the county board of elections should have access to the ballots inside of a drop-box;
- Drop-boxes should be secured in a manner to prevent their unauthorized removal;
- All drop-boxes should be secured by a lock and sealed with a tamper-evident seal. Only authorized election officials designated by the county board of elections may access the keys and/or combination of the lock;
- Drop-boxes should be securely fastened in a manner as to prevent moving or tampering, such as fastening the drop-box to concrete or an immovable object;
- During the hours when the staffed return site is closed or staff is unavailable, the drop-box should



be placed in a secure area that is inaccessible to the public and/or otherwise safeguarded;

- The county boards of election should ensure adequate lighting is provided at all ballot return sites when the site is in use;
- When feasible, ballot return sites should be monitored by a video security surveillance system, or an internal camera that can capture digital images and/or video. A video security surveillance system can include existing systems on county, city, municipal, or private buildings. Video surveillance should be retained by the county election office through 60 days following the deadline to certify the election; and
- To prevent physical damage and unauthorized entry, the drop-box at a ballot return site located outdoors should be constructed of durable material able to withstand vandalism, removal, and inclement weather.

With respect to ballot collection and “chain of custody” procedures, the Secretary stated that counties should adhere to the following standards, [*id.* at §§ 3.1-3.2]:

- Ballots should be collected from ballot return sites only by personnel authorized by the county board of elections and at times determined by the board of elections, at least every 24 hours, excluding Saturdays and Sundays;
- The county board of elections should designate at least two election officials to collect voted ballots from a ballot return site. Each designated election official should carry identification or an official designation that identifies them as an election official authorized to collect voted ballots;
- Election officials designated to collect voted ballots by the board of elections should sign a declaration declaring that he or she will timely and securely collect and return voted ballots, will

not permit any person to tamper with a ballot return site or its contents, and that he or she will faithfully and securely perform his or her duties;

- The designated election officials should retrieve the voted ballots from the ballot return site and place the voted ballots in a secure ballot transfer container;
- The designated election officials should note on *Ballot Return Site Collection Forms* the site and unique identification number of the ballot return site and the date and time of retrieval;
- Ballots collected from any ballot return site should be immediately transported to the county board of elections;
- Upon arrival at the office of the county board of elections, the county board of elections, or their designee(s), should note the time of arrival on the same form, as described above;
- The seal number should be verified by a county election official or a designated representative;
- The county board of elections, or their designee(s), should inspect the drop-box or secure ballot transfer container for evidence of tampering and should receive the retrieved ballots by signing the retrieval form and including the date and time of receipt. In the event tampering is evident, that fact must be noted on the retrieval form;
- The completed collection form should be maintained in a manner proscribed by the board of elections to ensure that the form is traceable to its respective secure ballot container; and
- The county elections official at the county election office or central count location should note the number of ballots delivered on the retrieval form.

And finally, as to election day and post-election day procedures with respect to drop boxes, the Secretary provided as follows, [*id.* at §§ 3.3, 4]:

- The county board of elections should arrange for authorized personnel to retrieve ballots on election night and transport them to the county board of elections for canvassing of the ballots;
- Authorized personnel should be present at ballot return sites immediately prior to 8:00 p.m. or at the time the polls should otherwise be closed;
- At 8:00 p.m. on election night, or later if the polling place hours have been extended, all ballot return sites and drop-boxes must be closed and locked;
- Staff must ensure that no ballots are returned to the ballot return site after the close of polls;
- After the final retrieval after the closing of the polls, the drop-box must be removed or locked and/or covered to prevent any further ballots from being deposited, and a sign shall be posted indicating that polling is closed for the election; and
- Any ballots collected from a return site should be processed in the same manner as mail-in ballots personally delivered to the central office of the county board of elections official by the voter and ballots received via the United States Postal Service or any other delivery service.

The Secretary and her staff developed this guidance in consultation with subject-matter experts within her Department and after review of the policies, practices, and laws in other states where drop boxes have been used. [ECF 549-6, pp. 23:14-22]. The evidence reflects at least one instance in which the Secretary's deputies reiterated that these "best practices" should be followed in response to inquiries from county officials considering whether to use drop boxes. [ECF 549-32 ("Per our conversation, the list of items are things the county must keep in mind if you

are going to provide a box for voters to return their ballots in person.”)].

Approximately 24 counties plan to use drop boxes during the November general election, to varying degrees. [ECF 549-28; ECF 504-1]. Of these, about nine counties intend to staff the drop boxes with county officials, while about 17 counties intend to use video surveillance in lieu of having staff present. [ECF 549-28].

## **2. Defendants’ and Intervenors’ evidence of the benefits and low risks associated with drop boxes.**

Secretary Boockvar advocates for the use of drop boxes as a “direct and convenient way” for voters to deliver cast ballots to their county boards of elections, “thereby increasing turnout.” [ECF 547, p. 22 ¶ 54 (citing 549-11 at pp. 10-11)]. The Secretary also touts the special benefits of expanding drop-box use in the ongoing COVID-19 pandemic. Specifically, she asserts that drop boxes reduce health risks and inspire voter confidence because “many voters understandably do not wish to cast their votes in person at their polling place on Election Day” due to COVID-19. [*Id.* at ¶¶ 55, 57 (citing ECF 549-2 ¶ 39; ECF 549-11 at p. 10; 549-8, ¶ 95)]. Drop boxes, she says, allow voters to vote in person without coming into “close proximity to other members of the public, compared to in-person voting or personally delivering a mail-in ballot to a public office building.” [*Id.* at ¶ 57].

Secretary Boockvar also states that drop boxes are highly convenient, and cost-saving, for both counties and voters. For counties, she notes that “24-hour secure ballot drop boxes” are “cost-effective measures . . . as they do not have to be staffed by election judges.” [*Id.* at p. 24 ¶ 62 (citing ECF 549-11 at p. 11); ECF 549-9 at ¶ 34]. As for voters, the Secretary explains that, in a state where “ten counties . . . cover more than 1,000 square miles” and “two-thirds” of counties “cover more than 500 square miles,” many Pennsylvania voters “could be required to drive dozens of miles (and perhaps in excess of 100 miles) if he or she wished to deposit his or her mail-in ballot in person at the main county board of elections office.” [*Id.* at ¶ 58 (citing ECF 549-29)].

In addition to any tangible benefit drop boxes may have for voter access and turnout, Secretary Boockvar also states that drop boxes have a positive impact on voter confidence. In particular, she cites a recent news article, and a letter sent by the General Counsel of the U.S. Postal Service regarding Pennsylvania's absentee and mail-in ballot deadline, which have raised concerns over the timeliness and reliability of the U.S. Postal Service. [*Id.* at ¶¶ 60-61 (citing ECF 549-13; ECF 549-14); ECF 549-17; ECF 549-2 ¶¶ 42-43]. Voters' fears that votes returned by mail will not be timely counted could, the Secretary worries, "justifiably dissuade voters from wanting to rely upon the Postal Service for return of their mail-in or absentee ballot." [ECF 547, ¶ 61]. Drop boxes, she says, can address this concern by allowing voters to safely return mail-in ballots to an in-person location.

In exchange for these benefits, the Secretary insists that any potential security risk associated with drop boxes is low. She notes that the federal Department of Homeland Security has released guidance affirming that a "ballot drop box provides a secure and convenient means for voters to return their mail ballot," and recommending that states deploy one drop box for every 15,000 to 20,000 registered voters. [*Id.* at ¶¶ 63-65 (citing ECF 549-24, p. 1)]. She also points to a purported lack of evidence of systemic ballot harvesting or any attempts to tamper with, destroy, or otherwise commit voter fraud using drop boxes, either in Pennsylvania's recent primary election, or in other states that have used drop boxes for many years. [*Id.* at ¶¶ 68-74 (citations omitted)]. And she asserts that "[i]n the last 20 years in the entire state of Pennsylvania, there have been fewer than a dozen confirmed cases of fraud involving a handful of absentee ballots" among the many millions of votes cast during that time period. [*Id.* at ¶ 70 (citing ECF 549-10, pp. 3-4)].

Finally, the Secretary, and other Defendants and Intervenors, argue that Pennsylvania already has robust measures in place to prevent fraud, including its criminal laws, voter registration system, mail-in ballot application requirement, and canvassing procedures. [*Id.* at ¶¶ 66-67 (citing 25 P.S. §§ 3516 - 3518)]; [ECF 549-9, p. 15, ¶¶ 46-47 ("These allegations are not consistent with my experience with drop box security, particularly given the strong voter

verification procedures that are followed by elections officials throughout the country and in Pennsylvania. Specifically, the eligibility and identity of the voter to cast a ballot is examined by an election judge who reviews and confirms all the personal identity information provided on the outside envelope. Once voter eligibility is confirmed, the ballot is extracted and separated from the outside envelope to ensure the ballot remains secret. During this step, election judges confirm that there is only one ballot in the envelope and checks for potential defects, such as tears in the ballot. . . . Regardless of the receptacle used for acceptance of the ballot (drop box versus USPS mailbox), ballot validation occurs when the ballot is received by the county board of elections. The validation is the same regardless of how the ballots are collected or who delivers the ballot, even where that delivery contravenes state law.”)].

Defendants and Intervenors also point to several expert reports expressing the view that drop boxes are both low risk and beneficial. These experts include:

**Professor Matthew A. Barreto**, a Professor of Political Science and Chicana/o Studies at UCLA. [ECF 549-7]. Professor Barreto offers the opinion that ballot drop boxes are an important tool in facilitating voting in Black and Latino communities. Specifically, he discusses research showing that Black and Latino voters are “particularly concerned about the USPS delivering their ballots.” [*Id.* at ¶ 22]. And he opines that ballot drop boxes help to reassure these voters that their vote will count, because “there is no intermediary step between the voters and the county officials who collect the ballot.” [*Id.* at ¶ 24].

**Professor Donald S. Burke**, a medical doctor and Distinguished University Professor of Health Science and Policy, Jonas Salk Chair in Population Health, and Professor of Epidemiology at the University of Pittsburgh. [ECF 549-8]. Professor Burke details the “significant risk of exposure” to COVID-19 in “enclosed areas like polling places.” [*Id.* at ¶ 69]. He opines that “depositing a ballot in a mailbox and depositing a ballot in a drop-box are potential methods of voting that impart the least health

risk to individual voters, and the least public health risk to the community.” *Id.* at ¶ 95].

**Amber McReynolds**, the CEO of the National Vote at Home Institute, with 13 years of experience administering elections as an Elections Director, Deputy Director, and Operations Manager for the City and County of Denver, Colorado. [ECF 549-9]. Ms. McReynolds opines that “[b]allot drop-boxes can be an important component of implementing expanded mail-in voting” that are “generally more secure than putting a ballot in post office boxes.” *Id.* at ¶ 16 (a)]. She notes that “[d]rop boxes are managed by election officials . . . delivered to election officials more quickly than delivery through the U.S. postal system, and are secure.” *Id.*]

Ms. McReynolds also opines that Secretary Boockvar’s guidance with respect to drop boxes is “consistent with best practices and advice that NVAHI has provided across jurisdictions.” *Id.* at ¶ 35]. But she also notes that “[b]est practices will vary by county based on the county’s available resources, population, needs, and assessment of risk.” *Id.* at ¶ 52].

More generally, Ms. McReynolds argues that “[d]rop-boxes do not create an increased opportunity for fraud” as compared to postal boxes. *Id.* at ¶ 44]. She also suggests that Pennsylvania guards against such fraud through other “strong voter verification procedures,” including “ballot validation [that] occurs when the ballot is received by the county board of elections” and “[r]econciliation procedures adopted by election officials . . . [to] protect against the potential risk of double voting.” *Id.* at ¶¶ 46-48]. She notes that “Pennsylvania’s balloting system requires that those who request a mail-in vote and do not return the ballot (or spoil the mail-in ballot at their polling place), can only vote a provisional ballot” and “[i]f a mail-in or absentee ballot was submitted by an individual, their provisional ballot is not counted.” *Id.* at ¶ 48].

**Professor Lorraine C. Minnite**, an Associate Professor and Chair of the Department of Public Policy and Administration at Rutgers University-Camden. [ECF 549-10]. Professor Minnite opines that “the incidence of voter fraud in contemporary U.S. elections is exceedingly rare,



including the incidence of voter impersonation fraud committed through the use of mail-in absentee ballots.” [*Id.* at p. 3]. In Pennsylvania specifically, she notes that “[i]n the last 20 years . . . there have been fewer than a dozen confirmed cases of fraud involving a handful of absentee ballots, and most of them were perpetrated by insiders rather than ordinary voters.” [*Id.* at pp. 3-4]. As a “point of reference,” she notes that 1,459,555 mail-in and absentee ballots were cast in Pennsylvania’s 2020 primary election alone. [*Id.* at 4].

**Professor Robert M. Stein**, a Professor of Political Science at Rice University and a fellow in urban politics at the Baker Institute. [ECF 549-11]. Professor Stein opines that “the Commonwealth’s use of drop boxes provides a number of benefits without increasing the risk of mail-in or absentee voter fraud that existed before drop boxes were implemented because (manned or unmanned) they are at least as secure as U.S. Postal Service (“USPS”) mailboxes, which have been successfully used to return mail-in ballots for decades in the Commonwealth and elsewhere around the U.S.” [*Id.* at p. 3]. According to Professor Stein, the use of drop boxes “has been shown to increase turnout,” which he suggests is particularly important “during a global pandemic and where research has shown that natural and manmade disasters have historically had a depressive effect on voter turnout.” [*Id.* at p. 4]. Professor Stein notes that “[d]rop boxes are widely used across a majority of states as a means to return mail-in ballots” and he is “not aware of any studies or research that suggest that drop boxes (manned or unmanned) are a source for voter fraud.” [*Id.*]. Nor is he aware “of any evidence that drop boxes have been tampered with or led to the destruction of ballots.” [*Id.*].

**Professor Paul Gronke**, a Professor of Political Science at Reed College and Director of the Early Voting Information Center. [ECF 545-7]. Professor Gronke recommends that “drop boxes should be provided in every jurisdiction that has significant (20% or more) percentage[] of voters casting a ballot by mail, which includes Pennsylvania” for the general election. [*Id.* at ¶ 6]. He avers that “[s]cientific research shows that drop boxes raise voter turnout and enhance voter confidence in the elections process.” [*Id.* at ¶ 7]. Voters, he explains, “utilize drop



boxes heavily—forty to seventy percent of voters in vote by mail states and twenty-five percent or more in no-excuse absentee states.” [*Id.*]. Professor Gronke further states that he is “not aware of any reports that drop boxes are a source for voter fraud” despite having “been in use for years all over the country.” [*Id.* at ¶ 8]. And he suggests that the use of drop boxes is “especially important” in an election “that will be conducted under the cloud of the COVID-19 pandemic, and for a state like Pennsylvania that is going to experience an enormous increase in the number of by-mail ballots cast by the citizenry of the state.” [*Id.* at ¶ 9].

Based on this evidence, and the purported lack of any contrary evidence showing great risks of fraud associated with the use of drop boxes, Defendants and Intervenor argue that Pennsylvania’s authorization of drop boxes, and the counties’ specific implementation of them, furthers important state interests at little cost to the integrity of the election system.

### **3. Plaintiffs’ evidence of the risks of fraud and vote dilution associated with drop boxes.**

Plaintiffs, on the other hand, argue that the drop boxes allow for an unacceptable risk of voter fraud and “illegal delivery or ballot harvesting” that, when it occurs, will “dilute” the votes of all lawful voters who comply with the Election Code. *See, e.g.*, [ECF 461, ¶¶ 127-128]. As evidence of the dilutive impact of drop boxes, Plaintiffs offer a combination of anecdotal and expert evidence.

Foremost among this evidence is the expert report of Greg Riddlemoser, the former Director of Elections and General Registrar for Stafford County, Virginia from 2011 until 2019. [ECF 504-19]. According to Mr. Riddlemoser, “voter fraud exists.” [*Id.* at p. 2]. He defines the term “voter fraud” to mean any “casting and/or counting of ballots in violation of a state’s election code.” [*Id.*]. Examples he gives include: “Voting twice yourself—even if in multiple jurisdictions,” “voting someone else’s ballot,” and “[e]lection officials giving ballots to or counting ballots from people who were not entitled to vote for various

reasons.” [*Id.* at pp. 2-3]. All of these things, he asserts, are “against the law and therefore fraudulent.” [*Id.*].<sup>3</sup>

Mr. Riddlemoser argues that “ballot harvesting” (which is the term Plaintiffs use to refer to situations in which an individual returns the ballots of other people) “persists in Pennsylvania.” [*Id.* at p. 3]. He points to the following evidence to support this opinion:

- Admissions by Pennsylvania’s Deputy Secretary for Elections and Commissions, Jonathan Marks, that “several Pennsylvania counties permitted ballot harvesting by counting ballots that were delivered in violation of Pennsylvania law” during the recent primary election, [*Id.*];
- “[S]everal instances captured by the media where voters in the June 2020 Primary deposited multiple ballots into unstaffed ballot drop boxes,” [*Id.* at p. 4];
- “Other photographs and video footage of at least one county’s drop box (Elk County) on Primary Election day” which “revealed additional instances of third-party delivery,” [*Id.*]; and
- “Documents produced by Montgomery County” which “reveal that despite signs warning that ballot harvesting is not permitted, people during the 2020 Primary attempted to deposit into the five drop boxes used by that county ballots that were not theirs,” [*Id.*].

With respect to the use of “unstaffed” or “unmanned” ballot drop boxes, Mr. Riddlemoser expresses the opinion that “the use of unmanned drop boxes presents the easiest opportunity for voter fraud” and “certain steps must be

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<sup>3</sup> As noted above, Plaintiffs and Mr. Riddlemoser use the term “voter fraud” to mean “illegal voting”—*i.e.*, voter fraud is any practice that violates the Election Code. For purposes of the Court’s decision and analysis of Plaintiffs’ vote-dilution claims, the Court accepts this definition.

taken to make drop boxes ‘secure’ and ‘monitored.’” [*Id.* at p. 16].

He states that, to be “secure,” drop boxes must be “attended” by “sworn election officials” at all times (*i.e.*, “never left unattended at any time they are open for ballot drop-off.”). [*Id.*]. He further suggests that officials stationed at drop boxes must be empowered, and required, to “verify the person seeking to drop off a ballot is the one who voted it and is not dropping off someone else’s ballot.” [*Id.*]. Doing so, he says, would, in addition to providing better security, also “allow the election official to ask the voter if they followed the instructions they were provided . . . and assist them in doing so to remediate any errors, where possible, before ballot submission.” [*Id.*].

In addition to being “manned,” Mr. Riddlemoser suggests that certain procedures with respect to ballot collection are necessary to ensure the integrity of votes cast in drop boxes. For example, he suggests that, at the end of each day, drop boxes, which should themselves be “tamperproof,” should “be verifiably completely emptied into fireproof/tamperproof receptacles, which are then sealed and labeled by affidavit as to whom, where, when, etc.” [*Id.*]. Once sealed, the containers “must then be transported by sworn officials in a county owned vehicle (preferably marked law enforcement) back to the county board where they are properly receipted and safeguarded.” [*Id.*]. Emptied drop boxes should also be sealed at the end of each day “such that they are not able to accept any additional ballots until they are ‘open’ again[.]” [*Id.*]. And boxes should be “examined to ensure no ballots are in the box, that nothing else is inside the box, and that the structural integrity and any security associated with the box remains intact.” [*Id.*]. All of this, he suggests, should also be “available for monitoring by poll watchers.” [*Id.*].

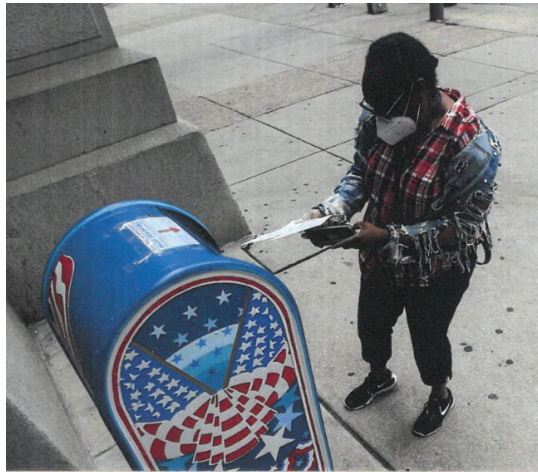
According to Mr. Riddlemoser, anything short of these robust procedures won’t do. In particular, “video cameras would not prevent anyone from engaging in activity that could or is designed to spoil the ballots inside the box; such as dumping liquids into the box, lighting the ballots on fire by using gasoline and matches, or even removing the box itself.” [*Id.* at p. 17]. Even if the “identity of the person responsible may be determined . . . the ballots

themselves would be destroyed—effectively disenfranchising numerous voters.” [*Id.*]. And given “recent footage of toppled statues and damage to government buildings” in the news, Mr. Riddlemoser finds the “forcible removal of ballot drop boxes” to be “a distinct possibility.” [*Id.*]. In addition to increasing the risk of ballot destruction, Mr. Riddlemoser notes that reliance on video cameras would also “not prohibit someone from engaging in ballot harvesting by depositing more than one ballot in the drop box[.]” [*Id.*].

Beyond Mr. Riddlemoser’s expert testimony, Plaintiffs proffer several other pieces of evidence to support their claims that drop boxes pose a dilutive threat to the ballots of lawful voters. Most notably, they present photographs and video stills of, by the Court’s count, approximately seven individuals returning more than one ballot to drop boxes in Philadelphia and Elk County (the same photographs referenced by Mr. Riddlemoser). [ECF 504-19, PDF pp. 49-71].

Those photographs depict the following:

- **An unidentified woman holding what appear to be two ballots at a Philadelphia drop box.**



- Instagram user “thefoodiebarrister” posing for a selfie with two ballots in Philadelphia; captioned, in part, “dropping of [sic] my votes in a designated ballot drop box.”



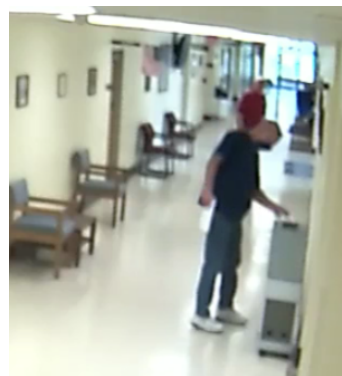
- A photograph posted to social media showing a hand placing two ballots in a drop box; captioned, in part, “Cory and I voted!”



- A photograph of an unidentified man wearing a “Philadelphia Water” sweater and hat, placing two ballots in a Philadelphia drop box.



- Several video stills that, according to Plaintiffs, show voters depositing more than one ballot in an Elk County drop box.



In addition to these photographs and video stills, Plaintiffs also provide a May 24, 2020, email sent by an



official in Montgomery County (which placed security guards to monitor its drop boxes) observing that security “have turned people away yesterday and today without incident who had ballots other than their own.” [ECF 504-28].

Separate and apart from this evidence specific to the use of drop boxes, Plaintiffs and their expert also provide evidence of instances of election fraud, voter fraud, and illegal voting generally. These include, for example:

- A case in which a New Jersey court ordered a new municipal election after a city councilman and councilman-elect were charged with fraud involving mail-in ballots. [ECF 504-19, p. 3].
- A New York Post article written by an anonymous fraudster who claimed to be a “master at fixing mail-in ballots” and detailed his methods. [*Id.*].
- Philadelphia officials’ admission that approximately 40 people were permitted to vote twice during the 2020 primary elections. [*Id.*].
- A YouTube video purporting to show Philadelphia election officials approving the counting of mail-in ballots that lacked a completed certification on the outside of the envelope. [*Id.* (citation omitted)].
- The recent guilty plea of the former Judge of Elections in South Philadelphia, Domenick J. DeMuro, to adding fraudulent votes to voting machines on election day. [ECF 461, ¶ 61]; see *United States v. DeMuro*, No. 20-cr-112 (E.D. Pa. May 21, 2020).
- The 2014 guilty plea of Harmar Township police chief Richard Allen Toney to illegally soliciting absentee ballots to benefit his wife and her running mate in the 2009 Democratic primary for town council, [ECF 461, ¶ 69];
- The 2015 guilty plea of Eugene Gallagher for unlawfully persuading residents and non-

residents of Taylor, in Lackawanna County, Pennsylvania, to register for absentee ballots and cast them for him during his councilman candidacy in the November 2013 election, [*Id.*];

- The 1999 indictment of Representative Austin J. Murphy in Fayette County for forging absentee ballots for residents of a nursing home and adding his wife as a write-in candidate for township election judge, [*Id.*];
- The 1994 Eastern District of Pennsylvania and Third Circuit case *Marks v. Stinson*, which involved an alleged incident of extensive absentee ballot fraud by a candidate for the Pennsylvania State Senate, *see Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994); *Marks v. Stinson*, No. 93-6157, 1994 WL 1461135 (E.D. Pa. Apr. 26, 1994), [ECF 461, ¶ 78]; and
- A report from the bipartisan Commission on Federal Election Reform, chaired by former President Jimmy Carter and former Secretary of State James A. Baker III, which observed that absentee voting is “the largest source of potential voter fraud” and proposed that states “reduce the risks of fraud and abuse in absentee voting by prohibiting ‘third-party’ organizations, candidates, and political party activists from handling absentee ballots.” [ECF 461, ¶¶ 66-67, 80].

### **C. Facts relevant to signature comparison.**

Many of the facts relevant to Plaintiffs’ signature-comparison claim relate to the verification procedures for mail-in and absentee ballots, on one hand, and those procedures for in-person voting, on the other. These are described below.

#### **1. Mail-in and absentee ballot verification.**

As noted above, Pennsylvania does not distribute unsolicited mail-in and absentee ballots. Rather, a voter must apply for the ballot (and any voter can). [ECF 549-2,



¶ 64]. As part of the application for a mail-in ballot,<sup>4</sup> an applicant must provide certain identifying information, including name, date of birth, length of time as a resident of the voting district, voting district if known, party choice in the primary, and address where the ballot should be sent. 25 P.S. § 3150.12(b). In applying for a mail-in ballot, the applicant must also provide “proof of identification,” which is defined by statute as that person’s driver’s license number, last four digits of Social Security number, or another specifically approved form of identification. [ECF 549-2, ¶ 64; ECF 549-27]; 25 P.S. § 2602(z.5)(3). A signature is not mentioned in the definition of “proof of identification.” 25 P.S. § 2602(z.5)(3). However, if physically capable, the applicant must sign the application. *Id.* at § 3150.12(c)-(d).

Upon receiving the mail-in ballot application, the county board of elections determines if the applicant is qualified by “verifying the proof of identification and comparing the information provided on the application with the information contained on the applicant’s permanent registration card.” 25 P.S. § 3150.12b(a). The county board of elections then either approves the application<sup>5</sup> or “immediately” notifies the applicant if the application is not approved. *Id.* at § 3150.12b(a), (c). Upon approval, the county mails the voter the mail-in ballot.

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<sup>4</sup> The procedure for absentee ballots and applications largely resembles the procedure for mail-in ballots and applications.

<sup>5</sup> If the application is approved, the approval is “final and binding,” subject only to challenges “on the grounds that the applicant was not a qualified elector.” 25 P.S. § 3150.12b(a)(2). An unqualified elector would be, for example, an individual who has not “been a citizen of the United States at least one month.” Pa. Const. Art. 7, § 1; *see also* 25 P.S. § 2602(t) (defining “qualified elector” as “any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, shall obtain such qualifications before the next ensuing election”).

After receiving the ballot, the mail-in voter must “mark the ballot” with his or her vote, insert the ballot into the “secrecy” envelope, and place the “secrecy” envelope into a larger envelope. *Id.* at § 3150.16(a). Then, the voter must “fill out, date and sign the declaration printed on [the larger] envelope. [The larger] envelope shall then be securely sealed and the elector shall send [it] by mail ... or deliver it in person to said county board of election.” *Id.* The declaration on the larger envelope must be signed, unless the voter is physically unable to do so. *Id.* at § 3150.16(a)-(a.1).

Once the voter mails or delivers the completed mail-in ballot to the appropriate county board of elections, the ballot is kept “in sealed or locked containers until they are to be canvassed by the county board of elections.” *Id.* at § 3146.8(a). The county boards of elections can begin pre-canvassing and canvassing the mail-in ballots no earlier than election day. *Id.* at § 3146.8(g)(1.1).

When pre-canvassing and canvassing the mail-in ballots, the county boards of elections must “examine the declaration on the [larger] envelope of each ballot ... and shall compare the information thereon with that contained in the ... Voters File.” *Id.* at § 3146.8(g)(3). The board shall then verify the “proof of identification” and shall determine if “the declaration [on the larger envelope] is sufficient.” *Id.* If the information in the “Voters File ... verifies [the elector’s] right to vote,” the ballot shall be counted. *Id.*

## **2. In-person voting verification.**

When a voter decides to vote in-person on election day, rather than vote by mail, the procedures are different. There is no application to vote in person. Rather, on election day, the in-person voter arrives at the polling place and “present[s] to an election officer proof of identification,” which the election officer “shall examine.” *Id.* at § 3050(a). The in-person voter shall then sign a voter’s certificate” and give it to “the election officer in charge of the district register.” *Id.* at § 3050(a.3)(1). Next, the election officer shall “announce the elector’s name” and “shall compare the elector’s signature on his voter’s certificate with his signature in the district register.” *Id.* at § 3050(a.3)(2). If the election officer believes the signature to be “genuine,”

the in-person voter may vote. *Id.* But if the election officer does not deem the signature “authentic,” the in-person voter may still cast a provisional ballot and is given the opportunity to remedy the deficiency. *Id.*

**3. The September 11, 2020, and September 28, 2020, sets of guidance.**

In September 2020, Secretary Boockvar issued two new sets of guidance related to signature comparisons of mail-in and absentee ballots and applications. The first, issued on September 11, 2020, was titled “Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes.” [ECF 504-24]. The guidance stated, in relevant part, the “Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.” [*Id.* at p. 3]. The second set of guidance, issued on September 28, 2020, was titled, “Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures.” [ECF 504-25]. This September 28, 2020, guidance stated, in relevant part, “The Election Code does not permit county election officials to reject applications or voted ballots based solely on signature analysis. ... No challenges may be made to mail-in and absentee ballots at any time based on signature analysis.” [*Id.* at p. 9]. Thus, as evidenced by these two sets of guidance, Secretary Boockvar advised the county boards of elections not to engage in a signature-comparison analysis of voters’ signatures on ballots and applications for ballots.

Most of the counties intend to follow the Secretary’s guidance and will not compare signatures on mail-in ballots and applications for the upcoming general election. *E.g.*, [ECF 504-1]. A few counties, however, stated their intent to not comply with the guidance, and instead would compare and verify the authenticity of signatures. *E.g.*, [*id.* (noting the counties of Cambria, Elk, Franklin, Juniata, Mifflin, Sullivan, Susquehanna, and Wyoming, as not intending to follow Secretary Boockvar’s guidance to not compare signatures)].

According to Defendants, there are valid reasons to not require signature comparisons for mail-in and absentee ballots. For example, Secretary Boockvar notes that signature verification is a technical practice, and election officers are not “handwriting experts.” [ECF 549-2, p. 19, ¶ 68]. Secretary Boockvar also notes that voters’ signatures can change over time, and various medical conditions (*e.g.*, arthritis) can impact a person’s signature. [*Id.*] Defendants’ expert, Amber McReynolds, also finds that “signature verification” involves “inherent subjectivity.” [ECF 549-9, p. 20, ¶ 64]. Ms. McReynolds further notes the “inherent variability of individuals’ signatures over time.” [*Id.*] And according to Secretary Boockvar, these are just some reasons Pennsylvania implements verification procedures other than signature comparisons for mail-in voters, who, unlike in-person voters, are not present when their signature would be verified. [ECF 549-2, p. 20, ¶ 69].

Plaintiffs’ expert, Greg Riddlemoser, on the other hand, states that signature comparison is “a crucial security aspect of vote-by-mail” and failing to verify signatures on mail-in ballots would “undermine voter confidence and would increase the possibility of voter fraud.” [ECF 504-19, pp. 10-11]. Mr. Riddlemoser asserts that Secretary Boockvar’s September 11, 2020, and September 28, 2020, guidance “encourage, rather than prevent, voter fraud.” [*Id.* at p. 12]. As such, Mr. Riddlemoser explains that mail-in voters should be subject to the same signature-comparison requirement as in-person voters. [*Id.* at pp. 13-14].

#### **4. Secretary Boockvar’s King’s Bench petition.**

In light of this case and the parties’ disagreement over whether the Election Code mandates signature comparison for mail-in ballots, Secretary Boockvar filed a “King’s Bench” petition with the Pennsylvania Supreme Court on October 4, 2020. In that petition, she asked the Pennsylvania Supreme Court to exercise its extraordinary jurisdiction, in light of the impending election, to clarify whether the Election Code mandates signature comparison of mail-in and absentee ballots and applications. [ECF 556, p. 11; ECF 557].

On October 7, 2020, several groups, including Donald J. Trump for President, Inc. and the Republican National Committee—who are Plaintiffs in this case—moved to intervene as Respondents in the Pennsylvania Supreme Court case. [ECF 571-1]. The Pennsylvania Supreme Court has not yet decided the motion to intervene or whether to accept the case. The petition remains pending.

**D. Facts relevant to poll-watcher claims.**

The position of “poll watcher” is a creation of state statute. *See* 25 P.S. § 2687. As such, the Election Code defines how a poll watcher may be appointed, what a poll watcher may do, and where a poll watcher may serve.

**1. The county-residency requirement for poll watchers.**

The Election Code permits candidates to appoint two poll watchers for each election district. 25 P.S. § 2687(a). The Election Code permits political parties and bodies to appoint three poll watchers for each election district. *Id.*

For many years, the Pennsylvania Election Code required that poll watchers serve only within their “election district,” which the Code defines as “a district, division or precinct, . . . within which all qualified electors vote at one polling place.” 25 P.S. § 2687(b) (eff. to May 15, 2002) (watchers “shall serve in only one district and must be qualified registered electors of the municipality or township in which the district where they are authorized to act is located”); 25 P.S. § 2602(g). Thus, originally, poll watching was confined to a more limited geographic reach than one’s county, as counties are themselves made up of many election districts.

Then, in 2004, the General Assembly amended the relevant poll-watcher statute to provide that a poll watcher “shall be authorized to serve in the election district for which the watcher was appointed and, when the watcher is not serving in the election district for which the watcher was appointed, in any other election district in the county in which the watcher is a qualified registered elector.” 25 P.S. § 2687(b) (eff. Oct. 8, 2004).

This county-residency requirement is in line with (or is, in some cases, more permissive than) the laws of at least eight other states, which similarly require prospective poll watchers to reside in the county in which they wish to serve as a watcher or (similar to the pre-2004 Pennsylvania statute) limit poll watchers to a sub-division of the county. *See, e.g.*, Fla. Stat. Ann. § 101.131(1) (Florida); Ind. Code Ann. § 3-6-8-2.5 (Indiana); Ky. Rev. Stat. Ann. § 117.315(1) (Kentucky); N.Y. Elec. Law § 8-500(5) (New York); N.C. Gen. Stat. Ann. § 163-45(a) (North Carolina); Tex. Elec. Code Ann. § 33.031(a) (Texas); S.C. Code Ann. § 7-13-860 (South Carolina); Wyo. Stat. Ann. § 22-15-109(b) (Wyoming). However, at least one state (West Virginia) does not provide for poll watchers at all. *See* W. Va. Code Ann. § 3-1-37; W. Va. Code Ann. § 3-1-41

The General Assembly has not amended the poll-watcher statute since 2004, even though some lawmakers have advocated for the repeal of the residency requirement. *See Cortés*, 218 F. Supp. 3d at 402 (observing that legislative efforts to repeal the poll-watcher residency requirement have been unsuccessful).

As part of its September 17, 2020, decision, the Pennsylvania Supreme Court found that the county-residency requirement does not violate the U.S. or Pennsylvania constitutions. *Bookcvar*, 2020 WL 554644, at \*31.

## **2. Where and when poll watchers can be present during the election.**

The Pennsylvania Election Code sets forth the rules for where and when poll watchers are permitted to be present.

The Election Code provides that poll watchers may be present “at any public session or sessions of the county board of elections, and at any computation and canvassing of returns of any primary or election and recount of ballots or recanvass of voting machines under” the Code. 25 P.S. § 2650. Additionally, one poll watcher for each candidate, political party, or political body may “be present in the polling place . . . from the time that the election officers meet prior to the opening of the polls . . . until the time that

the counting of votes is complete and the district register and voting check list is locked and sealed.” 25 P.S. § 2687(b).

During this time, poll watchers may raise objections to “challenge any person making application to vote.” *Id.* Poll watchers also may raise challenges regarding the voters’ identity, continued residence in the election district, or registration status. 25 P.S. § 3050(d).

Although Pennsylvania has historically allowed absentee ballots to be returned by U.S. Postal Service or by in-person delivery to a county board of elections office, the Election Code does not provide (and has never provided for) any right to have poll watchers in locations where absentee voters fill out their ballots (which may include their home, office, or myriad other locations), nor where those votes are mailed (which may include their own mailbox, an official U.S. Postal Service collection box, a work mailroom, or other places U.S. Postal Service mail is collected), nor at county board of elections offices. [ECF 549-2, ¶¶ 86-90].

Before Act 77, absentee ballots were held in election districts rather than centralized at the county board of elections. *See* 25 P.S. § 3146.8 (eff. Mar. 14, 2012 to Oct. 30, 2019) (“In all election districts in which electronic voting systems are used, absentee ballots shall be opened at the election district, checked for write-in votes in accordance with section 1113-A and then either hand-counted or counted by means of the automatic tabulation equipment, whatever the case may be.”).

At such time (again, before Act 77), poll workers opened those absentee ballots at each polling place after the close of the polls. *Id.* (“Except as provided in section 1302.1(a.2), the county board of elections shall then distribute the absentee ballots, unopened, to the absentee voter’s respective election district concurrently with the distribution of the other election supplies. Absentee ballots shall be canvassed immediately and continuously without interruption until completed after the close of the polls on the day of the election in each election district. The results of the canvass of the absentee ballots shall then be included in and returned to the county board with the returns of that district.” (footnote omitted)).



With the enactment of Act 77, processing and counting of mail-in and absentee ballots is now centralized in each county board of elections, with all mail-in and absentee ballots in such county held and counted at the county board of elections (or such other site as the county board may choose) without regard to which election district those ballots originated from. 25 P.S. § 3146.8(a) (eff. Mar. 27, 2020); [ECF 549-2, ¶ 81].

Under Act 12, counties are permitted to “pre-canvass” mail-in or absentee ballots received before Election Day beginning at 7:00 a.m. on Election Day. 25 P.S. § 3146.8(g)(1.1). Counties are further permitted to “canvass” ballots received after that time beginning “no earlier than the close of the polls on the day of the election and no later than the third day following the election.” *Id.* § 3146.8(g)(2).

The Election Code permits “[o]ne authorized representative of each candidate” and “one representative from each political party” to “remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed.” 25 P.S. § 3146.8(g)(1.1). Similarly, during canvassing, the Election Code permits “[o]ne authorized representative of each candidate” and “one representative from each political party” to “remain in the room in which the absentee ballots and mail-in ballots are canvassed.” 25 P.S. § 3146.8(g)(2).

The Election Code provisions pertaining to the “pre-canvass” and “canvass” do not make any separate reference to poll watchers, instead referring only to the “authorized representatives” of parties and candidates. *See* 25 P.S. § 3146.8.

On October 6, 2020, Secretary Boockvar issued guidance concerning poll watchers and authorized representatives. [ECF 571-1]. The guidance states that poll watchers “have no legal right to observe or be present at ... ballot return sites,” such as drop-box locations. [ECF 571-1, Ex. E, p. 5]. The guidance also states that while a candidate’s authorized representative may be present when mail-in ballots are opened (including during pre-canvass and canvass), the representative cannot challenge those ballots. [*Id.* at Ex. E, p. 4].



On October 9, 2020, in a separate lawsuit brought by the Trump Campaign in the Philadelphia County Court of Common Pleas, the state court there confirmed Secretary Boockvar's guidance. Specifically, the state court held that satellite ballot-collection locations, such as drop-box locations, are not "polling places," and therefore poll watchers are not authorized to be present in those places. [ECF 573-1, p. 12 ("It is clear from a reading of the above sections [of the Election Code] that the satellite offices where these activities, and only these activities, occur are true 'offices of the Board of Elections' and are not polling places, nor public sessions of the Board of Elections, at which watchers have a right to be present under the Election Code.")]]. Immediately after issuance of this decision, the Trump Campaign filed a notice of appeal, indicating its intention to appeal the decision to the Commonwealth Court of Pennsylvania. Having just been noticed, that appeal remains in its infancy as of the date of this Opinion.

### **3. Plaintiffs' efforts to recruit poll watchers for the upcoming general election.**

In order to become a certified poll watcher, a candidate must meet certain criteria. [ECF 504-20, ¶ 9]. That is, a poll watcher needs to be "willing to accept token remuneration, which is capped at \$120 under Pennsylvania state law" and must be able to take off work or otherwise make arrangements to be at the polling place during its open hours on Election Day, which can mean working more than 14 hours in a single day. [*Id.*].

The Pennsylvania Director for Election Day Operations for the Trump Campaign, James J. Fitzpatrick, stated that the Trump Campaign wants to recruit poll watchers for every county in Pennsylvania. [ECF 504-2, ¶ 30]. To that end, the RNC and the Trump Campaign have initiated poll-watcher recruitment efforts for the general election by using a website called DefendYourBallot.com. [ECF 528-14, 265:2-15, 326:14-329-7]. That website permits qualified electors to volunteer to be a poll watcher. [*Id.*]. In addition, Plaintiffs have called qualified individuals to volunteer to be poll watchers, and worked

with county chairs and conservative activists to identify potential poll watchers. [*Id.*].

Despite these efforts, the Trump Campaign claims it “is concerned that due to the residency restriction, it will not have enough poll watchers in certain counties.” [ECF 504-2, ¶ 25]. Mr. Fitzpatrick, however, could not identify a specific county where the Trump Campaign has been unable to obtain full coverage of poll watchers or any county where they have tried and failed to recruit poll watchers for the General Election. [ECF 528-14, 261:21-262:3, 263:8-19, 265:2-266:3].

In his declaration, Representative Reschenthaler shared Mr. Fitzpatrick’s concern, stating that he does not believe that he will “be able to recruit enough volunteers from Greene County to watch the necessary polls in Greene County.” [ECF 504-6, ¶ 12]. But Representative Reschenthaler did not provide any information regarding his efforts to recruit poll watchers to date, or what he plans to do in the future to attempt to address his concern. *See generally* [*id.*].

Representative Kelly stated in his declaration that he was “likely to have difficulty getting enough poll watchers from within Erie County to watch all polls within that county on election day.” [ECF 504-5, ¶ 16]. Representative Kelly never detailed his efforts (*e.g.*, the outreach he tried, prospective candidates he unsuccessfully recruited, and the like), and he never explained why those efforts aren’t likely to succeed in the future. *See generally* [*id.*].

In his declaration, Representative Thompson only stated that based on his experience, “parties and campaigns cannot always find enough volunteers to serve as poll watchers in each precinct.” [ECF 504-4, ¶ 20].

According to statistics collected and disseminated by the Pennsylvania Department of State, there is a gap between the number of voters registered as Democrats and Republicans in some Pennsylvania counties. [ECF 504-34]. Plaintiffs’ expert, Professor Lockerbie, believes this puts the party with less than a majority of voters in that county at a disadvantage in recruiting poll watchers. [ECF 504-

20, ¶ 15]. However, despite this disadvantage, Professor Lockerbie states that “the Democratic and Republican parties might be able to meet the relevant criteria and recruit a sufficient population of qualified poll watchers who meet the residency requirement[.]” [*Id.* at ¶ 16].

Additionally, Professor Lockerbie finds the gap in registered voters in various counties to be especially problematic for minor political parties. [*Id.* at ¶ 16]. As just one example, according to Professor Lockerbie, even if one were to assume that all third-party voters were members of the same minor party, then in Philadelphia County it would require “every 7th registrant” to be a poll watcher in order for the third party to have a poll watcher observing each precinct.” [*Id.*].

Professor Lockerbie believes that disruptions to public life caused by the COVID-19 pandemic “magnified” the difficulties in securing sufficient poll watchers. [*Id.* at ¶ 10].

Nothing in the Election Code limits parties from recruiting only registered voters from their own party. [ECF 528-14, 267:23-268:1]. For example, the Trump Campaign utilized at least two Democrats among the poll watchers it registered in the primary. [ECF 528-15, P001648].

#### **4. Rationale for the county-residency requirement.**

Defendants have advanced several reasons to explain the rationale behind county-residency requirement for poll watchers.

Secretary Boockvar has submitted a declaration, in which she has set forth the reasons for and interests supporting the county-residency requirement. Secretary Boockvar states that the residency requirement “aligns with Pennsylvania’s county-based election scheme[.]” [ECF 549-2, p. 22, ¶ 77]. “By restricting poll watchers’ service to the counties in which they actually reside, the law ensures that poll watchers should have some degree of familiarity with the voters they are observing in a given election district.” [*Id.* at p. 22, ¶ 78].

In a similar vein, Intervenors' expert, Dr. Barreto, in his report, states that, voters are more likely to be comfortable with poll watchers that "they know" and are "familiar with ... from their community." [ECF 524-1, p. 14, ¶ 40]. That's because when poll watchers come from the community, "there is increased trust in government, faith in elections, and voter turnout[.]" [*Id.*].

At his deposition, Representative Kelly agreed with this idea: "Yeah, I think – again, depending how the districts are established, I think people are probably even more comfortable with people that they – that they know and they recognize from their area." [ECF 524-23, 111:21-25].

### **LEGAL STANDARD**

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). At summary judgment, the Court must ask whether the evidence presents "a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). In making that determination, the Court must "consider all evidence in the light most favorable to the party opposing the motion." *A.W. v. Jersey City Pub. Schs.*, 486 F.3d 791, 794 (3d Cir. 2007).

The summary-judgment stage "is essentially 'put up or shut up' time for the non-moving party," which "must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument." *Berkeley Inv. Grp. Ltd. v. Colkitt*, 455 F.3d 195, 201 (3d Cir. 2006). If the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial," summary judgment is warranted. *Celotext Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

"The rule is no different where there are cross-motions for summary judgment." *Lawrence v. City of Philadelphia*, 527 F.3d 299, 310 (3d Cir. 2008). The parties'

filing of cross-motions “does not constitute an agreement that if one is rejected the other is necessarily justified[.]” *Id.* But the Court may “resolve cross-motions for summary judgment concurrently.” *Hawkins v. Switchback MX, LLC*, 339 F. Supp. 3d 543, 547 (W.D. Pa. 2018). When doing so, the Court views the evidence “in the light most favorable to the non-moving party with respect to each motion.” *Id.*

## **DISCUSSION & ANALYSIS**

Plaintiffs, Defendants, and Intervenors all cross-move for summary judgment on all three of Plaintiffs’ remaining claims, which the Court refers to, in the shorthand, as (1) the drop-box claim, (2) the signature-comparison claim, and (3) the poll-watching claim. The common constitutional theory behind each of these claims is vote dilution. Absent the security measures that Plaintiffs seek, they fear that others will commit voter fraud, which will, in turn, dilute their lawfully cast votes. They assert that this violates the federal and Pennsylvania constitutions.

The Court will address only the federal-constitutional claims. For the reasons that follow, the Court finds that Plaintiffs lack standing to bring their federal-constitutional claims because Plaintiffs’ injury of vote dilution is not “concrete” for Article III purposes.

But even assuming Plaintiffs had standing, the Court also concludes that Defendants’ regulations, conduct, and election guidance here do not infringe on any right to vote, and if they do, the burden is slight and outweighed by the Commonwealth’s interests—interests inherent in the Commonwealth’s other various procedures to police fraud, as well as its overall election scheme.

Finally, because the Court will be dismissing all federal-constitutional claims, it will decline to exercise supplemental jurisdiction over any of the state-constitutional claims and will thus dismiss those claims without prejudice.

### **I. Defendants’ procedural and jurisdictional challenges.**

At the outset, Defendants and Intervenors raise a

number of jurisdictional, justiciability, and procedural arguments, which they assert preclude review of the merits of Plaintiffs' claims. Specifically, they assert (1) the claims are not ripe and are moot, (2) there is a lack of evidence against certain county boards, and those boards are not otherwise necessary parties, and (3) Plaintiffs lack standing. The Court addresses each argument, in turn.

**A. Plaintiffs' claims are ripe and not moot.**

Several Defendants have argued that Plaintiffs' claims in the Second Amended Complaint are not ripe and are moot. The Court disagrees.

**1. Plaintiffs' claims are ripe.**

The ripeness doctrine seeks to “prevent the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Artway v. Attorney Gen. of N.J.*, 81 F.3d 1235, 1246-47 (3d Cir. 1996) (cleaned up). The ripeness inquiry involves various considerations including whether there is a “sufficiently adversarial posture,” the facts are “sufficiently developed,” and a party is “genuinely aggrieved.” *Peachlum v. City of York*, 333 F.3d 429, 433-34 (3d Cir. 2003). Ripeness requires the case to “have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them.” *Wyatt, Virgin Islands, Inc. v. Gov't of the Virgin Islands*, 385 F.3d 801, 806 (3d Cir. 2004) (quoting *Pub. Serv. Comm'n of Utah v. Wycoff Co.*, 344 U.S. 237, 244 (1952)). “A dispute is not ripe for judicial determination if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Id.*

Ultimately, “[r]ipeness involves weighing two factors: (1) the hardship to the parties of withholding court consideration; and (2) the fitness of the issues for judicial review.” *Artway*, 81 F.3d at 1247. Unlike standing, ripeness is assessed at the time of the court's decision (rather than the time the complaint was filed). See *Blanchette v. Connecticut General Ins. Corp.*, 419 U.S. 102, 139-40 (1974).

The Court finds that Plaintiffs' claims are ripe. Applying the two-factor test here, the Court first concludes that the parties would face significant hardship if the Court were to hold that the case was unripe (assuming it was otherwise justiciable). The general election is less than one month away, and Plaintiffs assert claims that could significantly affect the implementation of Pennsylvania's electoral procedures. Further, if the Court were to find that Plaintiffs' claims were not ripe, Plaintiffs would be burdened. This is because Plaintiffs would then have to either wait until after the election occurred—and thus after the alleged harms occurred—or Plaintiffs would have to bring suit on the very eve of the election, and thus there would be insufficient time for the Court to address the issues. This hardship makes judicial review at this time appropriate. The first factor is met.

Some Defendants argue that because some of the Secretary's guidance was issued after the 2020 primary election, Plaintiffs' claims that rely on such guidance are not ripe because the guidance has not been implemented in an election yet. The Court disagrees. Both the allegations in the Second Amended Complaint, and the evidence presented on summary judgment, reveal that the guidance issued after the primary election will apply to the upcoming general election. This is sufficient to make this a properly ripe controversy.<sup>6</sup>

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<sup>6</sup> In her summary-judgment brief, Secretary Boockvar argues that Plaintiffs' as-applied challenge to Pennsylvania's county-residency requirement is unripe. [ECF 547, pp. 60-63]. The Secretary reasons that Plaintiffs have not shown sufficient evidence that they are harmed by the county-residency requirement. This argument is directed more towards a lack of standing and a lack of evidence to support the claim on the merits. As the sufficiency of the evidence of harm is a separate issue from ripeness (which is more concerned with timing), the Court does not find Plaintiffs' as-applied challenge to the county-residency requirement unripe. *See Progressive Mountain Ins. Co. v. Middlebrooks*, 805 F. App'x 731, 734 (11th Cir. 2020) ("The question of ripeness frequently boils down to the same question as questions of Article III standing, but the distinction between the two is that standing focuses



The second factor the Court must consider in determining ripeness is “the fitness of the issues for judicial review.” *Artway*, 81 F.3d at 1247. “The principal consideration [for this factor] is whether the record is factually adequate to enable the court to make the necessary legal determinations. The more that the question presented is purely one of law, and the less that additional facts will aid the court in its inquiry, the more likely the issue is to be ripe, and vice-versa.” *Id.* at 1249.

Under this framework, the Court concludes that the issues are fit for review. The parties have engaged in extensive discovery, creating a developed factual record for the Court to review. Further, as shown below, the Court finds it can assess Plaintiffs’ claims based on the current factual record and can adequately address the remaining legal questions that predominate this lawsuit. As such, the Court finds Plaintiffs’ claims fit for judicial review.

Thus, Plaintiffs’ claims are presently ripe.

## **2. Plaintiffs’ claims are not moot.**

Some Defendants also assert that Plaintiffs’ claims are moot because Plaintiffs reference allegations of harm that occurred during the primary election, and since then, Secretary Boockvar has issued new guidance and the Pennsylvania Supreme Court has interpreted the Election Code to clarify several ambiguities. The Court, however, concludes that Plaintiffs’ remaining claims are not moot.

Mootness stems from the same principle as ripeness, but is stated in the inverse: courts “lack jurisdiction when ‘the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.’” *Merle v. U.S.*, 351 F.3d 92, 94 (3d Cir. 2003) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). Like ripeness and unlike standing, mootness is determined at the time of the court’s decision (rather than at the time the complaint is

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[on] whether the type of injury alleged is qualitatively sufficient to fulfill the requirements of Article III and whether the plaintiff has personally suffered that harm, whereas ripeness centers on whether that injury has occurred yet.” (cleaned up) (citations omitted)).



filed). *See U.S. Parole Commission v. Geraghty*, 445 U.S. 388, 397 (1980). When assessing mootness, the Court may assume (for purposes of the mootness analysis) that standing exists. *Friends of the Earth, Inc. v. Laidlaw Evtl. Servs.*, 528 U.S. 167, 180 (2000) (citation omitted).

Here, the Court finds that Plaintiffs' claims are not moot, as the claims Plaintiffs are proceeding with are "live." First, Plaintiffs' claims are based on guidance that issued after the primary election and are to be applied in the upcoming general election. As such, the *harms* alleged are not solely dependent on the already-passed primary election. Second, Defendants, by and large, have made clear that they intend to abide by guidance that Plaintiffs assert is unlawful or unconstitutional. Third, Plaintiffs sufficiently show that certain Defendants intend to engage in the conduct (*e.g.*, use unmanned drop-boxes) that Plaintiffs say infringes their constitutional rights. Thus, these issues are presently "live" and are not affected by the completion of the primary election.<sup>7</sup> Plaintiffs' claims are not moot.

### **3. All named Defendants are necessary parties to this lawsuit.**

Many of the county boards of elections that are Defendants in this case argue that the claims against them should be dismissed because Plaintiffs did not specifically allege or prove sufficient violative facts against them. Plaintiffs argue in response that all county boards have been joined because they are necessary parties, and the Court cannot afford relief without their presence in this case. The Court agrees with Plaintiffs, and declines to

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<sup>7</sup> In their briefing, the parties focused on the "capable of repetition yet evading review" exception to the mootness doctrine. The Court, however, does not find that it needs to rely on this exception. Nearing the eve of the election, it is clear that Defendants intend to engage in the conduct that Plaintiffs assert is illegal and unconstitutional. Thus, the claims are presently live, and are not "evading review" in this circumstance.

dismiss the county boards from the case. They are necessary parties.

Federal Rule of Civil Procedure 19(a) states that a party is a necessary party that must be joined in the lawsuit if, “in that [party’s] absence, the court cannot accord complete relief among existing parties.” Fed. R. Civ. P. 19(a)(1)(A).

Here, if the county boards were not named defendants in this case, the Court would not be able to provide Plaintiffs complete relief should Plaintiffs prove their case. That’s because the Court could not enjoin the county boards if they were not parties. *See* Fed. R. Civ. P. 65(d)(2).<sup>8</sup> This is important because each individual county board of elections manages the electoral process within its county lines. As one court previously summarized, “Election procedures and processes are managed by each of the Commonwealth’s sixty-seven counties. Each county has a board of elections, which oversees the conduct of all elections within the county.” *Cortés*, 218 F. Supp. 3d at 403

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<sup>8</sup> While Rule 65(d)(2)(C) states that an injunction binds “[non-parties] who are in active concert or participation” with the parties or the parties’ agents, the Court does not find that Rule 65(d) helps the county boards. As discussed, the county boards manage the elections and implement the electoral procedures. While the Court could enjoin Secretary Boockvar, for example, from using unmanned drop boxes, each individual county election board could still use unmanned drop boxes on their own. Doing so would not result in the counties being in “active concert or participation” with Secretary Boockvar, as each county is independently managing the electoral process within their county lines. *See Marshak v. Treadwell*, 595 F.3d 478, 486 (3d Cir. 2009) (“[N]on-parties guilty of aiding or abetting or acting in concert with a named defendant or his privy in violating the injunction may be held in contempt.” (cleaned up) (citations omitted)). In other words, each county elections board would not be “aiding or abetting” Secretary Boockvar in violating the injunction (which would implicate Rule 65(d)(2)(C)); rather, the counties would be utilizing their independent statutory authority to manage elections within their county lines.

(citing 25 P.S. § 2641(a)). “The county board of elections selects, fixes and at times alters the polling locations of new election districts. Individual counties are also tasked with the preservation of all ballots cast in that county, and have the authority to investigate fraud and report irregularities or any other issues to the district attorney[.]” *Id.* (citing 25 P.S. §§ 2726, 2649, and 2642). The county boards of elections may also make rules and regulations “as they may deem necessary for the guidance of voting machine custodians, elections officers and electors.” 25 P.S. § 2642(f).

Indeed, Defendants’ own arguments suggest that they must be joined in this case. As just one example, a handful of counties assert in their summary-judgment brief that the “[Election] Code permits Boards to exercise discretion in certain areas when administering elections, to administer the election in a manner that is both legally-compliant and meets the unique needs of each County’s citizens.” [ECF 518, p. 6]. Thus, because of each county’s discretionary authority, if county boards engage in unconstitutional conduct, the Court would not be able to remedy the violation by enjoining only Secretary Boockvar.<sup>9</sup>

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<sup>9</sup> As evidence of the county boards’ indispensability, one court recently found that the failure to join local election officials in an election case can make the harm alleged not “redressable.” It would be a catch-22 to say that county boards cannot be joined to this case as necessary parties, but then dismiss the case for lack of standing due to the boards’ absence. *Cf. Jacobson v. Florida Secretary of States*, --- F.3d ---, 2020 WL 5289377, at \*11-12 (11th Cir. Sept. 3, 2020) (“The problem for the [plaintiffs] is that Florida law tasks the [county] Supervisors, independently of the Secretary, with printing the names of candidates on ballots in the order prescribed by the ballot statute. . . . The Secretary is responsible only for certifying to the supervisor of elections of each county the names of persons nominated . . . . Because the Secretary didn’t do (or fail to do) anything that contributed to [plaintiffs’] harm, the voters and organizations cannot meet Article III’s traceability requirement.” (cleaned up)).

To grant Plaintiffs relief, if warranted, the Court would need to enter an order affecting all county boards of elections—which the Court could not do if some county boards were not joined in this case. Otherwise, the Court could only enjoin violative conduct in some counties but not others. As a result, inconsistent rules and procedures would be in effect throughout the Commonwealth. While some counties can pledge to follow orders issued by this Court, the judicial system cannot rely on pledges and promises, regardless of the county boards’ good intent. The only way to ensure that any illegal or unconstitutional conduct is uniformly remedied, permanently, is to include all county boards in this case.

Thus, because the county boards are necessary parties, the Court cannot dismiss them.

**4. Plaintiffs lack Article III standing to raise their claims of vote dilution because they cannot establish a “concrete” injury-in-fact.**

While Plaintiffs can clear the foregoing procedural hurdles, they cannot clear the final one—Article III standing.

Federal courts must determine that they have jurisdiction before proceeding to the merits of any claim. *Steel Co. v. Citizens for Better Env’t*, 523 U.S. 83, 94-95 (1998). Article III of the Constitution limits the jurisdiction of federal courts to “Cases” and “Controversies.” One component of the case-or-controversy requirement is standing, which requires a plaintiff to demonstrate the now-familiar elements of (1) injury in fact, (2) causation, and (3) redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Standing is particularly important in the context of election-law cases, including a case like this one, that challenge the laws, regulations, and guidance issued by elected and appointed state officials through the democratic processes. As the Supreme Court has explained, the standing “doctrine developed in our case law to ensure that federal courts do not exceed their authority

as it has been traditionally understood.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (cleaned up). The doctrine “limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong.” *Id.* In this way, “Article III standing serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Id.* Nowhere is that concern more acute than in a case that challenges a state’s exercise of its core constitutional authority to regulate the most deeply political arena of all—elections.

Here, Defendants and Intervenors claim that Plaintiffs lack standing, largely arguing that Plaintiffs’ injury is too speculative. [ECF 547, pp. 43-50]. The Court agrees and finds that Plaintiffs lack Article III standing for this reason.

Initially, to frame the standing inquiry, understanding the specific claims at issue is important. As discussed above, there are essentially three claims remaining in this case: (1) a challenge to Secretary Boockvar’s guidance that does not require all drop boxes to have manned security personnel; (2) a challenge to Secretary Boockvar’s guidance that counties should not perform a signature comparison for mail-in ballots; and (3) a challenge to Pennsylvania’s county-residency restriction for poll-watchers. *See* [ECF 509, pp. 4-5]. The theory behind all of these claims and the asserted injury is one of vote dilution due to the heightened risk of fraud; that is, without the above measures in place, there is an imminent risk of voter fraud (primarily by mail-in voters); and if that fraud occurs, it will dilute the votes of many of Plaintiffs, who intend to vote in person in the upcoming election. [ECF 551, p. 12 (“As qualified electors who will be voting in the November election, Plaintiffs will suffer an injury through their non-equal treatment and/or the dilution or debasement of their legitimately cast votes by absentee and mail-in votes that have not been properly verified by matching the voters’ signatures on their applications and ballots to the permanent voter registration record and/or that have been improperly delivered by others to drop boxes or other mobile collection sites in manners that are different[] from those offered or being used in their counties of residence.”)].

Turning to the familiar elements of Article III standing, the first and, in the Supreme Court’s estimation, “foremost” element—injury-in-fact—is dispositive. *See Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). Specifically, the Court finds that Plaintiffs’ theory of vote dilution, based on the evidence presented, is insufficient to establish standing because Plaintiffs’ injury-in-fact is not sufficiently “concrete.”

With respect to injury-in-fact, the Supreme Court has made clear that an injury must be “concrete” and “particularized.” *See Spokeo*, 136 S. Ct. at 1548. Defendants argue that the claimed injury of vote dilution caused by possible voter fraud here is too speculative to be concrete. The Court agrees.

To establish a “concrete” injury, Plaintiffs rely on a chain of theoretical events. They first argue that Defendants’ lack of election safeguards (poll watchers, drop-box guards, and signature-comparison procedures) creates a risk of voter fraud or illegal voting. *See* [ECF 461, ¶¶ 230-31, 240, 256]. That risk, they say, will lead to potential fraudsters committing voter fraud or ballot destruction. [*Id.*]. And if that happens, each vote cast in contravention of the Election Code will, in Plaintiffs’ view, dilute Plaintiffs’ lawfully cast votes, resulting in a constitutional violation.

The problem with this theory of harm is that this fraud hasn’t yet occurred, and there is insufficient evidence that the harm is “certainly impending.”

To be clear, Plaintiffs need not establish actual fraud at this stage; but they must establish that fraud is “certainly impending,” and not just a “possible future injury.” *See Clapper*, 568 U.S. at 409 (“Thus, we have repeatedly reiterated that threatened injury must be certainly impending to constitute injury in fact, and that allegations of possible future injury are not sufficient.”) (cleaned up).

This case is well past the pleading stage. Extensive fact and expert discovery are complete. [ECF 462]. Nearly 300 exhibits have been submitted on cross-motions for summary judgment (including 68 by Plaintiffs alone).

Plaintiffs bear the burden of proof on this issue, and unlike on a motion to dismiss, on summary judgment, they must come forward with proof of injury, taken as true, that will prove standing, including a concrete injury-in-fact. *See Lujan*, 504 U.S. at 561 (1992) (“At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice . . . . In response to a summary judgment motion, however, the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts . . . . which for purposes of the summary judgment motion will be taken to be true.”) (cleaned up).

Based on the evidence presented by Plaintiffs, accepted as true, Plaintiffs have only proven the “possibility of future injury” based on a series of speculative events—which falls short of the requirement to establish a concrete injury. For example, Plaintiffs’ expert, Mr. Riddlemoser, opines that the use of “unstaffed or unmanned” drop boxes merely “increases the **possibility** for voter fraud (and vote destruction)[.]” [ECF 504-19, p. 20 (emphasis added)]. That’s because, according to him (and Plaintiffs’ other witnesses), theoretical bad actors **might** intentionally “target” a drop box as the “easiest opportunity for voter fraud” or with the malicious “intent to destroy as many votes ... as possible.” [*Id.* at pp. 16-18; *see also* ECF 504-2, ¶ 12 (declaring that drop boxes “**may** serve as a target for bad actors that may wish to tamper with lawfully case ballots before such ballots are counted”) (emphasis added)]. But there’s no way of knowing whether these independent actors will ever surface, and if they do, whether they will act as Mr. Riddlemoser and Plaintiffs predict.

Similarly, Mr. Riddlemoser concludes that, at most, not conducting signature analysis for mail-in and absentee ballots “open[s] the door to the potential for massive fraud through a mechanism already susceptible to voter fraud.” [ECF 504-19, p. 20].

This increased susceptibility to fraud and ballot destruction is the impetus for Plaintiffs, in their various capacities, to express their concerns that vote dilution might occur and disrupt their right to a “free and fair election.” *See, e.g.*, [504-3, ¶ 6; 504-4, ¶ 7; ECF 504-6, ¶¶



6-8; ECF 504-7, ¶¶ 5-9]. But these concerns, as outlined above, are based solely on a chain of unknown events that may never come to pass.

In addition to Plaintiffs' expert report, Plaintiffs' evidence consists of instances of voter fraud in the past, including an article in the N.Y. Post purporting to detail the strategies of an anonymous fraudster, as well as pointing to certain prior cases of voter fraud and election irregularities (*e.g.*, Philadelphia inadvertently allowing 40 people to vote twice in the 2020 primary election; some counties counting ballots that did not have a completed declaration in the 2020 primary election). [ECF 461, ¶¶ 63-82; ECF 504-19, p. 3 & Ex. D]. Initially, with one exception noted directly below, none of this evidence is tied to individuals using drop boxes, submitting forged mail-in ballots, or being unable to poll watch in another county—and thus it is unclear how this can serve as evidence of a concrete harm in the upcoming election as to the specific claims in this case.

Perhaps the best evidence Plaintiffs present are the several photographs and video stills, which are depicted above, and which are of individuals who appear to be delivering more than one ballot to a drop box during the primary election. It is undisputed that during the primary election, some county boards believed it be appropriate to allow voters to deliver ballots on behalf of third parties. [ECF 504-9, 92:4-10; ECF 504-10, 60:3-61:10; ECF 504-49].

But this evidence of past injury is also speculative. Initially, the evidence is scant. But even assuming the evidence were more substantial, it would still be speculative to find that third-party ballot delivery will also occur in the general election. It may; it may not. Indeed, it may be less likely to occur now that the Secretary issued her September 28, 2020, guidance, which made clear to all county boards that for the general election, third-party ballot delivery is prohibited. [ECF 504-25 (“Third-person delivery of absentee or mail-in ballots is not permitted, and any ballots delivered by someone other than the voter are required to be set aside. The only exceptions are voters with a disability, who have designated in writing an agent to deliver their ballot for them.”)]. It may also be less likely to occur in light of the Secretary's other guidance, which



recommends that county boards place signs near drop boxes, warning voters that third-party delivery is prohibited.

It is difficult—and ultimately speculative—to predict future injury from evidence of past injury. This is why the Supreme Court has recognized that “[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief if unaccompanied by any continuing, present adverse effects.” *Lujan*, 504 U.S. at 564 (cleaned up).

In fact, based on Plaintiffs’ theory of harm in this case, it is almost impossible for them to present anything other than speculative evidence of injury. That is, they would have to establish evidence of a certainly impending illegal practice that is likely to be prevented by the precautions they seek. All of this sounds in “possible future injury,” not “certainly impending” injury. In that way, this case is very much like the Supreme Court’s decision in *Clapper*.

In *Clapper*, plaintiffs-respondents were attorneys, other advocates, and media groups who communicated with clients overseas whom they feared would be subject to government surveillance under a FISA statute. 568 U.S. at 406. The plaintiffs there alleged that the FISA statute at issue created a risk of possible government surveillance, which prevented them from communicating in confidence with their clients and compelled them to travel overseas instead and incur additional costs. *Id.* at 406-07. Based on these asserted injuries, the plaintiffs filed suit, seeking to invalidate provisions of FISA. *Id.* at 407.

The Supreme Court held that plaintiffs there lacked standing because their risk of harm was not concrete—rather, it was attenuated and based on a series of speculative events that may or may not ever occur. *Id.* at 410 (finding that “respondents’ argument rests on their highly speculative fear that: (1) the Government will decide to target the communications of non-U.S. persons with whom they communicate; (2) in doing so, the Government will choose to invoke its authority under § 1881a rather than utilizing another method of surveillance; (3) the Article III judges who serve on the Foreign Intelligence

Surveillance Court will conclude that the Government's proposed surveillance procedures satisfy § 1881a's many safeguards and are consistent with the Fourth Amendment; (4) the Government will succeed in intercepting the communications of respondents' contacts; and (5) respondents will be parties to the particular communications that the Government intercepts).

In the end, the Court found that it would not "endorse standing theories that rest on speculation about the decisions of independent actors." *Id.* at 414.

Like *Clapper*, here, Plaintiffs' theory of harm rests on speculation about the decisions of independent actors. For drop boxes, that speculation includes that unknown individuals will utilize drop boxes to commit fraud or other illegal activity; for signature comparison, that fraudsters will submit forged ballots by mail; for poll watchers, that illegal votes will not be sufficiently challenged; and for all these claims, that other security measures in place to monitor drop boxes, to verify ballot information, and to challenge ballots will not work.

All of this may occur and may result in some of Plaintiffs' votes being diluted; but the question is whether these events are "certainly impending." The evidence outlined above and presented by Plaintiffs simply fails to meet that standard.

This is not to say that claims of vote dilution or voter fraud never give rise to a concrete injury. A plaintiff can have standing to bring a vote-dilution claim—typically, in a malapportionment case—by putting forth statistical evidence and computer simulations of dilution and establishing that he or she is in a packed or cracked district. *See Gill*, 138 S. Ct. at 1936 (Kagan, J., concurring). And a plaintiff can have standing to bring a voter-fraud claim, but the proof of injury there is evidence of actual fraud in the election and thus the suit will be brought after the election has occurred. *See, e.g., Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994). But, at least based on the evidence presented here, a claim of vote dilution brought in advance of an election on the theory of the risk of potential fraud fails to establish the requisite concrete injury for purposes of Article III standing.

Plaintiffs advance three other theories of harm here, in order to establish standing—none of which establish a concrete injury-in-fact.

First, Plaintiffs assert that since some of them are Republican candidates and that Republicans are more likely to vote in person and Democrats more likely to vote by mail, that their injury here is a competitive disadvantage in the electoral process. [ECF 551, pp. 16-18 (“The challenged guidance will further harm the RNC through the institutional prioritization of voting by mail and the potential disenfranchisement of Republican voters, who prefer to vote in person in the upcoming General Election.”)]. This too is a speculative, non-concrete injury. There is nothing in the record to establish that potential voter fraud and dilution will impact Republicans more than Democrats.

To be sure, the information that Plaintiffs present shows that more Democrats are likely to use mail-in ballots. [ECF 551, p. 31 (“[I]n Pennsylvania, of the 1.9 million absentee or mail-in ballots that have been requested for the November 3, 2020 General Election, ‘nearly 1.5 million Democrats have requested a mail-in ballot—nearly three times the requests from Republicans.’” (quoting L. Broadwater, “Both Parties Fret as More Democrats Request Mail Ballots in Key States,” *New York Times* (Sept. 30, 2020), *available at* <https://www.nytimes.com/2020/09/30/us/mail-voting-democrats-republicans-turnout.html>)]. But it doesn’t necessarily follow that more Democrats will commit voter fraud, such as through the destruction of drop boxes or third-party ballot harvesting, and thus more Republicans’ votes will be diluted.

In fact, as Plaintiffs’ expert, Mr. Riddlemoser, explains, fraudsters from either party could target drop boxes in specific areas in order to destroy ballots, depending on who may be the predominant party in the area. [ECF 504-19, at pp. 17-18 (“In short, nothing would prevent someone from intentionally targeting a drop box in a predominantly Republican or predominantly Democratic area with an intent to destroy as many votes for that political party or that party’s candidate(s) as possible.”)]. Indeed, the more important fact for this theory of harm is

not the party of the voter, but the party of the fraudster—and, on this, Plaintiffs present no evidence that one party over the other is likely to commit voter fraud.

Second, Plaintiffs also argue that the RNC, the Congressional Plaintiffs, and the Trump Campaign have organizational standing because they “have and will continue to devote their time and resources to ensure that their Pennsylvania supporters, who might otherwise be discouraged by the Secretary’s guidance memos favoring mail-in and absentee voting and Defendants’ implementation thereof, get out to the polls and vote on Election Day.” [ECF 551, p. 19]. This is a similar argument raised by the plaintiffs in *Clapper*, and rejected there by the Supreme Court. Because Plaintiffs’ harm is not “certainly impending,” as discussed above, spending money in response to that speculative harm cannot establish a concrete injury. *Clapper*, 568 U.S. at 416 (“Respondents’ contention that they have standing because they incurred certain costs as a reasonable reaction to a risk of harm is unavailing—because the harm respondents seek to avoid is not certainly impending. In other words, respondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.”); see also *Donald J. Trump for President, Inc. v. Cegavske*, --- F. Supp. 2d ---, 2020 WL 5626974, at \*5 (D. Nev. Sept. 18, 2020) (“Outside of stating ‘confusion’ and ‘discouragement’ in a conclusory manner, plaintiffs make no indication of how AB 4 will discourage their member voters from voting. If plaintiffs did not expend any resources on educating their voters on AB4, their voters would proceed to vote in-person as they overwhelmingly have in prior elections.”).

Third, with respect to the poll-watching claim, Plaintiffs argue that at least one of the Plaintiffs, Ms. Patterson, is a prospective poll watcher who is being denied the right to poll watch based on the county-residency restriction, and thus she meets the Article III requirements. [ECF 551, p. 34 (citing ECF 551-3, ¶¶ 9-10)]. However, Ms. Patterson cannot establish standing because, by Plaintiffs’ own concession, the theory of harm in this case is not the denial of the right to poll watch, but instead dilution of votes from fraud caused from the failure

to have sufficient poll watchers. [ECF 509, p. 67 (“But, the core of the as-applied challenge here is not that the Plaintiffs cannot staff a particular polling place, it is that a candidate and his or her party is presented with the Hobson’s choice of selecting limited polling places to observe due to the residency requirement and accept that unobserved polling places must exist due to the inability to recruit a sufficient force of poll watchers due to the necessity that candidates be county residents.”)].

And the remedy sought here is much broader than simply allowing Ms. Patterson to poll watch in a certain county, but is tied to the broader harm of vote dilution that Plaintiffs assert. [ECF 503-1, p. 3, ¶ 3 (“Plaintiffs shall be permitted to have watchers present at all locations where voters are registering to vote, applying for absentee or mail-in ballots, voting absentee or mail-in ballots, and/or returning or collecting absentee or mail-in ballots, including without limitation any satellite or early voting sites established by any county board of elections.”)]. Standing is measured based on the theory of harm and the specific relief requested. *See Gill*, 138 S. Ct. at 1934 (“We caution, however, that ‘standing is not dispensed in gross’: A plaintiff’s remedy must be tailored to redress the plaintiff’s particular injury.”). As with all of the claims, the poll-watching claim rests on evidence of vote dilution that does not rise to the level of a concrete harm.

In sum, Plaintiffs here, based on the evidence presented, lack Article III standing to assert their claims. Because they lack standing, the Court will enter judgment in Defendants’ favor and dismiss all claims.<sup>10</sup> However,

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<sup>10</sup> The organizational Plaintiffs also raise certain associational and organizational standing arguments, asserting that they represent their members’ interests. The associational standing arguments are derivative of their members’ interests. That is, because the Court has found no concrete injury suffered by the individual voters, which would include the members of the organizational Plaintiffs, there are no separate grounds to establish standing for these organizations. *See United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 553 (1997) (an organization only has standing to sue on behalf of its members when “its

because of the novelty of Plaintiffs' claims and theories, a potential appeal in this case, and the short time before the general election, out of an abundance of caution, the Court will, in the alternative, proceed to examine the claims on the merits.

**II. Defendants and Intervenors are entitled to summary judgment on Plaintiffs' claim that drop boxes violate the U.S. Constitution.**

Plaintiffs' drop-box claim has materially changed since the Pennsylvania Supreme Court's decision authorizing the use of drop boxes. Plaintiffs now allege that drop boxes effectively allow third parties to return the ballots of voters other than themselves because, they say, no one is there to stop them. Absent an in-person guard or poll worker to monitor the drop boxes and prevent the return of ballots cast in a manner contrary to what the Election Code permits, Plaintiffs assert that they face an unacceptable risk of vote dilution, which burdens their right to vote. Plaintiffs also argue that the "uneven" use of drop boxes in Pennsylvania, by some counties but not others, violates equal protection by subjecting voters in different counties to different amounts of dilutive risk, and perhaps by diluting lawful votes cast by individuals who failed to comply with the Election Code.

The evidence relevant to these claims is undisputed. *See* [ECF 509, p. 45 ("After the completion of extensive discovery, including numerous depositions and responses to discovery requests, no genuine dispute of material fact exists regarding Plaintiffs' constitutional claims.")]. Viewed in the light most favorable to Plaintiffs, the Court could conclude from this evidence, and will assume for purposes of this decision, that (1) drop boxes allow for greater risk of third-party ballot delivery in violation of the Election Code than in-person polling locations or manned drop boxes, and (2) that the use of drop boxes is "uneven" across Pennsylvania due to its county-based election system—*i.e.*, some counties are using "unmanned" drop boxes with varying security measures, some are using "manned" drop boxes, some are using dozens of drop boxes

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members would otherwise have standing to sue in their own right") (citation omitted).

in a variety of locations, some are using one drop box in a county office building, and some are not using drop boxes at all. The question before the Court is whether this state of affairs violates equal protection or due process.

The Court finds that it does not. The uneven use of drop boxes across counties does not produce dilution as between voters in different counties, or between “lawful” and “unlawful” voters, and therefore does not present an equal-protection violation. But even if it did, the guidelines provided by Secretary Boockvar are rational, and weighing the relative burdens and benefits, the Commonwealth’s interests here outweigh any burden on Plaintiffs’ right to vote.

**A. Pennsylvania’s “uneven” use of drop boxes does not violate federal equal-protection rights.**

Plaintiffs’ primary claim concerns the uneven use of drop boxes across the Commonwealth, which they contend violates the Equal-Protection Clause of the 14th Amendment.

The 14th Amendment’s Equal-Protection Clause commands that “no State shall ... deny to any person within its jurisdiction the equal protection of laws.” U.S. Const. amend. XIV, § 1. This broad and simple promise is “an essential part of the concept of a government of laws and not men.” *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

But while the Constitution demands equal protection, that does not mean all forms of differential treatment are forbidden. *See Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (“Of course, most laws differentiate in some fashion between classes of persons. The Equal Protection Clause does not forbid classifications.”). Instead, equal protection “simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.” *Id.* (citation omitted). What’s more, “unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only



that the classification rationally further a legitimate state interest.” *Id.* (citations omitted).

Of course, the right of every citizen to vote is a fundamental right. *See Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (“[F]or reasons too self-evident to warrant amplification here, we have often reiterated that voting is of the most fundamental significance under our constitutional structure.”) (citations omitted). Indeed, it is a foundational right “that helps to preserve all other rights.” *Werme v. Merrill*, 84 F.3d 479, 483 (1st Cir. 1996); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”). And its scope is broad enough to encompass not only the right of each voter to cast a ballot, but also the right to have those votes “counted without dilution as compared to the votes of others.” *Minn. Voters Alliance v. Ritchie*, 720 F.3d 1029, 1031 (8th Cir. 2013) (cleaned up).

As a result, Plaintiffs are quite correct when they suggest that a state election procedure that burdens the right to vote, including by diluting the value of votes compared to others, must “comport with equal protection and all other constitutional requirements.” *Cortés*, 218 F. Supp. 3d at 407. That much, at least, is not in dispute.

At the same time, however, the Constitution “confers on the states broad authority to regulate the conduct of elections, including federal ones.” *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004) (citing U.S. Const. Art. I, § 4, cl. 1). This authority includes “broad powers to determine the conditions under which the right of suffrage may be exercised.” *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 543 (2013) (cleaned up). Indeed, “[c]ommon sense, as well as constitutional law, compels the conclusion” that states must be free to engage in “substantial regulation of elections” if “some sort of order, rather than chaos, is to accompany the democratic processes.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (cleaned up). And all “[e]lection laws will invariably impose some burden upon individual voters.” *Id.*

If the courts were “to subject every voting regulation to strict scrutiny and to require that the regulation be



narrowly tailored to advance a compelling state interest,” it “would tie the hands of States seeking to assure that elections are operated equitably and efficiently.” *Id.* The “machinery of government would not work if it were not allowed a little play in its joints.” *Bain Peanut Co. of Tex. v. Pinson*, 282 U.S. 499, 501 (1931). Thus, when faced with a constitutional challenge to a state election law, or to the actions of state officials responsible for regulating elections, a federal court must weigh these competing constitutional considerations and “make the ‘hard judgment’ that our adversary system demands.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 190 (2008).

The Supreme Court has supplied lower courts guidance as to how to make these hard judgments, by “forg[ing]” the “flexible standard” for assessing the constitutionality of election regulations into “something resembling an administrable rule.” *Id.* at 205 (Scalia, J. concurring) (citing *Burdick*, 504 U.S. at 434).

Under this standard, first articulated in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and then refined in *Burdick*, the fact “[t]hat a law or state action imposes some burden on the right to vote does not make it subject to strict scrutiny.” *Donatelli v. Mitchell*, 2 F.3d 508, 513 (3d Cir. 1993); see also *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 585 (6th Cir. 2006) (“[V]oting regulations are not automatically subjected to heightened scrutiny.”). Instead, any “law respecting the right to vote—whether it governs voter qualifications, candidate selection, or the voting process,” is subjected to “a deferential ‘important regulatory interests’ standard for nonsevere, nondiscriminatory restrictions, reserving strict scrutiny for laws that severely restrict the right to vote.” *Crawford*, 553 U.S. at 204 (Scalia, J. concurring).

In practice, this means that courts must weigh the “character and magnitude of the burden the State’s rule imposes” on the right to vote “against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make that burden necessary.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (cleaned up). If the state imposes a “severe” burden on the right to vote, strict scrutiny applies—the rule may survive only if it is “narrowly tailored” and only if the state

advances a “compelling interest.” *Id.* But if the state imposes only “reasonable, nondiscriminatory restrictions,” its “important regulatory interests will usually be enough” to justify it. *Id.* Indeed, where state regulations are “minimally burdensome and nondiscriminatory” a level of scrutiny “closer to rational basis applies[.]” *Ohio Council 8 Am. Fed’n of State v. Husted*, 814 F.3d 329, 335 (6th Cir. 2016). And where the state imposes no burden on the “right to vote” at all, true rational basis review applies. *See Biener v. Calio*, 361 F.3d 206, 215 (3d Cir. 2004) (“Biener also cannot establish an infringement on the fundamental right to vote . . . As the [election] filing fee does not infringe upon a fundamental right, nor is Biener in a suspect class, we consider the claims under a rational basis test.”) (citation omitted); *Common Cause/New York v. Brehm*, 432 F. Supp. 3d 285, 310 (S.D.N.Y. 2020) (“Under this framework, election laws that impose no burden on the right to vote are subject to rational-basis review.”).

This operates as a “sliding scale”—the “more severe the burden imposed, the more exacting our scrutiny; the less severe, the more relaxed our scrutiny.” *Arizona Libertarian Party v. Hobbs*, 925 F.3d 1085, 1090 (9th Cir. 2019); *see also Fish v. Schwab*, 957 F.3d 1105, 1124 (10th Cir. 2020) (“We, and our sister circuits and commentators, have referred to this as a ‘sliding scale’ test.”); *Libertarian Party of New Hampshire v. Gardner*, 638 F.3d 6, 14 (1st Cir. 2011) (“We review all of the First and Fourteenth Amendment claims under the sliding scale approach announced by the Supreme Court in *Anderson . . . and Burdick*[.]”); *Burdick*, 504 U.S. at 434 (“[T]he rigorosity of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.”).

Against that backdrop, the Court now turns to Plaintiffs’ claim that the use of unmanned drop boxes by some Pennsylvania counties, but not others, violates equal protection. As will be discussed, Plaintiffs’ equal-protection claim fails at the threshold, without even reaching *Anderson-Burdick*, because Plaintiffs have not alleged or shown that Pennsylvania’s system will result in the dilution of votes in certain counties and not others. Furthermore, even if the Court applies *Anderson-Burdick*, the attenuated “burden” Plaintiffs have identified—an

increased risk of vote dilution created by the use of unmanned drop boxes—is more than justified by Defendants’ important and precise interests in regulating elections.

**1. Plaintiffs have not shown that Pennsylvania treats equivalent votes in different counties differently.**

Plaintiffs’ equal-protection claim asserts differential treatment on a theory of vote dilution. As far as the Court can discern, this claim has two dimensions.

First, the main thrust concerns differential treatment as between counties. Plaintiffs assert that some counties will use drop boxes in certain ways (specifically, without in-person guards or in varying number and locations), while others will not—resulting in differential treatment. *See, e.g.*, [ECF 551, p. 44 (“Plaintiffs assert (and have proven) that Defendants have adopted, and intend to implement in the General Election, an election regime that applies Pennsylvania’s Election Code in a way that treats the citizens of Pennsylvania unequally depending on . . . the location where they happen to live: in some counties, voters will have around-the-clock access to ‘satellite election offices’ at which they can deposit their vote, but in other counties, voters will have no access at all to such drop boxes; in some counties those drop boxes will be staffed and secure, but in other counties drop boxes will be unmonitored and open to tampering[.]”)]; [*Id.* at p. 46 (“Defendants’ ongoing actions and stated intentions ensure that votes will not be counted the same as those voting in other counties, and in some instances, in the same Congressional district. For instance, the harm flowing from those actions will fall disproportionately on the Republican candidates that bring suit here because many Democrat-heavy counties have stated intentions to implement the Secretary’s unconstitutional . . . ballot collection guidance, and many Republican-heavy counties have stated intentions to follow the Election Code as it is written.”)].

Second, although less clear, Plaintiffs’ equal-protection claim may also concern broader differential

treatment between law-abiders and scofflaws. In other words, Plaintiffs appear to suggest that Pennsylvania discriminates against all law-abiding voters by adopting policies which tolerate an unacceptable risk of a lawfully cast votes being diluted by each unlawfully cast vote anywhere in Pennsylvania. *See, e.g.*, [ECF 509, p. 55 (“The use of unstaffed drop boxes . . . not only dilutes the weight of *all* qualified Pennsylvanian electors, it curtails a sense of security in the voting process.”) (emphasis in original)]; [ECF 509 p. 68 (“There will be no protection of one-person, one-vote in Pennsylvania, because her policies . . . allowing inconsistently located/used drop boxes will result in illegal ballots being cast and counted with legitimate votes[.]”).

As discussed below, both of these species of equal protection fail because there is, in fact, no differential treatment here—a necessary predicate for an equal-protection claim.

Initially, Plaintiffs “have to identify a burden before we can weigh it.” *Crawford*, 553 U.S. at 205 (Scalia, J. concurring). In the equal-protection context, this means the plaintiff “must present evidence that s/he has been treated differently from persons who are similarly situated.” *Renchenski v. Williams*, 622 F.3d 315, 337 (3d Cir. 2010) (cleaned up). And not just any differential treatment will do. As discussed above, differences in treatment raise equal-protection concerns, and necessitate heightened scrutiny of governmental interests, only if they burden a fundamental right (such as the right to vote) or involve a suspect classification based on a protected class. *See Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012) (“If a plaintiff alleges only that a state treated him or her differently than similarly situated voters, without a corresponding burden on the fundamental right to vote, a straightforward rational basis standard of review should be used.”).

Plaintiffs argue that equal protection is implicated because Pennsylvania has permitted counties to use drop boxes to varying extents, and with varying degrees of security. Some, like Delaware County, intend to use dozens of drop boxes. *See generally* [ECF 549-28]. Many others will not use drop boxes at all. *See generally* [ECF 504-1]. And among the counties that *do* use drop boxes,

some will staff them with county officials, while others will monitor them only with video surveillance or not at all. *See generally* [ECF 549-28].

In this respect, Plaintiffs argue that they suffer an equal-protection harm similar to that found by the Supreme Court in *Bush v. Gore*, 531 U.S. 98 (2000). There, the Supreme Court held that the Florida Supreme Court violated equal protection when it “ratified” election recount procedures that allowed different counties to use “varying standards to determine what was a legal vote.” *Id.* at 107. This meant that entirely equivalent votes might be counted in one county but discounted in another. *See, e.g., id.* (“Broward County used a more forgiving standard than Palm Beach County, and uncovered almost three times as many new votes, a result markedly disproportionate to the difference in population between the counties.”). Given the absence of uniform, statewide rules or standards to determine which votes counted, the Court concluded that the patchwork recount scheme failed to “satisfy the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right [to vote].” *Id.*

While the Supreme Court expressly limited its holding in *Bush* “to the present circumstances” of a standardless “statewide recount under the authority of a single state judicial officer,” *id.* at 109, a few courts have found its reasoning to be persuasive as a broader principle of equal protection. *See Stewart v. Blackwell*, 444 F.3d 843, 859 (6th Cir. 2006) (“Somewhat more recently decided is *Bush v. Gore*, . . . which reiterated long established Equal Protection principles.”); *Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 598 (6th Cir. 2012) (“We agree with all of the parties and the district court that the consent decree likely violates the equal protection principle recognized in *Bush v. Gore*.”); *Pierce v. Allegheny Cty. Bd. of Elections*, 324 F. Supp. 2d 684, 705 (W.D. Pa. 2003) (Conti, J.) (“As noted above, the court finds that the facts presented raise a serious equal protection claim under a theory similar to that espoused by the United States Supreme Court in *Bush v. Gore, supra*.”); *Black v. McGuffage*, 209 F. Supp. 2d 889, 899 (N.D. Ill. 2002) (“The Court is certainly mindful of the limited holding of *Bush*. However, we believe that situation presented by this case

is sufficiently related to the situation presented in *Bush* that the holding should be the same.”).

Indeed, *Bush*’s core proposition—that a state may not take the votes of two voters, similarly situated in all respects, and, for no good reason, count the vote of one but not the other—seems uncontroversial. It also seems reasonable (or at least defensible) that this proposition should be extended to situations where a state takes two equivalent votes and, for no good reason, adopts procedures that greatly increase the risk that one of them will not be counted—or perhaps gives more weight to one over the other. *See, e.g., Black*, 209 F. Supp. 2d at 899 (“Plaintiffs in this case allege that the resulting vote dilution, which was found to be unacceptable in *Bush* without any evidence of a disproportionate impact on any group delineated by traditional suspect criteria, is impacting African American and Hispanic groups disproportionately. . . . Any voting system that arbitrarily and unnecessarily values some votes over others cannot be constitutional.”); *see also Reynolds*, 377 U.S. at 555 (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”).

That is the sort of equal-protection claim Plaintiffs purport to be asserting—a claim that voters in counties that use drop boxes are subjected to a much higher risk of vote dilution than those in other counties that do not. But that characterization falls apart under scrutiny. Indeed, despite their assertions, Plaintiffs have not actually alleged, let alone proven, that votes cast in some counties are diluted by a greater amount relative to votes cast in others. Rather, they have, at best, shown only that events causing dilution are more likely to occur in counties that use drop boxes. But, importantly, the effect of those events will, by Plaintiffs’ own admission, be felt by every voter across all of Pennsylvania. [ECF 509, p. 55. (“The use of unstaffed drop boxes places the security of unknown hundreds (if not thousands) of ballots in jeopardy of theft, destruction, and manipulation. This not only dilutes the weight of *all* qualified Pennsylvanian electors, it curtails a sense of security in the voting process.”) (citations omitted) (emphasis in original)]. Such dilution impacts the entire



electorate equally; not just voters in the county where it occurs.

To illustrate this distinction, consider, for example, a presidential election. The Court agrees with Plaintiffs that the relevant electoral unit in such an election is “the entire Commonwealth of Pennsylvania.” [ECF 551, p. 55 (“The electoral unit in this election is the entire Commonwealth of Pennsylvania.”)]. Indeed, on election night, votes cast in each of Pennsylvania’s 67 counties will be canvassed, counted, and ultimately added to a statewide vote total that decides who wins Pennsylvania’s 20 electoral votes. So, ask: what is the dilutive impact of a hypothetical illegal vote cast in Philadelphia during that election? Does it cause, in any sense, an “unequal evaluation of ballots” cast in different counties, *Bush*, 531 U.S. at 106, such that lawful ballots cast in Philadelphia will be less likely to count, worth less if they do, or otherwise disfavored when compared to votes cast in other counties? The answer is evident—it does not. Rather, the hypothetical illegal vote cast in Philadelphia dilutes *all lawful votes* cast in the election *anywhere* in the Commonwealth by the exact same amount.

The same reasoning holds in elections that occur within part of a state, rather than statewide. For example, consider a hypothetical legislative district covering two counties—one that uses drop boxes and one that does not. There may well be a greater risk that illegal voting will occur in the county that uses drop boxes. But any dilutive impact of those votes will be felt equally by voters in *both* counties.

This is categorically different from the harm at issue in *Bush* and cases like it. In *Bush*, Florida’s arbitrary use of different recount standards in different counties meant that the state was counting equivalent ballots differently in different counties, meaning that voters in some counties were more likely to have their votes counted than those in others.

In *Black v. McGuffage*, an Illinois district-court case on which Plaintiffs heavily rely, the plaintiffs alleged that the type of voting machines used in some Illinois counties were statistically much more likely to result in equivalent

votes being discounted at a much higher frequency in some counties than others, and that the worst machines were those being used in counties with high populations of minority groups. 209 F. Supp. 2d at 899. As a result, voters (and, specifically, minority voters) were much more likely to have their votes discounted, based just on the county in which they lived. *See id.* (“As a result, voters in some counties are statistically less likely to have their votes counted than voters in other counties in the same state in the same election for the same office. Similarly situated persons are treated differently in an arbitrary manner. . . . In addition, the Plaintiffs in this case allege that the resulting vote dilution . . . is impacting African American and Hispanic groups disproportionately.”).

Finally, *Stewart v. Blackwell*, another case cited by Plaintiffs, was the same as *Black*—voters in counties that used punch-card voting were “approximately four times as likely not to have their votes counted” as a voter in a different county “using reliable electronic voting equipment.” 444 F.3d at 848.

What ties these cases together is that each of them involves a state arbitrarily “valu[ing] one person’s vote over that of another,” *Bush*, 531 U.S. at 104-05, by permitting counties to either apply different standards to decide what votes count (*Bush*) or use different voting technologies that create a great risk of votes being discounted in one county that does not exist in others (*Black* and *Stewart*). It is this sort of “differential treatment . . . burden[ing] a fundamental right” that forms the bedrock of equal protection. *Sullivan v. Benningfield*, 920 F.3d 401, 409 (6th Cir. 2019).

Plaintiffs, in contrast, have shown no constitutionally significant differential treatment at all.

Instead, as discussed, if Plaintiffs are correct that the use of drop boxes increases the risk of vote dilution, all votes in the relevant electoral unit—whether that is statewide, a subset of the state, or a single county—face the same degree of increased risk and dilution, regardless of which county is most at fault for elevating that risk.



What Plaintiffs have really identified, then, are not uneven *risks of vote dilution*—affecting voters in some counties more than equivalent voters in others—but merely different voting procedures in different counties that may contribute different amounts of vote dilution *distributed equally across the electorate as a whole*. The Court finds that this is not an equal-protection issue.

To be clear, the reason that there is no differential treatment is solely based on Plaintiffs’ theory of harm in this case. In the more “routine” vote-dilution cases, the state imposes some restriction or direct impact on the plaintiff’s right to vote—that results in his or her vote being weighed less (*i.e.*, diluted) compared to those in other counties or election districts. *See Gill*, 138 S. Ct. at 1930, (explaining that “the holdings in *Baker* and *Reynolds* were expressly premised on the understanding that the injuries giving rise to those claims were individual and personal in nature, because the claims were brought by voters who alleged facts showing disadvantage to themselves as individuals”) (cleaned up). In this case, though, Plaintiffs complain that the state is *not* imposing a restriction on *someone else’s* right to vote, which, they say, raises the risk of fraud, which, if it occurs, could dilute the value of Plaintiffs’ vote. The consequence of this inverted theory of vote dilution is that all other votes are diluted in the same way; all feel the same effect.

Finally, the Court’s ruling in this regard is consistent with the many courts that have recognized that counties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state. *See, e.g., Wexler v. Anderson*, 452 F.3d 1226, 1231-33 (11th Cir. 2006) (“Plaintiffs do not contend that equal protection requires a state to employ a single kind of voting system throughout the state. Indeed, local variety in voting systems can be justified by concerns about cost, the potential value of innovation, and so on.”) (cleaned up); *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 181 (4th Cir. 1983) (“A state may employ diverse methods of voting, and the methods by which a voter casts his vote may vary throughout the state.”); *Short v. Brown*, 893 F.3d 671, 679 (9th Cir. 2018) (“[T]he appellants’ reading of the Supreme Court’s voting cases would essentially bar a state from implementing any pilot

program to increase voter turnout. Under their theory, unless California foists a new system on all fifty-eight counties at once, it creates ‘unconstitutional vote-dilution’ in counties that do not participate in the pilot plan. Nothing in the Constitution, the Supreme Court’s controlling precedent, or our case law suggests that we can micromanage a state’s election process to this degree.”); *Fla. State Conference of N.A.A.C.P. v. Browning*, 569 F. Supp. 2d 1237, 1258 (N.D. Fla. 2008) (“[A]s with countless public services delivered through Florida’s political subdivisions—such as law enforcement and education—resource disparities are to some degree inevitable. They are not, however, unconstitutional.”); *Green Party of State of New York v. Weiner*, 216 F. Supp. 2d 176, 192 (S.D.N.Y. 2002) (“Even in that situation, [*Bush v. Gore*] did not challenge, and the Court did not question, the use of entirely different technologies of voting in different parts of the state, even in the same election.”); *Paher v. Cegavske*, No. 20-243, 2020 WL 2748301, at \*9 (D. Nev. May 27, 2020) (“[I]t cannot be contested that Clark County, which contains most of Nevada’s population—and likewise voters (69% of all registered voters [])—is differently situated than other counties. Acknowledging this as a matter of generally known (or judicially noticeable) fact and commonsense makes it more than rational for Clark County to provide additional accommodations to assist eligible voters.”); *Ron Barber for Cong. v. Bennett*, No. 14-2489, 2014 WL 6694451, at \*5 (D. Ariz. Nov. 27, 2014) (“[T]he [*Bush v. Gore*] Court did not invalidate different county systems regarding implementation of election procedures.”); *Tex. Democratic Party v. Williams*, No. 07-115, 2007 WL 9710211, at n.4 (W.D. Tex. Aug. 16, 2007) (“In *Bush v. Gore*, the Supreme Court specifically noted: ‘The question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections.’”).

Equal protection does not demand the imposition of “mechanical compartments of law all exactly alike.” *Jackman v. Rosenbaum Co*, 260 U.S. 22, 31 (1922). Rather, “the Constitution is sufficiently flexible to permit its requirements to be considered in relation to the . . . contexts in which they are invoked.” *Merchants Nat’l Bank of Mobile v. Dredge Gen. G. L. Gillespie*, 663 F.2d 1338, 1343 (5th Cir. 1981). And in this context, “few (if any) electoral

systems could survive constitutional scrutiny if the use of different voting mechanisms by counties offended the Equal Protection Clause.” *Trump v. Bullock*, --- F.3d ---, 2020 WL 5810556, at \*14 (D. Mont. Sept. 30, 2020).

The distinction—between differences in county election procedures and differences in the treatment of votes or voters between counties—is reflected in *Bush* itself. There, the Supreme Court took pains to clarify that the question before it was “not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections.” *Bush*, 531 U.S. at 109; *see also id.* at 134 (Souter, J. dissenting) (“It is true that the Equal Protection Clause does not forbid the use of a variety of voting mechanisms within a jurisdiction, even though different mechanisms will have different levels of effectiveness in recording voters’ intentions; local variety can be justified by concerns about cost, the potential value of innovation, and so on.”); *Bullock*, 2020 WL 5810556, at \*14 (“[T]he Supreme Court was clear in *Bush v. Gore* that the question was not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections.”) (cleaned up).

Thus, coming back to the theory of Plaintiffs’ case, Plaintiffs contend that Secretary Boockvar’s drop-box guidance will result in differences between counties and differing risks of fraud. But the result of that uneven implementation will not be votes in certain counties being valued less than others. And the result won’t be that voters who vote in person will have their votes valued less, either. Instead, if Plaintiffs are right, any unlawful votes will dilute all other lawful votes in the same way. While certainly voter fraud and illegal voting are bad, as a matter of equal protection, there is no unequal treatment here, and thus no burden on Plaintiffs’ rights under the Equal Protection Clause.

In addition to their equal-protection claim based on county differences, Plaintiffs also appear to allude to a more general type of equal-protection violation. They assert that Pennsylvania comprises a single election unit. [ECF 551, p. 55 (“The electoral unit in this election is the entire Commonwealth of Pennsylvania.”)]. They assert that they intend to cast their ballots lawfully. *See, e.g.*,

[ECF 504-3, ¶ 4 (“As a Pennsylvania qualified registered elector, I have always voted in-person at primary and general elections, and I intend to vote in-person at the upcoming November 3, 2020 General Election.”)]. And they assert that unmanned drop boxes across the Commonwealth (regardless of the county) will, on a statewide basis, dilute their votes. *See, e.g., [id.]* at ¶ 6 (“As a Pennsylvania qualified registered elector who votes in-person, I do not want my in-person vote diluted or cancelled by votes that are cast in a manner contrary to the requirements enacted by the Pennsylvania General Assembly.”)]. For example, if one “qualified elector” casts a lawful ballot, but a fraudulent voter casts ten ballots, then that elector’s vote will, under Plaintiffs’ theory, be diluted by a magnitude of ten—resulting in differential treatment.

The problem with this theory is that there does not appear to be any law to support it. Indeed, if this were a true equal-protection problem, then it would transform every violation of state election law (and, actually, every violation of every law) into a potential federal equal-protection claim requiring scrutiny of the government’s “interest” in failing to do more to stop illegal activity. This is not the law. To the contrary, it is well-established that even violations of state election laws by state officials, let alone violations by unidentified third parties, do not give rise to federal constitutional claims except in unusual circumstances. *See Shipley v. Chicago Bd. of Election Commissioners*, 947 F.3d 1056, 1062 (7th Cir. 2020) (“A violation of state law does not state a claim under § 1983, and, more specifically, a deliberate violation of state election laws by state election officials does not transgress against the Constitution.”) (cleaned up); *Martinez v. Colon*, 54 F.3d 980, 989 (1st Cir. 1995) (“[T]he Constitution is not an empty ledger awaiting the entry of an aggrieved litigant’s recitation of alleged state law violations—no matter how egregious those violations may appear within the local legal framework.”).

Thus, this type of equal-protection claim fails as a matter of law, as well.

**2. If Pennsylvania’s “uneven” use of drop boxes indirectly burdens the right to vote at all, that burden is slight, and justified by important state interests.**

Even assuming that Plaintiffs could establish unequal treatment to state an equal-protection claim, their claim nonetheless fails because the governmental interests here outweigh any burden on the right to vote.

Initially, the Court finds that the appropriate level of scrutiny is rational basis. Defendants’ failure to implement a mandatory requirement to “man” drop boxes doesn’t directly infringe or burden Plaintiffs’ rights to vote at all. Indeed, as discussed above in the context of standing, what Plaintiffs characterize as the burden or harm here is really just an ancillary ‘increased risk’ of a theoretical harm, the degree of which has not been established with any empirical precision. *See Obama*, 697 F.3d at 429 (“If a plaintiff alleges only that a state treated him or her differently than similarly situated voters, without a corresponding burden on the fundamental right to vote, a straightforward rational basis standard of review should be used.”); *Brehm*, 432 F. Supp. 3d at 310 (“Under this framework, election laws that impose no burden on the right to vote are subject to rational-basis review.”).

On rational-basis review, the Secretary’s guidance here passes constitutional muster. Her guidance certainly provides some flexibility in how counties may use drop boxes, but the guidance overall is rationally related to a legitimate governmental interest—namely, the implementation of drop boxes in a secure manner, taking into account specific county differences. That Plaintiffs feel the decisions and actions of the Pennsylvania General Assembly, Secretary Boockvar, and the county Defendants are insufficient to prevent fraud or illegal voting is of no significance. “[R]ational-basis review in equal protection analysis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.” *Heller v. Doe by Doe*, 509 U.S. 312, 319 (1993).

As detailed above, Secretary Boockvar’s guidance provides lawful, comprehensive, and reasonable standards

with respect to (1) selecting the location of drop boxes, (2) drop-box design criteria, (3) signage, (4) drop-box security measures, and (5) drop-box ballot collection and chain of custody procedures. Of particular note, with respect to ballot security, the Secretary's guidance calls for the use of reasonably robust measures like video surveillance, durable and tamperproof design features, regular ballot collection every 24 hours, chain-of-custody procedures to maintain ballot traceability, and signage advising voters that third-party delivery is prohibited, among other things.

To be sure, the Secretary's guidance doesn't insist on the use of security personnel—though some counties have decided to post security guards outside of drop boxes on their own. But the Court can't say that either the Secretary's failure to provide that requirement, or the decision of some counties to proceed with drop boxes "unmanned," is irrational. For example, the evidence presented demonstrates that placing a security guard outside of a drop box at all times is costly, particularly for cash-strapped counties—at least \$13 per hour or about \$104 (8 hours) to \$312 (24 hours) per day, according to Defendants' expert, Professor Robert McNair. [ECF 549-11, p. 11] In the context of a broader election system that detects and deters fraud at many other stages of the voting process, and given that there are also no equivalent security measures present at U.S. postal mailboxes (which constitute an arguably more tempting vehicle for the would-be ballot harvester), the Court finds that the lack of any statewide requirement that all drop boxes be manned or otherwise surveilled is reasonable, and certainly rational.

But even assuming Plaintiffs are right that their right to vote here has been burdened (and thus a heightened level of scrutiny must apply), that burden is slight and cannot overcome Defendants' important state interests under the *Anderson-Burdick* framework. Indeed, courts routinely find attenuated or ancillary burdens on the right to vote to be "slight" or insignificant, even burdens considerably *less* attenuated or ancillary than any burden arguably shown here. *See, e.g., Weber v. Shelley*, 347 F.3d 1101, 1106 (9th Cir. 2003) ("Under *Burdick*, the use of touchscreen voting systems is not subject to strict scrutiny simply because this particular balloting system may make



the possibility of some kinds of fraud more difficult to detect.”).<sup>11</sup>

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<sup>11</sup> See, also, e.g., *Dudum v. Arntz*, 640 F.3d 1098, 1117 (9th Cir. 2011) (“If the aspects of the City’s restricted IRV scheme Dudum challenges impose any burdens on voters’ constitutional rights to vote, they are minimal at best.”); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1354–55 (11th Cir. 2009) (“The district court determined that the burden imposed on Georgia voters who lack photo identification was not undue or significant, and we agree. . . . The NAACP and voters are unable to direct this Court to any admissible and reliable evidence that quantifies the extent and scope of the burden imposed by the Georgia statute.”); *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1183 (9th Cir. 1988) (“Appellants claim that Hawaii’s absentee voting law fails to prohibit ‘the solicitation, examination and delivery of absentee ballots by persons other than the voters’ and that such activities occurred during the special election . . . We agree with the district court that the Hawaii absentee ballot statute and the regulations adopted under it adequately protect the secrecy and integrity of the ballot. Although Hawaii has not adopted a regulation to prevent the delivery of ballots by persons other than the voter, the Hawaii regulations go into great detail in their elaboration of procedures to prevent tampering with the ballots.”); *McLain v. Meier*, 637 F.2d 1159, 1167 (8th Cir. 1980) (“[A]lthough ballot format has an effect on the fundamental right to vote, the effect is somewhat attenuated.”); *Nemes v. Bensinger*, --- F. Supp. 3d ---, 2020 WL 3402345, at \*13 (W.D. Ky. June 18, 2020) (“The burden imposed by the contraction to one polling place is modest, and the identified groups are afforded various other means under the voting plans to easily and effectively avoid disenfranchisement. As already discussed, Defendants have offered evidence of the substantial government interest in implementing voting plans that provide for a free and fair election while attempting to minimize the spread of COVID-19.”); *Paralyzed Veterans of Am. v. McPherson*, No. 06-4670, 2008 WL 4183981, at \*22 (N.D. Cal. Sept. 9, 2008) (“Plaintiff Bohlke’s listed burdens rely on speculative risk or the ancillary effects of third party assistance, but not on evidence of any concrete harm. Such

To begin with, application of the *Anderson-Burdick* framework here presents something of a “square peg, round hole” dilemma. After all, that test assumes there is some constitutional injury to “weigh” against the state’s “important” regulatory interests in the first place. And without differential treatment of votes or voters, there isn’t any equal-protection injury for the Court to balance.

The *Anderson-Burdick* test is also ill-fitted to Plaintiffs’ claims for another reason. Typically, *Anderson-Burdick* is invoked where the government takes some direct action to burden or restrict a plaintiff’s right to vote. Here, in contrast, Plaintiffs complain that Pennsylvania has indirectly burdened the right to vote through *inaction*—*i.e.*, by not imposing *enough* regulation to secure the voting process it has adopted, which, Plaintiffs say, will allow third parties to vote in an unlawful way, which, if it happens, will dilute (and thus burden) the right to vote.

This unusual causal daisy-chain makes it difficult to apply *Anderson-Burdick*’s balancing approach. After all, it is one thing to assess the government’s interest in taking a specific action that imposed burdens on the right to vote. It is much less natural for a court to evaluate whether the government had a good reason for not doing something differently, or for failing to do more to prevent (or reduce the risk of) misconduct by third parties that could burden the right to vote.

To the extent *Anderson-Burdick* applies in such circumstances, the appropriate course would, in this Court’s view, be to weigh any burden stemming from the government’s alleged failures against the government’s interest in enacting the broader election scheme it has erected, of which the challenged piece is usually only one part. Focusing solely on the allegedly inadequate procedure being challenged, such as the state’s authorization of “drop boxes” here, would ignore the fact that Election Code provisions and regulations operate as part of a single, complex organism balancing many

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speculations or effects are insufficient under Supreme Court and Ninth Circuit precedent to demonstrate a severe burden on the fundamental right to vote.”).



competing interests, all of which are “important” for purposes of the *Anderson-Burdick* analysis. See, e.g., *Crawford*, 553 U.S. at 184 (“detering and detecting voter fraud”); *Tedards v. Ducey*, 951 F.3d 1041, 1067 (9th Cir. 2020) (“voter turnout”); *Lunde v. Schultz*, 221 F. Supp. 3d 1095, 1106 (S.D. Iowa 2014) (“expanding ballot access to nonparty candidates”); *Greenville Cnty. Republican Party Exec. Comm. v. South Carolina*, 824 F. Supp. 2d 655, 671 (D.S.C. 2011) (“promoting voter participation in the electoral process”); *Mays v. LaRose*, 951 F.3d 775, 787 (6th Cir. 2020) (“orderly administration of elections”); *Dudum*, 640 F.3d at 1115 (“orderly administration of . . . elections”); *Paher*, 2020 WL 2089813, at \*7 (“protect[ing] the health and safety of . . . voters” and “safeguard[ing] the voting franchise”); *Nemes*, 2020 WL 3402345, at \*13 (“implementing voting plans that provide for a free and fair election while attempting to minimize the spread of COVID-19”).

Thus, on the “burden” side of the equation is Plaintiffs’ harm of vote dilution predicated on a risk of fraud. As discussed above in the context of lack of standing, that burden is slight, factually, because it is based on largely speculative evidence of voter fraud generally, anecdotal evidence of the mis-use of certain drop boxes during the primary election, and worries that the counties will not implement a “best practice” of having poll workers or guards man the drop boxes. See [ECF 461, ¶¶ 63-82; ECF 504-2, ¶ 12; 504-3, ¶ 6; 504-4, ¶7; ; ECF 504-6, ¶¶ 6-8; ECF 504-7, ¶¶ 5-9; ECF 504-9, 92:4-10; ECF 504-10, 60:3-61:10; 504-19, pp. 3, 16-18, 20 & Ex. D; ECF 504-25; ECF 504-49; ECF 509, p. 67; ECF 551, p. 34].

This somewhat scant evidence demonstrates, at most, an increased risk of some election irregularities—which, as many courts have held, does not impose a meaningful burden under *Anderson-Burdick*. “Elections are, regrettably, not always free from error,” *Hutchinson v. Miller*, 797 F.2d 1279, 1286–87 (4th Cir. 1986), let alone the “risk” of error. In just about every election, votes are counted, or discounted, when the state election code says they should not be. But the Constitution “d[oes] not authorize federal courts to be state election monitors.” *Gamza v. Aguirre*, 619 F.2d 449, 454 (5th Cir. 1980). It is “not an empty ledger awaiting the entry of an aggrieved

litigant's recitation of alleged state law violations." *Fournier v. Reardon*, 160 F.3d 754, 757 (1st Cir. 1998). Nor is it "an election fraud statute." *Minnesota Voters*, 720 F.3d at 1031.

"Garden variety" election irregularities, let alone the "risk" of such irregularities, are simply not a matter of federal constitutional concern "even if they control the outcome of the vote or election." *Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998). And as discussed above, most often, even "a deliberate violation of state election laws by state election officials does not transgress against the Constitution." *Shipley*, 947 F.3d at 1062. *see, e.g., Lecky v. Virginia State Bd. of Elections*, 285 F. Supp. 3d 908, 919 (E.D. Va. 2018) ("[E]ven assuming the Fredericksburg officials' failure to provide provisional ballots amounted to a violation of state law, it would not rise to the level of an equal protection violation.").

Compared, then, to Plaintiffs' slight burden, the Commonwealth has put forward reasonable, precise, and sufficiently weighty interests that are undisputed and that can be distilled into three general categories: (1) the benefits of drop boxes, (2) the Commonwealth's interests in furthering its overall election-security plan concerning drop boxes, and (3) the interests inherent in the Commonwealth's general mail-in ballot scheme.

The first category concerns the benefits of drop boxes generally. Secretary Boockvar has pointed out the Commonwealth's interests generally in using drop boxes—including, (1) the increase of voter turnout, (2) the protection of voters' health in the midst of the ongoing pandemic, (3) the increase of voter satisfaction, in light of ongoing U.S. Postal Service issues, and (4) the reduction of costs for counties. [ECF No. 547, at pp. 22-25; ECF No. 549-2, ¶¶ 36-39, 42-44]. Plaintiffs do not dispute any of these interests.

The second category of interests concerns the Commonwealth's interests in implementing drop boxes with appropriate and effective safety measures and protocols in place. That is, Secretary Boockvar has, in her capacity as the chief state official charged with overseeing elections, issued uniform guidance to all counties regarding

the use of drop boxes, which is noted above. That guidance includes (1) advising counties that the Election Code permits the use of drop boxes, and (2) setting forth best practices that the counties should “consider” with respect to their use. Among other things, the Secretary advised that counties should maintain a traceable chain of custody for mail-in and absentee ballots retrieved from drop boxes; utilize drop boxes with various security features (*e.g.*, anti-tampering features, locks, video surveillance, and removal when the site is closed or cannot be monitored); and designate sworn county personnel to remove ballots from drop boxes. And evidence suggests that the Secretary’s deputies have emphasized these best practices when queried by county officials. [ECF 549-32 (“Per our conversation, the list of items are things the county must keep in mind if you are going to provide a box for voters to return their ballots in person.”)].

This guidance is lawful, reasonable, and non-discriminatory, and so does not create any constitutional issue in its own right. With this guidance, the Secretary has diminished the risks tolerated by the legislature in adopting mail-in voting and authorizing drop-boxes, by encouraging the counties to adopt rather comprehensive security and chain-of-custody procedures if they do elect to use drop boxes. Conversely, the legislature’s decision to leave the counties with ultimate discretion when it comes to how, and to what extent, to use drop boxes (as opposed to adopting a scheme in which the Secretary could enforce compliance with her guidance) is also reasonable, and justified by sufficiently weighty governmental interests, given the many variations in population, geography, local political culture, crime rates, and resources. [ECF 549-9 (“There is no logical reason why ballot receptacles such as drop boxes must be uniform across different counties; particularly because the verification of the voter is determined by election officials upon receipt of the ballot. Counties vary in size and need. Across the country, best practices dictate that counties determine what type of box and size works for them. The needs of a large county are very different from the needs of a smaller county.”); ECF 549-11, p. 9 (“Such variation between counties even within a state makes sense, since the needs of different counties vary and their use of drop boxes reflects those considerations (*e.g.*, the geographic size of a county, the

population of the county, and the ease with which voters in the county can access other locations to return mail-in ballots).”].

The third category of interests is, more generally, the interests of the Commonwealth in administering its overall mail-in ballot regime, including the various security and accountability measures inherent in that legislative plan.

Pennsylvania did not authorize drop boxes in a vacuum. Last year, the Pennsylvania legislature “weigh[ed] the pros and cons,” *Weber*, 347 F.3d at 1107, and adopted a broader system of “no excuse” mail-in voting as part of the Commonwealth’s Election Code. As the Pennsylvania Supreme Court has now confirmed, that system left room for counties to authorize drop boxes and other satellite locations for returning ballots to the county boards of elections. *See Boockvar*, 2020 WL 5554644, at \*9 (“[W]e need not belabor our ultimate conclusion that the Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes.”).

Inherent in any mail-in or absentee voting system is some degree of increased risk of votes being cast in violation of other provisions of the Election Code, regardless of whether those ballots are returned to drop boxes, mailboxes, or some other location. For example, there is simply no practical way to police third party delivery of ballots to any mailbox anywhere in the Commonwealth, where Plaintiffs do not dispute that such ballots can be lawfully returned. It is also likely that more (and perhaps many more) voters than usual will be disenfranchised by technicalities this year, for failing to comply with the procedural requirements associated with mail-in ballots, such as the requirement that such ballots be placed in “inner secrecy envelopes.”

But in enacting the “no excuse” mail-in voting system that it did, the Pennsylvania legislature chose to tolerate the risks inherent in that approach. And the key point is that the legislature made that judgment in the context of erecting a broader election scheme that

authorizes other forms of voting and has many other safeguards in place to catch or deter fraud and other illegal voting practices. These safeguards include voter registration; a mail-in ballot application and identity verification process, 25 P.S. §§ 3146.2, 3150.12; a system for tracking receipt of mail-in ballots, 25 P.S. §§ 3146.3(a), 3150.13(a); and, perhaps most important of all, a pre-canvassing and canvassing process during which mail-in ballots are validated before being counted. In addition, Pennsylvania law also seeks to deter and punish fraud by imposing criminal penalties for unlawful voting, 25 P.S. § 3533; voting twice in one election, 25 P.S. § 3535; forging or destroying ballots, 25 P.S. § 3517; unlawful possession or counterfeiting of ballots 25 P.S. § 3516; and much more of the conduct Plaintiffs fear, *see* 25 P.S. §3501, *et seq.*

In this larger context, the Court cannot say that the balance Pennsylvania struck across the Election Code was unreasonable, illegitimate, or otherwise not “sufficiently weighty to justify,” *Crawford*, 553 U.S. at 191, whatever ancillary risks may be associated with the use of drop boxes, or with allowing counties to exercise discretion in that regard. Pennsylvania may balance the many important and often contradictory interests at play in the democratic process however it wishes, and it must be free to do so “without worrying that a rogue district judge might later accuse it of drawing lines unwisely.” *Abbott*, 961 F.3d at 407.

Thus, balancing the slight burden of Plaintiffs’ claim of dilution against the categories of interests above, the Court finds that the Commonwealth and Defendants’ interests in administering a comprehensive county-based mail-in ballot plan, while both promoting voting and minimizing fraud, are sufficiently “weighty,” reasonable, and justified. Notably, in weighing the burdens and interests at issue, the Court is mindful of its limited role, and careful to not intrude on what is “quintessentially a legislative judgment.” *Griffin*, 385 F.3d at 1131. “[I]t is the job of democratically-elected representatives to weigh the pros and cons of various balloting systems.” *Weber*, 347 F.3d at 1106. “So long as their choice is reasonable and neutral, it is free from judicial second-guessing.” *Id.*; *see also Abbott*, 961 at 407 (“That the line might have been drawn differently ... is a matter for legislative, rather than

judicial, consideration.”) (cleaned up); *Trinsey v. Com. of Pa.*, 941 F.2d 224, 235 (3d Cir. 1991) (“We take no position on the balancing of the respective interests in this situation. That is a function for which the legislature is uniquely fitted.”).

Thus, even under the *Anderson-Burdick* framework, the Court finds that Plaintiffs’ constitutional challenge fails as a matter of law.

**B. Pennsylvania’s use of drop boxes does not violate federal due process.**

In addition to their equal-protection challenge to the use of drop boxes, Plaintiffs also appear to argue that the use of unmanned drop boxes violates substantive due process protected by the 14th Amendment. This argument is just a variation on their equal-protection argument—*i.e.*, the uneven use of drop boxes will work a “patent and fundamental unfairness” in violation of substantive due process principles. *See Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978) (substantive due process rights are violated “[i]f the election process itself reaches the point of patent and fundamental unfairness[.]”). The analysis for this claim is the same as that for equal protection, and thus it fails for the same reasons.

But beyond that, this claim demands even stricter proof. Such a claim exists in only the most extraordinary circumstances. *See Nolles v. State Comm. for Reorganization of Sch. Districts*, 524 F.3d 892, 898 (8th Cir. 2008) (“A canvass of substantive due process cases related to voting rights reveals that voters can challenge a state election procedure in federal court only in limited circumstances, such as when the complained of conduct discriminates against a discrete group of voters, when election officials refuse to hold an election though required by state law, resulting in a complete disenfranchisement, or when the willful and illegal conduct of election officials results in fraudulently obtained or fundamentally unfair voting results.”) (cleaned up); *Yoshina*, 140 F.3d at 1226 (“We have drawn a distinction between ‘garden variety’ election irregularities and a pervasive error that undermines the integrity of the vote. In general, garden variety election irregularities do not violate the Due



Process Clause, even if they control the outcome of the vote or election.”) (citation omitted); *Bennett v. Mollis*, 590 F. Supp. 2d 273, 278 (D.R.I. 2008) (“Before an election error becomes a key that unlocks the restraints on the federal court’s authority to act, the Plaintiffs must demonstrate either an intentional election fraud or an unintentional error resulting in broad-gauge unfairness.”).

Indeed, “only the most egregious official conduct can be said to be arbitrary in the constitutional sense”—the “executive action must be so ill-conceived or malicious that it ‘shocks the conscience.’” *Miller v. City of Phila.*, 174 F.3d 368, 375 (3d Cir. 1999) (cleaned up).

Based on the slight burden imposed here, and the Commonwealth’s interests in their overall county specific voting regime, which includes a host of other fraud-prevention measures, the Court finds that the drop-box claim falls short of the standard of substantive due process.

### **III. Defendants and Intervenors are entitled to summary judgment on Plaintiffs’ signature-comparison claims.**

Plaintiffs’ next claim concerns whether the Secretary’s recent guidance on signature comparison violates the federal Constitution. Plaintiffs frame their claims pertaining to signature comparison in two ways—one based on due process and the other based on equal protection.

Plaintiffs initially assert that the Election Code requires a signature comparison for mail-in and absentee applications and ballots. Thus, according to Plaintiffs, Secretary Boockvar’s guidance, which says the opposite, is creating unconstitutional vote dilution, in violation of due-process principles—*i.e.*, certain unlawful, unverified ballots will now be counted, thereby diluting the lawful ones cast by other voters (such as in-person voters, whose signatures are verified). Plaintiffs also appear to argue more generally that absent signature comparison, there is a heightened risk of voter fraud, and therefore a heightened risk of vote dilution of lawful votes.

In addition to due process, Plaintiffs argue that the guidance violates equal-protection principles—first, by counties engaging in a patchwork of procedures (where some counties intend to do a signature comparison for mail-in ballots, while others do not); and second, by implementing different standards between mail-in ballots and in-person ones.

In contrast, Defendants and Intervenors take the position that state law does not require signature comparison, and for good reason. According to them, requiring such comparisons is fraught with trouble, as signatures change over time and elections officials are not signature-analysis experts. This leaves open the possibility for arbitrary and discriminatory application that could result in the disenfranchisement of valid voters.

For the reasons that follow, the Court will dismiss the signature-comparison claims and enter judgment in favor of Defendants. A plain reading of the Election Code demonstrates that it does not impose a signature-comparison requirement for mail-in ballots and applications, and thus Plaintiffs' vote-dilution claim sounding in due process fails at the outset. Further, the heightened risk of fraud resulting from a lack of signature comparison, alone, does not rise to the level of a federal constitutional violation. Finally, the equal-protection claims fail because there are sound reasons for the different treatment of in-person ballots versus mail-in ballots; and any potential burdens on the right to vote are outweighed by the state's interests in their various election security measures.

**A. The Election Code does not require signature comparison for mail-in and absentee ballots or ballot applications.**

Plaintiffs' federal-constitutional claims in Count I of their Second Amended Complaint are partially based on the Secretary's guidance violating state law. That is, Plaintiffs' first theory is that by the Secretary violating state law, unlawful votes are counted and thus lawfully cast votes are diluted. According to Plaintiffs, this violates the 1st and 14th Amendments, as well as the Elections



Clause (the latter of which requires the legislature, not an executive, to issue election laws).<sup>12</sup>

Thus, a necessary predicate for these constitutional claims is whether the Election Code mandates signature comparison for mail-in and absentee ballots. If it doesn't, as the Secretary's guidance advises, then there can be no vote dilution as between lawful and unlawful votes, nor a usurpation of the legislature's authority in violation of the Elections Clause.

After carefully considering the parties' arguments and the relevant law, the Court finds that the plain language of the Election Code imposes no requirement for signature comparison for mail-in and absentee ballots and applications.<sup>13</sup> In other words, the Secretary's guidance is

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<sup>12</sup> The parties do not specifically brief the elements of an Elections-Clause claim. This is typically a claim brought by a state legislature, and the Court has doubts that this is a viable theory for Plaintiffs to assert. *See Lance v. Coffman*, 549 U.S. 437, 442 (2007). Regardless, if state law does not require signature comparison, then there is no difference between the Secretary's guidance and the Election Code, and the Elections-Clause claim necessarily fails.

<sup>13</sup> Several Defendants and Intervenors have asked this Court to abstain from deciding this issue on the basis of *Pullman*. As this Court previously discussed, a court can abstain under *Pullman* if three factors are met: "(1) [the dispute] requires interpretation of 'unsettled questions of state law,'" (2) permitting resolution of the unsettled state-law questions by state courts would "obviate the need for, or substantially narrow the scope of adjudication of the constitutional claims"; and (3) an "erroneous construction of state law would be disruptive of important state policies[.]" [ECF 409, p. 3 (quoting *Chez Sez*, 945 F.2d at 631)]. But if, on the other hand, the answer to the state law dispute is "clear and unmistakable," abstention is not warranted. [*Id.* at p. 15 (citing *Chez Sez*, 945 F.2d at 632)]. Here, the Court concludes (as discussed below) that the Election Code is clear that signature comparison is not required and further, that Plaintiffs' competing

consistent with the Election Code, and creates no vote-dilution problems.<sup>14</sup>

Plaintiffs, in advancing their claim, rely on section 3146.8(g)(3)-(7) of the Election Code to assert that the Code requires counties to “verify” the signatures on mail-in and absentee ballots (*i.e.*, examine the signatures to determine whether they are authentic). Plaintiffs specifically point to section 3146.8(g)(3) as requiring this signature verification. [ECF 509, pp. 17-18].

Section 3146.8(g)(3) states:

When the county board meets to pre-canvass or canvass absentee ballots and mail-in ballots ... the board shall examine the declaration on the envelope of each ballot ... and shall compare the information thereon

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interpretation is not plausible. As such, the Court cannot abstain under *Pullman*.

The *Pullman* analysis does not change simply because Secretary Boockvar has filed a “King’s Bench” petition with the Pennsylvania Supreme Court, requesting that court to clarify whether the Election Code mandates signature comparison of mail-in and absentee ballots and applications. [ECF 556, p. 11; ECF 557]. The fact that such a petition was filed does not change this Court’s conclusion that the Election Code is clear. The *Pullman* factors remain the same. And they are not met here.

<sup>14</sup> The Secretary’s September 11, 2020, guidance, stated that the “Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.” [ECF 504-24, p. 3, § 3]. Similarly, the Secretary’s September 28, 2020, guidance stated that “Election Code does not permit county election officials to reject applications or voted ballots based solely on signature analysis. ... No challenges may be made to mail-in and absentee ballots at any time based on signature analysis.” [ECF 504-25, p. 9, § 5.2].

with that contained in the “Registered Absentee and Mail-in Voters File,” the absentee voters’ list and/or the “Military Veterans and Emergency Civilians Absentee Voters File,” whichever is applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the “Registered Absentee and Mail-in Voters File,” the absentee voters’ list and/or the “Military Veterans and Emergency Civilians Absentee Voters File” verifies his right to vote, the county board shall provide a list of the names of electors whose absentee ballots or mail-in ballots are to be pre-canvassed or canvassed.

25 P.S. § 3146.8(g)(3).

According to Plaintiffs, Section 3146.8(g)(3)’s requirement to verify the proof of identification, and compare the information on the declaration, is tantamount to signature comparison. The Court disagrees, for at least three reasons.

First, nowhere does the plain language of the statute require signature comparison as part of the verification analysis of the ballots.

When interpreting a statute enacted by the Pennsylvania General Assembly, courts apply Pennsylvania’s Statutory Construction Act, 1 Pa. C.S. §§ 1501-1991. And as the Act instructs, the “object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.” 1 Pa C.S. § 1921(a). If the words of the statute are clear and unambiguous, the letter of the law applies. *Id.* at § 1921(b). Otherwise, courts may consider a variety of factors to determine the legislature’s intent, including “other statutes upon the same or similar subjects” and “[t]he consequences of a particular interpretation.” *Id.* at § 1921(c)(5)-(6).

Section 3146.8(g)(3) does not expressly require any signature verification or signature comparison. 25 P.S. § 3146.8(g)(3). It instead requires election officials to (1) “examine the declaration on the envelope of each ballot,” (2) “compare the information thereon with that contained in the ... ‘Voters file’ [or] the absentee voters’ list,” and (3) if “the county board has [a] verified the proof of identification as required under this act and [b] is satisfied that the declaration is sufficient and the information contained in the [Voter’s file] ... verifies his right to vote,” the election official shall include the ballot to be counted. *Id.*

Under the express terms of the statute, then, the information to be “verified” is the “proof of identification.” *Id.* The Election Code defines “proof of identification” as the mail-in/absentee voter’s driver’s license number, last four digits of their Social Security number, or a specifically approved form of identification. 25 P.S. § 2602(z.5)(3)(i)-(iv).<sup>15</sup> The only other “verification” the election official

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<sup>15</sup> The Election Code’s definition of “proof of identification” in full provides:

The words “proof of identification” shall mean ... For a qualified absentee elector ... or a qualified mail-in elector... :

i. in the case of an elector who has been issued a current and valid driver’s license, the elector’s driver’s license number;

ii. in the case of an elector who has not been issued a current and valid driver’s license, the last four digits of the elector’s Social Security number;

iii. in the case of an elector who has a religious objection to being photographed, a copy of a document that satisfies paragraph (1) [*i.e.*, “a valid-without-photo driver’s license or a valid-without-photo identification card issued by the Department of Transportation”]; or

must conduct is to determine whether “the information contained in the [Voter’s file] ... verifies his right to vote.”

Nowhere does this provision require the election official to compare and verify the authenticity of the elector’s signature. In fact, the word “signature” is absent from the provision. It is true that the elector must fill out and sign the declaration included on the ballot. 25 P.S. §§ 3146.6(a), 3150.16(a). However, while section 3146.8(g)(3) instructs the election official to “examine the declaration ... and compare the information thereon with that contained in the [Voter’s file],” the provision clarifies that this is so the election official can be “satisfied that the declaration is sufficient.” 25 P.S. § 3146.8(g)(3). In other words, the election official must be “satisfied” that the declaration is “fill[ed] out, date[d] and sign[ed],” as required by sections 3150.16(a) and 3146.6(a) of the Election Code. Notably absent is any instruction to verify the signature and set aside the ballot if the election official believes the signature to be non-genuine. There is an obvious difference between checking to see if a signature was provided at all, and checking to see if the provided signature is sufficiently authentic. Only the former is referred to in section 3146.8(g)(3).

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iv. in the case of an elector who has not been issued a current and valid driver’s license or Social Security number, a copy of a document that satisfies paragraph (2) [*i.e.*, “a document that shows the name of the individual to whom the document was issued and the name substantially conforms to the name of the individual as it appears in the district register; shows a photograph of the individual to whom the document was issued; includes an expiration date and is not expired, except (A) ... or (B) ...; and was issued by” the federal, state, or municipal government, or an “accredited Pennsylvania public or private institution of higher learning [or] “a Pennsylvania are facility.”].

25 P.S. § 2602(z.5)(3).

Second, beyond the plain language of the statute, other canons of construction compel the Court's interpretation. When interpreting statutes passed by the General Assembly, Pennsylvania law instructs courts to look at other aspects of the statute for context. See 1 Pa. C.S. § 1921(c)(5) ("When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering ... other statutes upon the same or similar subjects."); *O'Rourke v. Commonwealth*, 778 A.2d 1194, 1201 (Pa. 2001) ("The cardinal rule of all statutory construction is to ascertain and effectuate the intent of the Legislature. To accomplish that goal, we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear." (citation omitted)).

Context here is important because the General Assembly mandated signature comparison for in-person voting elsewhere in the Election Code—thus evidencing its intention not to require such comparison for mail-in ballots. See *Fonner v. Shandon, Inc.*, 724 A.2d 903, 907 (Pa. 1999) ("[W]here a section of a statute contains a given provision, the omission of such a provision from a similar section is significant to show a different legislative intent.") (citation omitted).

In addressing in-person voting, the General Assembly explicitly instructs that the election official shall, after receiving the in-person elector's voter certificate, immediately "**compare the elector's signature** on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That **if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic** by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to [cure the deficiency]." 25 P.S. § 3050(a.3)(2) (emphasis added).

Elsewhere, the General Assembly also explicitly accounts for signature comparison of in-person voters: "[I]f it is determined that the individual was registered and

entitled to vote at the election district where the ballot was cast, ***the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector's registration form and, if the signatures are determined to be genuine, shall count the ballot*** if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election. ... [But a] provisional ballot shall not be counted if ... the signature[s] required ... are either not genuine or are not executed by the same individual..." 25 P.S. § 3050(a.4)(5)(i)-(ii) (emphasis added); *see also* 25 P.S. § 2936 (“[When reviewing nomination papers], the Secretary of the Commonwealth or the county board of elections, although not hereby required so to do, ***may question the genuineness of any signature or signatures appearing thereon***, and if he or it shall thereupon find that any such signature or signatures are not genuine, such signature or signatures shall be disregarded[.]” (emphasis added)).

Clearly then, the General Assembly, in enacting the Election Code, knew that it could impose a signature-comparison requirement that requires an analysis to determine whether a signature is “genuine.” And when that was its intent, the General Assembly explicitly and unequivocally imposed that requirement. It is thus telling, from a statutory construction standpoint, that no such explicit requirement is imposed for returned mail-in or absentee ballots. Indeed, the General Assembly is aware—and in fact, requires—that a voter must sign their application for an absentee or mail-in ballot, and must sign the declaration on their returned ballot. 25 P.S. §§ 3146.2(d) (absentee-ballot application), 3150.12(c) (mail-in-ballot application), 3146.6(a) (absentee-voter declaration), 3150.16(a) (mail-in voter declaration). Despite this, the General Assembly did not mention a signature-comparison requirement for returned absentee and mail-in ballots.

The Court concludes from this context that this is because the General Assembly did not intend for such a requirement. *See, e.g., Mishoe v. Erie Ins. Co.*, 824 A.2d 1153, 1155 (Pa. 2003) (“In arriving at our conclusion that the foregoing language does not provide for the right to a jury trial, we relied on three criteria. First, we put ***substantial emphasis*** on the fact that the PHRA was



silent regarding the right to a jury trial. As we explained, ‘the General Assembly is well aware of its ability to grant a jury trial in its legislative pronouncements,’ and therefore, ‘we can presume that the General Assembly’s express granting of trial by jury in some enactments means that it did not intend to permit for a jury trial under the PHRA.’” (cleaned up) (emphasis added)); *Holland v. Marcy*, 883 A.2d 449, 456, n.15 (Pa. 2005) (“We additionally note that the legislature, in fact, did specify clearly when it intended the choice of one individual to bind others. In every other category addressed by Section 1705(a) other than (a)(5) which addressed uninsured owners, the General Assembly specifically referenced the fact that the decision of the named insured ... binds other household members. ... Similar reference to the ability of the uninsured owner’s deemed choice to affect the rights of household members is conspicuously missing from Section 1705(a)(5).”).

Accordingly, the Court finds that the General Assembly’s decision not to expressly refer to signature comparisons for mail-in ballots, when it did so elsewhere, is significant.

Third, this Court is mindful that Pennsylvania’s election statutes are to be construed in a manner that does not risk disenfranchising voters. *See, e.g.*, 1 Pa. C.S. § 1922(3) (“In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: ... That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.”); *id.* at § 1921(c)(6) (in interpreting a statute, the court may consider “[t]he consequences of a particular interpretation”).

As the Pennsylvania Supreme Court emphasized last month, “[I]t is well-settled that, although election laws must be strictly construed to prevent fraud, they ordinarily will be construed liberally in favor of the right to vote. Indeed, our goal must be to enfranchise and not to disenfranchise the electorate.” *Boockvar*, 2020 WL 5554644, at \*9 (cleaned up); *see also id.* (“[A]lthough both Respondent and the Caucus offer a reasonable interpretation of Section 3150.16(a) as it operates within the Election Code, their interpretation restricts voters’



rights, as opposed to the reasonable interpretation tendered by Petitioner and the Secretary. The law, therefore, militates in favor of this Court construing the Election Code in a manner consistent with the view of Petitioner and the Secretary, as this construction of the Code favors the fundamental right to vote and enfranchises, rather than disenfranchises, the electorate.”).

Here, imposing a signature-comparison requirement as to mail-in and absentee ballots runs the risk of restricting voters’ rights. This is so because election officials, unstudied and untested in signature verification, would have to subjectively analyze and compare signatures, which as discussed in greater detail below, is potentially problematic.<sup>16</sup> [ECF 549-2, p. 19, ¶ 68]; [ECF 549-9, p. 20, ¶ 64]. And perhaps more importantly, even assuming an adequate, universal standard is implemented, mail-in and absentee voters whose signatures were “rejected” would, unlike in-person voters, be unable to cure the purported error. *See* 25 P.S. § 3146.8(a) (stating that in-person and absentee ballots “shall [be safely kept] in sealed or locked containers until they are to be canvassed by the county board of elections,” which § 3146.8(g)(1.1)-(2) states is no earlier than election day); *Boockvar*, 2020 WL 5554644, at \*20 (“[A]lthough the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the ‘notice and opportunity to cure’ procedure sought by Petitioner. To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, we agree that the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate that risk is one best suited for the Legislature.”). As discussed in more detail below, unlike in-person voters, whose signatures are verified in their presence, mail-in and absentee voters’ signatures would be verified at a later date

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<sup>16</sup> While election officials must engage in signature comparison for in-person voters, that requirement is explicitly required by the Election Code, unlike for mail-in ballots. 25 P.S. § 3050(a.3)(2). And as discussed below, in-person voters, unlike mail-in voters, are immediately notified if their signatures are deficient.

outside the presence of the voter. *See generally* 25 P.S. § 3146.8(a), (g) (requiring mail-in and absentee ballots to be kept secured in a sealed container until Election Day). Unbeknownst to the voter, then, and without an opportunity to remedy the purported error, these mail-in and absentee voters may not have their votes counted. Based on this risk of disenfranchisement, which the Court must consider in interpreting the statute, the Court cannot conclude that this was the General Assembly’s intention.

The Court is not persuaded by Plaintiffs’ arguments to the contrary.

Plaintiffs argue that section 3146.8(g)(5)-(7) provides a voter, whose ballot-signature was rejected, notice and an opportunity to cure the signature deficiency. [ECF 509, pp. 13, 18, 50]. That section, however, refers to when a person raises a specific challenge to a specific ballot or application on the grounds that the elector is not a “qualified elector.” 25 P.S. § 3146.8(g)(4) (stating that mail-in and absentee ballots shall be counted unless they were challenged under §§ 3146.2b or 3150.12b, which allow challenges on the grounds that the elector applying for a mail-in or absentee ballot wasn’t qualified). Thus, the “challenges” referenced in § 3146.8(g)(5)-(7) refer to a voter’s qualifications to vote, not a signature verification.

Plaintiffs similarly argue that section 3146.8(h) provides mail-in voters notice and opportunity to cure signature deficiencies. [ECF 552, p. 60]. But that section relates to “those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified.” 25 P.S. § 3146.8(h). As discussed above, “proof of identification” is a defined term, and includes the voter’s driver’s license number, last four digits of their Social Security number, or a specifically approved form of identification. 25 P.S. § 2602(z.5)(3)(i)-(iv). Not included is the voter’s signature.<sup>17</sup>

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<sup>17</sup> Plaintiffs also argue that signature comparison for mail-in and absentee ballots is supported by historical case law. [ECF 552, pp. 58-59]. Plaintiffs cite to two cases from the 1960s that the Court of Common Pleas decided. [*Id.*]. The first, *Appeal of Fogleman*, concluded that under the then-

At bottom, Plaintiffs request this Court to impose a requirement—signature comparison—that the General Assembly chose not to impose. Section 3146.8(g)(3) does not mention or require signature comparison. The Court will not write it into the statute.

For the same reasons that the Election Code does not impose a signature-comparison requirement for mail-in and absentee ballots, the Election Code does not impose a signature-comparison requirement for mail-in and absentee ballot *applications*. While the General Assembly imposed a requirement that the application be signed, there is no mention of a requirement that the signature be verified, much less that the application be rejected based solely on such verification. 25 P.S. §§ 3146.2(d) (absentee-ballot application), 3150.12(c) (mail-in-ballot application). Again, finding no explicit instructions for signature comparison here (unlike elsewhere in the Code), the Court concludes that the General Assembly chose not to include a signature-comparison requirement for ballot applications.

The Court again finds Plaintiffs’ arguments to the contrary unavailing. Plaintiffs argue that “there is no other proof of identification required to be submitted with the

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applicable election law, an absentee voter had to sign a declaration to show that he was a proper resident who had not already voted in that election. 36 Pa. D. & C.2d 426, 427 (Pa. Ct. Comm. Pl. 1964). Regarding the voter’s signature, the court simply stated, “[if the elector fails or refuses to attach his or her signature, then such elector has not completed the declaration as required by law of all voters.” *Id.* Thus, no signature comparison or verification was implicated there; rather, the court simply stated that the declaration must be signed (*i.e.*, completed). The second case Plaintiffs cite, *In re Canvass of Absentee Ballots of Gen. Election* [ECF 552, pp. 58-59], arose from individual, post-election challenges to 46 individual absentee ballots. 39 Pa. D. & C.2d 429, 430 (Pa. Ct. Comm. Pl. 1965). Thus, a universal and mandatory signature-comparison requirement was not at issue there, unlike what Plaintiffs contest here. This Court finds neither case persuasive.

ballot applications,” and thus, a signature comparison must be required. [ECF 509, p. 16].

But the Election Code expressly requires the applicant to include several pieces of identifying information, including their name, mailing address, and date of birth. 25 P.S. §§ 3146.2(b), 3150.12(b). And after receiving the applicant’s application, the election official must “verify[] the proof of identification [a defined term as discussed above] and compar[e] the information provided on the application with the information contained on the applicant’s permanent registration card.”<sup>18</sup> *Id.* at §§ 3146.2b(c), 3150.12b(a). Thus, contrary to Plaintiffs’ argument, the General Assembly provided for certain methods of identification as to ballot applications. Signature verification isn’t one of them.

For these reasons, the Court concludes that the Election Code does not impose a signature-comparison requirement for absentee and mail-in ballots and applications. As such, the Secretary’s September 11, 2020, and September 28, 2020, guidance is consistent with the Election Code. Plaintiffs’ claims of vote dilution based on this guidance will therefore be dismissed.

**B. The lack of a signature comparison does not violate substantive due process.**

In addition to alleging that the Secretary’s guidance violates the Election Code, Plaintiffs appear to also argue that their right to vote is unconstitutionally burdened and diluted due to a risk of fraud. That is, regardless of what the Election Code requires, Plaintiffs assert that absent signature comparison, mail-in and absentee ballots will be prone to fraud, thereby diluting other lawful ballots. [ECF 509, pp. 45-50; 504-19, pp. 10-15]. Plaintiffs argue that this

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<sup>18</sup> This identifying information on a ballot application includes much of the same information expressly listed for what a voter must provide in initially registering to vote. 25 Pa. C.S.A. § 1327(a) (stating that the “official voter registration application” shall request the applicant’s: full name, address of residence (and mailing address if different), and date of birth).

significantly burdens their fundamental right to vote, resulting in a due-process violation, and thus strict scrutiny applies. The Court disagrees.

As discussed above in the context of Plaintiffs' drop-box claim, Plaintiffs' claim here simply does not rise to the high level for a substantive due process claim. To violate substantive due process in the voting-rights context, the infringements are much more severe. Only in extraordinary circumstances will there be "patent and fundamental unfairness" that causes a constitutional harm. *See Bonas v. Town of North Smithfield*, 265 F.3d 69, 74 (1st Cir. 2001); *Shannon v. Jacobowitz*, 394 F.3d 90, 94 (2d Cir. 2005).

Here, Plaintiffs' signature-comparison claim does not meet this high standard. This isn't a situation of malapportionment, disenfranchisement, or intentional discrimination. And the risk of voter fraud generally without signature comparison—as a matter of fact and law—does not rise to "patent and fundamental unfairness."

Indeed, as discussed above, Plaintiffs' evidence of potential voter fraud here is insufficient to establish "patent and fundamental unfairness." In their summary-judgment brief, Plaintiffs argue that "the Secretary's September 2020 guidance memos promote voter fraud." [ECF 509, p. 48]. Plaintiffs then offer a hypothetical where a parent signs a ballot application on their child's behalf because the child is out-of-state. [ECF 509, p. 48]. Plaintiffs assert that without signature comparisons, such "fraud" could proceed unchecked. [*Id.*]. Plaintiffs continue, arguing that the "fraud" would "snowball," so that "spouses, neighbors, acquaintances, strangers, and others" were signing applications and ballots on others' behalf. [*Id.* at pp. 48-49]. To prevent such fraud, Plaintiffs' expert, Mr. Riddlemoser, asserts that signature comparison is needed. [ECF 504-19, p. 10 ("Not only does enforcing the Election Code's requirement of a completed and signed declaration ensure uniformity, which increases voter confidence, it also functions to reduce fraud possibilities by allowing signature verification.")].

Mr. Riddlemoser first highlights that in Philadelphia in the primary, ballots were counted "that

lacked a completed declaration.” [*Id.* at p. 11]. Mr. Riddlemoser further opines that the September 11, 2020, guidance and September 28, 2020, guidance, in instructing that signature comparison is not required for mail-in and absentee ballots and applications, “encourage[s], rather than prevent[s], voter fraud.” [*Id.* at pp. 12-13]. Mr. Riddlemoser also notes that signature comparison is “the most common method” to verify ballots and that the Secretary’s guidance “leave the absentee/mail-in ballots subject to the potential for unfettered fraud.” [*Id.* at p. 14]. He concludes that the guidance “invites the dilution of legitimately cast votes.” [*Id.*].

Based on this evidentiary record, construed in Plaintiffs’ favor, the Court cannot conclude that there exists “patent and fundamental unfairness.” Rather, Plaintiffs present only the possibility and potential for voter fraud. In their briefing, Plaintiffs relied on hypotheticals, rather than actual events. [ECF 509, p. 48]. Mr. Riddlemoser admits that failing to verify signatures only creates “the potential” for fraud and “invites” vote dilution. [ECF 504-19, pp. 14, 15]. Even assuming an absence of signature comparison does indeed invite the potential for fraud, the nondiscriminatory, uniform practice and guidance does not give rise to “patent and fundamental unfairness” simply because of a “potential” for fraud. Plaintiffs have not presented evidence to establish a sufficient burden on their constitutional right to vote.

Indeed, even if the Court assumed some “forged” applications or ballots were approved or counted, this is insufficient to establish substantial, widespread fraud that undermines the electoral process. Rather, limited instances of “forged” ballots—which according to Plaintiffs’ definition, includes an individual signing for their spouse or child—amount to what the law refers to as “garden variety” disputes of limited harm. As has long been understood, federal courts should not intervene in such “garden variety” disputes. *Hutchinson*, 797 F.2d at 1283 (“[C]ourts have uniformly declined to endorse action under § 1983 with respect to garden variety election irregularities.”) (cleaned up); *Yoshina*, 140 F.3d at 1226 (“In general, garden variety election irregularities do not violate the Due Process Clause, even if they control the

outcome of the vote or election.” (collecting cases)); *Curry v. Baker*, 802 F.2d 1302, 1314-15 (11th Cir. 1986) (“[I]f the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause may be indicated and relief under § 1983 therefore in order. Such a situation must go well beyond the ordinary dispute over the counting and marking of ballots.” (cleaned up)).

To be clear, the Court does not take Plaintiffs’ allegations and evidence lightly. Election fraud is serious and disruptive. And Plaintiffs could be right that the safer course would be to mandate signature comparison for all ballots. But what Plaintiffs essentially complain of here is whether the procedures employed by the Commonwealth are sufficient to prevent that fraud. That is a decision left to the General Assembly, not to the meddling of a federal judge. *Crawford*, 553 U.S. at 208 (Scalia, J. concurring) (“It is for state legislatures to weigh the costs and benefits of possible changes to their election codes, and their judgment must prevail unless it imposes a severe and unjustified overall burden upon the right to vote, or is intended to disadvantage a particular class.”). *Griffin*, 385 F.3d at 1131-32 (“[S]triking of the balance between discouraging fraud and other abuses and encouraging turnout is quintessentially a legislative judgment with which we judges should not interfere unless strongly convinced that the legislative judgment is grossly awry.”).

**C. Plaintiffs’ federal equal-protection claims based on signature comparison fail.**

Plaintiffs present two federal equal-protection claims. The Court will address each in turn.

**1. County differences over signature comparison do not violate federal equal-protection rights.**

Plaintiffs’ first federal equal-protection claim is based on some county boards of elections intending to verify the signatures on mail-in and absentee ballots and applications, while others do not intend to do so. To that end, Plaintiffs have presented evidence that some, but not



all, counties do intend to verify signatures. *E.g.*, [ECF 504-1].<sup>19</sup> According to Plaintiffs, this arbitrary and differential treatment of mail-in and absentee ballots among counties—purportedly caused by the Secretary’s September 11, 2020, and September 28, 2020, guidance—violates the Equal-Protection Clause because voters will be treated differently simply because of the county in which they reside. The Court, however, finds no equal-protection violation in this context.

The Secretary’s guidance about which Plaintiffs complain is uniform and nondiscriminatory. It was issued to all counties and applies equally to all counties, and by extension, voters. Because the uniform, nondiscriminatory guidance is rational, it is sound under the Equal-Protection Clause. *See Gamza*, 619 F.2d at 453 (5th Cir. 1980) (“We must, therefore, recognize a distinction between state laws and patterns of state action that systematically deny equality in voting, and episodic events that, despite non-discriminatory laws, may result in the dilution of an individual’s vote. Unlike systematically discriminatory laws, isolated events that adversely affect individuals are not presumed to be a violation of the equal protection clause.”) (citation omitted). Indeed, the guidance merely instructs counties to abide by the Election Code—an instruction to follow the law is certainly rational and related to an obviously rational government interest.

In fact, if there is any unequal application now, it is caused by those counties that are *not* following the guidance and are going above and beyond the Election Code to impose a signature-comparison requirement. That claim, though, is not before the Court, as Plaintiffs here do not assert that imposing a signature-comparison requirement violates the Constitution (they allege the opposite).

In any event, to the extent there was uncertainty before, this decision informs the counties of the current

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<sup>19</sup> The counties that intend to compare and verify signatures in the upcoming election include at least the following counties: Cambria, Elk, Franklin, Juniata, Mifflin, Sullivan, Susquehanna, and Wyoming. [ECF 504-1].



state of the law as it relates to signature comparison. If any county still imposes a signature-comparison requirement in order to disallow ballots, it does so without support from the Secretary's guidance or the Election Code. Further, counties that impose this signature-comparison requirement to reject ballots may be creating a different potential constitutional claim for voters whose ballots are rejected. *Boockvar*, 2020 WL 5554644, at \*34, n.16 (Wecht, J. concurring) (noting that courts around the country have found due process issues with signature-comparison requirements; and collecting cases).

For these reasons, Plaintiffs' equal-protection claim falls short.

**2. Different treatment between in-person ballots and mail-in ballots also does not violate federal equal-protection rights.**

Plaintiffs also assert a second federal equal-protection claim on the grounds that the Election Code, by not requiring signature comparison for mail-in and absentee ballots, treats such ballots differently than in-person ballots (which require signature comparisons). Plaintiffs argue that this is an unconstitutionally arbitrary and unequal treatment. The Court disagrees.

It is well-settled that states may employ in-person voting, absentee voting, and mail-in voting and each method need not be implemented in exactly the same way. *See Hendon*, 710 F.2d at 181 ("A state may employ diverse methods of voting, and the methods by which a voter casts his vote may vary throughout the state.")

"Absentee voting is a fundamentally different process from in-person voting, and is governed by procedures entirely distinct from in-person voting procedures." *ACLU of New Mexico v. Santillanes*, 546 F.3d 1313, 1320 (10th Cir. 2008) (citations omitted). It is an "obvious fact that absentee voting is an inherently different procedure from in-person voting." *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 830-31 (S.D. Ind. 2006). Because in-person voting is "inherently different" from mail-in and absentee voting, the procedures for each

need not be the same. *See, e.g., Santillanes*, 546 F.3d at 1320-21 (“[B]ecause there are clear differences between the two types of voting procedures, the law’s distinction is proper.”); *Rokita*, 458 F. Supp. 2d at 831 (“[I]t is axiomatic that a state which allows for both in-person and absentee voting must therefore apply different requirements to these two groups of voters.”); *Billups*, 439 F. Supp. 2d at 1356-57 (“[A]bsentee voting and in-person voting are inherently different processes, and both processes use different standards, practices, and procedures.”).

Plaintiffs argue that while absentee and mail-in voting “is a fundamentally different process from in-person voting,” Defendants have “no justification in this instance to create such an arbitrary and disparate rule between absentee/mail-in voters and in-person voters.” [ECF 509, p. 51]. Not so.

Because of the “inherent” differences between in-person voting and mail-in and absentee voting, Pennsylvania’s requirement for signature comparison for in-person ballots, but not mail-in and absentee ballots, is not arbitrary. By way of example, Secretary Boockvar articulated several valid reasons why Pennsylvania implements different verification procedures for mail-in and absentee voters versus in-person voters. [ECF 504-12; ECF 549-2].

In her deposition, Secretary Boockvar explained that for in-person voters, the only possible verification is signature comparison and verification. [ECF 504-12, 55:19-56:19]. This is because, unlike mail-in and absentee voters who must apply for a ballot, in-person voters may simply show up at the polls on Election Day and vote. In contrast, for mail-in and absentee voters, there are several verification steps implemented before the voter’s mail-in/absentee ballot is counted, such as checking their application and their drivers’ license number or social security number. [*Id.* at 56:8-19]. Thus, counties don’t need to resort to a signature comparison to identify and verify the mail-in or absentee voter.

This is important, as Defendants and Intervenors present valid concerns about the uniformity and equality of signature comparisons, in part, due to the technical

nature of signature analysis, the subjective underpinnings of signature analysis, and the variety of reasons that signatures can naturally change over time. [ECF 549-2, pp. 19-20, ¶ 68; ECF 549-9, p. 20, ¶¶ 63-64]. Such factors can reasonably justify not requiring a signature comparison when the elector is not physically present.

For example, Secretary Boockvar notes the concern with non-handwriting-expert election officials comparing signatures, without uniform standards. [ECF 549-2, pp. 19-20, ¶ 68]. She also notes that people's signatures can change over time, due to natural and unavoidable occurrences, like injuries, arthritis, or the simple passage of time. [*Id.*]. Such reasons are valid and reasonable. *See Boockvar*, 2020 WL 5554644, at \*34 (Wecht, J. concurring) (“Signature comparison is a process fraught with the risk of error and inconsistent application, especially when conducted by lay people.”).

Secretary Boockvar further asserts that signature comparison is justified for in-person voting, but not mail-in or absentee voting, because the in-person voter is notified of his or her signature deficiency, and afforded an opportunity to cure. [ECF 549-2, pp. 19-20, ¶¶ 66-68 (explaining that in-person voters can be immediately notified of the signature deficiency, but mail-in/absentee voters cannot)]. Secretary Boockvar's justifications are consistent with the Election Code's framework.

When a voter votes in person, he or she signs the voter's certificate, and the election official immediately, in the voter's presence, verifies the signature. 25 P.S. § 3050(a.3)(1)-(2). If the election official finds the signature to be problematic, the in-person voter is told as such. *Id.* at § 3050(a.3)(2). Notably, however, the in-person voter may still cast a ballot. *Id.* (“[I]f the signature on the voter's certificate ... shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason[.]”). The in-person voter whose signature is questioned must, after casting the ballot, “produce at least one qualified elector of the election district as a witness, who shall make affidavit of his identity or continued residence in the election district.” *Id.* at § 3050(d). Thus, the in-person voter whose signature is not verified is immediately notified, is still allowed to cast

a ballot, and is given the opportunity to remedy the signature-deficiency.

In contrast, a voter who casts a mail-in or absentee ballot cannot be afforded this opportunity. Absentee and mail-in ballots are kept in “sealed or locked containers” until they are “canvassed by the county board of elections.” 25 P.S. § 3146.8(a). The pre-canvassing and canvassing cannot begin until Election Day. *Id.* at § 3146.8(g)(1.1)-(2). As such, the absentee and mail-in ballots cannot be verified until Election Day, regardless of when the voter mails the ballot. Further, even if there were sufficient time, a voter cannot cure these types of deficiencies on their mail-in or absentee ballot. *Boockvar*, 2020 WL 5554644, at \*20 (“[A]lthough the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the “notice and opportunity to cure” procedure sought by Petitioner.”).

Therefore, if mail-in and absentee ballots were subject to signature comparison, an election official—who is unstudied in the technical aspects of signature comparison—could deem a voter’s signature problematic and not count the ballot, which would effectively disenfranchise that voter. Unlike the in-person voter, the mail-in or absentee voter may not know that his or her signature was deemed inauthentic, and thus may be unable to promptly cure the deficiency even if he or she were aware.

Accordingly, the Court concludes that the inherent differences and opportunities afforded to in-person voters compared to mail-in and absentee voters provides sufficient reason to treat such voters differently regarding signature comparison. The Court concludes that the lack of signature comparison for mail-in and absentee ballots is neither arbitrary, nor burdens Plaintiffs’ equal-protection rights.

For these reasons, the Court will dismiss Plaintiffs’ federal equal-protection claims related to signature comparison.

**3. The Election Code provisions related to signature comparison satisfy *Anderson-Burdick*.**

Finally, even assuming the Election Code's absence of a signature-comparison requirement imposes some burden on Plaintiffs' constitutional rights, Plaintiffs' constitutional claims still fail.

As discussed above with respect to Defendants' drop-box implementation, *Anderson-Burdick* does not apply neatly to this claim either. This is because Plaintiffs aren't challenging a specific regulation affecting their right to vote, but are instead challenging the *lack* of a restriction on someone else's right to vote. This makes both the burden difficult to assess and also the state's interests in *not* doing something more abstract. As such, the Court finds that the proper application of the *Anderson-Burdick* framework here includes weighing the burden involving Plaintiffs' risk of vote dilution against the state's interests and overall plan in preventing against voter fraud, including with respect to forged mail-in ballots.

Weighing these considerations compels a conclusion that there is no constitutional violation here. With respect to any burden on Plaintiffs' right to vote, that burden is slight, at best. A failure to engage in a signature comparison may, crediting Plaintiffs' evidence, increase the risk of voter fraud. But even then, this remains a largely speculative concern. This burden too is lessened by the numerous other regulations imposed by the Election Code, including the detailed verification procedure as to the information on mail-in ballots (discussed above), and the deterrence furthered by criminal sanctions for those engaging in such voter fraud.

Against these burdens, the Commonwealth has precise and weighty interests in verifying ballot applications and ballots in an appropriate manner to ensure that they are accurate. As discussed above, the Commonwealth determined that the risk of disenfranchising mail-in and absentee voters, did not justify signature comparison for those voters. [ECF 549-2, pp. 19-20, ¶¶ 66-69]. Unlike for in-person voters, there are other means of identifying and verifying mail-in and

absentee voters, such as having to specifically apply for a mail-in or absentee ballot and provide various categories of identifying information. [ECF 504-12, 55:19-56:19]; 25 P.S. §§ 3146.2(b), 3150.12(b). And ultimately, due to the slight burden imposed on Plaintiffs, Pennsylvania's regulatory interests in a uniform election pursuant to established procedures is sufficient to withstand scrutiny. *Timmons*, 520 U.S. at 358.

The General Assembly opted not to require signature comparisons for mail-in and absentee ballots and applications. And as previously discussed, absent extraordinary reasons to, the Court is not to second-guess the legislature.

**IV. Defendants and Intervenors are entitled to summary judgment on Plaintiffs' as-applied, federal constitutional challenge to the county-residency requirement for poll watchers.**

Plaintiffs next take exception with the provision of the Election Code that restricts a registered voter from serving as a poll watcher outside the county of his or her residence. [ECF 461, ¶ 217].

Plaintiffs argue that “[a]s applied to the 2020 General Election, during the midst of the COVID-19 pandemic, Pennsylvania’s residency requirement for watchers violates equal protection.” [ECF 509, p. 58]. That’s because, according to Plaintiffs, the “current pandemic severely challenges the ability of parties to staff watchers[.]” [*Id.* at p. 60]. And not having enough poll watchers in place “puts into danger the constitutionally-guaranteed right to a transparent and undiluted vote,” [*id.* at p. 68], by “fostering an environment that encourages ballot fraud or tampering,” [ECF 461, ¶ 256]. As such, Plaintiffs believe that the county residency requirement “is not rationally connected or reasonably related to any interest presented by the Commonwealth.” [ECF 509, p. 63].

Defendants and Intervenors have a markedly different view.

As an initial matter, the Democratic Intervenors argue that Plaintiffs “are precluded from relitigating their claim that the Commonwealth lacks a constitutionally recognized basis for imposing a county-residence restriction for poll watchers” based on the doctrine articulated in *England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411 (1964). [ECF 529, p. 16]. That doctrine requires that after a federal court has abstained under *Pullman*, the plaintiff must expressly reserve the right to litigate any federal claims in federal court while litigating state-law issues in state court. *England*, 375 U.S. at 419, 421-22. Defendants and Intervenors contend that Plaintiffs (specifically, the Trump Campaign, the RNC, and the Republican Party) failed to do so in the proceedings before the Pennsylvania Supreme Court.

And if the *England* doctrine doesn’t bar this claim, Defendants and Intervenors argue that “Plaintiffs’ as-applied challenge simply fails to state a constitutional claim.” *See, e.g.*, [ECF 547, p. 65]. They believe that the county-residency requirement does not infringe on a fundamental right or regulate a suspect classification (such as race, sex, or national origin). [*Id.*]. As a result, the Commonwealth need only provide a rational basis for the requirement, which Defendants and Intervenors believe the Commonwealth has done. [*Id.*].

After carefully reviewing the record and considering the parties’ arguments and evidence, the Court finds that the *England* doctrine does not bar Plaintiffs’ ability to bring this claim. Even so, after fully crediting Plaintiffs’ evidence, the Court agrees with Defendants and Intervenors that Plaintiffs’ as-applied challenge fails on the merits.

**A. The *England* doctrine does not bar Plaintiffs’ federal challenge to the county-residency requirement.**

In *England*, the Supreme Court established that after a federal court abstains under *Pullman*, “if a party freely and without reservation submits his federal claims for decision by the state courts, litigates them there, and has them decided there, then ... he has elected to forgo his right to return to the District Court.” 375 U.S. at 419. To



reserve those rights, a plaintiff forced into state court by way of abstention must inform the state court that he is exposing the federal claims there only to provide the proper context for considering the state-law questions. *Id.* at 421. And that “he intends, should the state court[] hold against him on the question of state law, to return to the District Court for disposition of his federal contentions.” *Id.* Essentially, in *England*, the Supreme Court created a special doctrine of *res judicata* for *Pullman* abstention cases.

The Democratic Intervenors argue that because none of the three Plaintiffs who participated in the Pennsylvania Supreme Court case as either intervenors or *amici* “reserved the right to relitigate [Plaintiffs’ poll-watcher claim] in federal court,” they are now “precluded” from doing so. [ECF 529, p. 17]. The Court is not convinced that this doctrine bars Plaintiffs’ claim for at least two reasons.

First, in its original abstention decision, the Court noted that “[n]one of Plaintiffs’ poll-watching claims directly ask the Court to construe an ambiguous state statute.” [ECF 409, p. 24]. Instead, these claims resided in a *Pullman* gray area, because they were only indirectly affected by other unsettled state-law issues. In light of that, the Court finds that the *England* doctrine was not “triggered,” such that Plaintiffs needed to reserve their right to return to federal court to litigate the specific as-applied claim at issue here.

Second, even if it were triggered, not all of the Plaintiffs here were parties in the Pennsylvania Supreme Court case, and only one (the Republican Party) was even given intervenor status. But even the Republican Party, acting as an intervenor, did not have an opportunity to develop the record or present evidence relevant to its as-applied challenge. Thus, this claim wasn’t “fully litigated” by any of the Plaintiffs, which is a necessary condition for the claim to be barred under the *England* doctrine. *Cf. Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064, 1073 (3d Cir. 1990) (explaining that a litigant “may not relitigate an issue s/he fully and unreservedly litigated in state court”).



Thus, Plaintiffs are not precluded by the *England* doctrine from bringing their remaining as applied poll-watcher claim. The Court will now address the claim on the merits.

**B. The county-residency requirement, as applied to the facts presented and the upcoming general election, does not violate the U.S. Constitution.**

Originally, Plaintiffs raised a facial challenge to the county-residency requirement under 25 P.S. § 2687. That is, Plaintiffs first took the position that there was no conceivable constitutional application of the requirement that an elector be a resident of the county in which he or she seeks to serve. But, as Plaintiffs' concede, that facial challenge is no longer viable in light of the Pennsylvania Supreme Court's recent decision. [ECF 448, p. 10]. As a result, Plaintiffs now focus solely on raising an as-applied challenge to the county-residency requirement.

"[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010).

At a fundamental level, a "facial attack tests a law's constitutionality based on its text alone and does not consider the facts or circumstances of a particular case. *United States v. Marcavage*, 609 F.3d 264, 273 (3d Cir. 2010). By contrast, an "as-applied attack" on a statute "does not contend that a law is unconstitutional as written but that its application to a particular person under particular circumstances deprived that person of a constitutional right." *Id.* The distinction between facial and an as-applied attack, then, "goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Citizens United*, 558 U.S. at 331; *see also Bruni v. City of Pittsburgh*, 824 F.3d 353, 362 (3d Cir. 2016) ("The distinction between facial and as-applied constitutional challenges, then, is of critical importance in determining the remedy to be provided).

Because the distinction is focused on the available remedies, not the substantive pleading requirements, “[t]he substantive rule of law is the same for both challenges.” *Edwards v. D.C.*, 755 F.3d 996, 1001 (D.C. Cir. 2014); *see also Pursuing Am.’s Greatness v. Fed. Election Comm’n*, 831 F.3d 500, 509, n.5 (D.C. Cir. 2016) (“Indeed, the substantive rule of law is the same for both as-applied and facial First Amendment challenges.”) (cleaned up); *Legal Aid Servs. of Or. v. Legal Servs. Corp.*, 608 F.3d 1084, 1096 (9th Cir. 2010) (“The underlying constitutional standard, however, is no different [in an as-applied challenge] th[a]n in a facial challenge.”).

“In other words, *how* one must demonstrate the statute’s invalidity remains the same for both type of challenges, namely, by showing that a specific rule of law, usually a constitutional rule of law, invalidates the statute, whether in a personal application or to all.” *Brooklyn Legal Servs. Corp. v. Legal Servs. Corp.*, 462 F.3d 219, 228 (2d Cir. 2006), *abrogated on other grounds by Bond v. United States*, 564 U.S. 211 (2011).

In determining whether a state election law violates the U.S. Constitution, the Court must “first examine whether the challenged law burdens rights protected by the First and Fourteenth Amendments.” *Patriot Party of Allegheny Cnty. v. Allegheny Cnty. Dep’t of Elections*, 95 F.3d 253, 258 (3d Cir. 1996). “Where the right to vote is not burdened by a state’s regulation on the election process, ... the state need only provide a rational basis for the statute.” *Cortés*, 218 F. Supp. 3d at 408. The same is true under an equal protection analysis. “If a plaintiff alleges only that a state treated him or her differently than similarly situated voters, without a corresponding burden on the fundamental right to vote, a straightforward rational basis standard of review should be used.” *Obama*, 697 F.3d at 428 (6th Cir. 2012); *see also Biener*, 361 F.3d at 214-15 (applying rational basis where there was no showing of an “infringement on the fundamental right to vote.”); *Donatelli*, 2 F.3d at 515 (“A legislative classification that does not affect a suspect category or infringe on a fundamental constitutional right must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” (cleaned up)).

But where the law imposes at least some burden on protected rights, the court “must gauge the character and magnitude of the burden on the plaintiff and weigh it against the importance of the interests that the state proffers to justify the burden.” *Patriot Party*, 95 F.3d at 258 (citations omitted).

Consistent with the Pennsylvania Supreme Court’s recent decision, but now based on a complete record, this Court finds that the county-residency requirement for poll watching does not, as applied to the particular circumstances of this election, burden any of Plaintiffs’ fundamental constitutional rights, and so a deferential standard of review should apply. *See Boockvar*, 2020 WL 5554644, at \*30. Under a rational-basis review and considering all the relevant evidence before the Court, the county-residency requirement is rational, and thus constitutional. But even if the requirement burdened the right to vote, that burden is slight—and under the *Anderson-Burdick* test, the Commonwealth’s interests in a county-specific voting system, viewed in the context of its overall polling-place security measures, outweigh any slight burden imposed by the county-residency restriction.

**1. The county-residency requirement neither burdens a fundamental right, including the right to vote, nor discriminates based on a suspect classification.**

At the outset, “there is no individual constitutional right to serve as a poll watcher[.]” *Boockvar*, 2020 WL 5554644, at \*30 (citing *Cortés*, 218 F. Supp. 3d at 408); *see also Dailey v. Hands*, No. 14-423, 2015 WL 1293188, at \*5 (S.D. Ala. Mar. 23, 2015) (“[P]oll watching is not a fundamental right protected by the First Amendment.”); *Turner v. Cooper*, 583 F. Supp. 1160, 1162 (N.D. Ill. 1983) (“Plaintiffs have cited no authority ..., nor have we found any, that supports the proposition that [the plaintiff] had a first amendment right to act as a poll watcher.”).

“State law, not the Federal Constitution, grants individuals the ability to serve as poll watchers and parties and candidates the authority to select those individuals.” *Cortés*, 218 F. Supp. 3d at 414; *see also Boockvar*, 2020 WL

5554644, at \*30 (the right to serve as a poll watcher “is conferred by statute”); *Tiryak v. Jordan*, 472 F. Supp. 822, 824 (E.D. Pa. 1979) (“The number of poll-watchers allowed, the manner of their appointment, their location within the polling place, the activities permitted and the amount of compensation allowed are all dictated by [25 P.S. § 2687].”). Given the nature of the right, “[i]t is at least arguable that the [Commonwealth of Pennsylvania] could eliminate the position of poll watcher” without offending the constitution. *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 364 (S.D.N.Y. 2007). In fact, one neighboring state—West Virginia—has eliminated poll watchers. W. Va. Code Ann. § 3-1-37; W. Va. Code Ann. § 3-1-41.

Nor does the county-residency requirement hinder the “exercise of the franchise.” *Cortés*, 218 F. Supp. 3d at 408. It doesn’t in any way limit voters’ “range of choices in the voting booth”—voters can still “cast ballots for whomever they wish[.]” *Id.* And, as Plaintiffs admit, the county-residency requirement doesn’t make the actual act of casting a vote any harder. *See* [ECF 524-24, 67:1-6]. Indeed, at least one of the plaintiffs here, Representative Joyce, testified that he was unaware of anyone unable to cast his ballot because of the county-residency requirement for poll watchers [*Id.*].

Finally, Plaintiffs’ claim that Pennsylvania’s “poll watching system” denies them “equal access” to the ability to observe polling places in the upcoming election does not, on its own, require the Court to apply anything other than rational-basis scrutiny. [ECF 551, p. 75]. To the extent Plaintiffs are denied equal access (which discussed below, as a matter of evidence, is very much in doubt), it isn’t based on their membership in any suspect classification.

For a state law to be subject to strict scrutiny, it must not only make a distinction among groups, but the distinction must be based on inherently suspect classes such as race, gender, alienage, or national origin. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-40 (1985). Political parties are not such a suspect class. *Greenville Republican Party*, 824 F. Supp. 2d at 669 (“[T]his court is unfamiliar with, and Plaintiffs have not cited, any authority categorizing political parties as an inherently suspect class.”) Likewise, “[c]ounty of residence

is not a suspect classification warranting heightened scrutiny[.]” *Short*, 893 F.3d at 679.

Plaintiffs don’t dispute this. [ECF 509, p. 65 (“To be clear, the right at issue here is the right of **candidates** and **political parties** to participate in an election where the process is transparent and open to observation and the right of the **voters** to participate in such election.” (emphasis in original))]. Rather, Plaintiffs’ theory as to how the county-residency requirement burdens the right to vote is based on the same threat of vote dilution by fraud that they have advanced with their other claims. In other words, Plaintiffs’ claim that the county-residency requirement for poll watchers limits the ability to find poll watchers, which, in turn, limits the ability for poll watchers to detect fraud and ballot tampering. [ECF 461, ¶¶ 256-57]. The resulting fraudulent or destroyed ballots cause the dilution of lawfully cast ballots. [ECF 509, pp. 64-68].

Thus, based on this theory, to establish the burden flowing from the county-residency restriction, Plaintiffs must show (1) the county-residency requirement prevents them from recruiting enough registered Republican poll watchers in every county, (2) the absence of these Republican poll watchers creates a material risk of increased fraud and ballot tampering, and (3) this risk of fraud and ballot tampering will dilute the value of honestly cast votes.

There are both factual and legal problems fatal to Plaintiffs’ vote-dilution theory in this context. Factually, Plaintiffs’ evidence, accepted as true, fails to establish that they cannot find enough poll watchers because of the county-residency requirement. But even if they made that factual showing, the inability to find poll watchers still does not burden any recognized constitutional right in a way that would necessitate anything more than deferential review.

**2. Plaintiffs’ evidence does not establish any factual predicate for their theory.**

Even accepting as true Plaintiffs’ version of events, Plaintiffs have not established that the county-residency

requirement is responsible for an inability to find enough poll watchers for at least two reasons.

First, Plaintiffs' evidence stops short of demonstrating any actual shortfall of desired poll watchers.

For example, in his declaration, James J. Fitzpatrick, the Pennsylvania Director for Election Day Operations for the Trump Campaign, stated only that the "Trump Campaign is **concerned** that due to the residency restriction, it will not have enough poll watchers in certain counties." [ECF 504-2, ¶ 25 (emphasis added)]. Notably, however, Mr. Fitzpatrick, even when specifically asked during his deposition, never identified a single county where the Trump Campaign has **actually** tried and failed to recruit a poll watcher because of the county-residency requirement. *See, e.g.*, [ECF 528-14, 261:21-25 ("Q: Which counties does the Trump campaign or the RNC contend that they will not be able to obtain what you refer to as full coverage of poll watchers for the November 2020 election? A: I'm not sure. I couldn't tell you a list.")].

Nor do any of Plaintiffs' other witness declarations establish an actual, inability to recruit poll watchers in any specific county. Representative Reschenthaler stated only that he was "concerned" that he "will not be able to recruit enough volunteers from Greene County to watch the necessary polls in Greene County." [ECF 504-6, ¶ 12].

Representative Kelly stated that he was "likely to have difficulty getting enough poll watchers from within Erie County to watch all polls within that county on election day." [ECF 504-5, ¶ 16]. "Likely difficulty" isn't the same as an "actual inability." That aside, the declaration doesn't provide any basis for Representative Kelly's assessment of this "likely difficulty." Nowhere does he detail the efforts he took (*e.g.*, the outreach he tried, prospective candidates he unsuccessfully recruited, and the like), nor did he explain why those efforts aren't likely to succeed in the future.

The same goes for Representative Thompson's declaration. Representative Thompson stated that during some unspecified prior elections, unidentified parties and

campaigns did not “always find enough volunteers to serve as poll watchers in each precinct.” [ECF 504-4, ¶ 20]. But this undetailed statement doesn’t help Plaintiffs’ cause, because it doesn’t identify the elections during which this was a problem, the parties and campaigns affected by a lack of poll watchers, or the precincts for which no poll watcher could be found.

Representative Joyce’s declaration doesn’t even express a “concern” about “likely difficulty” in recruiting poll watchers. He simply stated his belief that “[p]oll watchers play a very important role in terms of protecting the integrity of the election process[.]” [ECF 504-7, ¶ 11]. While he may be right, it has no bearing on whether Plaintiffs can find enough people to play that “very important role.”

Indeed, Plaintiffs’ prediction that they will “likely” have difficulty finding poll watchers is belied by the uncontested Pennsylvania voter registration statistics for 2019 that they included as an exhibit to their summary-judgment brief. [ECF 504-34]. Those statistics suggest that there is no shortage of registered Republican voters who are qualified to serve as poll watchers. [*Id.*]. Even in the three specific counties in which Plaintiffs warn that “Democratic registered voters out-number ... their Republican counterparts” (*i.e.*, Philadelphia, Delaware, and Centre), there are still significant numbers of registered Republicans. *See* [ECF 504-34 (Philadelphia – 118,003; Delaware – 156,867; and Centre – 42,903)]. And only a very small percentage of the registered Republicans would be needed to fill all the necessary poll watcher positions in those allegedly problematic counties. *See, e.g., Cortés*, 218 F. Supp. 3d at 410 (noting that, in 2016, the Republican Party “could staff the entirety of the poll watcher allotment in Philadelphia county with just 4.1% of the registered Republicans in the county.”). While Plaintiffs argue that these statistics don’t show the number of registered Republicans *willing* to serve as a poll watcher, the Court is hard pressed to see, nor do Plaintiffs show, how among the tens—or hundreds—of thousands of



registered Republicans in these counties, Plaintiffs are unable to find enough poll workers.<sup>20</sup>

Plaintiffs have not presented any evidence that would explain how, despite these numbers, they will have a hard time finding enough poll watchers. In fact, Plaintiffs' own expert, Professor Lockerbie, admits that "the Democratic and Republican parties might be able to meet the relevant criteria and recruit a sufficient population of qualified poll watchers who meet the residency requirements[.]" [ECF 504-20, ¶ 16].

Professor Lockerbie's report makes clear, and Plaintiffs appear to agree, that the county-residency requirement only potentially burdens other, "minor" political parties' ability to recruit enough poll watchers. [ECF 509, p. 61 (citing ECF 504-20, ¶¶ 16-17)]. Regardless, any burden on these third parties is not properly before the Court. They are not parties to this litigation, and so the Court doesn't know their precise identities, whether they have, in fact, experienced any difficulty in recruiting poll watchers, or, more fundamentally, whether they even want to recruit poll watchers at all.<sup>21</sup>

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<sup>20</sup> Plus, these figures do not even tell the whole story because they do not take into account the hundreds of thousands of voters who are registered to other parties who could also conceivably serve as poll watchers for the Trump Campaign and the candidate Plaintiffs. [504-34]. While that may not be the ideal scenario for Plaintiffs, they concede there's nothing in the Election Code that limits them to recruiting only registered voters from the Republican Party. [ECF 528-14, 267:23-268:1 (Q: And you don't have to be a registered Republican to serve as a poll watcher for the Trump campaign, do you? A: No.)]. To that point, the Trump Campaign utilized at least two Democrats among the poll watchers it registered in the primary. [ECF 528-15, P001648].

<sup>21</sup> To the extent that Plaintiffs are attempting to bring their claim on behalf of these third parties (which is unclear), they would lack standing to do so. Ordinarily, "a litigant must assert his or her own legal rights and interests and cannot rest a claim of relief on the legal rights or interests



Additionally, Plaintiffs failed to present evidence that connects the county-residency requirement to their inability to find enough poll watchers. To succeed on their theory Plaintiffs cannot just point to difficulty recruiting poll watchers, they need to also show that “Section 2687(b)

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of third parties.” *Powers v. Ohio*, 499 U.S. 400, 410 (1991). The only time a litigant can bring an action on behalf of a third party is when “three important criteria are satisfied.” *Id.* “The litigant must have suffered an ‘injury in fact,’ thus giving him or her a ‘sufficiently concrete interest’ in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party’s ability to protect his or her own interest.” *Id.* at 410-11 (cleaned up). Plaintiffs cannot satisfy the second or third criteria.

Plaintiffs claim that they “have a close relationship with these minor parties such that it will act as an effective advocate for the minor parties.” [ECF 551, p. 30]. It is hard to see how Plaintiffs can be said to have a close relationship with rival political parties who are their direct adversaries in the upcoming election.

Plaintiffs also argue that these “minor parties are hindered from protecting their own interests, particularly in this action when there are no minor party intervenors.” [*Id.*]. But that doesn’t hold water either. Just because these other parties have not asked to intervene, it does not mean they were incapable of intervening or seeking relief elsewhere. Indeed, these parties and their candidates have demonstrated time and again that they can raise their own challenges to election laws when they so desire, including by filing suit in federal district court. *See, e.g., Stein v. Cortés*, 223 F. Supp. 3d 423 (E.D. Pa. 2016) (Green Party Presidential candidate Jill Stein seeking recount); *Libertarian Party of Conn. v. Merrill*, No. 20-467, 2020 WL 3526922 (D. Conn. June 27, 2020 (seeking to enjoin Connecticut’s ballot access rules that required minor party candidates to petition their way onto the ballot); *Green Party of Ark. v. Martin*, 649 F.3d 675 (8th Cir. 2011) (challenging Arkansas’ ballot access laws).

is responsible for their purported staffing woes.” *Cortés*, 218 F. Supp. 3d at 410. Plaintiffs fail to show this, too.

Plaintiffs argue that the ongoing COVID-19 pandemic greatly reduces the number of people who would be willing to serve as a poll watcher, which further exacerbates the alleged problem caused by the county-residency requirement. [ECF 509, p. 60]. The primary problem with this argument, though, is that Plaintiffs have not presented any evidence to support it. Plaintiffs have not put forward a statement from a single registered voter who says they are unwilling to serve as a poll watcher due to concerns about contracting COVID-19.

Despite this shortcoming, the Court also acknowledges that COVID-19 generally has made it more difficult to do anything in person, and it is entirely plausible that the current pandemic will limit Plaintiffs from recruiting poll watchers to man polling places on election day. But that is likely true for just about every type of election rule and regulation. For example, the effects of the ongoing pandemic coupled with the requirement that the poll watcher be a registered voter (a requirement that unquestionably narrows the pool of potential candidates) would also make it harder to recruit poll watchers. There is no basis to find that the current public-health conditions, standing alone, render the county-residency requirement irrational or unconstitutional.

To bolster their concerns over COVID-19, Plaintiffs point to *Democratic Nat’l Committee v. Bostelmann*, No. 20-249, 2020 WL 5627186 (W.D. Wis. Sept. 21, 2020), where the court there enjoined Wisconsin’s statute that requires that each election official (*i.e.*, poll worker) be an elector of the county in which the municipality is located. That case is distinguishable in at least two important ways.

First, *Bostelmann* concerned poll **workers**, not poll **watchers**. *Id.* at \*7. The difference between the two is significant. Poll workers are a more fundamental and essential aspect of the voting process. Without poll workers, counties cannot even open polling sites, which creates the possibility that voters will be completely disenfranchised. In fact, in *Bostelmann*, the plaintiffs

presented evidence that Milwaukee was only able to open 5 of its normal 180 polling places. *Id.* A failure to provide voters a place to vote is a much more direct and established constitutional harm than the one Plaintiffs allege here.

Second, the plaintiffs in *Bostelmann* actually presented evidence that they were unable to find the poll workers they needed due to the confluence of the COVID-19 pandemic and the challenged restriction. *Id.* As discussed above, Plaintiffs here have presented no such evidence.

To succeed on summary judgment, Plaintiffs need to move beyond the speculative concerns they offer and into the realm of proven facts. But they haven't done so on two critical fronts—they haven't shown an actual inability to find the necessary poll watchers, or that such an inability is caused by the county-residency requirement. Because Plaintiffs have not pointed to any specific “polling place that Section 2687(b) prevents [them] from staffing with poll watchers,” Plaintiffs’ theory of burden is doomed at launch. *Cortés*, 218 F. Supp. 3d at 409.

**3. Even if Plaintiffs could establish a factual predicate for their theory, it would fail as a matter of law.**

As the Pennsylvania Supreme Court concluded last month, Plaintiffs’ “speculative claim that it is ‘difficult’ for both parties to fill poll watcher positions in every precinct, *even if true*, is insufficient to transform the Commonwealth’s uniform and reasonable regulation requiring that poll watchers be residents of the counties they serve into a non-rational policy choice.” *Boockvar*, 2020 WL 5554644, at \*30 (emphasis added).<sup>22</sup> The

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<sup>22</sup> The Sierra Club Intervenors argue this should end the analysis. [ECF 542, p. 14 (“Even ‘as applied,’ Plaintiffs’ claim has already been rejected”)]. While the Court finds the Pennsylvania Supreme Court’s apparent ruling on Plaintiffs’ as-applied challenge instructive, it is not outcome determinative. That is because the Pennsylvania Supreme Court did not have the benefit of the full evidentiary record that the Court has here.

fundamental constitutional principles undergirding this finding are sound.

Plaintiffs' only alleged burden on the right to vote is that Defendants' lawful imposition of a county-residency requirement on poll watching will result in an increased risk of voter irregularities (*i.e.*, ballot fraud or tampering) that will, in turn, potentially cause voter dilution. While vote dilution is a recognized burden on the right to vote in certain contexts, such as when laws are crafted that structurally devalue one community's or group of people's votes over another's, there is no authority to support a finding of burden based solely on a speculative, future possibility that election irregularities might occur. *See, e.g., Minnesota Voters*, 720 F.3d at 1033 (affirming dismissal of claims "premised on potential harm in the form of vote dilution caused by insufficient pre-election verification of EDRs' voting eligibility and the absence of post-election ballot rescission procedures"); *Common Cause Rhode Island v. Gorbea*, 970 F.3d 11, 15 (1st Cir. 2020) (rejecting the claim that a ballot witness signature requirement should not be enjoined during a pandemic because it would allegedly increase the risk of voter fraud and put Republican candidates at risk); *Cook Cnty. Rep. Party v. Pritzker*, No. 20-4676, 2020 WL 5573059, at \*4 (N.D. Ill. Sept. 17, 2020) (denying a motion to enjoin a law expanding the deadline to cure votes because plaintiffs did not show how voter fraud would dilute the plaintiffs' votes).

Without a recognized burden on the right to vote, Plaintiffs' "argument that the defendants did not present an adequate justification is immaterial." *Green Party of Tennessee v. Hargett*, No. 16-6299, 2017 WL 4011854, at \*4 (6th Cir. May 11, 2017). That's because the Court need not apply the *Anderson-Burdick* framework, and its intermediate standards, in this situation. *See Donatelli*, 2 F.3d at 514 & n.10. Instead, just as the Pennsylvania Supreme Court held, the Commonwealth here need only show "that a rational basis exists [for the county-residency requirement] to be upheld. *Boockvar*, 2020 WL 5554644, at \*30 (citing *Cortes*, 218 F. Supp. 3d at 408); *see also Voting for Am., Inc. v. Andrade*, 488 F. App'x 890, 899 (5th Cir. 2012) (applying rational basis review as opposed to the *Anderson-Burdick* balancing test because state election law did not implicate or burden specific constitutional

rights); *McLaughlin v. North Carolina Bd. of Elections*, 65 F.3d 1215, 1227 (4th Cir. 1995) (concluding that a ballot access law “fails the *Anderson* balancing test only if it also does in fact burden protected rights”).

“Under rational-basis review, the challenged classification must be upheld ‘if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.’” *Donatelli*, 2 F.3d at 513 (quoting *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993)). “This standard of review is a paradigm of judicial restraint.” *FCC*, 508 U.S. at 314. It “is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.” *Id.* at 313. Nor is it the Court’s “place to determine whether the [General Assembly’s decisions] were the best decisions or even whether they were good ones.” *Donatelli*, 2 F.3d at 518.

Applying this deferential standard of review, the Pennsylvania Supreme Court found that given Pennsylvania’s “county-based scheme for conducting elections, it is reasonable that the Legislature would require poll watchers, who serve within the various counties of the state, to be residents of the counties in which they serve.” *Boockvar*, 2020 WL 5554644, at \*30 (citing *Cortés*, 218 F. Supp. 3d at 409). The Court agrees.

There are multiple reasons for this. As Secretary Boockvar advises, “[b]y restricting poll watchers’ service to the counties in which they actually reside, the law ensures that poll watchers should have some degree of familiarity with the voters they are observing in a given election district.” [ECF 549-2, p. 22, ¶ 78]. In a similar vein, Intervenors’ expert, Dr. Barreto, in his report, states that, voters are more likely to be comfortable with poll watchers that “they know and they recognize from their area.” [ECF 524-1, ¶40 (“Research in political science suggests that voters are much more comfortable and trusting of the process when they know or are familiar with poll workers who are from their community.”)]. When poll watchers come from the community, “there is increased trust in government, faith in elections, and voter turnout[.]” [*Id.*].

At his deposition, Representative Kelly agreed with this idea: “Yeah, I think – again, depending how the

districts are established, I think people are probably even more comfortable with people that they – that they know and they recognize from their area.” [ECF 524-23, 111:21-25].

Whether requiring poll watchers to be residents of the county in which they will serve is the best or wisest rule is not the issue before the Court. The issue is whether that rule is *reasonable* and rationally advances Pennsylvania’s legitimate interests. This Court, like multiple courts before it, finds that it does.

**4. Plaintiffs’ poll-watcher claim fails under the *Anderson-Burdick* framework.**

Even if rational-basis review did not apply and Plaintiffs had established a burden on their right to vote, their claim nonetheless fails under the *Anderson-Burdick* framework.

Viewing Plaintiffs’ evidence in the best possible light, at most, the county-residency requirement for poll watching places only an indirect, ancillary burden on the right to vote through an elevated risk of vote dilution.

Against this slight burden, the Commonwealth has sound interests in imposing a county-residency requirement, including, as noted above, local familiarity with rules, regulations, procedures, and the voters. Beyond this, in assessing the Commonwealth’s interest in imposing the county-based restriction, that interest must be viewed in the overall context of the Commonwealth’s security measures involving polling places that are designed to prevent against fraud and vote dilution.

As the court in *Cortés* recognized, “while poll watchers may help guard the integrity of the vote, they are not the Election Code’s only, or even best, means of doing so.” 218 F. Supp. 3d at 404.

Each county has the authority to investigate fraud and report irregularities to the district attorney. 25 P.S. § 2642(i). Elections in each district are conducted by a multimember election board, which is comprised of an election judge, a majority inspector, and a minor inspector.

25 P.S. § 2671. Each voting district may also use two overseers of election, who are appointed from different political parties by the Pennsylvania Courts of Common Pleas, and “carry greater authority than poll watchers.” *Cortés*, 218 F. Supp. 3d at 403 (citing 25 P.S. § 2685). “Election overseers have the right to be present with the officers of an election ‘within the enclosed space during the entire time the ... election is held.” *Id.* “Poll watchers have no such right,” they must “remain ‘outside the enclosed space’ where ballots are counted or voting machines canvassed.” *Id.* (citing 25 P.S. § 2687(b)). Election overseers can also challenge any person offering to vote, while poll watchers have no such authority. 25 P.S. § 2687. For these reasons, concerns “over potential voter fraud—whether perpetrated by putative electors or poll workers themselves—appear more effectively addressed by election overseers than poll watchers[.]” *Id.* at 406.

Plaintiffs complain that poll watchers may not be present during the pre-canvass and canvass meetings for absentee and mail-in ballots. But the Election Code provides that “authorized representatives” of each party **and** each candidate can attend such canvassing. 25 P.S. § 3146.8(g)(1.1), (2). That means if, for example, 15 Republican candidates appear on ballots within a particular county (between both the state and federal elections), there could be up to 16 “authorized representatives” related to the Republican Party (one for each candidate and one for the party as a whole) present during canvassing. Adding poll watchers to that mix would just be forcing unnecessary cooks into an already crowded kitchen.<sup>23</sup> *See* [ECF 549-2, p. 23, ¶ 83 (“If every certified

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<sup>23</sup> After the briefing on the cross-motions for summary judgment had closed, on October 6, 2020, Secretary Boockvar issued additional guidance, which Plaintiffs then raised with the Court the following day. [ECF 571]. This new guidance confirms that poll watchers cannot be present during the pre-canvassing and canvassing of mail-in ballots. It also makes clear that while the authorized representative can be present, the representative cannot make any challenges to the ballots. The Court finds that this new guidance has minimal relevance to the current disputes at issue here. The scope of duties of a representative is not before the Court. Of sole relevance



poll watcher within a county was permitted to attend the pre-canvass meeting, the elections staff could be overwhelmed by the vast numbers of poll watchers, and the pre-canvassing process could become chaotic and compromised.”)].

Further, Secretary Boockvar testified that Pennsylvania has adopted new voting systems that will provide an additional layer of security. [ECF 524-27, 237:21-238:11. That is, there will now be a paper trail in the form of verifiable paper ballots that will allow voters to confirm their choice, and the state recently piloted a new program that will help ensure that votes can be properly verified. [*Id.*].

On balance, then, it is clear that to the extent any burden on the right to vote exists, it is minimal. On the other hand, the Commonwealth’s interest in a county-specific voting system, including with county-resident poll watchers, is rational and weighty, particularly when viewed in the context of the measures that the Commonwealth has implemented to prevent against election fraud at the polls. As such, under the flexible *Anderson-Burdick* standard, Plaintiffs have failed to establish that the county-residency requirement is unconstitutional.

**5. The Court will continue to abstain from deciding where the Election Code permits poll watching to occur.**

Plaintiffs also appear to challenge any attempts to limit poll watching to “monitoring only in-person voting at the polling place on Election Day.” [ECF 461, ¶ 254]. That

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here is whether this new guidance changes how this Court weighs the burdens and benefits of the county-residency restriction for poll watchers. The Court finds that the representative’s inability to challenge mail-in ballots does appear to provide less protection to Plaintiffs; but in the grand election scheme, particularly in light of the role of the election overseers, the Court does not find the new guidance to materially upset the Commonwealth’s interests in its overall election-monitoring plan.



is, in their proposed order accompanying their Motion for Summary Judgement, Plaintiffs seek a declaration that they are “permitted to have watchers present at all locations where voters are registering to vote, applying for absentee or mail-in ballots, voting absentee or mail-in ballots, and/or returning or collecting absentee or mail-in ballots, including without limitation any satellite or early voting sites established by any county board of elections.” [ECF 503-1, ¶ 3].

Plaintiffs also argue that Secretary Boockvar’s October 6, 2020, guidance expressly, and unlawfully, prohibits poll watchers from being present at county election offices, satellite offices, and designated ballot-return sites. [ECF 571].

This challenge, however, is directly related to the unsettled state-law question of whether drop boxes and other satellite locations are “polling places” as envisioned under the Election Code. If they are, then Plaintiffs may be right in that poll watchers must be allowed to be present. However, the Court previously abstained under *Pullman* in addressing this “location” claim due to the unsettled nature of the state-law issues; and it will continue to do so. [ECF 459, p. 5 (“The Court will continue to abstain under *Pullman* as to Plaintiffs’ claim pertaining to the notice of drop box locations and, more generally, whether the ‘polling place’ requirements under the Election Code apply to drop-box locations. As discussed in the Court’s prior opinion, this claim involves unsettled issues of state law.”)].

Moreover, Plaintiffs have filed a lawsuit in the Court of Common Pleas of Philadelphia to secure access to drop box locations for poll watchers. The state court held that satellite ballot-collection locations, such as drop-box locations, are not “polling places,” and therefore poll watchers are not authorized to be present in those places. [ECF 573-1, at p. 12]. The Trump Campaign immediately filed a notice of appeal of that decision. Regardless of what happens on appeal, Plaintiffs appear to be on track to obtain resolution of that claim in state court. [ECF 549-22]. Although this isn’t dispositive, it does give the Court comfort that Plaintiffs will be able to seek timely resolution of these issues, which appear to be largely matters of state

law. *See Barr v. Galvin*, 626 F.3d 99, 108 n.3 (1st Cir. 2010) (“Though the existence of a pending state court action is sometimes considered as a factor in favor of abstention, the lack of such pending proceedings does not necessarily prevent abstention by a federal court.”).

**V. The Court will decline to exercise supplemental jurisdiction over Plaintiffs’ state-constitutional claims.**

In addition to the federal-constitutional claims addressed above, Plaintiffs assert violations of the Pennsylvania Constitution in Counts III, V, VII, and IX of the Second Amended Complaint. Because the Court will be dismissing all federal-constitutional claims in this case, it will decline to exercise supplemental jurisdiction over these state-law claims.

Under 28 U.S.C. § 1367(c)(3), a court “may decline to exercise supplemental jurisdiction over state law claims if it has dismissed all claims over which it has original jurisdiction[.]” *Stone v. Martin*, 720 F. App’x 132, 136 (3d Cir. 2017) (cleaned up). “It ‘must decline’ to exercise supplemental jurisdiction in such circumstances ‘unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for [exercising supplemental jurisdiction].” *Id.* (quoting *Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000) (emphasis in original)).

Courts have specifically applied this principle in cases raising federal and state constitutional challenges to provisions of the state’s election code. *See, e.g., Silberberg v. Bd. of Elections of New York*, 272 F. Supp. 3d 454, 480–81 (S.D.N.Y. 2017) (“Having dismissed plaintiffs’ First and Fourteenth Amendment claims, the Court declines to exercise supplemental jurisdiction over plaintiffs’ state law claims.”); *Bishop v. Bartlett*, No. 06-462, 2007 WL 9718438, at \*10 (E.D.N.C. Aug. 18, 2007) (declining “to exercise supplemental jurisdiction over the state constitutional claim” following dismissal of all federal claims and recognizing “the limited role of the federal judiciary in matters of state elections” and that North Carolina’s administrative, judicial, and political processes provide a

better forum for plaintiffs to seek vindication of their state constitutional claim), *aff'd*, 575 F.3d 419 (4th Cir. 2009).

Beyond these usual reasons to decline to exercise supplemental jurisdiction over the state-constitutional claims, there are two additional reasons to do so here.

First, the parties do not meaningfully address the state-constitutional claims in their cross-motions for summary judgment, effectively treating them as coextensive with the federal-constitutional claims here. The Pennsylvania Supreme Court, however, has held that Pennsylvania's "Free and Equal Elections" Clause is not necessarily coextensive with the 14th Amendment. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 812-813 (Pa. 2018) (referring to the Pennsylvania Free and Equal Elections Clause as employing a "separate and distinct standard" than that under the 14th Amendment to the U.S. Constitution). Given the lack of briefing on this issue and out of deference to the state courts to interpret their own state constitution, the Court declines to exercise supplemental jurisdiction.

Second, several Defendants have asserted a defense of sovereign immunity in this case. That defense does not apply to Plaintiffs' federal-constitutional claims under the *Ex parte Young* doctrine. *See Acosta v. Democratic City Comm.*, 288 F. Supp. 3d 597, 627 (E.D. Pa. 2018) ("Here, the doctrine of *Ex parte Young* applies to Plaintiffs' constitutional claims for prospective injunctive and declaratory relief, and therefore the First and Fourteenth Amendment claims are not barred by the Eleventh Amendment. Secretary Cortés, as an officer of the Pennsylvania Department of State, may be sued in his individual and official capacities 'for prospective injunctive and declaratory relief to end continuing or ongoing violations of federal law.'). But sovereign immunity may apply to the state-law claims, at least those against Secretary Boockvar. The possibility of sovereign immunity potentially applying here counsels in favor of declining supplemental jurisdiction to decide the state-law claims.

As such, all state-constitutional claims will be dismissed without prejudice.

**CONCLUSION**

For the foregoing reasons, the Court will enter judgment in favor of Defendants and against Plaintiffs on all federal-constitutional claims, decline to exercise supplemental jurisdiction over the remaining state-law claims, and dismiss all claims in this case. Because there is no just reason for delay, the Court will also direct entry of final judgment under Federal Rule of Civil Procedure 54(b). An appropriate order follows.

DATED this 10th day of October, 2020.

BY THE COURT:

/s/ J. Nicholas Ranjan  
United States District Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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SENATOR JAY COSTA, SENATOR ANTHONY H. WILLIAMS, SENATOR VINCENT J. HUGHES, SENATOR STEVEN J. SANTARSIERO, and SENATE DEMOCRATIC CAUCUS

Petitioners,

v.

SENATOR JACOB CORMAN III, SENATE PRESIDENT PRO TEMPORE, SENATOR CRIS DUSH, and SENATE SECRETARY-PARLIAMENTARIAN MEGAN MARTIN,

Respondents.

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COMMONWEALTH OF PENNSYLVANIA,  
PENNSYLVANIA DEPARTMENT OF STATE  
And VERONICA DEGRAFFENREID, Acting  
Secretary of the Commonwealth of  
Pennsylvania

Petitioners,

v.

SENATOR CRIS DUSH, SENATOR JAKE CORMAN, and THE PENNSYLVANIA STATE SENATE INTERGOVERNMENTAL OPERATIONS COMMITTEE,

Respondents,

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ARTHUR HAYWOOD and JULIE HAYWOOD

Petitioners,

v.

VERONICA DEGRAFFENREID, Acting

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**CASES CONSOLIDATED**

No. 310 MD 2021

No. 322 MD 2021

No. 323 MD 2021

**EXHIBIT**

**5**

Secretary of the Commonwealth of  
Pennsylvania

Respondent.

**AFFIDAVIT OF J. ALEX HALDERMAN IN SUPPORT OF  
MOTION FOR SUMMARY RELIEF OF PETITIONER-INTERVENORS**

I, J. Alex Halderman, declare and state as follows:

1. I am Professor of Computer Science and Engineering, Director of the Center for Computer Security and Society, and Director of the Software Systems Laboratory at the University of Michigan in Ann Arbor. I hold a Ph.D. (2009), a master's degree (2005), and a bachelor's degree (2003), *summa cum laude*, in computer science, all from Princeton University. My background, qualifications, and professional affiliations are set forth in my curriculum vitae, which is attached as Exhibit 1.

2. My research focuses on computer security and privacy, with an emphasis on problems that broadly impact society and public policy. Among my areas of research are software security, network security, data privacy, anonymity, computer forensics, and election cybersecurity. I have authored more than 90 articles and books, and my work has been cited in more than 12,500 scholarly publications. I have served as a peer-reviewer for more than 35 research conferences and workshops.

3. I have published numerous peer-reviewed research papers analyzing security problems in electronic voting systems used in U.S. states and in other countries. I have also developed methods for improving election security, including techniques for conducting rigorous post-election audits. I regularly teach courses in computer security, network security, and election cybersecurity at the graduate and undergraduate levels. I am the creator of Securing

Digital Democracy, a massive, open, online course about computer security and elections that has attracted more than 20,000 students.

4. I serve as co-chair of the State of Michigan’s Election Security Advisory Commission, by appointment of the Michigan Secretary of State. The commission was instrumental in introducing risk-limiting post-election audits in Michigan. I have also performed security testing of electronic voting systems for the Secretary of State of California. I have testified before the U.S. Senate Select Committee on Intelligence and before the U.S. House Appropriations Subcommittee on Financial Service and General Government on the subject of cybersecurity and U.S. elections.

5. I received a 2011 John Gideon Award for Election Integrity from the Election Verification Network, a 2019 Andrew Carnegie Fellowship, a 2015 Alfred P. Sloan Foundation Research Fellowship, the 2015 IRTF Applied Networking Research Prize, the 2017 Eric Aupperle Innovation Award, the 2015 University of Michigan College of Engineering 1938E Award for teaching and scholarship, and the 2020 University of Michigan President’s Award for National and State Leadership.

6. For purposes of making this declaration, I was supplied with the following documents:

- a. Subpoena Duces Tecum from the Intergovernmental Operations Committee to the Hon. Veronica Degraffenreid, Acting Secretary, Pennsylvania Department of State (Sept. 15, 2021) (“Legislative Subpoena”);
- b. Transcript of Senate Intergovernmental Operations Committee, *Public Hearing on the Investigation of the 2020 General Election and the 2021 Primary Election*

(Sept. 9, 2021), <https://intergovernmental.pasenategop.com/intergovernmental-090821/>; and

- c. Transcript of Senate Intergovernmental Operations Committee, *Voting Meeting – Consideration of A Motion To Authorize The Issuance of Subpoenas* (Sept. 15, 2021), <https://intergovernmental.pasenategop.com/intergovernmental-091521/>.
- d. I have also reviewed the website established by the Senate Intergovernmental Operations Committee entitled “PA Election Investigation – Restoring Faith in Our Elections” available at <https://paelectioninvestigation.com/>, including the “Frequently Asked Questions.”

7. My opinions are based on my experience, training, research, academic and professional literature, and review of materials provided to me by counsel including the documents listed in paragraph 6. All my opinions are expressed to a reasonable degree of professional certainty.

8. I have reviewed the Legislative Subpoena. My testimony specifically relates to Request Nos. 4-13, which seek various compilations of voter registration records.

9. Per Request No. 4, the Committee seeks

A complete list containing the name, date of birth, driver’s license number, last four digits of Social Security number, address, and date of last voting activity of all registered voters within the Commonwealth of Pennsylvania as of May 1, 2021, by County.

Request Nos. 5-13 are variations and duplicative versions of this request, essentially asking for the same data sorted by voting method and date of election, either for the November 2020 general election or the May 2021 primary.

10. During the hearing of the Senate Intergovernmental Operations Committee (“Committee”) held on September 15, 2021, Senator Dush, the chair of the Committee, directed



that “the production of requested records be made to the Office of General Counsel for the Senate Republican Caucus,” Tr. at 8:12-14, which is housed in the State Capitol and is a partisan office.

11. During the hearing of the Committee held on September 15, 2021, members of the Committee repeatedly questioned Senator Dush about why the committee would need Social Security and driver’s license numbers. Senator Dush stated that “those documents [*sic*] are part of any audit that the auditor general would conduct or anybody who is looking to verify the identity of individuals and their place of residence and their eligibility to vote.” Tr. at 17:4-8. In response to questioning about why the committee would need to “verify the identity” of individual voters, Senator Dush responded that “there have been questions regarding the validity of people who have voted, whether or not they exist.” Tr. at 17:16-18. Senator Dush admitted that he had no “proven allegations” that voters did not exist; rather, the Committee is “investigating the allegations to determine whether or not they are factual.” Tr. at 17:19-20. (“Again, we are not responding to proven allegations. We are investigating the allegations to determine whether or not they are factual”).

12. Similarly, on the Committee’s investigation website, the Committee states it needs the sensitive personal information for all Pennsylvania voters because it “is necessary to help identify any duplicate registrations, fake registrations, and any votes resulting from those ineligible registrations. Having that information allows us to complete a thorough investigation to ensure every vote cast in every election comes from a living, legal, registered voter.”<sup>1</sup> Further, the committee states, without detail, that “the information will be stored securely,” and “any

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<sup>1</sup> <https://paelectioninvestigation.com/> (visited Oct. 11, 2021, 10:52 AM) (under Frequently Asked Questions, click on “Why are lawmakers trying to get my Social Security number and Driver License number?”)

third-party vendor personnel will be required to sign a non-disclosure agreement to protect this information.”<sup>2</sup>

13. Senator Dush stated during the hearing that documents and data responsive to the subpoena would be “held in legal counsel’s office until such time as we have a finalized agreement and a contract for the investigator.” Tr. at 24: 10-12. Senator Dush stated that the data responsive to the subpoena would be secured “just like any other legal documents are secured within the senate legal offices.” Tr. at 24: 16-20.

14. Despite repeated questions from members of the Committee, Senator Dush was either unable to, or unwilling to, describe who would have access to the information. He acknowledged that the Senate Republican caucus general counsel, Senator Dush’s staff, perhaps outside counsel and at least one if not multiple outside vendors could possibly have access to the data. Tr. 20:12-25. Senator Dush was either unable to, or unwilling to, name the potential third-party vendors with whom the partisan office of General Counsel of the Senate Republican caucus was in discussion. Tr. at 21:16-17 (“I don’t have anybody that I am willing to share at this point”). Senator Dush admitted that the vendor engaged would have complete access to all the information that may be produced in response to this subpoena. Tr. at 24:7.

15. The Legislative Subpoena seeks multiple pieces of data that can be traced back to specific individuals. Such data is called “personally identifying information” or “PII” for short. Certain of the data points in the request, specifically driver’s license numbers and the last four digits of Social Security numbers, are particularly sensitive because those numbers are used to establish a person’s identity for purposes such as financial transactions, banking, and medical care, among others.

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<sup>2</sup> *Id.* (under Frequently Asked Questions, click on “What security measures will be in place to protect my personal information?”)

16. The requests seek the records of 8.7 million Pennsylvanians<sup>3</sup> from May 2021 and more than nine million from November 2020.<sup>4</sup> The volume of records aggregated together with the most sensitive personally identifying information—driver’s license numbers and the last four digits of Social Security numbers—significantly increases the risks to individuals from potential improper handling, storage, and security of the information and, at the same time, makes the information trove significantly more valuable to hackers and thieves.

17. The Senate Chair of the Intergovernmental Operations Committee, in his public statements during the hearing authorizing subpoena, did not disclose or announce a plan that would adequately secure the digital information. Rather, he stated that the data would be secured “just like any other legal documents are secured within the senate legal offices.” Sept. 15, 2021 Tr. at 24: 18-20. But this data is not “just like any other legal document.” Equating the data requested by the Legislative Subpoena to “any other legal document” fails to appreciate the significant risks and stark consequences of a data breach. In fact, the records of nine million Pennsylvania voters containing highly sensitive PII are not the same “as any other legal document,” and, as I will explain, storing them using procedures appropriate for typical legal documents would be completely inadequate.

18. The risk to individuals from disclosure of sensitive PII is that thieves can create false accounts in individuals’ names, access bank accounts and medical records, incur debt in a person’s name, and cause other severe disruptions to an individual’s life. An individual’s name and address coupled with the last four digits of their Social Security number and/or driver’s

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<sup>3</sup> Voter registration statistics as of May 21, 2020, <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/2021%20Primary%20VR%20Stats.pdf> and visited Oct. 6, 2021.

<sup>4</sup> Voter registration statistics as of November 2020 available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/2020%20Election%20VR%20Stats%20%20FINAL%20REVIEWED.pdf> visited Oct. 6, 2021.

license number is enough to allow criminals to pose as the individual and engage in various activities to enrich themselves at the expense of the individual.

19. Examples of the kinds of actions a criminal impostor could take include using the name address, zip code, and last four digits of a Social Security number to access credit card information and bank accounts, open new accounts, or take out loans in the individual's name and not pay, causing disruptions to credit history.<sup>5</sup> Scammers might also file fraudulent tax returns to receive refunds using Social Security numbers and can obtain medical services disrupting a patient's medical history. Even with only the last four digits, attackers can in many circumstances reconstruct a person's complete Social Security number. In 2009, researchers were able to correctly match complete Social Security numbers for 44% of individuals born after 1988 using the last four digits and birth data, based on the Social Security Administration's method of assigning numbers.<sup>6</sup> The data that would be released pursuant to the Legislative Subpoena also contains the birth dates that make this kind of reconstruction possible. Although the SSA adopted a less predictable method of assigning numbers in 2011 to make such attacks more difficult, the vast majority of Pennsylvania voters were assigned SSNs before this change, so their complete SSNs are susceptible to reconstruction from the data subject to the Subpoena.<sup>7</sup>

20. According to some estimates, it can take between 100 and 200 hours of an individual's time to recover from a stolen identity, especially when an impostor has opened new

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<sup>5</sup> See, e.g., *Social Security Numbers are Easy to Guess*, SCIENCE MAGAZINE, (July 6, 2009), <https://www.science.org/content/article/social-security-numbers-are-easy-guess>, discussing Acquisti, A. & Gross, R., *Predicting Social Security numbers from public data*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES (July 7, 2009), 106 (27): 10975-10980, <https://doi.org/10.1073/pnas.0904891106>.

<sup>6</sup> *Id.*

<sup>7</sup> *Social Security Number Randomization*, Social Security Administration, <https://www.ssa.gov/employer/randomization.html>.

accounts, applied for government benefits, or taken other actions in the name of the individual.<sup>8</sup> The Identity Theft Resource Center reports that identity theft victims suffer financial, emotional, and physical impacts of having their identity misused.<sup>9</sup> While the financial impacts vary, more than 21% of victims report that they lost more than \$20,000 to identity theft criminals.<sup>10</sup>

21. The database of nine million Pennsylvania voters including driver's license numbers and the last four digits of Social Security numbers is an attractive target for many reasons, not least its financial value. This data has a monetary value proportional to the number of people it represents, and it could command an even higher price because of the number of records that have multiple data points per individual. Voter registration records with name, address, date of birth, last four digits of Social Security number, and driver's license number would be a treasure trove of neatly packaged information that could command a high price on the "Dark Web." The Dark Web is a portion of the internet that contains black markets where illicit sales of exfiltrated data take place.<sup>11</sup> Most datasets available on the Dark Web are compiled from personal information obtained through various data breaches. According to IdentityForce, an identity-theft protection company, a person's driver's license number is worth \$28.<sup>12</sup> An adult's complete identity with a high credit score is worth \$1,200. Similarly, Experian, the credit reporting agency, estimates that a driver's license is worth \$20.<sup>13</sup> Some security companies are

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<sup>8</sup> See, e.g., *How to Protect yourself against the theft of your identity*, THE ECONOMIST, (Sept. 16, 2017), <https://www.economist.com/finance-and-economics/2017/09/14/how-to-protect-yourself-against-the-theft-of-your-identity>.

<sup>9</sup> *2021 Consumer Aftermath report: How Identity Crimes Impact Victims, Their Families, Friends and Workplaces*, Identity Theft Resource Center, May 2021, <https://www.idtheftcenter.org/identity-theft-aftermath-study/>.

<sup>10</sup> *Id.*, noting that the majority of victims lost less than \$500.

<sup>11</sup> Michael Chertoff, *A public policy perspective of the Dark Web*, JOURNAL OF CYBER POLICY 2(1):26-38, 2017, <https://www.tandfonline.com/doi/full/10.1080/23738871.2017.1298643>.

<sup>12</sup> Parent, D., *Shining a Light on the Dark Web with Identity Monitoring*, (Dec. 28, 2020), <https://www.identityforce.com/blog/shining-light-dark-web-identity-monitoring>.

<sup>13</sup> *Here's how much your personal information is Selling for on the Dark Web*, Experian, (Dec. 6, 2017), <https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/>.

reporting a black-market price increase for certain accounts because of the coronavirus pandemic.<sup>14</sup> The black-market value of the driver's license numbers alone, according to the above estimates, is between \$180 million and \$252 million.

22. The Committee has not announced or disclosed any concrete plans to secure the information following industry or government best practices, should they receive it. In light of the lack of specific security safeguards, the storage of this sensitive data in the Senate chambers and by unidentified outside contractors is extremely risky. Unauthorized parties could obtain access to the information in any of several ways including:

- i. Technical compromise of any weakly protected connected system (“hacking”);
- ii. Social engineering methods, such as phishing emails;
- iii. Breaches of physical security resulting in loss or theft of systems or storage media where the data is stored;
- iv. Bribery, blackmail, or extortion against anyone with access, including the most vulnerable employees; and
- v. Insider attacks by workers with access (e.g., agreeing to work for an outside consultant with the intention of stealing the data).

23. Insiders have leaked sensitive election data before in two recent instances. In August, security-sensitive election software and data from Mesa County, Colorado was posted online by conspiracy theorists after the County Clerk allegedly gave an unauthorized person

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<sup>14</sup> Simon Migliano, “Dark Web Market Price Index 2020: Covid-19 Edition,” Top10VPN, (Aug. 3, 2020), <https://www.top10vpn.com/research/dark-web-prices/2020/>.

access to the voting machine software.<sup>15</sup> The FBI is reportedly investigating the case. Also in August, confidential voting system data from Antrim County, Michigan, which was collected by the plaintiffs in an election fraud lawsuit, was distributed to members of the public at an event organized by MyPillow CEO Mike Lindell in apparent violation of a protective order in that case.<sup>16</sup> I have reviewed the data leaked in each instance and confirmed its authenticity. Both leaks potentially increase the risk of security breaches in future elections.

24. Regardless of the type of auditing to be done in Pennsylvania, there are technical information security measures that the Committee could put in place to try to limit the risks of a data breach, including data destruction policies, access control systems, data encryption, network isolation, and other techniques. Best practice for protecting sensitive PII such as that covered by the Subpoena would call for apply all these measures, but from my review of the available information, the Committee does not have the expertise or capacity to implement them.

25. The National Institute for Standards and Technology (“NIST”) has issued guidance on protecting PII that are widely practiced by U.S. Federal agencies as well as other organizations and businesses.<sup>17</sup> NIST’s recommendations include conducting privacy impact assessments, creating comprehensive PII handling policies and procedures, and providing training and education for workers handling PII.<sup>18</sup> They emphasize the importance of minimizing the use, collection, and retention of PII, and of anonymizing information where possible so that it

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<sup>15</sup> *Voting Data From A Colorado County Was Leaked Online. Now The Clerk Is In Hiding*, National Public Radio, (Sept. 3, 2021), <https://www.npr.org/2021/09/03/1033374723/voting-data-from-a-colorado-county-was-leaked-online-now-the-clerk-is-in-hiding>.

<sup>16</sup> Christina A. Cassidy, *Experts warn of dangers from breach of voter system software*, ASSOCIATED PRESS, (Aug. 28, 2021), <https://apnews.com/article/technology-software-election-2020-1341028212960b9b4ed713620d764629>.

<sup>17</sup> RSI Cybersecurity Solutions, *Best Practices for Protecting PII* (2020) (“While the [NIST] report is several years old, many of the recommendations serve as the foundation for PII protection plans today”).

<sup>18</sup> NIST Special Publication 800-122, *Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)*, (2010), <https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-122.pdf>.

is non-identifying. NIST also recommends specific operational safeguards to protect PII, including 17 forms of information security controls.<sup>19</sup>

26. The Commonwealth has a variety of information technology policies in place that impose extensive requirements on agencies and their contractors when handling sensitive data. ITP-SEC025 (“Proper Use and Disclosure of Personally Identifiable Information (PII)”)<sup>20</sup> applies to identifiers including driver’s license numbers and Social Security numbers. It requires agencies to “limit the generation, collection, storage, use, and disclosure of PII to the *minimum* PII necessary” [emphasis in the original]. It further requires that “access or use of such information is properly controlled, encrypted, and restricted to prevent unauthorized use or disclosure, and that the retention period is minimized” including as specified under ITP-SEC019 (“Policy and Procedures for Protecting Commonwealth Electronic Data”). Agencies and outside entities receiving PII must also comply with ITP-SEC024 (“IT Security Incident Reporting Policy”). All Commonwealth agencies, including the Pennsylvania Department of State, are required to adhere to these policies.

27. The Federal Trade Commission has issued recommendations for businesses to protect PII.<sup>21</sup> The FTCs recommended security measures include creating a detailed data security plan that encompasses protections for physical security and electronic security, including general network security, authentication, laptop security, firewalls, wireless and remote access, digital copiers, and breach detection, as well as providing employee training and assessing the security practices of contractors and service providers. Other recommendations including minimizing the

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<sup>19</sup> Id. at §4.3.

<sup>20</sup> Information Technology Policy, No. ITP-SEC025, Pennsylvania Office of Administration/Office for Information Technology, (Mar. 19. 2010), [https://www.oa.pa.gov/Policies/Documents/itp\\_sec025.pdf](https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf).

<sup>21</sup> Federal Trade Commission, *Protecting Personal Information: A Guide for Business*, (2016), [https://www.ftc.gov/system/files/documents/plain-language/pdf-0136\\_proteting-personal-information.pdf](https://www.ftc.gov/system/files/documents/plain-language/pdf-0136_proteting-personal-information.pdf).



collection and retention of PII, ensuring proper disposal of data when it is no longer needed, and creating a plan to respond to security incidents when they occur.

28. The Committee should, at a minimum, comply with the recommendations in NIST SP 800-122 and applicable Commonwealth IT policies described above and require any outside contractors to apply the FTC's guidance. Securing PII is not trivial: rather, implementing the correct processes to comply with expected industry standards are complex undertakings. The measures that would reduce (but not eliminate) the risk of a data breach for this amount of data must be installed in advance of receipt. To ensure compliance, the Committee should engage a reputable third-party firm to conduct a data security assessment. All of these measures will require substantial expenditures of time and taxpayer dollars. There is no evidence that the Committee has implemented or is in a position to adopt these measures, and until and unless they do, voters' private data turned over to the Committee would be highly vulnerable.

29. The purpose for seeking the subpoenaed records, according to the Committee, is to "help identify any duplicate registrations, fake registrations, and any votes resulting from those ineligible registrations." When these purposes are examined, disclosure of sensitive personal information is either unnecessary or creates unacceptable levels of risk. The first purpose, to identify duplicate registrations, is more efficiently conducted by the Department of State by comparing data points internally within the database and reporting the results to the Committee. Identifying fake registrations would require individual investigation of specific voters. Not only does such an effort raise serious issues about how voters would be selected for follow-up, but it would require massive numbers of staff. The work that would be required to perform that kind of examination by following up with individual voters would be extremely labor-intensive and time-consuming. Any contractor engaged would necessarily have to hire a

significant number of workers to perform the examination. Each worker with access to the dataset would represent an additional potential avenue for compromise, and thus the effort would pose substantial risk of a data leak.

30. The expansive level of unrestricted access contemplated by the Committee substantially increases the risk of disclosure of sensitive information. Each transmission of the data and each granting of access to workers who are charged with checking the authenticity of an undisclosed number of registered votes creates additional risk of attack for the data. With each access point, the risk of loss of a computer or laptop containing information or login credentials to access the information increases.

31. Given the Committee's statements about the storage and handling of this sensitive data, if the data were released to the Committee, the risk of a data breach would be high. The only explicitly stated forms of protection are contractual limits like non-disclosure agreements, which only carry penalties when a breach is discovered. Breaches of this sort are not easily detected and may not be detected until damage to individuals has already occurred. Even when a breach is detected before damage is caused, information in the wild often cannot be effectively contained, leading to potential future damage even after detection.

32. According to the Insurance Information Institute, the financial losses from identity theft were \$502.5 billion in 2019, increased by 42% to \$712.4 billion in 2020, and are forecast to increase again in 2021 to \$721.3 billion.<sup>22</sup> The Federal Trade Commission reports that in 2020, it received 4.7 million reports from consumers about complaints in the marketplace.<sup>23</sup>

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<sup>22</sup> *Facts & Statistics: Identity theft and cybercrime*, Insurance Information Institute, <https://www.iii.org/fact-statistic/facts-statistics-identity-theft-and-cybercrime> (visited Oct. 6, 2021).

<sup>23</sup> *Consumer Sentinel Network, Data Book 2020*, at 4, Federal Trade Commission, (Feb. 2021), [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn\\_annual\\_data\\_book\\_2020.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf).

Of those reports, 1.4 million (29%) were classified as identity theft. The most common complaint among identity theft complainants was that thieves had misused their information to apply for and receive government benefits.<sup>24</sup>

33. Disruptions to an individual's financial, medical, or government benefits is not the only possible negative consequence of the release of sensitive personal data to an entity ill-equipped to implement appropriate security measures. Voting and elections in Pennsylvania could experience serious disruptions. Fortunately, there is no evidence that Pennsylvania's voter registration database system has experienced a malicious intrusion in the past. However, the release of PII on the scale that the Legislative Subpoena would make possible—the records of nine million voters—could have devastating consequences.

34. In the scenario created by the Legislative Subpoena, everything a bad actor would need to disrupt voter registration records would be included in the data responsive to the Legislative Subpoena. Both the online and paper voter registration applications in Pennsylvania ask applicants for their driver's license number and, only if they do not have a driver's license number, they must provide the last four digits of the Social Security number. Anyone with access to the data requested in the Legislative Subpoena could change a voter's address or apply for a mail-in or absentee ballot in their name, among other things. These changes could prevent a voter from voting in some circumstances. For example, a mail-in ballot could be submitted in their name and the voter might not discover it unless and until they appear at the polls to vote. Other scenarios include changing the addresses of voters so that they are not listed in the poll book when they appear to vote. While large numbers of changes would raise red flags and likely be detected, persons intent on disrupting elections could be more subtle with their attacks and,

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<sup>24</sup> *Id.*

because the data has the records of nine million Pennsylvania voters, could execute an attack with surgical precision. If a data breach occurs and is discovered, it could result in the complete shutdown of online voter services in Pennsylvania, including the online voter registration application, while the Department of State determines how to recover from the breach.

35. In the first half of 2021, there were more than four data breaches per day in United States, with some predicting that breaches in 2021 could exceed the number recorded in 2020.<sup>25</sup>

36. When these records are compromised, that is, information that identifies a person has been lost or stolen as a result of a data breach, the mitigation of that data breach would be costly and not necessarily effective. Some of the mitigations that organizations have used include personnel trainings, financial and credit reporting service monitoring and notifications of possible unauthorized changes. IBM estimates the total cost of a single data breach to be a little less than \$4 million, but those estimates are based on a maximum breach size of 100,000 records.<sup>26</sup> A “mega breach,” consisting of between one million and ten million records, costs an average of \$50 million for the entity.<sup>27</sup> In the case of the records sought by the Committee, those costs would likely be borne by the Pennsylvania taxpayer.

37. The Legislative Subpoena is part of the Senate Republican caucus “audit” of the 2020 election. This investigation does not contain the elements of a credible and sound post-election audit. Best practices would require bipartisan participation in the design and conduct of the audit, transparent disclosure of the plans and processes surrounding the audit, the

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<sup>25</sup> *Facts & Statistics: Identity theft and cybercrime*, *supra* note 13.

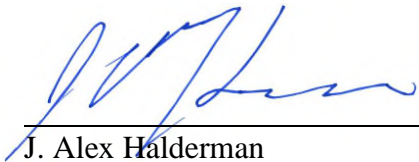
<sup>26</sup> *Cost of Data Breach Report 2020*, IBM Security and Ponemon Institute, <https://www.ibm.com/downloads/cas/RZAX14GX>.

<sup>27</sup> *Id.*

establishment and publication of a clear hypothesis to test, and the development and publication of written comprehensive procedures that govern the audit.<sup>28</sup>

38. Although certain kinds of audits, conducted properly and in a non-partisan manner, are an important safeguard for election integrity, the Committee’s proposal is without precedent and, absent rigorous safeguards, will raise severe risks for the privacy of every Pennsylvania voter’s personal information.

The preceding statements are true and correct and I understand that the statements made in this Declaration are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



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J. Alex Halderman

Date: October 13, 2021

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<sup>28</sup> See, e.g., J. Bydlak, et al., *Partisan Election Review Efforts in Five States*, Brennan Center for Justice, (July 8, 2021), <https://www.brennancenter.org/sites/default/files/2021-07/Partisan%20Election%20Review%20Efforts%20Across%20the%20United%20States%20in%202021%20-%2007.08.21.pdf>; Adler, W., *We need a Way to Distinguish Good Post-Election Audits from Bad Ones*, Center for Democracy & Technology, (Aug. 3, 2021), <https://cdt.org/insights/we-need-a-way-to-distinguish-good-post-election-audits-from-bad-ones/>.

# J. Alex Halderman

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July 22, 2021

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## Research Overview

My research focuses on computer security and privacy, with an emphasis on problems that broadly impact society and public policy. Topics that interest me include software security, network security, data privacy, anonymity, surveillance, election cybersecurity, censorship resistance, computer forensics, ethics, and cybercrime. I'm also interested in the interaction of technology with politics and international affairs.

### Selected Projects

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|--|---|
| '20: Human factors limit BMD verifiability         | '13: ZMap Internet-wide network scanner           |
| '19: Leading Michigan Election Security Taskforce  | '12: Widespread weak keys in network devices      |
| '18: Commercial launch of Censys, Inc.             | '11: Anticensorship in the network infrastructure |
| '17: Testimony to U.S. Senate Russia investigation | '10: Hacking Washington D.C.'s Internet voting    |
| '17: Weaknesses in TLS interception middleboxes    | '10: Vulnerabilities in India's e-voting machines |
| '16: U.S. presidential election recounts           | '09: Analysis of China's Green Dam censorware     |
| '16: Let's Encrypt HTTPS certificate authority     | '09: Fingerprinting paper with desktop scanners   |
| '16: DROWN: Attacking TLS with SSLv2               | '08: Cold-boot attacks on encryption keys         |
| '15: Weak Diffie-Hellman and the Logjam attack     | '07: California's "top-to-bottom" e-voting review |
| '14: Understanding Heartbleed's aftermath          | '07: Machine-assisted election auditing           |
| '14: Security problems in full-body scanners       | '06: The Sony rootkit: DRM's harmful side effects |
| '14: Analysis of Estonia's Internet voting system  | '03: Analysis of MediaMax "shift key" DRM         |

## Positions

- University of Michigan, Ann Arbor, MI  
Department of Electrical Engineering and Computer Science,  
Computer Science and Engineering Division  
*Professor ... (2016–present)*  
*Associate Professor ... (2015–2016)*  
*Assistant Professor ... (2009–2015)*  
*Director, Center for Computer Security and Society (2014–present)*
- ISRG; Co-founder and Board Member (2013–present)
- Censys; Co-founder and Chief Scientist (2017–2020)

## Education

- Ph.D. in Computer Science, Princeton University, June 2009  
Advisor: Ed Felten      Committee: Andrew Appel, Adam Finkelstein, Brian Kernighan, Avi Rubin  
Thesis: *Investigating Security Failures and their Causes: An Analytic Approach to Computer Security*
- A.B. in Computer Science, *summa cum laude*, Princeton University, June 2003

## Honors and Awards

- **Best Student Paper Award** of the 41st IEEE Symposium on Security and Privacy for “Can Voters Detect Malicious Manipulation of Ballot Marking Devices?” (2020)
- **President’s Award for National and State Leadership**, University of Michigan (2020)
- Andrew Carnegie Fellowship (2019)
- Merit Network’s Eric Aupperle Innovation Award (2017)  
 (“named for Merit’s first president, recognizes individuals that enhance their work by using networking and related technologies in exciting ways”)
- Pwnie Award in the category of “Best Cryptographic Attack” for “DROWN: Breaking TLS using SSLv2,” Black Hat 2016
- Finalist for 2016 Facebook Internet Defense Prize for “DROWN: Breaking TLS using SSLv2”
- Named one of Popular Science’s “**Brilliant 10**” (2015) (“each year *Popular Science* honors the brightest young minds reshaping science, engineering, and the world”)
- **Best Paper Award** of the 22nd ACM Conference on Computer and Communications Security for “Imperfect Forward Secrecy: How Diffie-Hellman Fails in Practice” (2015)
- Pwnie Award in the category of “Most Innovative Research” for “Imperfect Forward Secrecy: How Diffie-Hellman Fails in Practice,” Black Hat 2015
- IRTF **Applied Networking Research Prize** for “Neither Snow Nor Rain Nor MITM. . . An Empirical Analysis of Email Delivery Security” (2015)
- Alfred P. Sloan Research Fellowship (2015)
- University of Michigan College of Engineering 1938 E Award (2015) (“recognizes an outstanding teacher in both elementary and advanced courses, an understanding counselor of students who seek guidance in their choice of a career, a contributor to the educational growth of the College, and a teacher whose scholarly integrity pervades his/her service and the profession of Engineering”)
- Morris Wellman Faculty Development Assistant Professorship (2015)  
 (“awarded to a junior faculty member to recognize outstanding contributions to teaching and research”)
- **Best Paper Award** of the 14th ACM Internet Measurement Conference for “The Matter of Heartbleed” (2014)
- **Best Paper Award** of the 21st USENIX Security Symposium for “Mining Your Ps and Qs: Detection of Widespread Weak Keys in Network Devices” (2012)
- Runner-up for 2012 PET Award for Outstanding Research in Privacy Enhancing Technologies for “Telex: Anticensorship in the Network Infrastructure” (2012)
- John Gideon Memorial Award from the Election Verification Network for contributions to election verification (2011)
- **Best Student Paper Award** of the 17th USENIX Security Symposium for “Lest We Remember: Cold Boot Attacks on Encryption Keys” (2008)

- Pwnie Award in the category of “Most Innovative Research” for “Lest We Remember: Cold Boot Attacks on Encryption Keys,” Black Hat 2008
- Charlotte Elizabeth Procter Honorific Fellowship, Princeton University (2007) (“awarded in recognition of outstanding performance and professional promise, and represents high commendation from the Graduate School”)
- National Science Foundation Graduate Research Fellowship (2004–2007)
- **Best Paper Award** of the 8th International Conference on 3D Web Technology for “Early Experiences with a 3D Model Search Engine” (2003)
- Princeton Computer Science Department Senior Award (2003)
- Accenture Prize in Computer Science, Princeton University (2002)
- Martin A. Dale Summer Award, Princeton University (2000)
- USA Computing Olympiad National Finalist (1996 and 1997)

## Refereed Conference Publications

- [1] **Improving the Accuracy of Ballot Scanners Using Supervised Learning**  
Sameer Barretto, William Chown, David Meyer, Aditya Soni, Atreya Tata, and J. A. Halderman  
To appear in *Proc. 6th International Joint Conference on Electronic Voting (E-Vote-ID)*, Oct. 2021.
- [2] **Security Analysis of the Democracy Live Online Voting System**  
Michael A. Specter and J. A. Halderman  
To appear in *Proc. 30th USENIX Security Symposium*, Aug. 2021.
- [3] **Investigating Large-Scale HTTPS Interception in Kazakhstan**  
Ram Sundara Raman, Leonid Evdokimov, Eric Wustrow, J. A. Halderman and Roya Ensafi  
*Proc. 20th ACM Internet Measurement Conference (IMC)*, Oct. 2020.  
Acceptance rate: 25%, 53/216.
- [4] **Running Refraction Networking for Real**  
Benjamin VanderSloot, Sergey Frolov, Jack Wampler, Sze Chuen Tan, Irv Simpson, Michalis Kallitsis, J. A. Halderman, Nikita Borisov, and Eric Wustrow  
*Proc. 20th Privacy Enhancing Technologies Symposium (PETS)*, July 2020.  
Acceptance rate: 22%, 54/250.
- [5] **Characterizing Transnational Internet Performance and the Great Bottleneck of China**  
Pengxiong Zhu, Keyu Man, Zhongjie Wang, Zhiyun Qian, Roya Ensafi, J. A. Halderman, and Haixin Duan  
*Proc. ACM SIGMETRICS*, June 2020.
- [6] **Can Voters Detect Malicious Manipulation of Ballot Marking Devices?**  
Matthew Bernhard, Allison McDonald, Henry Meng, Jensen Hwa, Nakul Bajaj, Kevin Chang, and J. A. Halderman  
*Proc. 41st IEEE Symposium on Security and Privacy (“Oakland”)*, May 2020.  
Acceptance rate: 12%, 104/841.  
**Best student paper award.**



- [7] **Let's Encrypt: An Automated Certificate Authority to Encrypt the Entire Web**  
Josh Aas, Richard Barnes, Benton Case, Zakir Durumeric, Peter Eckersley, Alan Flores-López, J. A. Halderman, Jacob Hoffman-Andrews, James Kasten, Eric Rescorla, Seth Schoen, and Brad Warren  
*Proc. 26th ACM Conference on Computer and Communications Security (CCS)*, Nov. 2019.  
Acceptance rate: 16%, 117/722.
- [8] **Conjure: Summoning Proxies from Unused Address Space**  
Sergey Frolov, Jack Wampler, Sze Chuen Tan, J. A. Halderman, Nikita Borisov, and Eric Wustrow  
*Proc. 26th ACM Conference on Computer and Communications Security (CCS)*, Nov. 2019.  
Acceptance rate: 16%, 117/722.
- [9] **UnclearBallot: Automated Ballot Image Manipulation**  
Matthew Bernhard, Kartikeya Kandula, Jeremy Wink, and J. A. Halderman  
*Proc. 4th International Joint Conference on Electronic Voting (E-Vote-ID)*, October 2019.  
Acceptance rate: 29%, 13/45.
- [10] **On the Usability of HTTPS Deployment**  
Matthew Bernhard, Jonathan Sharman, Claudia Ziegler Acemyan, Philip Kortum, Dan S. Wallach, and J. A. Halderman  
*Proc. ACM Conference on Human Factors in Computing Systems (CHI)*, May 2019.  
Acceptance rate: 24%, 705/2958.
- [11] **403 Forbidden: A Global View of Geoblocking**  
Allison McDonald, Matthew Bernhard, Benjamin VanderSloot, Will Scott, J. A. Halderman, and Roya Ensafi  
*Proc. 18th ACM Internet Measurement Conference (IMC)*, October 2018.  
Acceptance rate: 24%, 43/174.
- [12] **Quack: Scalable Remote Measurement of Application-Layer Censorship**  
Benjamin VanderSloot, Allison McDonald, Will Scott, J. A. Halderman, and Roya Ensafi  
*Proc. 27th USENIX Security Symposium*, August 2018.  
Acceptance rate: 19%, 100/524.
- [13] **Tracking Certificate Misissuance in the Wild**  
Deepak Kumar, Zhengping Wang, Matthew Hyder, Joseph Dickinson, Gabrielle Beck, David Adrian, Joshua Mason, Zakir Durumeric, J. A. Halderman, and Michael Bailey  
*Proc. 39th IEEE Symposium on Security and Privacy ("Oakland")*, May 2018.  
Acceptance rate: 11%, 63/549.
- [14] **Initial Measurements of the Cuban Street Network**  
Eduardo Pujol, Will Scott, Eric Wustrow, and J. A. Halderman  
*Proc. 17th ACM Internet Measurement Conference (IMC)*, London, November 2017.  
Acceptance rate: 23%, 42/179.

- [15] **Public Evidence from Secret Ballots**  
Matthew Bernhard, Josh Benaloh, J. A. Halderman, Ronald L. Rivest, Peter Y. A. Ryan, Philip B. Stark, Vanessa Teague, Poorvi L. Vora, and Dan S. Wallach  
*Proc. 2nd International Joint Conference on Electronic Voting (E-Vote-ID)*, Bregenz, Austria, October 2017.
- [16] **Understanding the Mirai Botnet**  
Manos Antonakakis, Tim April, Michael Bailey, Matt Bernhard, Elie Bursztein, Jaime Cochran, Zakir Durumeric, J. A. Halderman, Luca Invernizzi, Michalis Kallitsis, Deepak Kumar, Chaz Lever, Zane Ma, Joshua Mason, Damian Menscher, Chad Seaman, Nick Sullivan, Kurt Thomas, and Yi Zhou  
*Proc. 26th USENIX Security Symposium*, Vancouver, BC, August 2017.  
Acceptance rate: 16%, 85/522.
- [17] **Security Challenges in an Increasingly Tangled Web**  
Deepak Kumar, Zane Ma, Zakir Durumeric, Ariana Mirian, Joshua Mason, J. A. Halderman, and Michael Bailey  
*Proc. 26th World Wide Web Conference (WWW)*, April 2017.  
Acceptance rate: 17%, 164/966.
- [18] **The Security Impact of HTTPS Interception**  
Zakir Durumeric, Zane Ma, Drew Springall, Richard Barnes, Nick Sullivan, Elie Bursztein, Michael Bailey, J. A. Halderman, and Vern Paxson  
*Proc. 24th Network and Distributed Systems Symposium (NDSS)*, February 2017.  
Acceptance rate: 16%, 68/423.
- [19] **Measuring Small Subgroup Attacks Against Diffie-Hellman**  
Luke Valenta, David Adrian, Antonio Sanso, Shaanan Cohney, Joshua Fried, Marcella Hastings, J. A. Halderman, and Nadia Heninger  
*Proc. 24th Network and Distributed Systems Symposium (NDSS)*, February 2017.  
Acceptance rate: 16%, 68/423.
- [20] **An Internet-Wide View of ICS Devices**  
Ariana Mirian, Zane Ma, David Adrian, Matthew Tischer, Thasphon Chuenchujit, Tim Yardley, Robin Berthier, Josh Mason, Zakir Durumeric, J. A. Halderman, and Michael Bailey  
*Proc. 14th IEEE Conference on Privacy, Security, and Trust (PST)*, Auckland, NZ, December 2016.
- [21] **Implementing Attestable Kiosks**  
Matthew Bernhard, J. A. Halderman, and Gabe Stocco  
*Proc. 14th IEEE Conference on Privacy, Security, and Trust (PST)*, Auckland, NZ, December 2016.
- [22] **A Security Analysis of Police Computer Systems**  
Benjamin VanderSloot, Stuart Wheaton, and J. A. Halderman  
*Proc. 14th IEEE Conference on Privacy, Security, and Trust (PST)*, Auckland, NZ, December 2016.

- [23] **Measuring the Security Harm of TLS Crypto Shortcuts**  
Drew Springall, Zakir Durumeric, and J. A. Halderman  
*Proc. 16th ACM Internet Measurement Conference (IMC)*, Santa Monica, November 2016.  
Acceptance rate: 25%, 46/184.
- [24] **Towards a Complete View of the Certificate Ecosystem**  
Benjamin VanderSloot, Johanna Amann, Matthew Bernhard, Zakir Durumeric, Michael Bailey, and J. A. Halderman  
*Proc. 16th ACM Internet Measurement Conference (IMC)*, Santa Monica, November 2016.  
Acceptance rate: 25%, 46/184.
- [25] **DROWN: Breaking TLS using SSLv2**  
Nimrod Aviram, Sebastian Schinzel, Juraj Somorovsky, Nadia Heninger, Maik Dankel, Jens Steube, Luke Valenta, David Adrian, J. A. Halderman, Viktor Dukhovni, Emilia Käsper, Shaanan Cohney, Susanne Engels, Christof Paar, and Yuval Shavitt  
*Proc. 25th USENIX Security Symposium*, Austin, TX, August 2016.  
Acceptance rate: 16%, 72/463.  
**Tied for highest ranked submission.**  
Pwnie award for best cryptographic attack.  
Facebook Internet Defense Prize finalist.
- [26] **FTP: The Forgotten Cloud**  
Drew Springall, Zakir Durumeric, and J. A. Halderman  
*Proc. 46th IEEE/IFIP International Conference on Dependable Systems and Networks (DSN)*, Toulouse, June 2016.  
Acceptance rate: 22%, 58/259.
- [27] **Android UI Deception Revisited: Attacks and Defenses**  
Earlence Fernandes, Qi Alfred Chen, Justin Paupore, Georg Essl, J. A. Halderman, Z. Morley Mao, and Atul Prakash  
*Proc. 20th International Conference on Financial Cryptography and Data Security (FC)*, Barbados, February 2016.
- [28] **Imperfect Forward Secrecy: How Diffie-Hellman Fails in Practice**  
David Adrian, Karthikeyan Bhargavan, Zakir Durumeric, Pierrick Gaudry, Matthew Green, J. A. Halderman, Nadia Heninger, Drew Springall, Emmanuel Thomé, Luke Valenta, Benjamin VanderSloot, Eric Wustrow, Santiago Zanella-Béguelin, and Paul Zimmermann  
*Proc. 22nd ACM Conference on Computer and Communications Security (CCS)*, Denver, CO, October 2015.  
Acceptance rate: 19%, 128/659.  
**Best paper award. Perfect review score.**  
Pwnie award for most innovative research.  
CACM Research Highlight.

- [29] **Censys: A Search Engine Backed by Internet-Wide Scanning**  
Zakir Durumeric, David Adrian, Ariana Mirian, Michael Bailey, and J. A. Halderman  
*Proc. 22nd ACM Conference on Computer and Communications Security (CCS)*, Denver, CO, October 2015.  
Acceptance rate: 19%, 128/659.
- [30] **Neither Snow Nor Rain Nor MITM... An Empirical Analysis of Email Delivery Security**  
Zakir Durumeric, David Adrian, Ariana Mirian, James Kasten, Elie Bursztein, Nicholas Lidzborski, Kurt Thomas, Vijay Eranti, Michael Bailey, and J. A. Halderman  
*Proc. 15th ACM Internet Measurement Conference (IMC)*, Tokyo, October 2015.  
Acceptance rate: 26%, 44/169.  
**IRTF Applied Networking Research Prize winner.**
- [31] **The New South Wales iVote System: Security Failures and Verification Flaws in a Live Online Election**  
J. A. Halderman and Vanessa Teague  
*Proc. 5th International Conference on E-Voting and Identity (VoteID)*, Bern, Switzerland, September 2015.
- [32] **The Matter of Heartbleed**  
Zakir Durumeric, Frank Li, James Kasten, Johanna Amann, Jethro Beekman, Mathias Payer, Nicolas Weaver, David Adrian, Vern Paxson, Michael Bailey, and J. A. Halderman  
*Proc. 14th ACM Internet Measurement Conference (IMC)*, November 2014.  
Acceptance rate: 23%, 43/188  
**Best paper award.**  
Honorable mention for Best dataset award.
- [33] **Security Analysis of the Estonian Internet Voting System**  
Drew Springall, Travis Finkenauer, Zakir Durumeric, Jason Kitcat, Harri Hursti, Margaret MacAlpine, and J. A. Halderman  
*Proc. 21st ACM Conference on Computer and Communications Security (CCS)*, Scottsdale, AZ, November 2014.  
Acceptance rate: 19%, 114/585.  
**Highest ranked submission.**
- [34] **Efficiently Auditing Multi-Level Elections**  
Joshua A. Kroll, Edward W. Felten, and J. A. Halderman  
*Proc. 6th International Conference on Electronic Voting (EVOTE)*, Lochau, Austria, October 2014.
- [35] **Security Analysis of a Full-Body Scanner**  
Keaton Mowery, Eric Wustrow, Tom Wypych, Corey Singleton, Chris Comfort, Eric Rescorla, Stephen Checkoway, J. A. Halderman, and Hovav Shacham  
*Proc. 23rd USENIX Security Symposium*, San Diego, CA, August 2014.  
Acceptance rate: 19%, 67/350.

- [36] **TapDance: End-to-Middle Anticensorship without Flow Blocking**  
Eric Wustrow, Colleen Swanson, and J. A. Halderman  
*Proc. 23rd USENIX Security Symposium*, San Diego, CA, August 2014.  
Acceptance rate: 19%, 67/350.
- [37] **An Internet-Wide View of Internet-Wide Scanning**  
Zakir Durumeric, Michael Bailey, and J. A. Halderman  
*Proc. 23rd USENIX Security Symposium*, San Diego, CA, August 2014.  
Acceptance rate: 19%, 67/350.
- [38] **Elliptic Curve Cryptography in Practice**  
Joppe W. Bos, J. A. Halderman, Nadia Heninger, Jonathan Moore, Michael Naehrig, and Eric Wustrow  
*Proc. 18th Intl. Conference on Financial Cryptography and Data Security (FC)*, March 2014.  
Acceptance rate: 22%, 31/138.
- [39] **Outsmarting Proctors with Smartwatches: A Case Study on Wearable Computing Security**  
Alex Migicovsky, Zakir Durumeric, Jeff Ringenberg, and J. A. Halderman  
*Proc. 18th Intl. Conference on Financial Cryptography and Data Security (FC)*, March 2014.  
Acceptance rate: 22%, 31/138.
- [40] **Analysis of the HTTPS Certificate Ecosystem**  
Zakir Durumeric, James Kasten, Michael Bailey, and J. A. Halderman  
*Proc. 13th ACM Internet Measurement Conference (IMC)*, Barcelona, Spain, October 2013.  
Acceptance rate: 24%, 42/178.
- [41] **ZMap: Fast Internet-Wide Scanning and its Security Applications**  
Zakir Durumeric, Eric Wustrow, and J. A. Halderman  
*Proc. 22nd USENIX Security Symposium*, Washington, D.C., August 2013.  
Acceptance rate: 16%, 45/277.
- [42] **CAGE: Taming Certificate Authorities by Inferring Restricted Scopes**  
James Kasten, Eric Wustrow, and J. A. Halderman  
*Proc. 17th Intl. Conference on Financial Cryptography and Data Security (FC)*, April 2013.
- [43] **Mining Your Ps and Qs: Detection of Widespread Weak Keys in Network Devices**  
Nadia Heninger, Zakir Durumeric, Eric Wustrow, and J. A. Halderman  
*Proc. 21st USENIX Security Symposium*, pages 205–220, Bellevue, WA, August 2012.  
Acceptance rate: 19%, 43/222.  
**Best paper award.**  
Named one of *Computing Reviews*' Notable Computing Books and Articles of 2012.

- [44] **Attacking the Washington, D.C. Internet Voting System**  
Scott Wolchok, Eric Wustrow, Dawn Isabel, and J. A. Halderman  
In Angelos D. Keromytis, editor, *Financial Cryptography and Data Security (FC)*, volume 7397 of *Lecture Notes in Computer Science*, pages 114–128. Springer, 2012.  
Acceptance rate: 26%, 23/88.  
**Election Verification Network John Gideon Memorial Award.**
- [45] **Telex: Anticensorship in the Network Infrastructure**  
Eric Wustrow, Scott Wolchok, Ian Goldberg, and J. A. Halderman  
*Proc. 20th USENIX Security Symposium*, pages 459–474, San Francisco, CA, August 2011.  
Acceptance rate: 17%, 35/204.  
**Runner-up for 2012 PET Award** for Outstanding Research in Privacy Enhancing Technologies.
- [46] **Internet Censorship in China: Where Does the Filtering Occur?**  
Xueyang Xu, Z. Morley Mao, and J. A. Halderman  
In Neil Spring and George F. Riley, editors, *Passive and Active Measurement*, volume 6579 of *Lecture Notes in Computer Science*, pages 133–142. Springer, 2011.  
Acceptance rate: 29%, 23/79.
- [47] **Absolute Pwnage: Security Risks of Remote Administration Tools**  
Jay Novak, Jonathan Stribley, Kenneth Meagher, and J. A. Halderman  
In George Danezis, editor, *Financial Cryptography and Data Security (FC)*, volume 7035 of *Lecture Notes in Computer Science*, pages 77–84. Springer, 2011.  
Acceptance rate: 20%, 15/74.
- [48] **Security Analysis of India's Electronic Voting Machines**  
Scott Wolchok, Eric Wustrow, J. A. Halderman, Hari K. Prasad, Arun Kankipati, Sai Krishna Sakhamuri, Vasavya Yagati, and Rop Gonggrijp  
*Proc. 17th ACM Conference on Computer and Communications Security (CCS)*, pages 1–14. ACM, Chicago, IL, October 2010.  
Acceptance rate: 17%, 55/320.  
**Highest ranked submission.**
- [49] **Sketcha: A Captcha Based on Line Drawings of 3D Models**  
Steve Ross, J. A. Halderman, and Adam Finkelstein  
*Proc. 19th International World Wide Web Conference (WWW)*, pages 821–830. ACM, Raleigh, NC, April 2010.  
Acceptance rate: 12%, 91/754.
- [50] **Defeating Vanish with Low-Cost Sybil Attacks Against Large DHTs**  
Scott Wolchok, Owen S. Hofmann, Nadia Heninger, Edward W. Felten, J. A. Halderman, Christopher J. Rossbach, Brent Waters, and Emmett Witchel  
In *Proc. 17th Network and Distributed System Security Symposium (NDSS)*. Internet Society, San Diego, CA, February–March 2010.  
Acceptance rate: 15%, 24/156.

- [51] **Fingerprinting Blank Paper Using Commodity Scanners**  
William Clarkson, Tim Weyrich, Adam Finkelstein, Nadia Heninger, J. A. Halderman, and Edward W. Felten  
*IEEE Symposium on Security and Privacy ("Oakland")*, pages 301–314. IEEE, May 2009.  
Acceptance rate: 10%, 26/254.
- [52] **Lest We Remember: Cold-Boot Attacks on Encryption Keys**  
J. A. Halderman, Seth D. Schoen, Nadia Heninger, William Clarkson, William Paul, Joseph A. Calandrino, Ariel J. Feldman, Jacob Appelbaum, and Edward W. Felten  
*Proc. 17th USENIX Security Symposium*, pages 45–60, San Jose, CA, July 2008.  
Acceptance rate: 16%, 27/170.  
**Best student paper award.**  
Pwnie award for most innovative research.  
CACM Research Highlight.
- [53] **Harvesting Verifiable Challenges from Oblivious Online Sources**  
J. A. Halderman and Brent Waters  
*Proc. 14th ACM Conference on Computer and Communications Security (CCS)*, pages 330–341.  
ACM, Washington, D.C., October 2007.  
Acceptance rate: 18%, 55/302.
- [54] **Lessons from the Sony CD DRM Episode**  
J. A. Halderman and Edward W. Felten  
*Proc. 15th USENIX Security Symposium*, pages 77–92, Vancouver, BC, August 2006.  
Acceptance rate: 12%, 22/179.
- [55] **A Convenient Method for Securely Managing Passwords**  
J. A. Halderman, Brent Waters, and Edward W. Felten  
*Proc. 14th International World Wide Web Conference (WWW)*, pages 471–479. ACM, Chiba, Japan, May 2005.  
Acceptance rate: 14%, 77/550.
- [56] **New Client Puzzle Outsourcing Techniques for DoS Resistance**  
Brent Waters, Ari Juels, J. A. Halderman, and Edward W. Felten  
*Proc. 11th ACM Conference on Computer and Communications Security (CCS)*, pages 246–256.  
ACM, Washington, D.C., October 2004.  
Acceptance rate: 14%, 35/251.
- [57] **Early Experiences with a 3D Model Search Engine**  
Patrick Min, J. A. Halderman, Michael Kazhdan, and Thomas Funkhouser  
*Proc. 8th International Conference on 3D Web Technology (Web3D)*, pages 7–18. ACM, Saint Malo, France, March 2003.  
**Best paper award.**



## Book Chapters

[58] **Practical Attacks on Real-world E-voting**

J. A. Halderman

In Feng Hao and Peter Y. A. Ryan (Eds.), *Real-World Electronic Voting: Design, Analysis and Deployment*, pages 145–171, CRC Press, December 2016.

## Journal Publications

[59] **Imperfect Forward Secrecy: How Diffie-Hellman Fails in Practice**

David Adrian, Karthikeyan Bhargavan, Zakir Durumeric, Pierrick Gaudry, Matthew Green, J. A. Halderman, Nadia Heninger, Drew Springall, Emmanuel Thomé, Luke Valenta, Benjamin VanderSloot, Eric Wustrow, Santiago Zanella-Béguelin, and Paul Zimmermann  
*Communications of the ACM*, 61(1):106–114, 2019.

[60] **Lest We Remember: Cold-Boot Attacks on Encryption Keys**

J. A. Halderman, Seth D. Schoen, Nadia Heninger, William Clarkson, William Paul, Joseph A. Calandrino, Ariel J. Feldman, Jacob Appelbaum, and Edward W. Felten  
*Communications of the ACM*, 52(5):91–98, 2009.

[61] **A Search Engine for 3D Models**

Thomas Funkhouser, Patrick Min, Michael Kazhdan, Joyce Chen, J. A. Halderman, David P. Dobkin, and David Jacobs  
*ACM Transactions on Graphics (TOG)*, 22(1):83–105, 2003.

## Refereed Workshop Publications

[62] **Bernoulli Ballot-Polling: A Manifest Improvement for Risk-Limiting Audits**

Kellie Ottoboni, Matthew Bernhard, J. A. Halderman, Ronald L. Rivest, and Philip B. Stark  
*Proc. 4th Workshop on Advances in Secure Electronic Voting*, Feb. 2019.

[63] **An ISP-Scale Deployment of TapDance**

Sergey Frolov, Fred Douglas, Will Scott, Allison McDonald, Benjamin VanderSloot, Rod Hynes, Adam Kruger, Michalis Kallitsis, David G. Robinson, Nikita Borisov, J. A. Halderman, and Eric Wustrow  
*Proc. 7th USENIX Workshop on Free and Open Communications on the Internet (FOCI)*, Aug. 2017.

[64] **Content-Based Security for the Web**

Alexander Afanasyev, J. A. Halderman, Scott Ruoti, Kent Seamons, Yingdi Yu, Daniel Zappala, and Lixia Zhang  
*Proc. 2016 New Security Paradigms Workshop (NSPW)*, September 2016.

[65] **Umbra: Embedded Web Security through Application-Layer Firewalls**

Travis Finkenauer and J. A. Halderman

*Proc. 1st Workshop on the Security of Cyberphysical Systems (WOS-CPS)*, Vienna, Austria, September 2015.



- [66] **Replication Prohibited: Attacking Restricted Keyways with 3D Printing**  
Ben Burgess, Eric Wustrow, and J. A. Halderman  
*Proc. 9th USENIX Workshop on Offensive Technologies (WOOT)*, Washington, DC, August 2015.
- [67] **Green Lights Forever: Analyzing the Security of Traffic Infrastructure**  
Branden Ghena, William Beyer, Allen Hillaker, Jonathan Pevarnek, and J. A. Halderman  
*Proc. 8th USENIX Workshop on Offensive Technologies (WOOT)*, San Diego, CA, August 2014.
- [68] **Zippier ZMap: Internet-Wide Scanning at 10Gbps**  
David Adrian, Zakir Durumeric, Gulshan Singh, and J. A. Halderman  
*Proc. 8th USENIX Workshop on Offensive Technologies (WOOT)*, San Diego, CA, August 2014.
- [69] **Internet Censorship in Iran: A First Look**  
Simurgh Aryan, Homa Aryan, and J. A. Halderman  
*Proc. 3rd USENIX Workshop on Free and Open Communications on the Internet (FOCI)*, Washington, D.C., August 2013.
- [70] **Illuminating the Security Issues Surrounding Lights-Out Server Management**  
Anthony Bonkoski, Russ Bielawski, and J. A. Halderman  
*Proc. 7th USENIX Workshop on Offensive Technologies (WOOT)*, Washington, D.C., August 2013.
- [71] **Crawling BitTorrent DHTs for Fun and Profit**  
Scott Wolchok and J. A. Halderman  
*Proc. 4th USENIX Workshop on Offensive Technologies (WOOT)*, Washington, D.C., August 2010.
- [72] **Can DREs Provide Long-Lasting Security?**  
**The Case of Return-Oriented Programming and the AVC Advantage**  
Steve Checkoway, Ariel J. Feldman, Brian Kantor, J. A. Halderman, Edward W. Felten, and Hovav Shacham  
*Proc. 2009 USENIX/ACCURATE/IAVoSS Electronic Voting Technology Workshop / Workshop on Trustworthy Elections (EVT/WOTE)*, Montreal, QC, August 2009.
- [73] **You Go to Elections with the Voting System You Have:**  
**Stop-Gap Mitigations for Deployed Voting Systems**  
J. A. Halderman, Eric Rescorla, Hovav Shacham, and David Wagner  
In *Proc. 2008 USENIX/ACCURATE Electronic Voting Technology Workshop (EVT)*, July 2008.
- [74] **In Defense of Pseudorandom Sample Selection**  
Joseph A. Calandrino, J. A. Halderman, and Edward W. Felten  
*Proc. 2008 USENIX/ACCURATE Electronic Voting Technology Workshop (EVT)*, San Jose, CA, July 2008.
- [75] **Security Analysis of the Diebold AccuVote-TS Voting Machine**  
Ariel J. Feldman, J. A. Halderman, and Edward W. Felten  
*Proc. 2007 USENIX/ACCURATE Electronic Voting Technology Workshop (EVT)*, Washington, D.C., August 2007.

- [76] **Machine-Assisted Election Auditing**  
Joseph A. Calandrino, J. A. Halderman, and Edward W. Felten  
*Proc. USENIX/ACCURATE Electronic Voting Technology Workshop (EVT)*, Washington, D.C., August 2007.
- [77] **Privacy Management for Portable Recording Devices**  
J. A. Halderman, Brent Waters, and Edward W. Felten  
*Proc. 2004 ACM Workshop on Privacy in the Electronic Society (WPES)*, pages 16–24, ACM, Washington, D.C., October 2004.  
Acceptance rate: 22%, 10/45.
- [78] **Evaluating New Copy-Prevention Techniques for Audio CDs**  
J. A. Halderman  
In Joan Feigenbaum, editor, *Digital Rights Management*, volume 2696 of *Lecture Notes in Computer Science*, pages 101–117. Springer, 2003.

## Selected Other Publications

- [79] **Analysis of the Antrim County, Michigan November 2020 Election Incident**  
J. A. Halderman  
Expert report prepared for the State of Michigan, March 26, 2021.
- [80] **Elections Should be Grounded in Evidence, Not Blind Trust**  
Philip B. Stark, Edward Perez, and J. A. Halderman  
*Barrons*, January 4, 2021.
- [81] **Scientists say no credible evidence of computer fraud in the 2020 election outcome, but policymakers must work with experts to improve confidence**  
Matt Blaze, J. A. Halderman, Joseph Lorenzo Hall, *et al.*  
Public statement from election security experts, November 16, 2021.
- [82] **Michigan Election Security Advisory Commission Report and Recommendations**  
J. A. Halderman *et al.*  
Report prepared for the State of Michigan, October 2020.
- [83] **Internet Voting Is Happening Now—And it could destroy our elections**  
Rachel Goodman and J. A. Halderman  
*Slate*, January 15, 2020.
- [84] **U.S. House Testimony Regarding Federal Funding for Election Cybersecurity**  
J. A. Halderman  
Testimony before the U.S. House Appropriations Subcommittee on Financial Service and General Government, “Election Security: Ensuring the Integrity of U.S. Election Systems,” February 27, 2019.
- [85] **I Hacked an Election. So Can the Russians.**  
J. A. Halderman  
Video op/ed in collaboration with *The New York Times*, April 5, 2018.

- [86] **U.S. Senate Testimony Regarding Russian Interference in the 2016 U.S. Elections**  
J. A. Halderman  
Testimony before the U.S. Senate Select Committee on Intelligence, June 21, 2017.
- [87] **Here's How to Keep Russian Hackers from Attacking the 2018 Elections**  
J. A. Halderman and J. Talbot-Zorn  
*The Washington Post*, June 21, 2017.
- [88] **Want to Know if the Election was Hacked? Look at the Ballots**  
J. A. Halderman  
Posted on Medium, November 23, 2016. (Read by over a million people.)
- [89] **The Security Challenges of Online Voting Have Not Gone Away**  
Robert Cunningham, Matthew Bernhard, and J. A. Halderman  
*IEEE Spectrum*, November 3, 2016.
- [90] **TIVOS: Trusted Visual I/O Paths for Android**  
Earlence Fernandes, Qi Alfred Chen, Georg Essl, J. A. Halderman, Z. Morley Mao, and Atul Prakash  
Technical report, Computer Science and Engineering Division, University of Michigan, Ann Arbor, MI, May 2014.
- [91] **Tales from the Crypto Community:  
The NSA Hurt Cybersecurity. Now It Should Come Clean**  
Nadia Heninger and J. A. Halderman  
*Foreign Affairs*, October 23, 2013.
- [92] **Ethical Issues in E-Voting Security Analysis**  
David G. Robinson and J. A. Halderman  
In George Danezis, Sven Dietrich, and Kazue Sako, editors, *Financial Cryptography and Data Security*, volume 7126 of *Lecture Notes in Computer Science*, pages 119–130. Springer, 2011.  
Invited paper.
- [93] **To Strengthen Security, Change Developers' Incentives**  
J. A. Halderman  
*IEEE Security & Privacy*, 8(2):79–82, March/April 2010.
- [94] **Analysis of the Green Dam Censorware System**  
Scott Wolchok, Randy Yao, and J. A. Halderman  
Technical report, Computer Science and Engineering Division, University of Michigan, Ann Arbor, MI, June 2009.
- [95] **AVC Advantage: Hardware Functional Specifications**  
J. A. Halderman and Ariel J. Feldman  
Technical report, TR-816-08, Princeton University Computer Science Department, Princeton, New Jersey, March 2008.

- [96] **Source Code Review of the Diebold Voting System**  
J. A. Calandrino, A. J. Feldman, J. A. Halderman, D. Wagner, H. Yu, and W. Zeller  
Technical report, California Secretary of State’s “Top-to-Bottom” Voting Systems Review (TTBR),  
July 2007.
- [97] **Digital Rights Management, Spyware, and Security**  
Edward W. Felten and J. A. Halderman  
*IEEE Security & Privacy*, 4(1):18–23, January/February 2006.
- [98] **Analysis of the MediaMax CD3 Copy-Prevention System**  
J. A. Halderman  
Technical report, TR-679-03, Princeton University Computer Science Department, Princeton,  
New Jersey, October 2003.

## Selected Legal and Regulatory Filings

- [99] **Request for DMCA Exemption: Security Research**  
Petition to the U.S. Copyright Office of Ed Felten and J. Alex Halderman, represented by  
Elizabeth Field, Justin Manusov, Brett Hildebrand, Alex Kimata, and Blake Reid, regarding the  
Seventh Triennial Section 1201 Proceeding, 2017–18.  
(*Outcome*: Requested exemption granted in part.)
- [100] **Request for DMCA Exemption: Security Research**  
Petition to the Librarian of Congress of S. M. Bellovin, M. Blaze, E. W. Felten, J. A. Halderman,  
and N. Heninger, represented by Andrea Matwyshyn, regarding the U.S. Copyright Office  
2014–2015 DMCA Anticircumvention Rulemaking, Nov. 2014.  
(*Outcome*: Requested exemption granted in part.)
- [101] **Request for DMCA Exemption: Games with Insecure DRM and Insecure DRM Generally**  
Petition to the Librarian of Congress of J. A. Halderman, represented by B. Reid, P. Ohm, H.  
Surden, and J. B. Bernthal, regarding the U.S. Copyright Office 2008–2010 DMCA Anticircum-  
vention Rulemaking, Dec. 2008.  
(*Outcome*: Requested exemption granted in part.)
- [102] **Request for DMCA Exemption for Audio CDs with Insecure DRM**  
Petition to the Librarian of Congress of E. Felten and J. A. Halderman, represented by D.  
Mulligan and A. Perzanowski, regarding the U.S. Copyright Office 2005–2006 DMCA Anticir-  
cumvention Rulemaking, Dec. 2005.  
(*Outcome*: Requested exemption granted in part.)

## Patents

- [103] **Controlling Download and Playback of Media Content**  
Wai Fun Lee, Marius P. Schilder, Jason D. Waddle, and J. A. Halderman  
U.S. Patent No. 8,074,083, issued Dec. 2011.

[104] **System and Method for Machine-Assisted Election Auditing**  
Edward W. Felten, Joseph A. Calandrino, and J. A. Halderman  
U.S. Patent No. 8,033,463, issued Oct. 2011.

## Speaking

### Major Invited Talks and Keynotes

- **U.S. House Testimony Regarding Federal Funding for Election Cybersecurity**  
Testimony before the U.S. House Appropriations Subcommittee on Financial Service and General Government, February 27, 2019.
- **Election Cybersecurity Progress Report: Will the U.S. be Ready for 2020?**  
35c3, Leipzig, December 27, 2018.
- **Cyberattacks on Election Infrastructure**  
Keynote speaker, DIMVA 2018, Paris, June 29, 2018.
- **U.S. Senate Testimony Regarding Russian Interference in the 2016 U.S. Elections**  
Testimony before the U.S. Senate Select Committee on Intelligence, June 21, 2017.
- **Recount 2016: A Security Audit of the U.S. Presidential Election**  
Keynote talk, NDSS 2017, February 27, 2017.
- **Recount 2016: An Uninvited Security Audit of the U.S. Presidential Election**  
33c3, Hamburg, December 28, 2016.
- **Elections and Cybersecurity: What Could Go Wrong?**  
Keynote speaker, Merit Security Summit, Ypsilanti, MI, November 7, 2016.
- **Let's Encrypt**  
Invited speaker, TTI/Vanguard conference on Cybersecurity, Washington, D.C., Sept. 28, 2016.
- **Elections and Cybersecurity: What Could Go Wrong?**  
Keynote speaker, 19th Information Security Conference (ISC), Honolulu, September 9, 2016.
- **Internet Voting: What Could Go Wrong?**  
Invited speaker, USENIX Enigma, San Francisco, January 27, 2016.
- **Logjam: Diffie-Hellman, Discrete Logs, the NSA, and You**  
32c3, Hamburg, December 29, 2015.
- **The Network Inside Out: New Vantage Points for Internet Security**  
Invited talk, China Internet Security Conference (ISC), Beijing, September 30, 2015.
- **The Network Inside Out: New Vantage Points for Internet Security**  
Keynote speaker, ESCAR USA (Embedded Security in Cars), Ypsilanti, Michigan, May 27, 2015.
- **Security Analysis of the Estonian Internet Voting System**  
31c3, Hamburg, December 28, 2014.

- **The Network Inside Out: New Vantage Points for Internet Security**  
Keynote speaker, 14th Brazilian Symposium on Information Security and Computer Systems (SBSeg), Belo Horizonte, Brazil, November 4, 2014.
- **Empirical Cryptography: Measuring How Crypto is Used and Misused Online**  
Keynote speaker, 3rd International Conference on Cryptography and Information Security in Latin America (Latincrypt), Florianópolis, Brazil, September 2014.
- **Healing Heartbleed: Vulnerability Mitigation with Internet-wide Scanning**  
Keynote speaker, 11th Conference on Detection of Intrusions and Malware and Vulnerability Assessment (DIMVA), London, July 10, 2014.
- **Fast Internet-wide Scanning and its Security Applications**  
30c3, Hamburg, December 28, 2013.
- **Challenging Security Assumptions.** Three-part tutorial. 2nd TCE Summer School on Computer Security, Technion (Haifa, Israel), July 23, 2013.
- **Verifiably Insecure: Perils and Prospects of Electronic Voting**  
Invited talk, Computer Aided Verification (CAV) 2012 (Berkeley, CA), July 13, 2012.
- **Deport on Arrival: Adventures in Technology, Politics, and Power**  
Invited talk, 20th USENIX Security Symposium (San Francisco, CA), Aug. 11, 2011.
- **Electronic Voting: Danger and Opportunity**  
Keynote speaker, ShmooCon 2008 (Washington, D.C.), Feb. 15, 2008.

## Selected Talks

- **Election Security: Facts, Myths, and Fixes**  
Invited speaker, Washtenaw County League of Women Voters, April 14, 2021.
- **Let's Encrypt: An Automated Certificate Authority to Encrypt the Entire Web**  
Invited speaker, OWASP Copenhagen, November 25, 2019.
- **Cybersecurity and U.S. Elections**  
Invited speaker, Microsoft Election Law Security Roundtable, September 25, 2020; Invited speaker, U-M Florida Seminars, February 4, 2020; Invited speaker, CyberSec & AI Prague, October 25, 2019; Invited speaker, Indiana University Research, February 7, 2019; Invited speaker, Arizona State, January 16, 2019; Invited speaker, University of San Diego, November 16, 2018; Invited speaker, UMass Amherst, October 31, 2018; Invited speaker, U-M Alumni Association, October 18, 2018; Invited speaker, MIT EmTech, August 13, 2018; Invited speaker, DEFCON Voting Village, August 10, 2018; Invited speaker, U.S. Irvine Election Security Summit, Irvine, March 13, 2018; Invited speaker, Global Election Summit, San Francisco, May 17, 2017; Invited speaker, Wolverine Caucus Forum, Lansing, February 21, 2017; Invited speaker, CSE Science on Screen at Michigan Theater, Ann Arbor, January 25, 2017.
- **Congressional Briefing on Election Cybersecurity.**  
Hosted by Rep. Mike Quigley and Rep. John Katko; September 26, 2018.

- **Congressional Briefing on Election Cybersecurity.**  
Co-panelists: Harri Hursti, Tony Schaffer, Liz Howard, Shantiel Soeder, Dan Savickas; moderator: Trey Greyson. July 10, 2018.
- **Congressional Briefing: Hacked Voting Machine Demonstration.**  
Hosted by Senator Kamala Harris and Senator James Lankford. April 12, 2018.
- **Congressional Briefing: Strengthening Election Cybersecurity.**  
Co-panelists: Nicole Austin-Hillery, Tony Shaffer, Bruce Fein, Susan Greenhalgh, Shane Schoeller. October 19, 2017.
- **The Security Impact of HTTPS Interception.** Invited talk, GOTO Copenhagen, Oct. 2, 2017.
- **Congressional Briefing: Free, Automated, and Open Web Encryption.**  
August 8, 2017; hosted by Congressional Cybersecurity Caucus.
- **Let's Encrypt: A Certificate Authority to Encrypt the Entire Web.** Invited talk, Summer school on real-world crypto and privacy, Croatia, June 9, 2017; Invited talk, Cubaconf, Havana, April 25, 2016.
- **Congressional Briefing: Strengthening Election Cybersecurity.** Co-panelists: James Woolsey, Tony Shaffer, Lawrence Norden, Susan Greenhalgh, James Scott; moderator: Karen Greenberg. May 15, 2017.
- **The Legacy of Export-grade Cryptography in the 21st Century.** Invited talk, Summer school on real-world crypto and privacy, Croatia, June 9, 2016.
- **Logjam: Diffie-Hellman, Discrete Logs, the NSA, and You.** Invited talk, NYU Tandon School of Engineering, April 8, 2016 [host: Damon McCoy]; Invited talk, UIUC Science of Security seminar, February 9, 2016 [host: Michael Bailey].
- **The Network Inside Out: New Vantage Points for Internet Security.** Invited talk, Qatar Computing Research Institute, Doha, May 24, 2015; Invited talk, University of Chile, Santiago, April 8, 2015; Invited talk, Princeton University, October 15, 2014; Invited talk, U.T. Austin, March 9, 2014.
- **Decoy Routing: Internet Freedom in the Network's Core.** Invited speaker, Internet Freedom Technology Showcase: The Future of Human Rights Online, New York, Sep. 26, 2015.
- **The New South Wales iVote System: Security Failures and Verification Flaws in a Live Online Election.** 5th International Conference on E-Voting and Identity (VoteID), Bern, Switzerland, Sep. 3, 2015; Invited talk, IT Univ. of Copenhagen, Sep. 1, 2015; Invited talk (with Vanessa Teague), USENIX Journal of Election Technologies and Systems Workshop (JETS), Washington, D.C., Aug. 11, 2015.
- **Security Analysis of the Estonian Internet Voting System.** Invited talk, 5th International Conference on E-Voting and Identity (VoteID), Bern, Switzerland, Sep. 3, 2015; Invited talk, Google, Mountain View, CA, June 3, 2014; Invited talk, Copenhagen University, June 12, 2014.
- **Indiscreet Tweets.** Rump session talk; 24th USENIX Security Symposium, Washington, D.C., August 12, 2015.
- **How Diffie-Hellman Fails in Practice.** Invited talk, IT Univ. of Copenhagen, May 22, 2015.



- **Influence on Democracy of Computers, Internet, and Social Media.** Invited speaker, Osher Lifelong Learning Institute at the University of Michigan, March 26, 2015.
- **E-Voting: Danger and Opportunity.** Invited talk, University of Chile, Santiago, April 7, 2015; Keynote speaker, 14th Brazilian Symposium on Information Security and Computer Systems (SBSEG), Belo Horizonte, Brazil, November 3, 2014; Crypto seminar, University of Tartu, Estonia, October 10, 2013; Invited speaker, US–Egypt Cyber Security Workshop, Cairo, May 28, 2013; Invited speaker, First DemTech Workshop on Voting Technology for Egypt, Copenhagen, May 1, 2013; Invited keynote, 8th CyberWatch Mid-Atlantic CCDC, Baltimore, MD, Apr. 10, 2013; Invited speaker, Verifiable Voting Schemes Workshop, University of Luxembourg, Mar. 21, 2013; Invited speaker, MHacks hackathon, Ann Arbor, MI, Feb. 2, 2013; Public lecture, U. Michigan, Nov. 6, 2012.
- **Internet Censorship in Iran: A First Look.** 3rd USENIX Workshop on Free and Open Communications on the Internet (FOCI), Aug. 13, 2013.
- **Mining Your Ps and Qs: Detection of Widespread Weak Keys in Network Devices.** Invited talk, NSA, Aug. 8, 2013; Invited talk, Taiwan Information Security Center Workshop, National Chung-Hsing University (Taichung, Taiwan), Nov. 16, 2012
- **Securing Digital Democracy.** U. Maryland, Apr. 8, 2013 [host: Jonathan Katz]; CMU, Apr. 1, 2013 [host: Virgil Gligor]; Cornell, Feb. 28, 2013 [host: Andrew Myers].
- **Telex: Anticensorship in the Network Infrastructure.** Invited speaker, Academia Sinica (Taipei), Nov. 14, 2012 [host: Bo-Yin Yang]; TRUST Seminar, U.C., Berkeley, Dec. 1, 2011 [host: Galina Schwartz]; Think Conference, Nov. 5, 2011; Ideas Lunch, Information Society Project at Yale Law School, Oct. 26, 2011; Invited speaker, Committee to Protect Journalists Online Press Freedom Summit (San Francisco), Sept. 27, 2011.
- **Deport on Arrival: Adventures in Technology, Politics, and Power.** Guest lecture, U-M School of Art and Design, Nov 5, 2012 [host: Osman Khan]; Invited speaker, CS4HS Workshop, U. Michigan, Aug. 21, 2012; Invited speaker, U. Michigan IEEE, Feb. 15, 2012.
- **Attacking the Washington, D.C. Internet Voting System.** Invited speaker, International Foundation for Election Systems (IFES), Nov. 2, 2012 [host: Michael Yard]; Invited speaker, IT University of Copenhagen, May 11, 2012 [host: Carsten Schürmann].
- **Voter IDon't.** Rump session talk; 21st USENIX Security Symposium (Bellevue, WA), Aug. 8, 2012; Rump session talk; EVT/WOTE '12 (Bellevue, WA), Aug. 6, 2012 [with Josh Benaloh].
- **Reed Smith's Evening with a Hacker.** Keynote speaker (New Brunswick, NJ), Oct. 20, 2011.
- **Are DREs Toxic Waste?** Rump session talk, 20th USENIX Security Symposium (San Francisco), Aug. 10, 2011; Rump session talk, EVT/WOTE '11 (San Francisco), Aug. 8, 2011.
- **Security Problems in India's Electronic Voting Machines.** Dagstuhl seminar on Verifiable Elections and the Public (Wadern, Germany), July 12, 2011; Harvard University, Center for Research on Computation and Society (CRCS) seminar, Jan. 24, 2011 [host: Ariel Procaccia]; U. Michigan, CSE seminar, Nov. 18, 2010 [with Hari Prasad]; MIT, CSAIL CIS Seminar, Nov. 12, 2010 [with Hari Prasad; host: Ron Rivest]; Distinguished lecture, U.C. San Diego, Department



- of Computer Science, Nov. 9, 2010 [with Hari Prasad; host: Hovav Shacham]; U.C. Berkeley, Center for Information Technology Research in the Interest of Society (CITRIS), Nov. 8, 2010 [with Hari Prasad; host: Eric Brewer]; Google, Inc., Tech Talk (Mountain View, CA), Nov. 5, 2010 [with Hari Prasad; host: Marius Schilder]; U.C., Berkeley TRUST Security Seminar, Nov. 4, 2010 [with Hari Prasad; host: Shankar Sastry]; Stanford University, CS Department, Nov. 3, 2010 [with Hari Prasad; host: David Dill]; Princeton University, Center for Information Technology Policy, Oct. 28, 2010 [with Hari Prasad, host: Ed Felten]; University of Texas at Austin, Department of Computer Science, Aug. 27, 2010 [host: Brent Waters].
- **Ethical Issues in E-Voting Security Analysis.** Invited talk, Workshop on Ethics in Computer Security Research (WECSR) (Castries, St. Lucia), Mar. 4, 2011 [with David Robinson].
  - **Electronic Voting: Danger and Opportunity.** Invited speaker, “Interfaces 10: Technology, Society and Innovation,” Center for Technology and Society (CTS/FGV) (Rio de Janeiro), Dec. 2, 2010 [host: Ronaldo Lemos]; Invited speaker, Conference on “EVMs: How Trustworthy?,” Centre for National Renaissance (Chennai, India), Feb. 13, 2010; Google, Inc., Tech Talk (Mountain View, CA), Jan. 10, 2008; Star Camp (Cape Town, South Africa), Dec. 8, 2007; Lehigh University, Nov. 27, 2007; Princeton OiT Lunch-’n-Learn, Oct. 24, 2007; University of Waterloo (Canada), Feb. 28, 2007.
  - **A New Approach to Censorship Resistance.** Think Conference, Nov. 7, 2010.
  - **Practical AVC-Edge CompactFlash Modifications can Amuse Nerds [PACMAN].** Rump session, 19th USENIX Security Symposium (Washington, D.C.), Aug. 11, 2010; Rump session, EVT/WOTE ’10 (Washington, D.C.), Aug. 9, 2010.
  - **Legal Challenges to Security Research.** Guest lecture, Law 633: Copyright, U. Michigan Law School, Apr. 7, 2010; Invited talk, University of Florida Law School, Oct. 12, 2006.
  - **Adventures in Computer Security.** Invited talk, Greenhills School, grades 6–12 (Ann Arbor, MI), Mar. 8, 2010.
  - **The Role of Designers’ Incentives in Computer Security Failures.** STIET Seminar, U. Michigan, Oct. 8, 2009.
  - **Cold-Boot Attacks Against Disk Encryption.** Invited speaker, SUMIT 09 Security Symposium, U. Michigan, Oct. 20, 2009.
  - **On the Attack.** Distinguished lecture, U.C. Berkeley EECS, Nov. 18, 2009.
  - **AACS, BD+, and the Limits of DRM.** DIMACS/DyDAn Workshop on Internet Privacy, Rutgers University, Sept. 18, 2008.
  - **Security Through the Lens of Failure.** UCSD, Apr. 2, 2008; U. Michigan, Mar. 25, 2008,
  - **Harvesting Verifiable Challenges from Oblivious Online Sources.** ACM Conference on Computer and Communications Security (Washington, D.C.), Oct. 31, 2007.
  - **Dangerous Tunes: Lessons from the Sony CD DRM Episode.** USENIX Security Symposium (Vancouver, Canada), Aug. 2, 2006; SRI International (Palo Alto, CA), July 14, 2006; University of Waterloo (Canada), Mar. 9, 2006.

- **A Convenient Method for Securely Managing Passwords.** International World Wide Web Conference (Chiba, Japan), May 12, 2005.
- **Privacy Management for Portable Recording Devices.** ACM Workshop on Privacy in the Electronic Society (Washington, D.C.), Oct. 18, 2004.
- **Evaluating New Copy-Prevention Techniques for Audio CDs.** ACM Workshop on Digital Rights Management (Washington, D.C.), Nov. 18, 2002.

### **Selected Other Speaking (2010–present)**

- **Panelist: President’s Awards for Public Engagement.** Co-panelists: Marc A. Zimmerman, Emily Toth Martin, Margaret Dewar; moderator: Mark S. Schlissel. University of Michigan, Mar. 22, 2021.
- **Panelist: The 2020 Election: Remote Voting, Disinformation, and Audit.** Co-panelists: Ben Adida and Vanessa Teague; moderator: Avi Rubin. 29th USENIX Security Symposium, Aug. 12, 2020.
- **Panelist: Internet Freedom in the Domestic Arena.** Co-panelists: Nadine Strossen, Milton Mueller, and Roger Dingledine; moderator: Anita Nikolich. 10th USENIX Workshop on Free and Open Communications on the Internet (FOCI), via Zoom, Aug. 11, 2020.
- **Panelist: Internet Voting.** Co-panelists: Thomas Chanussot, Carsten Schürmann, Virginia Atkinson, Robert Krimmer, and Ronan McDermott; moderator: Beata Martin-Rozumilowicz. International Foundation for Electoral Systems (IFES), via Zoom, June 16, 2020.
- **Panelist: How Adversaries Can Erode Public Trust in Democratic Institutions.** Co-panelists: Hany Farid, Ron Rivest, Suzanne Spaulding; moderator: James E. Boasberg. D.C. Circuit Judicial Conference, Cambridge, Maryland, June 26, 2019.
- **Alumni-Faculty Forum: Cold War 2.0: Russia, Cybersecurity and Hacking.** Co-panelists: Walter Slocombe, Alexander Southwell, Ishani Sud; moderator: Jonathan Mayer. June 1, 2018.
- **Panelist: “Critical Infrastructure” Designation for Election Operations: Risks, Mitigations, & Import for 2018.** Election Verification Network Conference, Miami, March 16, 2018.
- **Panelist: The Technology of Voting: Risks & Opportunities.** U.C. Irvine Cybersecurity and Policy Research Institute, March 13, 2018.
- **Panelist: Election Law Conflicts and the Vulnerability of our Election Systems.** Co-panelists: Stephen Berzon, Holly Lake, Harvey Saferstein. Ninth Circuit Judicial Conference, July 18, 2017.
- **Moderator: Apple & the FBI: Encryption, Security, and Civil Liberties.** Panelists: Nate Cardozo and Barbara McQuade. U-M Dissonance Speaker Series, April 12, 2016.
- **Moderator: Privacy, IT Security and Politics.** Panelists: Ari Schwartz and David Sobel. U-M ITS SUMIT\_2015, Oct. 22, 2015.
- **Panelist: The Future of E-Voting Research.** 5th International Conference on E-Voting and Identity (VoteID), Bern, Switzerland, Sep. 4, 2015.

- Moderator: **Panel on Research Ethics.** 24th USENIX Security Symposium, Washington, D.C., August 13, 2015.
- Panelist: **Theories of Privacy in Light of “Big Data.”** Michigan Telecommunications and Technology Law Review Symposium on Privacy, Technology, and the Law, University of Michigan Law School, Feb. 21, 2015.
- Panelist: **Measuring Privacy.** Big Privacy symposium, Princeton University CITP, Apr. 26, 2013 [moderator: Ed Felten].
- Panelist: **Civil Society’s Challenge in Preserving Civic Participation.** The Public Voice workshop: Privacy Rights are a Global Challenge, held in conjunction with the 34th International Conference of Data Protection and Privacy Commissioners, Punta del Este, Uruguay, Oct. 22, 2012 [moderator: Lillie Coney].
- Panelist: **Election Technologies: Today and Tomorrow.** Microsoft Faculty Summit (Redmond), July 17, 2012 [moderator: Josh Benaloh].
- Panelist: **Is America Ready to Vote on the Internet?** CSPRI Seminar, George Washington University (Washington, D.C.), May 16, 2012 [moderator: Lance Hoffman].
- Panelist: **Technical Methods of Circumventing Censorship.** Global Censorship Conference, Yale Law School, Mar. 31, 2012.
- Panelist: **Internet Voting.** RSA Conference (San Francisco), Mar. 1, 2012 [moderator: Ron Rivest].
- Panelist: **The Law and Science of Trustworthy Elections.** Association of American Law Schools (AALS) Annual Meeting, Jan. 5, 2012 [moderator: Ron Rivest].
- Panelist: **Connecticut Secretary of State’s Online Voting Symposium** (New Britain, CT), Oct. 27, 2011 [moderator: John Dankosky].
- Panelist: **Cyber Security / Election Technology.** Overseas Voting Foundation Summit, Feb. 10, 2011 [moderator: Candice Hoke].
- Tutorial speaker/organizer: **Security Issues in Electronic Voting,** ICISS (Gandhinagar, India), Dec. 15, 2010 [canceled under threat of deportation].
- Invited testimony: **On D.C. Board of Elections and Ethics Readiness for the Nov. 2010 General Election.** D.C. Council Hearing, Oct. 8, 2010.
- Panelist and organizer: **India’s Electronic Voting Machines.** EVT/WOTE (Washington, D.C.), Aug. 9, 2010.
- Panelist: **Ethics in Networking and Security Research.** ISOC Network and Distributed System Security Symposium (San Diego, CA), Mar. 2, 2010 [moderator: Michael Bailey].

## **Advising and Mentoring**

### **Graduate Students**

- Allison McDonald (Ph.D. in progress; Facebook Emerging Scholar Fellowship)
- Matthew Bernhard (Ph.D. 2020; in went on to position at VotingWorks)

- Benjamin VanderSloot (Ph.D. 2020; went on to tenure-track faculty position at University of Detroit Mercy)
- David Adrian (Ph.D. 2019; went on to principal engineer at Censys)
- Andrew Springall (Ph.D. 2018; went on to Google, then tenure-track faculty position at Auburn)
- Zakir Durumeric (Ph.D. 2017; Google Ph.D. Fellowship in Computer Security; went on to tenure-track faculty position at Stanford)
- Eric Wustrow (Ph.D. 2016; went on to tenure-track faculty position at U. Colorado, Boulder)
- James Kasten (Ph.D. 2015; went on to software engineering position at Google)
- Max Froehlich (M.S. in progress)
- Rose Howell (M.S. 2018)
- Travis Finkenauer (M.S. 2016; went on to security position at Juniper Networks)
- Scott Wolchok (M.S. 2011; went on to software engineering position at Facebook)

### **Post Docs**

- Will Scott (2017–18)
- Colleen Swanson (2014–15)

### **Doctoral Committees**

- Matthew Bernhard (C.S. Ph.D. 2020, Michigan; chair)
- Benjamin VanderSloot (C.S. Ph.D. 2020, Michigan; chair)
- David Adrian (C.S. Ph.D. 2019, Michigan; chair)
- Arunkumaar Ganesan (C.S. Ph.D. 2019)
- Andrew Springall (C.S. Ph.D. 2018, Michigan; chair)
- Kyong Tak Cho (C.S. Ph.D. 2018, Michigan)
- Armin Sarabi (E.E. Ph.D. 2018, Michigan)
- Zakir Durumeric (C.S. Ph.D. 2017, Michigan; chair)
- Armin Sarabi (E.E. Ph.D. 2017, Michigan)
- Eric Crockett (C.S. Ph.D. 2017, Georgia Tech)
- Kassem Fawaz (C.S. Ph.D. 2017, Michigan)
- Amir Rahmati (C.S. Ph.D. 2017, Michigan)
- Earlenca Fernandez (C.S. Ph.D. 2017, Michigan)
- Huan Feng (C.S. Ph.D. 2016, Michigan)
- Jakub Czyz (C.S. Ph.D. 2016, Michigan)
- Denis Bueno (C.S. Ph.D. 2016, Michigan)
- Eric Wustrow (C.S. Ph.D. 2016, Michigan; chair)
- James Kasten (C.S. Ph.D. 2015, Michigan; chair)
- Jing Zhang (C.S. Ph.D. 2015, Michigan)
- Katharine Cheng (C.S. Ph.D. 2012, Michigan)
- Matt Knysz (C.S. Ph.D. 2012, Michigan)

- Zhiyun Qian (C.S. Ph.D. 2012, Michigan)
- Xin Hu (C.S. Ph.D. 2011, Michigan)
- Ellick Chan (C.S. Ph.D. 2011, UIUC)

## Undergraduate Independent Work

- 2021: Anna Ablove, Nakul Bajaj, Sameer Barretto, William Chown, Braden Crimmins, Lukas Hazen-Bushbaker, Rebecca Hirsh, Carson Hoffman, David Meyer, Siddharth Pittie, Marshall Rhea, Aditya Soni, Atreya Tata, Kevin Zhang
- 2020: Nakul Bajaj, Ryan Feng, Carson Hoffman, Jensen Hwa, Yuxuan Luo, Jacob Shreve, Atreya Tata
- 2019: Nakul Bajaj, Scott Bays, Kevin Chang, Jensen Hwa, Kartikeya Kandula, Nicholas Matton, Henry Meng, Ellen Tsao, Hassaan Ali Watoo, Jeremy Wink
- 2018: Jensen Hwa, Henry Meng, Armando Ruvalcaba
- 2017: Gabrielle Beck, Alex Holland
- 2016: Ben Burgess, Noah Duchan, Mayank Patke
- 2015: Ben Burgess, Rose Howell, Vikas Kumar, Ariana Mirian, Zhi Qian Seah
- 2014: Christopher Jeakle, Andrew Modell, Kollin Purcell
- 2013: David Adrian, Anthony Bonkoski, Alex Migicovsky, Andrew Modell, Jennifer O’Neil
- 2011: Yilun Cui, Alexander Motalleb
- 2010: Arun Ganesan, Neha Gupta, Kenneth Meagher, Jay Novak, Dhritiman Sagar, Samantha Schumacher, Jonathan Stribley
- 2009: Mark Griffin, Randy Yao

## Teaching

- **Introduction to Computer Security**, EECS 388, University of Michigan  
Terms: Fall 2021, Winter 2020, Fall 2019, Winter 2019, Winter 2017, Fall 2016, Fall 2015, Fall 2014, Fall 2013, Fall 2011, Fall 2010, Fall 2009  
Created new undergrad security elective that has grown to reach >750 students/year. An accessible intro, teaches the security mindset and practical skills for building and analyzing security-critical systems.
- **Election Cybersecurity**, EECS 498.5/598.16, University of Michigan, Fall 2020.
- **Surveillance Law and Technology** (with Margo Schlanger), EECS 598.7 / LAW 441.1, University of Michigan, Fall 2019.  
Interdisciplinary seminar brought together students and faculty from computer science and law to address current controversies in surveillance and privacy.
- **Election Cybersecurity**, EECS 498.9, University of Michigan, Fall 2018.
- **Computer and Network Security**, EECS 588, University of Michigan  
Terms: Winter 2016, Winter 2015, Winter 2014, Winter 2013, Winter 2012, Winter 2011, Winter 2010, Winter 2009  
Redesigned core grad-level security course. Based around discussing classic and current research papers and performing novel independent work. Provides an intro. to systems research for many students.

- **Securing Digital Democracy**, Coursera (MOOC)

Designed and taught a massive, open online course that explored the security risks—and future potential—of electronic voting and Internet voting technologies; over 20,000 enrolled students.

## Professional Service

### Program Committees

- 2021 USENIX Security Symposium (Sec '21)
- 2019 ACM Internet Measurement Conference (IMC '19)
- 2017 ACM Conference on Computer and Communications Security (CCS '17)
- 2017 ISOC Network and Distributed Systems Security Symposium (NDSS '17)
- 2016 ACM Internet Measurement Conference (IMC '16)
- 2016 USENIX Security Symposium (Sec '16)
- 2016 International Joint Conference on Electronic Voting (E-VOTE-ID '16)
- 2016 Workshop on Advances in Secure Electronic Voting (Voting '16)
- 2015 ACM Conference on Computer and Communications Security (CCS '15)
- 2015 ACM Internet Measurement Conference (IMC '15)
- 2015 USENIX Security Symposium (Sec '15)
- 2014 ACM Conference on Computer and Communications Security (CCS '14)
- 2014 USENIX Security Symposium (Sec '14)
- 2013 ACM Conference on Computer and Communications Security (CCS '13)
- **Program co-chair**, 2012 Electronic Voting Technology Workshop/Workshop on Trustworthy Elections (EVT/WOTE '12)
- 2012 Workshop on Free and Open Communications on the Internet (FOCI '12)
- 2012 IEEE Symposium on Security and Privacy (“Oakland” '12)
- 2012 International Conference on Financial Cryptography and Data Security (FC '12)
- 2011 Workshop on Free and Open Communications on the Internet (FOCI '11)
- 2011 Electronic Voting Technology Workshop (EVT/WOTE '11)
- 2010 ACM Conference on Computer and Communications Security (CCS '10)
- 2010 USENIX/ACCURATE/IAVOSS Electronic Voting Technology Workshop (EVT '10)
- 2010 USENIX Security Symposium (Sec '10)
- 2010 IEEE Symposium on Security and Privacy (Oakland '10)
- 2010 International World Wide Web Conference (WWW '10)
- 2009 ACM Conference on Computer and Communications Security (CCS '09)
- 2009 ACM Workshop on Digital Rights Management (DRM '09)
- 2009 ACM Workshop on Multimedia Security (MMS '09)
- 2009 USENIX Workshop on Offensive Technologies (WOOT '09)
- 2009 International World Wide Web Conference (WWW '09)
- 2008 ACM Conference on Computer and Communications Security (CCS '08)

- 2008 ACM Workshop on Privacy in the Electronic Society (WPES '08)
- 2008 USENIX/ACCURATE Electronic Voting Technology Workshop (EVT '08)
- 2008 International World Wide Web Conference (WWW '08)

## Boards

- Board of Directors of [Internet Security Research Group](#) (2014–present)
- Board of Advisors for the Verified Voting Foundation (2012–present)
- External Advisory Board for the DemTech Project, IT University of Copenhagen (2011–2016)
- Advisory Council for the Princeton University Department of Computer Science (2012–2014)

## Government Service

- Michigan Secretary of State's Election Security Advisory Commission (co-chair, 2019–)

## Department and University Service

- CSE Executive Committee (member, 2020, FA2021–)
- Lab Director, CSE Systems Lab (2018–present)
- CSE Hiring Committee (member, 2018–present)
- Faculty Advisor for Michigan Hackers student group (2012–present)
- CSE Graduate Affairs Committee (member, 2014–2017)
- CSE Undergraduate Program Advising (CS/ENG) (2011–2017)
- Faculty Senate, Rules Committee of the Senate Assembly (member, 2011–12)
- CSE Graduate Admissions Committee (member, 2010–11)
- CSE Graduate Committee (member, 2009–10)

## Broader Impact of Selected Projects

- [2016 U.S. Presidential Election Recounts](#) (2016)  
Helped orchestrate election recount efforts in Michigan, Wisconsin, and Pennsylvania in an attempt to detect or deter potential outcome-alerting cyberattacks. Legal and political roadblocks prevented completion of full manual counts; the partial recounts that did occur showed no evidence of tampering.
- [Let's Encrypt: A Certificate Authority to Encrypt the Entire Web](#) (2016)  
Co-founded a new HTTPS certificate authority to provide free, automatically validated certificates for all domains. Developed in partnership with EFF and Mozilla, Let's Encrypt has helped secure millions of websites and now accounts for more than half of all public browser-trusted certificates worldwide.
- [The Logjam Attack and Weak Practical Use of Diffie-Hellman](#) (2015)  
Introduced Logjam, a practical attack on TLS that affected nearly 10% of popular HTTPS websites. Our results suggest that state-level attackers can break 1024-bit Diffie-Hellman, providing the first parsimonious explanation for how NSA is decrypting widespread VPN traffic, as revealed by Snowden.
- [Security Analysis of the Estonian Internet Voting System](#) (2014)  
Led the first rigorous security review of world's most significant Internet voting system. Based on code review, laboratory testing, and in-person observation, our study revealed significant shortcomings that could allow state-level attackers to upset national elections.

- **ZMap Internet-Wide Scanner Open-Source Project (2013)**  
Created ZMap, a network probing tool designed for Internet-wide measurement research that achieves up to 10,000× better performance than earlier tools. Now a thriving open-source project, ZMap is available in major Linux distros. We also maintain Scans.io, a public scan data repository.
- **Detection of Widespread Weak Keys in Network Devices (2012)**  
After conducting the largest Internet-wide survey of HTTPS and SSH hosts, we uncovered serious flaws in cryptographic public key generation affecting millions of users. We disclosed vulnerabilities to more than 60 network device makers and spawned major changes to the Linux random number generator.
- **The Telex Anticensorship System (2011)**  
Invented a fundamentally new approach to circumventing state-level Internet censorship, based on placing anticensorship technology into core network infrastructure outside the censoring country. Prototype attracted over 100,000 users, mainly in China. Now testing next-gen. schemes at partner ISP.
- **Attacking Washington, D.C.’s Internet Voting System (2010)**  
Participated in the first public security trial of an Internet voting system set to be deployed in a real election. We found serious flaws that allowed us to change all votes without detection. This led to the system being scrapped, and the widespread media coverage has altered the debate on Internet voting.
- **Analysis of India’s E-Voting System (2010)**  
Participated in the first independent security review of the electronic voting machines used by half a billion voters in India. The flaws uncovered in our work were front-page news. After arresting my coauthor and threatening to deport me, officials eventually moved to adopt a paper trail nationwide.
- **Green Dam Youth Escort Censorware (2009)**  
Uncovered security problems and copyright infringement in client-side censorship software mandated by the Chinese government. Findings helped catalyze popular protest against the program, leading China to reverse its policy requiring installation on new PCs.
- **Cold-Boot Attacks (2008)**  
Developed the “cold boot” attack against software disk encryption systems, which altered widespread thinking on security assumptions about the behavior of RAM, influenced computer forensics practice, and inspired the creation of a new subfield of theoretical cryptography.
- **California “Top-to-Bottom” Review (2007)**  
Helped lead the California Secretary of State’s “top-to-bottom” review of electronic voting machines, the first public review of this technology by any state. Our reports led California to discontinue use of highly vulnerable touch-screen voting systems and altered the course of election technology in the U.S.
- **DMCA Exemptions for Security (2006 and 2010)**  
Worked with legal teams to successfully petition the U.S. Copyright Office to create exemptions to the Digital Millennium Copyright Act (which prohibits circumventing DRM) in order to allow the public to investigate and repair security problems caused by certain DRM. One of only six exemptions granted.
- **Sony DRM Rootkit (2005)**  
Discovered dangerous security side-effects in the design of copy protection software used for music CDs. Resulted in the recall of millions of discs, class action lawsuits, and an investigation by the U.S. Federal Trade Commission in which I served as a technical expert on DRM’s harm to consumers’ security.
- **The Art of Science (2004)**  
Co-founded an interdisciplinary art competition at Princeton University that showcases images and videos produced in the course of scientific research as well as creative works that incorporate tools and ideas from science. Following international attention, the concept has spread to many other campuses.



## Outreach and Press Coverage

I'm happy to speak to the press when the topic is important for the public to understand. Much of my research has received significant media attention, resulting in thousands of stories.

**Selected media outlets** *Television:* CNN, Fox News, CBS Evening News, NBC Nightly News, MSNBC, CNBC, MTV, Al Jazeera, C-SPAN. *Radio:* NPR News, NPR Science Friday, BBC World Service, The Diane Rehm Show. *Print:* The New York Times, LA Times, USA Today (front page profile), The Wall Street Journal, Washington Post, Boston Globe, Times of India, Time, Fortune, Harpers (incl. Harpers Index), The Atlantic; The Economist, Scientific American, New Scientist, MIT Tech Review, Businessweek, Redbook, PC Magazine, Playboy (long-form profile). *Online:* Hacker News (dozens of top stories), Slashdot (>40 stories), Reddit (top of front page), BoingBoing, CNET News, Wired News, Gizmodo, TechDirt, Ars Technica, The Register, Huffington Post, Politico, The New Republic, The Drudge Report, and hundreds more.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|                                    |   |                 |
|------------------------------------|---|-----------------|
| COMMONWEALTH OF PENNSYLVANIA,      | : |                 |
| PENNSYLVANIA DEPARTMENT OF STATE   | : |                 |
| And VERONICA DEGRAFFENREID, Acting | : |                 |
| Secretary of the Commonwealth of   | : |                 |
| Pennsylvania,                      | : |                 |
|                                    | : |                 |
|                                    | : |                 |
| Petitioners,                       | : | No. 322 MD 2021 |
|                                    | : |                 |
|                                    | : |                 |
| Vs.                                | : |                 |
|                                    | : |                 |
|                                    | : |                 |
| SENATOR CRIS DUSH, SENATOR JAKE    | : |                 |
| CORMAN, and THE PENNSYLVANIA       | : |                 |
| STATE SENATE INTERGOVERNMENTAL     | : |                 |
| OPERATIONS COMMITTEE,              | : |                 |
|                                    | : |                 |
|                                    | : |                 |
| Respondents.                       | : |                 |

**NOTICE OF PLEAD**

TO: SENATOR CRIS DUSH, SENATOR JAKE CORMAN, AND THE PENNSYLVANIA STATE SENATE INTERGOVERNMENTAL OPERATIONS COMMITTEE

You are hereby notified to file a written response to the enclosed petition for review within thirty (30) days from service hereof, in accordance with Pa. R.A.P. 1516(b), or a judgment may be entered against you.

Dated: October 4, 2021

Witold J. Walczak (PA I.D. No. 62976)  
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\**Pro hac vice* forthcoming

## NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this complaint and notice are served, in accordance with Pa. R.A.P. 1516(b), by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MidPenn Legal Services  
213-A North Front Street  
Harrisburg, PA 17101  
(717) 232-0581

Dauphin County Lawyer Referral Service  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536



1. On September 15, 2021, the Intergovernmental Operations Committee of the Pennsylvania Senate issued a Subpoena to the Acting Secretary of State, to compel the disclosure of constitutionally-protected private personal information of approximately nine million registered voters in Pennsylvania. The Secretary and the Commonwealth filed a Petition for Review in the above-captioned case challenging the legitimacy and enforceability of that Subpoena. The Intervenor-Petitioners -- voters and organizations that work to empower and support voters in Pennsylvania -- assert their rights in the private, personal information that the Subpoena seeks and request that the Court block the subpoena to prevent the impermissible disclosure of that information.

2. The Subpoena demands personally-identifying information, including driver's license numbers and the last four digits of social security numbers in addition to names and addresses, for every registered voter in Pennsylvania. The Intervenor-Petitioners and their members and constituents, and all registered Pennsylvania voters, indisputably have a constitutional right of privacy in this information, thereby giving them a concrete and personal stake in the resolution of this dispute.

3. The disclosure of this sensitive, personally-identifying information carries real risks of identity theft and financial fraud, especially when compiled together for all nine million Pennsylvania registered voters in one dataset. In

particular, social security numbers and driver's license numbers are used by the government and businesses to identify individuals, and can be used to access financial information, bank accounts, credit cards, medical records and many other forms of highly confidential personal information. In analogous situations earlier this year where voter data was shared outside official election channels, data breaches occurred. This information also enables bad actors to conduct targeted voter intimidation efforts. Moreover, bad actors who gain access to this information would have all the data they need to control the voters' registrations, and even their votes, and thus, the Subpoena actually increases the risk of disruption to elections and to registered voters' attempts to cast their vote.

4. There is no legitimate purpose for requesting the disclosure of social security numbers and driver's license numbers of nine million registered voters. Such information is not needed for conducting an election audit in accordance with best practices for conducting such audits. Nor have Respondents explained why such information is necessary to help draft future legislation or provided any other legitimate rationale. In short, there is no compelling state interest in the production of this information. Further, any ostensible Committee interest is vastly outweighed by Intervenor-Petitioners' constitutional privacy rights and the serious potential risks from disclosure of that information. Accordingly, this Court should

enjoin any attempt by the Intergovernmental Operations Committee to compel the disclosure of Pennsylvania voters' sensitive personal information.

### **Parties and Jurisdiction**

5. Roberta Winters is a United States citizen, a resident of Delaware County, Pennsylvania, and is a registered voter in the Republican party. Ms. Winters cast votes in the November 2020 election and May 2021 primary. Certain private information of Ms. Winters is included within the information sought by the Subpoena described below.

6. Ms. Winters has twice had her private information disclosed through data breaches and, previously, a criminal gained access to her and her husband's joint bank account and drained it of all funds.

7. In light of these past incidents, Ms. Winters is concerned that her private information will be disseminated to people and third parties to whom she has not consented to disclose her information.

8. Ms. Winters is also concerned that the Department of State's compliance with the Subpoena and exposure of her sensitive personal information



will make her more vulnerable to identity theft and further public intrusions into her private financial and personal information.

9. As a member of the League of Women Voters, Ms. Winters understands that the information sought in the Subpoena is exactly the information necessary to register, change a voter registration or request a mail-in or absentee ballot. She is concerned that the release of the sensitive personal information will dramatically increase the risk of fraudulent manipulation of voter registration records in Pennsylvania.

10. Ms. Winters seeks to prevent the harm that the exposure of her sensitive personal information could cause by asserting her constitutional right to privacy with respect to the personal information that is requested in the Subpoena.

11. Nichita Sandru is a United States citizen, a resident of Monroe County, Pennsylvania, and is a registered voter in the Democratic party. Mr. Sandru first registered to vote in Pennsylvania about five years ago, when he became a naturalized U.S. citizen. He cast a vote in the November 2020 election. Mr. Sandru's private information is included within the information sought by the Subpoena described below.

12. Mr. Sandru is very proud to have become a U.S. citizen, in part because he has a right to vote and thus has a say in the governance of the country.

This is very different from his experience in Romania, from which he fled in 1988 when military police were surveilling his home.

13. Mr. Sandru is a systems engineer at a large technology company and is particularly concerned that the Subpoena will lead to the exploitation of his personal information. In his work experience, this type of personally-identifying information enables others to collect even more information about an individual. Mr. Sandru is concerned that his personally-identifying information will be disclosed to others without his consent.

14. Mr. Sandru also understands this risk personally. His debit card was hacked several years ago and used to make illegal purchases. Mr. Sandru is highly concerned that the Department of State's compliance with the Subpoena and exposure of his sensitive personal information will make him more vulnerable to identity theft and further public intrusions into his private financial and personal information.

15. Mr. Sandru seeks to prevent the harm that the exposure of his sensitive personal information could cause by asserting his constitutional right to privacy with respect to the personal information that is requested in the Subpoena.

16. Kathy Foster-Sandru is a United States citizen, a resident of Monroe County, Pennsylvania, and is a registered voter in the Democratic party. Ms.

Foster-Sandru cast a vote in the November 2020 election. Ms. Foster-Sandru's private information is included within the information sought by the Subpoena described below.

17. Ms. Foster-Sandru is concerned that her personally-identifying information, especially her social security number and driver's license number, will be disclosed to others without her express permission, and may be misused. She is particularly concerned about how the disclosure of such information may impact her family. As an African-American woman in a mixed-race marriage, with two sons from that marriage, she is concerned that her family may be targeted by voter intimidation efforts.

18. Ms. Foster-Sandru also understands the risk of identity theft personally. Her debit card was hacked within the past two months, and was used to make illegal purchases. Her bank advised her that this was identity theft. Ms. Foster-Sandru is highly concerned that the Department of State's compliance with the Subpoena and exposure of her sensitive personal information will make her more vulnerable to identity theft and further public intrusions into her private financial and personal information.

19. Ms. Foster-Sandru seeks to prevent the harm that the exposure of her sensitive personal information could cause by asserting her constitutional right to privacy with respect to the personal information that is requested in the Subpoena.

20. Robin Roberts is a United States citizen, a resident of Philadelphia County, Pennsylvania, and a registered voter in the Democratic party. Ms. Roberts cast votes in the November 2020 election and May 2021 primary. Ms. Roberts' private information is included within the information sought by the Subpoena described below.

21. Ms. Roberts is very concerned that her personally-identifying information will be disclosed to others without her express permission, and may be misused. She is particularly concerned about the potential for voter intimidation efforts using this information.

22. Ms. Roberts also understands this risk personally. Her husband's bank card was used to make illegal online purchases. Ms. Roberts is highly concerned that the Department of State's compliance with the Subpoena and exposure of her sensitive personal information will make her more vulnerable to identity theft and further public intrusions into her private financial and personal information.

23. Ms. Roberts seeks to prevent the harm that the exposure of her sensitive personal information could cause by asserting her constitutional right to privacy with respect to the personal information that is requested in the Subpoena.

24. Kierstyn Zolfo is a United States citizen, a resident of Bucks County, Pennsylvania, and a registered Independent voter. Ms. Zolfo cast a vote in the November 2020 election and May 2021 primary. Ms. Zolfo's private information is included within the information sought by the Subpoena described below.

25. Ms. Zolfo is concerned about the potential release of her social security and driver's license numbers. Ms. Zolfo has a disability and has numerous current prescriptions. She is concerned that someone could use her personally-identifying information to gain access to her prescriptions. For example, with her date of birth, zip code and the last four digits of her social security number, someone could order a refill of her prescriptions and have them sent to a different address. She is similarly concerned that this information would allow others to access her medical records and bank accounts, and create new credit cards, among other things.

26. Ms. Zolfo is concerned that the Department of State's compliance with the Subpoena and exposure of her sensitive personal information will make

her more vulnerable to identity theft and further public intrusions into her private financial and personal information.

27. Ms. Zolfo seeks to prevent the harm that the exposure of her sensitive personal information could cause by asserting her constitutional right to privacy with respect to the personal information that is requested in the Subpoena.

28. Michael Zolfo is a United States citizen, a resident of Bucks County, Pennsylvania, and a registered voter in the Republican party. Mr. Zolfo first registered to vote in Bucks County sixteen years ago. He cast a vote in the November 2020 election and the May 2021 primary. Mr. Zolfo's private information is included within the information sought by the Subpoena described below.

29. Mr. Zolfo is currently a web developer for a publishing company in Philadelphia. Previously, he was an IT consultant in the health care industry and is very familiar with strict rules for access to and disclosure of private and confidential information under HIPAA.

30. He is particularly concerned that the Subpoena will lead to the exploitation of his personal information. In his work experience, this type of personally-identifying information enables others to collect even more information about an individual. Mr. Zolfo is concerned that his personally-identifying

information will be disclosed to others without his consent. He understands that the transfer of large amounts of digital information can increase the risk that the data could be compromised or leaked.

31. Mr. Zolfo never expected that the confidential personal information he provided to his county for the purpose of voter registration would be disclosed to unnamed outside parties for some other, undefined purpose.

32. Mr. Zolfo's experience with voting in Pennsylvania confirms his belief that the county and election workers handle his ballot securely, limit the access to his ballot and prevent others from disrupting the process.

33. Mr. Zolfo is concerned that the Department of State's compliance with the Subpoena and exposure of his sensitive personal information will make him more vulnerable to identity theft and further public intrusions into his private financial and personal information.

34. Mr. Zolfo seeks to prevent the harm that the exposure of his sensitive personal information could cause by asserting his constitutional right to privacy with respect to the personal information that is requested in the Subpoena.

35. Phyllis Hilley is a United States citizen, a resident of Delaware County, Pennsylvania, and a registered voter in the Democratic party. She has been a registered voter for 46 years. Ms. Hilley cast votes in the November 2020

election and May 2021 primary. Ms. Hilley's private information is included within the information sought by the Subpoena described below.

36. Ms. Hilley serves as a Judge of Elections in Yeadon Precinct 1 in Delaware County. She knows most people in her precinct, knows how careful all poll workers are, and feels strongly that there is virtually no possibility of any voter fraud in her precinct.

37. Ms. Hilley is concerned that her personally-identifying information will be disclosed to others without her express permission, and may be misused. She works as the Program Director for a public interest organization, and advocates for people with disabilities who receive Social Security benefits and who work part-time. Because of her work with the Social Security system, she is acutely aware of why personally-identifying information, including social security numbers, must remain private. She also is aware of friends and neighbors who have experienced identity theft, and is concerned that she could also become a victim.

38. Ms. Hilley is concerned that the Department of State's compliance with the Subpoena and exposure of her sensitive personal information will make her more vulnerable to identity theft and further public intrusions into her private financial and personal information.



39. Ms. Hilley seeks to prevent the harm that the exposure of her sensitive personal information could cause by asserting her constitutional right to privacy with respect to the personal information that is requested in the Subpoena.

40. Ben Bowens is a United States citizen, a resident of Philadelphia County, Pennsylvania, and a registered voter in the Democratic party. Mr. Bowens cast votes in the November 2020 election and May 2021 primary. Mr. Bowens' private information is included within the information sought by the Subpoena described below.

41. Mr. Bowens is concerned that his personally-identifying information will be disclosed to others without his express permission, and may be misused.

42. Mr. Bowens has received notifications of data breaches from several large companies that involved private customer information. Mr. Bowens is concerned that the Department of State's compliance with the Subpoena and exposure of his sensitive personal information will make him more vulnerable to identity theft and further public intrusions into his private financial and personal information.

43. Mr. Bowens seeks to prevent the harm that the exposure of his sensitive personal information could cause by asserting his constitutional right to privacy with respect to the personal information that is requested in the Subpoena.

44. The League of Women Voters of Pennsylvania (“the League”) is a nonpartisan statewide non-profit formed in August 1920, shortly after the Nineteenth Amendment granted women suffrage in November 1918.

45. The League encourages the informed and active participation of citizens in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.

46. The League and its members are dedicated to helping the people of Pennsylvania safely exercise their right to vote, as protected by the law.

47. The League has 30 chapters in 28 counties in Pennsylvania.

48. Members of the League are registered voters in Pennsylvania and are at risk of having their private information disclosed if the Secretary complies with the Subpoena.

49. The League supports full voting rights for all eligible citizens and opposes efforts that chill or burden the exercise of the fundamental right to vote.

50. The League works in the areas of voter registration, election protection, voter education, get out the vote, and grassroots mobilization around voting rights.

51. A significant part of the League's mission is voter registration. It conducts voter registration drives, staffs nonpartisan voter registration tables and works with local high schools to register new 18-year-old voters.

52. In its voter registration work, the League encounters resistance from voters who are wary of providing their driver's license number or last four digits of their Social Security number because they fear misuse of that private information.

53. If the nine million records of Pennsylvania voters containing driver's license numbers and the last four digits of Social Security numbers are released to the Committee members and staff, and unknown third-party vendors, the League will have more difficulty registering voters because they will be even more fearful of disclosing their private information and risking the release and publication of their information.

54. The disclosure of constitutionally protected private information will interfere with the League's ability to carry out its mission of registering voters and will cause it to divert resources towards educating voters about the release of their personally identifying information and the steps they will need to take to protect themselves from identity theft.

55. Common Cause Pennsylvania (“Common Cause”) is a non-profit political advocacy organization and a chapter of the national Common Cause organization.

56. Common Cause has approximately 36,000 members and supporters in Pennsylvania. These members live in all 67 counties of Pennsylvania.

57. Many members of Common Cause are registered voters in Pennsylvania and are similarly at risk of having their private information disclosed if the Secretary complies with the Subpoena.

58. Common Cause works to encourage civic engagement and public participation in democracy, and to ensure that public officials and public institutions are accountable to and reflective of all people.

59. Common Cause is nonpartisan and uses grassroots mobilization, community education, coalition building, legislative advocacy, and litigation to build a democracy that includes everyone.

60. Common Cause seeks to increase the level of voter registration and voter participation in Pennsylvania elections, especially in communities that are historically underserved and whose populations have a low propensity for voting. Many of these communities are communities of color.

61. In its voter registration efforts, Common Cause helps eligible voters to properly fill out and submit voter registration applications. During those efforts, Common Cause has encountered reluctance among voters to share highly sensitive personal information such as driver's license numbers and the last four digits of the voter's Social Security number.

62. Since the Committee vote on the Subpoena, Common Cause has received numerous calls from its members and supporters expressing anger at the prospect of the Secretary sharing their personally identifying information.

63. If the nine million records of Pennsylvania voters containing driver's license numbers and the last four digits of Social Security numbers are released to the Committee and unknown third-party vendors, Common Cause will have to divert resources to educating voters about how to try to protect themselves from possible identity theft as a result of the disclosure of their personal information.

64. If the nine million records of Pennsylvania Voters containing driver's license numbers and last four digits of Social Security numbers are released to the Committee and unknown third-party vendors, Common Cause will need to divert resources to monitoring the voter registration system to verify that voter registration records are not altered or tampered with by bad actors.

65. Make the Road Pennsylvania (“Make the Road PA”) is a not-for-profit, member-led organization formed in 2014 that builds the power of the working-class in Latino and other communities to achieve dignity and justice through organizing, policy innovation, and education services.

66. Make the Road PA’s more than 10,000 members are primarily working-class residents of Pennsylvania, many in underserved communities.

67. Many members of Make the Road PA are registered voters in Pennsylvania and are similarly at risk of having their private information disclosed if the Secretary complies with the Subpoena.

68. Make the Road PA has offices in Allentown, Reading, and Philadelphia and also works across the state, including engaging members and constituents in Berks, Bucks, Lehigh, Luzerne, Northampton, and Philadelphia counties. That work includes voter protection, voter advocacy and voter education on, for example, how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote.

69. Make the Road PA has run active programs to register voters in historically underserved communities of color, especially in Berks, Bucks, Lehigh, Northampton and Philadelphia Counties. In 2021, Make the Road also began working in Luzerne County.

70. The voters that Make the Road PA assists in registering to vote are at risk of having their constitutionally-protected private information disclosed if the Secretary complies with the Subpoena.

71. If the nine million records of Pennsylvania voters containing driver's license numbers and the last four digits of Social Security numbers are released to the Committee and unknown third-party vendors, Make the Road PA will have more difficulty registering voters because they will be even more fearful of disclosing their private information and risking the release and publication of their information.

72. The disclosure of constitutionally protected private information will interfere with Make the Road PA's ability to carry out its mission of registering voters and will cause it to divert resources towards educating voters about the release of their personal information and the steps they will need to take to protect themselves from identity theft.

73. The organizational Intervenor-Petitioners ( i.e. Common Cause Pennsylvania, the League of Women Voters of Pennsylvania and Make the Road Pennsylvania) represent, have as members, and/or have as constituents Pennsylvania voters who would be harmed by the disclosure of private information. Similarly, those whom they seek to register to vote may be

discouraged from registering to vote because of increased fear their private information will be disclosed. Such disclosure frustrates the organizations' missions, including registering more Pennsylvania voters, and diverts scarce resources needed to accomplish their organizational priorities.

74. The Organizations' members and constituents have a direct, tangible interest in the protection of their personal information. These interests are germane to the organizations' purpose and the claims and relief requested in this Petition do not require the participation of individual members. It is also impractical for all these organizations' members and constituents, or all nine million registered voters in Pennsylvania, to be joined or for them to raise these claims on their own.

75. Collectively, Ms. Winters, Mr. Sandru, Ms. Foster-Sandru, Ms. Roberts, Ms. Zolfo, Mr. Zolfo, Ms. Hilley, Mr. Bowens, the League, Common Cause and Make the Road PA are herein referred to as "Intervenor-Petitioners."

76. The Intergovernmental Operations Committee ("Committee") is a standing committee of the Pennsylvania State Senate.

77. Senator Cris Dush is a member of the Pennsylvania Senate, and is Chair of the Committee.

78. Senator Jake Corman currently serves as President Pro Tempore of the Pennsylvania State Senate.



79. This Court has original jurisdiction over this matter pursuant to 42 Pa. C.S. §761(a)(1), because the relief sought in this Petition is against the Commonwealth government or its officers. Alternatively, the original Petition was brought on behalf of the Commonwealth government, and therefore, this Court has original jurisdiction pursuant to 42 Pa.C.S. §761(a)(2).

### **The Constitutional Right to Privacy**

80. Citizens of this Commonwealth have a right to privacy that emanates from several provisions of the Pennsylvania Constitution. This constitutional right includes the right to privacy in one’s own information.

81. The “right of informational privacy” includes “the right of the individual to control access to, or the dissemination of, personal information about himself or herself.” *Pa. State Educ. Ass’n v. Commonwealth, Dep’t of Community & Econ. Development*, 637 Pa. 337, 350, 148 A.3d 142, 150 (2016). *See also In re T.R.*, 557 Pa. 99, 105, 731 A.2d 1276, 1279 (1999) (plurality) (“There is no longer any question that the United States Constitution and the Pennsylvania Constitution provide protections for an individual’s right to privacy . . . [including] . . . the individual’s interest in avoiding disclosure of personal matters . . .”).

82. Pennsylvania’s Constitution “provides even ‘more rigorous and explicit protection for a person’s right to privacy’ than does the U.S. Constitution.” *Pa. State Educ. Ass’n*, 148 A.3d at 151 (citation omitted). *See also Commonwealth v. Alexander*, 243 A.3d 177, 181, 206 (Pa. 2020) (“Article I, Section 8 affords greater protection to our citizens than the Fourth Amendment” and, referring also to Article I, Section I, “[w]e must consider our charter as a whole . . .”).

83. “The right to privacy is as much property of the individual as the land to which he holds title and the clothing he wears on his back.” *Commonwealth v. Murray*, 423 Pa. 37, 39, 223 A.2d 102, 109 (1966) (also describing this right as the right “to be let alone”).

84. This right to privacy is also based on the Pennsylvania Constitution’s prohibition against unreasonable searches and seizures. *Commonwealth v. Alexander*, 243 A.3d 177, 206 (Pa. 2020); *Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 513 Pa. 236, 519 A.2d 408, 413-14 (1986).

85. In particular, the constitutional right to privacy protects Pennsylvanians against legislative overreach, including unjustified and overbroad subpoenas. *See, e.g., Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 513 Pa. 236, 248, 519 A.2d 408, 415 (1986); *Annenberg v. Roberts*, 333 Pa. 203, 213, 2 A.2d 612, 617-18 (1938).

86. Information that is protected by the right to privacy includes personally-identifying information, such as social security numbers and driver's license numbers.<sup>1</sup> *Pa. State Educ. Ass'n*, 148 A.3d at 158; *Sapp Roofing Company, Inc. v. Sheet Metal Workers' Int'l Ass'n, Local Union No. 12*, 552 Pa. 105, 713 A.2d 627 (1998); *Governor's Office of Admin. v. Purcell*, 35 A.3d 811, 821 (Pa. Commw. 2011). *See also PSEA ex rel. Wilson v. OOR*, 981 A.2d 383, 385-86 (Pa. Commw. 2009); *Cypress Media, Inc. v. Hazleton Area Sch. Dist.*, 708 A.2d 866, 870 (Pa. Commw. 1998) (“[T]his Court has held that a person’s [personally-identifying information including] social security number are not subject to disclosure under the [previous Right-to-Know] Act because the benefits of disclosing such information are outweighed by a person’s privacy interests in that information.”) (citations omitted).”) *cf. Pa. State Univ. v. State Emples. Ret. Bd.*, 594 Pa. 244, 260, 935 A.2d 530, 539 (2007) (“With regard to the right to privacy in one’s social security number, . . . , we would have greater difficulty concluding that the public interest asserted here outweighs those basic rights to privacy”).

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<sup>1</sup> Voters’ constitutional privacy interests are not limited to social security numbers and driver’s license numbers. Noting that the Petitioners’ Petition for Review addresses a broader range of information, this Petition focuses on these two types of information, which are uniformly recognized as highly confidential and the disclosure of which would create an especially heightened risk.

87. Driver’s license numbers are specifically included as “personal information” that is not to be disclosed under the Drivers Protection Privacy Act, 18 U.S.C. §§2721, 2725(3), and can be used for identifying particular individuals just as easily as social security numbers. *See also* Pennsylvania Information Technology Policy No. ITP-SEC025 (March 19, 2010), [https://www.oa.pa.gov/Policies/Documents/itp\\_sec025.pdf](https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf) (defining personally identifiable information to include driver’s license numbers, social security numbers and other information); Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, section 7.0, <https://www.pacourts.us/Storage/media/pdfs/20210517/211002-477jad-attach1.pdf> (identifying confidential information to include social security numbers and driver’s license numbers).

### **Expectation of Privacy in Sensitive Information Provided to Exercise**

### **Constitutional Right to Vote**

88. Pennsylvania’s voter-registration process required (and requires) Intervenor-Petitioners and all Pennsylvanians to provide certain personally-identifying information to the Secretary of State, including their driver’s license number or the last four digits of their social security number. 52 U.S.C.

§21083(a)(5)(i). *See also* 4 Pa. Code §183.1 (definition of personal information);  
Voter Registration Application,

<https://www.pavoterservices.pa.gov/pages/VoterRegistrationApplication.aspx>.

89. Intervenor-Petitioners and eligible Pennsylvanians provide this private information when registering to vote solely to exercise their constitutional right to vote, and all voters have a reasonable expectation that this private information will remain confidential.

90. Under Pennsylvania law, this sensitive personally-identifying information is considered private and access is limited only to the Secretary and any employees or agents she assigns to administer the Statewide Uniform Registry of Electors (SURE) system, and elected commission officials in the respective counties. 25 Pa. C.S. §1222(c)). Indeed, the law includes criminal sanctions for unauthorized access to, or disclosure of, the information in the SURE system to further safeguard the privacy of this data. 25 Pa.C.S. §1707.

91. Upon an authorized request, the Department may provide a voter's name, address, date of birth and voting history, 4 Pa. Code §183.14, but the law specifically excludes voters' unique identifiers, driver's license number or social security number from any such production. §183.14(c). Further, home addresses

likewise are excluded for certain categories of voters with sensitive jobs.

§183.14(c)(4) and (5). *See also* 25 Pa.C.S. §1404.

92. “Street lists,” that is, lists of voters arranged either by street or house number or alphabetically by surname, may be compiled for individual districts, limited to names and addresses, 4 Pa. Code §183.13(a), and even this limited information is subject to safeguards. §183.13(c). This regulation specifies that a voter’s signature, unique identifier, driver’s license number and the last four digits of his/her social security number shall not be made available. §183.13(c)(5). *See also* 25 Pa.C.S. §1403.

93. State law prohibits the disclosure of records relating to the driving record of any person, 75 Pa.C.S. §6114, and this Court has held that information included in a driver’s license falls within this protection. *Advancement Project v. Pennsylvania Dep’t of Transp.*, 60 A.3d 891, 895-97 (Pa. Commw. 2013). Similarly, the Drivers’ Privacy Protection Act prohibits the disclosure of personal information obtained in connection with a motor vehicle record. 18 U.S.C. §2721. This personal information includes a person’s driver identification number and social security number. 18 U.S.C. §2725(3).

94. These laws and regulations demonstrate a strong public policy in favor of protecting individuals' personally-identifying information from unwanted and unwarranted disclosure.

95. Similarly, in *Pa. State Educ. Ass'n*, the Pennsylvania Supreme Court quoted an earlier decision by the United States Supreme Court:

We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files . . . The right to collect and use such data for public purposes is typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures.

*Id.* (quoting *Whalen v. Roe*, 429 U.S. 589, 605, 97 S. Ct. 869, 879 (1977)).

96. Numerous Pennsylvania laws and governmental representations provide assurance to Intervenor-Petitioners, and indeed all Pennsylvania voters, that their private information will remain confidential. These protections reassure voters that they have a strong, reasonable and legally protected expectation of privacy in the personally-identifying information they have provided to the Department of State in order to register to vote, which is a prerequisite to exercising their right to vote. *Cf. Commonwealth v. DeJohn*, 486 Pa. 32, 47, 403 A.2d 1283, 1289, 1291 (1979) (bank customers had reasonable expectation of privacy of bank records in possession of bank).

97. The disclosure of registered voters' personally-identifying information may cause others to refrain from registering to vote and exercising their constitutional right to vote for fear that their personal information also will be unexpectedly and unreasonably divulged.

### **The Subpoena**

98. On September 15, 2021, the Committee issued a subpoena *duces tecum* to Veronica Degraffenreid, Acting Secretary of State ("Subpoena"), a true and correct copy of which is attached hereto as Exhibit A.

99. The Subpoena requires the Secretary of State to turn over citizens' private personal information. In particular, the Subpoena seeks the following information for *every registered voter* in Pennsylvania: the name, date of birth, driver's license number, last four digits of social security number, address and date of last voting activity. (Subpoena, ¶¶4 through 13). For example, paragraph 4 of the Subpoena requests as follows:

A complete list containing the name, date of birth, driver's license number, last four digits of social security number, address, and date of last voting activity of all registered voters within the Commonwealth of Pennsylvania as of May 1, 2021, by County.



100. The Subpoena thus purports to require the Secretary to turn over the constitutionally-protected personal information of nine-million registered voters in the Commonwealth.

101. Enforcing the Subpoena will cause the Secretary to disclose constitutionally-protected and highly sensitive personal information of Intervenor-Petitioners (and indeed all the Commonwealth's registered voters) to individuals that they neither expected nor authorized to receive it when they registered to vote.

102. The Committee's failure to specify exactly how the information will be used, who will have access to it, and how security will be maintained makes enforcement of the Subpoena even more dangerous for Intervenor-Petitioners' and voters' privacy rights. The Committee has not identified the individuals who would have access to this information. From the Subpoena language and the testimony of Senator Dush, however, it appears such information would be shared with the Committee (consisting of eleven members, their staffs, and their counsel), the General Counsel of the Senate Republican Caucus, and unidentified third parties to whom the Committee intends to send the information for further review.

103. The constitutionally-protected information that the Subpoena seeks is personally identifying information, the unauthorized disclosure of which poses

significant risk above and beyond the infringement of voters' constitutional right to privacy, and the adverse impact on the voters' constitutional right to vote.

104. The requested information can be used to commit identity theft and financial fraud. In particular, this same information is used by government entities and businesses to identify individuals.

105. The Subpoena increases the risk of a data breach that would expose voters' constitutionally-protected personal information. Several instances within the past year involving analogous election reviews, conducted outside ordinary and legal channels, have already resulted in dangerous voter-information breaches. For example, in a lawsuit filed in Colorado, one of the parties disclosed a January 22, 2021, email offering more than 100 gigabytes of election data from Antrim County, Michigan, to another attorney in support of election challenges. Neither individual was entitled to possess that information. Omnibus Response to Motion to Dismiss, at paragraphs 27-28 in *Coomer v. Donald J. Trump for President, Inc.*, No. 2020CV34319 (Denver County, CO), found at <https://int.nyt.com/data/documenttools/coomer-lawsuit-motion/1095e8a9731b885b/full.pdf>. More recently, in May 2021, county officials made forensic images of voting system data in Mesa County, CO, which in August 2021, was distributed publicly at a Cyber Symposium event and now is available worldwide via certain file sharing services. Furthermore, during the audit in

Maricopa County, AZ, on which Senator Dush is modeling this effort, copies of voting system data were sent to an unnamed lab in Montana, which resulted in the voter data file being posted online. A. Kimbel-Sannit, Arizona Audit Data Might Be in Montana, or Maybe Virginia (Arizona Mirror June 2, 2021), <https://www.azmirror.com/blog/arizona-audit-data-might-be-in-montana-or-maybe-virginia/>; [https://twitter.com/Garrett\\_Archer/status/1437485829442588672](https://twitter.com/Garrett_Archer/status/1437485829442588672).

106. The information subpoenaed by the Committee, which includes driver's license numbers and social security numbers, would give anyone with access to the information the keys to control the registrations -- and even the votes -- of all nine million Pennsylvania voters. For example, a bad actor could use such information to tamper with an individual's voter registration, such as changing the voter's address, the voter's party affiliation or even the voter's name. This could disenfranchise voters by making them ineligible to vote in a primary, or unable to vote at all when their polling place has no record of their registration when they appear to vote on Election Day. The requested information also would allow a bad actor to request a mail-in ballot for the voter and have it sent to a different mailing address. Consequently, disclosure of the requested information would allow bad actors to disrupt elections and citizens' attempts to vote.

107. The disclosure of personally-identifying information along with multiple other data points for each individual voter is especially concerning, as that

makes identity theft much easier. In addition, having multiple data points for nine million voters in one dataset only enhances this risk.

108. Bad actors also could use the information to engage in voter intimidation. For example, in York County, members of a so-called “election integrity committee” went door-to-door, asking residents how they voted. <https://www.ydr.com/story/news/2021/07/29/york-county-voter-intimidation-alleged-residents-asked-about-elections-investigation-follows/5418312001/>. The United States Department of Justice has noted “[t]his sort of activity raises concerns regarding potential intimidation of voters.” United States Department of Justice, Federal Law Constraints on Post-Election Audits (July 28, 2021), <https://www.justice.gov/opa/press-release/file/1417796/download>.

### **The Committee’s Purported Interest in Voters’ Personal Information**

109. At a September 15, 2021, Intergovernmental Operations Committee hearing, Senator Dush described the purpose of its investigation as follows: “this body’s investigation into the 2020 general election and 2021 primary election and how the election code is working after the sweeping changes of Act 77 of 2020.” (Transcript of September 15, 2021 hearing, at 4:14-16). *See also* Transcript of September 9, 2021 hearing, at 2:20 to 3:1 (purpose is “looking intensely into the

general election held November 2020 and the primary election held in May of 2021, to evaluate our election code is working and to confirm whether or not these things and their worth – if there were things that need to be changed in the law to make our elections run better for everyone”).

110. Specifically with respect to the Subpoena for voters’ constitutionally-protected personal information, Senator Dush stated that the Committee’s purpose is to “verify the identity of individuals and their place of residence and their eligibility to vote” (September 15, 2021 hearing, at 16:22-17:20). When asked why it was necessary to verify the identities of individual voters, Senator Dush responded by referring only to unsubstantiated allegations by unidentified individuals who supposedly had raised unspecified “questions”:

Because there have been questions regarding the validity of the people who have voted, whether or not they exist. Again, we are not responding to proven allegations. We are investigating the allegations to determine whether or not they are factual.

(*Id.*, at 17:15-20).

111. Thus, the Committee is seeking to obtain the constitutionally-protected personal information of nine million Pennsylvania citizens based solely on unsubstantiated allegations by unidentified individuals who “question” whether certain unidentified voters may have committed voter fraud. Not only has the Committee failed to introduce any evidence to support these allegations, but courts

repeatedly dismissed complaints that made similar allegations without a factual basis. *See, e.g., Donald J. Trump for President, Inc. v. Secretary, Com. Of Pennsylvania*, No. 20-3371 (3d Cir. Nov. 27, 2020) (Bibas, J.) (“calling an election unfair does not make it so”).

112. Unsubstantiated allegations by unidentified individuals regarding other unidentified individuals cannot be the basis for invading the constitutionally-protected privacy rights of nine million Pennsylvania voters.

113. Moreover, the Committee has not explained why voters’ constitutionally-protected personal information is necessary for any such investigation. In prior investigations, the investigating bodies did not seek the information now sought by the Committee.

114. This personal information was not needed for the automatic recounts conducted by each county in Pennsylvania pursuant to 25 Pa. Stat. §3031.17.

115. This personal information was not needed for the risk-limiting audit conducted by 63 of Pennsylvania’s 67 counties.

116. This personal information was not needed for hearings conducted by the Pennsylvania House State Government Committee, which were designed to assess Pennsylvania’s election laws and “fix any identified problem within the election system and to regain the voters’ trust in . . . elections”. House State

Government Committee, A Comprehensive Review of Pennsylvania’s Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System (May 10, 2021),

<http://www.pahousegop.com/Display/SiteFiles/OtherDocuments/Election%20Oversight%20Hearing%20Final%20Report.pdf>.

117. This personal information was not needed for hearings conducted by the Pennsylvania Senate’s Special Committee on Election Integrity and Reform, which were designed to review “all aspects of” the November 2020 election, including the security of the vote, and the accuracy and security of the election process. Senate Special Committee on Election Integrity and Reform, Report on the Special Committee’s Findings and Recommendations to the Senate and the Senate State Government Committee (June 2021),

<https://pasenelectioncommittee.com/wp-content/uploads/sites/106/2021/06/election-integrity-report-final.pdf>.

118. This personal information was not needed by the Advisory Board within the Joint State Government Commission, created by the General Assembly and whose purpose was to study election law and to make annual recommendations to the General Assembly as to election law amendments, regulations and best practices to ensure integrity and efficiency in Commonwealth elections. 25 P.S. §3150.22(c). This Advisory Board issued its first annual report

in June 2021 with its recommendations. Jt. State Gov't Comm., Report of the Election Law Advisory Board for the Fiscal Year 2020-2021 (Pa. June 2021), [http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2021-06-23%20\(Act%2012\)%20ELAB%20web%206.23.2021.pdf](http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2021-06-23%20(Act%2012)%20ELAB%20web%206.23.2021.pdf).

119. This personal information was not needed when the Senate passed H.B. 1300 on June 25, 2021. This bill made several changes to the voter registration system, created a Bureau of Election Audits, and required an audit of the SURE system every five years. House Bill No. 1300 (Session of 2021), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2021&sessInd=0&billBody=H&billTyp=B&billNbr=1300&pn=1869>.

120. Thus, the Committee has no legitimate interest in this constitutionally-protected personal information.

### **Balancing of Interests**

121. Intervenor-Petitioners and their members have a right to notice and an opportunity to assert their interests before this Court can even consider whether to enforce the Subpoena for the constitutionally-protected personal information of Intervenor-Petitioners and other Pennsylvania voters. *City of Harrisburg v. Prince*, 219 A.3d 602, 619 (Pa. 2019) (“before the City can perform the required balancing



test . . . the donors [those whose personal information was subject to potential disclosure] must be afforded notice and an opportunity to be heard”). *See also Easton Area Sch. Dist. v. Miller*, 232 A.3d 716, 733 (Pa. 2020).

122. Before the constitutionally-protected personal information of Intervenor-Petitioners and their members and constituents is subject to disclosure under the facts of this case, this Court must weigh the constitutional rights to be infringed against the Committee’s interest in obtaining that information. *PA State Educ. Ass’n*, 148 A.3d at 154; *City of Harrisburg*, 219 A.3d at 618.

123. In Pennsylvania, where important constitutional rights such as the right to privacy are at stake, the Committee must demonstrate a “compelling” state interest. *Commonwealth v. Nixon*, 563 Pa. 425, 434, 761 A.2d 1151, 1156 (2000) (“On the other hand, under Pennsylvania’s constitution, while the right to privacy is not absolute, we do not apply a flexible approach. In this Commonwealth, only a compelling state interest will override one’s privacy rights.” (*citing Stenger v. Lehigh Valley Hosp. Ctr.*, 530 Pa. 426, 609 A.2d 796 (1992))).

124. In *In re T.R.*, 557 Pa. 99, 731 A.2d 1276 (1999), the Pennsylvania Supreme Court explained the test as follows:

Privacy claims must be balanced against state interests. Our test of whether an individual may be compelled to disclose private matters, as we stated it in *Denoncourt*, is that “government’s intrusion into a person’s private affairs is

constitutionally justified when the government interest is significant and there is no alternate reasonable method of lesser intrusiveness to accomplish the governmental purpose.” 470 A.2d at 949. More recently, we have stated the test in terms of whether there is a compelling state interest. *Stenger*, 609 A.2d at 802. In reality, the two tests are not distinct. There must be both a compelling, i.e., “significant” state interest and no alternate reasonable method of lesser intrusiveness.

557 Pa. at 106 (citing *Denoncourt v. Commonwealth State Ethics Comm’n*, 504 Pa. 191, 470 A.2d 945 (1983), and *Stenger, supra*). This balancing test is in addition to any statutory restrictions such as those pursuant to the right to know law, and applies to any government disclosure of personal information. *Reese v. Pennsylvanians for Union Reform*, 643 Pa. 530, 555-57, 173 A.3d 1143, 1159 (Pa. 2017).

125. Intervenor-Petitioners’ interests are significant. The right to privacy in one’s personal information is protected by the Pennsylvania Constitution, and is a seminal right: “the right to be let alone—the most comprehensive of rights and the right most valued by civilized [people].” *Denoncourt v. Commonwealth State Ethics Comm’n*, 504 Pa. 191, 199, 470 A.2d 945, 948-49 (1983) (quoting *Olmstead v. United States*, 277 U.S. 438, 478, 48 S. Ct. 564, 572 (1928) (dissenting opinion of J. Brandeis)).

126. The Committee has not identified any state interest that justifies this intrusion. And any as-yet unidentified interest of the Committee in this constitutionally-protected personal information would be suspect. Many other

already-conducted investigations did not require such information. Moreover, the Committee has not established any factual basis to justify or necessitate access to this personal information to verify voters' identities. Even if there were a factual basis (rather than just "questions") regarding inconsistencies or anomalies in certain voting precincts, the collection of this sensitive, personally-identifying information for every registered voter in the Commonwealth is overbroad. One does not perform surgery when a dose of aspirin will suffice.

127. Thus, the Committee cannot establish a "compelling" state interest in acquiring this information.

128. Even under a straight balancing test, the Committee's interest does not outweigh Intervenor-Petitioners' significant privacy interests.

129. The Supreme Court has cautioned against any such "fishing expeditions" where the investigating body has provided no factual basis for the request. *Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 513 Pa. 236, 519 A.2d 408 (1986). The Pennsylvania Supreme Court quoted the United States Supreme Court as follows:

Recognizing the danger of legislative inquiries intruding upon privacy interests, Mr. Justice Oliver Wendell Holmes, Jr. once stated,

Anyone who respects the spirit as well as the letter of the 4th Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions

into the fire . . . and to direct *fishing expeditions* into private papers on the possibility that they may disclose evidence of crime . . . . It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up.

. . . The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it . . . . Some evidence of the materiality of the papers demanded must be produced.

...

*FTC. v. American Tobacco Co.*, 264 U.S. 298, 305-307, 44 S.Ct. 336, 337-338, 68 L.Ed. 696, 700-701 (1924) (emphasis added).

513 Pa. 236, 245-46, 519 A.2d 408, 413.

130. The Committee has not proffered any factual or legitimate basis to justify the intrusion on the constitutional privacy rights of all registered voters in Pennsylvania, let alone voters in any particular community or precinct.

131. The Committee has not established that it has any interest, let alone a compelling interest, that outweighs the constitutional privacy rights of registered Pennsylvania voters.

132. Even if the Committee were to advance a legitimate legislative interest, the Subpoena is not narrowly tailored to advance that interest and is

overbroad. Nor has the Committee demonstrated that there is no alternate or less-intrusive means of advancing a legitimate interest.

**Count I – Request for Injunctive Relief and Declaratory Judgment**  
**(Infringement Upon Constitutionally-Protected Privacy Interest in Voters’**  
**Personal Information)**

133. Intervenor-Petitioners incorporate by reference paragraphs 1 through 132 of this Petition for Review as though set forth fully herein.

134. The Subpoena seeks to compel the disclosure of constitutionally-protected personal information of nine million registered voters in Pennsylvania, including Intervenor-Petitioners’ personal information.

135. The Committee has not identified any legitimate public interest that would be served by disclosure of this private information, let alone a compelling public interest.

136. The privacy interest of Pennsylvania voters, including the Intervenor-Petitioners, and their right to vote, heavily outweigh any potential public interest in the disclosure of such information.

137. Registered voters in Pennsylvania, including the Intervenor-Petitioners, have a reasonable expectation of privacy in their personally-identifying

information, including their drivers' license number and social security number (in whole or in part).

138. The Subpoena and any compliance therewith violates Intervenor-Petitioners' constitutional rights, as well as those of all registered voters in Pennsylvania.

WHEREFORE, Intervenor-Petitioners request that this Court (1) quash that portion of the Subpoena that purports to compel the disclosure of this protected information; (2) declare the Subpoena invalid and unenforceable to the extent it seeks this information; (3) enjoin the Secretary of State from disclosing protected information in response to the Subpoena; and (4) enjoin Respondents from taking any further action to enforce the Subpoena or compel the disclosure of protected information.

Dated: October 4, 2021

Witold J. Walczak (PA I.D. No. 62976)  
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Respectfully submitted,

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Kathy Foster-Sandru, Robin Roberts, Kierstyn  
Zolfo, Michael Zolfo, Phyllis Hilley, Ben  
Bowens, League of Women Voters of  
Pennsylvania; Common Cause Pennsylvania  
and Make the Road Pennsylvania*

*\*Pro hac vice forthcoming*

# EXHIBIT A



# Senate of Pennsylvania



COPY

HARRISBURG, PA

## Subpoena Duces Tecum

In the Senate of Pennsylvania

**From:** Intergovernmental Operations Committee

**To:** The Honorable Veronica Degraffenreid, Acting Secretary  
Department of State  
302 North Office Building  
401 North Street  
Harrisburg, Pennsylvania 17120

You are hereby ordered by the Senate Intergovernmental Operations Committee to supply the following documents listed below. This material shall be delivered to the General Counsel, Senate Republican Caucus, Crystal H. Clark, Esquire, at Room 350 Main Capitol Building, Harrisburg, Pennsylvania, no later than Friday, October 1, 2021 at 4:00 p.m.

1. Any and all communications (emails, letters, notes of calls and/or meetings, or otherwise) from the Department of State to any County Election Director or member of a County's Elections Board between May 1, 2020 and May 31, 2021.
2. A copy of each and every version of all directives, guidance(s), policies, or procedures in effect at any time between August 1, 2020 and June 30, 2021 relating to elections, election systems, mail-in ballot applications, ballots, voting, compliance with state or federal election laws, polling places, and/or poll watchers.
3. All training materials used to train County election workers, poll workers, poll watchers, Judges of Election, inspectors, clerks, and all persons who staffed voting offices between August 1, 2020 and May 31, 2021.
4. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, address, and date of last voting activity of all registered voters within the Commonwealth of Pennsylvania as of May 1, 2021, by County.
5. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, address, and date of last voting activity of all registered voters within the Commonwealth of Pennsylvania as of November 1, 2020, by County.

6. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, and address of all individuals who voted in person in the November 2020 General Election, by County.
7. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, and address of all individuals who voted by mail-in ballot in the November 2020 General Election, by County.
8. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, and address of all individuals who voted by absentee ballot in the November 2020 General Election, by County.
9. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, and address of all individuals who voted by provisional ballot in the November 2020 General Election, by County.
10. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, and address of all individuals who voted in person in the May 2021 Primary Election, by County.
11. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, and address of all individuals who voted by mail-in ballot in the May 2021 Primary Election, by County.
12. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, and address of all individuals who voted by absentee ballot in the May 2021 Primary Election, by County.
13. A complete list containing the name, date of birth, driver's license number, last four digits of social security number, and address of all individuals who voted by provisional ballot in the May 2021 Primary Election, by County.
14. A complete list of all changes to voter records made between May 31, 2020 and May 31, 2021.
15. A copy of the certified results for each and every race and/or ballot question on the 2020 General or 2021 Primary elections.
16. A copy of all reports of audits and/or reviews of the SURE system conducted by or for the Department of State between 2018 and the present, including, but not limited to, any audits conducted under 25 Pa.C.S. 1803(a).
17. A copy of the annual reports submitted to the Department in 2021 pursuant to 4 Pa. Code 183.17.

**COPY**

This subpoena is issued pursuant to permission granted to the Chair of the Senate Intergovernmental Operations Committee and in accord with the Constitution and Rules of the Senate of Pennsylvania.



\_\_\_\_\_  
Senator Cris Dush, Chair  
Senate Intergovernmental  
Operations Committee

Attest:



\_\_\_\_\_  
Megan Martin, Secretary  
Senate of Pennsylvania

9/15/21

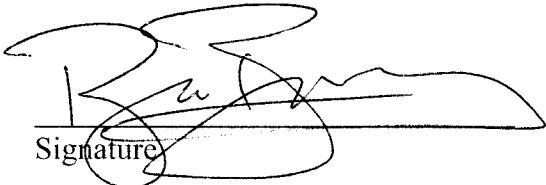
Date

COPY

SENATOR COSTA-RCUD  
21 SEP 15 PM 12:05

**VERIFICATION**

I verify that the statements made in the foregoing proposed Petition for Review of Petitioner-Intervenors are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
Signature

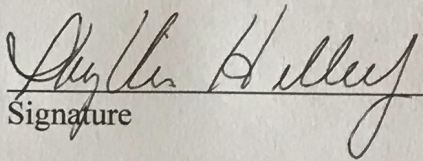
Ben Bowens  
Name

Dated: October 3, 2021



**VERIFICATION**

I verify that the statements made in the foregoing proposed Petition for Review of Petitioner-Intervenors are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

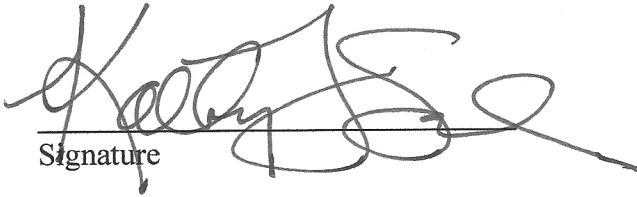
  
Signature

Phyllis Hilley  
Name

Dated: October 3, 2021

**VERIFICATION**

I verify that the statements made in the foregoing proposed Petition for Review of Petitioner-Intervenors are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.




Signature

Kathy Foster-Sandru  
Name

Dated: October 3, 2021

**VERIFICATION**

I verify that the statements made in the foregoing proposed Petition for Review of Petitioner-Intervenors are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
Signature

Kierstyn P. Zolfo  
Name

Dated: October 3, 2021

**VERIFICATION**

I verify that the statements made in the foregoing proposed Petition for Review of Petitioner-Intervenors are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Signature

Michael Zolfo  
\_\_\_\_\_  
Name

Dated: October 3, 2021



**VERIFICATION**

I verify that the statements made in the foregoing proposed Petition for Review of Petitioner-Intervenors are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



\_\_\_\_\_  
Signature

Nichita Sandru

\_\_\_\_\_  
Name

Dated: October 3, 2021

**VERIFICATION**

I verify that the statements made in the foregoing proposed Petition for Review of Petitioner-Intervenors are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
Signature

Robin Roberts  
Name

Dated: October 2, 2021

VERIFICATION

I am authorized to make this verification on behalf of the League of Women Voters of Pennsylvania. I have read proposed Petition for Review of Petitioner-Intervenors, and verify that the statements contained therein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



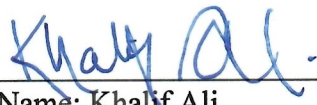
Name: *Terri Griffin*

Title: *President*

Dated: October 3, 2021

**VERIFICATION**

I am authorized to make this verification on behalf of the Common Cause of Pennsylvania. I have read proposed Petition for Review of Petitioner-Intervenors and verify that the statements contained therein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



\_\_\_\_\_  
Name: Khalif Ali  
Title: Executive Director, Common Cause PA

Dated: October 4, 2021

**VERIFICATION**

I verify that the statements made in the foregoing proposed Petition for Review of Petitioner-Intervenors are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

*Roberta L. Winters*

\_\_\_\_\_  
Signature

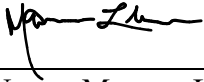
Roberta L. Winters

Name

Dated: October 2, 2021

**VERIFICATION**

I am authorized to make this verification on behalf of Make the Road Pennsylvania. I have read the proposed Petition for Review of Petitioner-Intervenors, and verify that the statements contained therein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



---

Name: Maegan Llerena

Title: Director, Make the Road PA

Dated: October 4, 2021

CONFIDENTIAL DOCUMENTS CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Keith E. Whitson  
Keith E. Whitson

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via email, this 4th day of October, 2021, upon the following:

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*Counsel for Respondents*

/s/ Keith E. Whitson  
Keith E. Whitson

**PUBLIC ACCESS POLICY OF THE  
UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA:  
CASE RECORDS OF THE  
APPELLATE AND TRIAL COURTS**

**Section 1.0 Definitions**

- A. “Abuse Victim” is a person for whom a protection order has been granted by a court pursuant to Pa.R.C.P. No. 1901 et seq. and 23 Pa.C.S. § 6101 et seq. or Pa.R.C.P. No. 1951 et seq. and 42 Pa.C.S § 62A01 et seq.
- B. “Case Records” are (1) documents for any case filed with, accepted and maintained by a court or custodian; (2) dockets, indices, and documents (such as orders, opinions, judgments, decrees) for any case created and maintained by a court or custodian. This term does not include notes, memoranda, correspondence, drafts and work product of judges and court personnel. Unless otherwise provided in this policy, this definition applies equally to case records maintained in paper and electronic formats.
- C. “Clerical errors” are errors or omissions appearing in a case record that are patently evident, as a result of court personnel's action or inaction.
- D. “Court” includes the Supreme Court, Superior Court, Commonwealth Court, Courts of Common Pleas, and Philadelphia Municipal Court, excluding the Traffic Division of Philadelphia Municipal Court.
- E. “Court Facility” is the location or locations where case records are filed or maintained.
- F. “Custodian” is any person responsible for maintaining case records or for processing public requests for access to case records.
- G. “Docket” is a chronological index of filings, actions, and events in a particular case, which may include identifying information of the parties and counsel, a brief description or summary of the filings, actions, and events, and other case information.
- H. “Financial Account Numbers” include financial institution account numbers, debit and credit card numbers, and methods of authentication used to secure accounts such as personal identification numbers, user names and passwords.

- I. “Financial Source Documents” are:
1. Tax returns and schedules;
  2. W-2 forms and schedules including 1099 forms or similar documents;
  3. Wage stubs, earning statements, or other similar documents;
  4. Credit card statements;
  5. Financial institution statements;
  6. Check registers;
  7. Checks or equivalent; and
  8. Loan application documents.
- J. “Medical/psychological records” are records relating to the past, present, or future physical or mental health or condition of an individual.
- K. “Minor” is a person under the age of eighteen.
- L. “Party” is one who commences an action or against whom relief is sought in a matter.
- M. “Public” is any person, member of the media, business, non-profit entity, organization or association. The term does not include a party to a case; the attorney(s) of record in a case; Unified Judicial System officials or employees if acting in their official capacities; or any federal, state, or local government entity, and employees or officials of such an entity if acting in their official capacities.
- N. “Remote Access” is the ability to electronically search, inspect, print or copy information in a case record without visiting the court facility where the case record is maintained or available, or requesting the case record from the court or custodian pursuant to Section 4.0.

### **COMMENTARY**

Regarding Subsection B, “documents for any case filed with, accepted and maintained by a court or custodian” are those not created by a court or custodian, such as pleadings and motions. Indices are tools for identifying specific cases.

Regarding Subsection C, examples of clerical errors are the docket entry links to the wrong document or court personnel misspells a name in the caption.

Regarding Subsection F, the definition of “custodian” does not include those entities listed in Pa.R.A.P. 3191 who receive copies of briefs filed in an appellate court.

Regarding Subsection J, this definition is derived from the definition of “health information” provided in 45 C.F.R. § 160.103 (HIPAA). Examples of case records that

would fall within this exclusion are: drug and alcohol treatment records, psychological reports in custody matters, and DNA reports.

Regarding Subsection L, *amici curiae* are not parties. See Pa.R.A.P. 531.

Regarding Subsection M, Unified Judicial System officials or employees include: judicial officers and their personal staff, administrative staff and other central staff, prothonotaries, clerks of the courts, clerks of the orphans' court division, sheriffs, prison and correctional officials, and personnel of all the above.

## Section 2.0 Statement of General Policy

- A. This policy shall govern access by the public to case records.
- B. Security, possession, custody, and control of case records shall generally be the responsibility of the applicable custodian and designated staff.
- C. Facilitating access by the public shall not substantially impede the orderly conduct of court business.
- D. A court or custodian may not adopt more restrictive or expansive access protocols than provided for in this policy. Nothing in this policy requires a court or custodian to provide remote access to case records. However, if a court or custodian chooses to provide remote access to any of its case records, access shall be provided in accordance with Section 10.0.

### COMMENTARY

The Supreme Court of Pennsylvania has adopted other policies governing public access to Unified Judicial System case records: the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* that provides for access to the statewide case management systems' web docket sheets and requests for bulk data and the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts* that provides for access to case records of the magisterial district courts maintained in a paper format.

## **Section 3.0 Access to Case Records**

All case records shall be open to the public in accordance with this policy.

## Section 4.0 Requesting Access to Case Records

- A. When desiring to inspect or copy case records, a member of the public shall make an oral or written request to the applicable custodian, unless otherwise provided by court order or rule. If the request is oral, the custodian may require a written request.
- B. Requests shall identify or describe the records sought with specificity to enable the custodian to ascertain which records are being requested.

### COMMENTARY

Public access requests to the courts and custodians are routinely straightforward and often involve a limited number of records. Therefore, artificial administrative barriers should not be erected so as to inhibit making these requests in an efficient manner.

This policy provides the courts and custodians latitude to establish appropriate administrative protocols for viewing/obtaining case records remotely. However, the definition of “remote access” in Section 1.0 clarifies that a request under this section is neither necessary nor expected under this policy.

Nonetheless, Subsection A provides a custodian with the flexibility to require that a more complex request be submitted in writing to avoid misunderstandings and errors that can often result in more time being expended to provide the requested information than is necessary. This approach is not novel; submission of a written request form has been a longstanding practice under the Unified Judicial System’s *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* and *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*.

Subsection B does not require a requestor to identify a case by party or case number in order to have access to the files, but the request shall clearly identify or describe the records requested so that court personnel can fulfill the request.

Written requests should be substantially in the format designed and published by the Administrative Office of Pennsylvania Courts.

## **Section 5.0 Responding to Requests for Access to Case Records**

- A. A custodian shall fulfill a request for access to case records as promptly as possible under the circumstances existing at the time of the request.
- B. If a custodian cannot fulfill the request promptly or at all, the custodian shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied.
- C. If a custodian denies a written request for access, the denial shall be in writing.
- D. Relief from a custodian's written denial may be sought by filing a motion or application with the court for which the custodian maintains the records.

### **COMMENTARY**

Given that most public access requests for case records are straightforward and usually involve a particular case or matter, custodians should process the same in an expeditious fashion.

There are a number of factors that can affect how quickly a custodian may respond to a request. For example, the custodian's response may be slowed if the request is vague, involves retrieval of a large number of case records, or involves information that is stored off-site. Ultimately, the goal is to respond timely to requests for case records.

In those unusual instances in which access to the case records cannot be granted in an expeditious fashion, the custodian shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied, which may include:

- the request involves such voluminous amounts of information that the custodian is unable to fulfill the same without substantially impeding the orderly conduct of the court or custodian's office;
- records in closed cases are located at an off-site facility;
- a particular file is in use by a judge or court staff. If a judge or court staff needs the file for an extended period of time, special procedures should be considered, such as making a duplicate file that is always available for public inspection;
- the requestor failed to pay the appropriate fees, as established pursuant to Section 6.0 of this policy, associated with the request;
- the requested information is restricted from access pursuant to applicable authority, or any combination of factors listed above.



An aggrieved party may seek relief from a denial of a written request for access consistent with applicable authority (for example, in an appellate court, Pa.R.A.P. 123 sets forth procedures for applications for relief under certain circumstances, or pertinent motion practice at the trial court level).

## Section 6.0 Fees

- A. Unless otherwise provided by applicable authority, fees for duplication by photocopying or printing from electronic media or microfilm shall not exceed \$0.25 per page.
- B. A custodian shall establish a fee schedule that is (1) posted in the court facility in an area accessible to the public, and (2) posted on the custodian's website.

### COMMENTARY

Reasonable fees may be imposed for providing public access to case records pursuant to this policy and in accordance with applicable authority. This section does not authorize fees for viewing records that are stored at the court facility.

To the extent that the custodian is not the court, approval of the fee schedule by the court may be necessary.

An example of applicable authority setting forth photocopying fees is 42 Pa.C.S. § 1725(c)(1)(ii) that provides the Clerk of Orphans' Court of the First Judicial District shall charge \$3 per page for a copy of any record. *See also* 42 P.S. § 21032.1 (providing authority for the establishment of fees in orphans' court in certain judicial districts). In addition, the copying fees for appellate court records are provided for in 204 Pa. Code § 155.1. However, copies of most appellate court opinions and orders are available for free on the Unified Judicial System's website, [www.pacourts.us](http://www.pacourts.us).

## Section 7.0 Confidential Information

- A. Unless required by applicable authority or as provided in Subsection C, the following information is confidential and shall be not included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document:
1. Social Security Numbers;
  2. Financial Account Numbers, except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified;
  3. Driver License Numbers;
  4. State Identification (SID) Numbers;
  5. Minors' names and dates of birth except when a minor is charged as a defendant in a criminal matter (see 42 Pa.C.S. § 6355); and
  6. Abuse victim's address and other contact information, including employer's name, address and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name.
- This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.
- B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Information Form.
- C. Instead of using the Confidential Information Form, a court may adopt a rule or order permitting the filing of any document in two versions, a "Redacted Version" and "Unredacted Version." The "Redacted Version" shall not include any information set forth in Subsection A, while the "Unredacted Version" shall include the information. Redactions must be made in a manner that is visibly evident to the reader.
- D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents."
- E. A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply

with this section shall not affect access to case records that are otherwise accessible.

- F. If a filed document fails to comply with the requirements of this section, a court may, upon motion or its own initiative, with or without a hearing order the filed document sealed, redacted, amended or any combination thereof. A court may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.
- G. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

### **COMMENTARY**

There is authority requiring information listed in Subsection A to appear on certain documents. For example, Pa.R.C.P. No. 1910.27 provides for inclusion of the plaintiff's and defendant's social security number on a complaint for support.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, for example, cases filed under the Juvenile Act that are already protected by 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

Whether using a Confidential Information Form or filing a redacted and unredacted version of a document, the drafter shall indicate where in the document confidential information has been omitted. For example, the drafter could insert minors' initials in the document, while listing full names on the Confidential Information Form. If more than one child has the same initials, a different moniker should be used (e.g., child one, child two, etc.).

While Pa.R.C.P. No. 1931 is suspended in most judicial districts, the reference to the rule is merely for definitional purposes.

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system.

With regard to Subsection E, a court or custodian is not required to review or redact documents filed by a party or attorney for compliance with this section. However, such activities are not prohibited.

Any party may make a motion to the court to cure any defect(s) in any filed document that does not comport with this section.

## Section 8.0 Confidential Documents

- A. Unless required by applicable authority, the following documents are confidential and shall be filed with a court or custodian under a cover sheet designated “Confidential Document Form”:
1. Financial Source Documents;
  2. Minors’ educational records;
  3. Medical/Psychological records;
  4. Children and Youth Services’ records;
  5. Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33;
  6. Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c); and
  7. Agreements between the parties as used in 23 Pa.C.S. §3105.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

- B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Document Form.
- C. Confidential documents submitted with the Confidential Document Form shall not be accessible to the public, except as ordered by a court. However, the Confidential Document Form or a copy of it shall be accessible to the public.
- D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form “I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.”
- E. A court or custodian is not required to review any filed document for compliance with this section. A party’s or attorney’s failure to comply with this section shall not affect access to case records that are otherwise accessible.
- F. If confidential documents are not submitted with the Confidential Document Form, a court may, upon motion or its own initiative, with or without a hearing, order that any such documents be sealed. A court may also impose appropriate sanctions for failing to comply with this section.

G. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

### **COMMENTARY**

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, such as Juvenile Act cases pursuant to 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from attaching confidential documents to court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

Examples of "agreements between the parties" as used in Subsection (A)(7) include marital settlement agreements, post-nuptial, pre-nuptial, ante-nuptial, marital settlement, and property settlement. See 23 Pa.C.S. §3105 for more information about agreements between parties.

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system.

With regard to Subsection E, if the party or party's attorney fails to use a cover sheet designated "Confidential Document Form" when filing a document deemed confidential pursuant to this section, the document may be released to the public.

Any party may make a motion to the court to cure any defect(s) in any filed document that does not comport with this section.

## **Section 9.0 Limits on Public Access to Case Records at a Court Facility**

The following information shall not be accessible by the public at a court facility:

- A. Case records in proceedings under 20 Pa.C.S. § 711(9), including but not limited to case records with regard to issues concerning recordation of birth and birth records, the alteration, amendment, or modification of such birth records, and the right to obtain a certified copy of the same, except for the docket and any court order or opinion;
- B. Case records concerning incapacity proceedings filed pursuant to 20 Pa.C.S. §§ 5501-5555, except for the docket and any final decree adjudicating a person as incapacitated;
- C. Any Confidential Information Form or any Unredacted Version of any document as set forth in Section 7.0;
- D. Any document filed with a Confidential Document Form as set forth in Section 8.0;
- E. Information sealed or protected pursuant to court order;
- F. Information to which access is otherwise restricted by federal law, state law, or state court rule; and
- G. Information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice, as determined by the Court Administrator of Pennsylvania with the approval of the Chief Justice. The Court Administrator shall publish notification of such determinations in the *Pennsylvania Bulletin* and on the Unified Judicial System's website.

### **COMMENTARY**

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in or attaching confidential documents to court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.



With respect to Subsection F, Pennsylvania Rule of Appellate Procedure 104(a), Pa.R.A.P. 104(a), provides that the appellate courts may make and amend rules of court governing their practice. The Administrative Office of Pennsylvania Courts shall from time to time publish a list of applicable authorities that restrict public access to court records or information. This list shall be published on the Unified Judicial System's website and in the *Pennsylvania Bulletin*. In addition, all custodians shall post this list in their respective court facilities in areas accessible to the public and on the custodians' websites.

With respect to Subsection G, the Administrative Office of Pennsylvania Courts shall include any such determinations in the list of applicable authorities referenced above. The same provision appears in existing statewide public access policies adopted by the Supreme Court: *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* and *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*. The provision is intended to be a safety valve to address a future, extraordinary, unknown issue of statewide importance that might escape timely redress otherwise. It cannot be used by parties or courts in an individual case.

## Section 10.0 Limits on Remote Access to Case Records

- A. The following information shall not be remotely accessible by the public:
1. The information set forth in Section 9.0;
  2. In criminal cases, information that either specifically identifies or from which the identity of jurors, witnesses (other than expert witnesses), or victims could be ascertained, including names, addresses and phone numbers;
  3. Transcripts lodged of record, excepting portions of transcripts when attached to a document filed with the court;
  4. *In Forma Pauperis* petitions;
  5. Case records in family court actions as defined in Pa.R.C.P. No. 1931(a), except for dockets, court orders and opinions;
  6. Case records in actions governed by the Decedents, Estates and Fiduciaries Code, Adult Protective Services Act and the Older Adult Protective Services Act, except for dockets, court orders and opinions; and
  7. Original and reproduced records filed in the Supreme Court, Superior Court or Commonwealth Court as set forth in Pa.R.A.P. 1921, 1951, 2151, 2152, and 2156.
- B. With respect to Subsections A(5) and A(6), unless otherwise restricted pursuant to applicable authority, dockets available remotely shall contain only the following information:
1. A party's name;
  2. The city, state, and ZIP code of a party's address;
  3. Counsel of record's name and address;
  4. Docket number;
  5. Docket entries indicating generally what actions have been taken or are scheduled in a case;
  6. Court orders and opinions;
  7. Filing date of the case; and
  8. Case type.
- C. Case records remotely accessible by the public prior to the effective date of this policy shall be exempt from this section.

### COMMENTARY

Remote access to the electronic case record information residing in the Pennsylvania Appellate Court Case Management System (PACMS), the Common Pleas Case Management System (CPCMS) and the Magisterial District Judges System (MDJS) is provided via web dockets, available on <https://ujportal.pacourts.us/>, and is

governed by the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*.

Depending upon individual court resources, some courts have posted online docket information concerning civil matters. If a court elects to post online docket information concerning family court actions and actions governed by the Decedents, Estates and Fiduciaries Code, Adult Protective Services Act and the Older Adult Protective Services Act, the docket may only include the information set forth in Subsection B. This information will provide the public with an overview of the case, its proceedings and other pertinent details, including the court's decision. Release of such information will enhance the public's trust and confidence in the courts by increasing awareness of the procedures utilized to adjudicate the claims before the courts as well as the material relied upon in reaching determinations. This provision does not impact what information is maintained on the docket available at the court facility.

Access to portions of transcripts when attached to a document filed with the court in family court actions is governed by Subsection A(5). While Pa.R.C.P. No. 1931 is suspended in most judicial districts, the reference to the rule is merely for definitional purposes.

## **Section 11.0 Correcting Clerical Errors in Case Records**

- A. A party, or the party's attorney, seeking to correct a clerical error in a case record may submit a written request for correction.
  - 1. A request to correct a clerical error in a case record of the Supreme Court, Superior Court or Commonwealth Court shall be submitted to the prothonotary of the proper appellate court.
  - 2. A request to correct a clerical error in a case record of a court of common pleas or Philadelphia Municipal Court shall be submitted to the applicable custodian.
- B. The request shall be made on a form designed and published by the Administrative Office of Pennsylvania Courts.
- C. The requestor shall specifically set forth on the request form the information that is alleged to be a clerical error and shall provide sufficient facts, including supporting documentation, that corroborate the requestor's allegation that the information in question is in error.
- D. The requestor shall provide copies of the request to all parties to the case.
- E. Within 10 business days of receipt of a request, the custodian shall respond in writing to the requestor and all parties to the case in one of the following manners:
  - 1. The request does not contain sufficient information and facts to determine what information is alleged to be in error, and no further action will be taken on the request.
  - 2. The request does not concern a case record that is covered by this policy, and no further action will be taken on the request.
  - 3. A clerical error does exist in the case record and the information in question has been corrected.
  - 4. A clerical error does not exist in the case record.
  - 5. The request has been received and an additional period not exceeding 30 business days is necessary to complete a review of the request.
- F. A requestor may seek review of the custodian's response under Subsections E(1)-(4) within 10 business days of the mailing date of the response.

1. The request for review shall be submitted on a form that is designed and published by the Administrative Office of Pennsylvania Courts.
2. The request shall be reviewed by the judge(s) who presided over the case.

### COMMENTARY

Case records are as susceptible to clerical errors and omissions as any other public record. The power of the court to correct errors in its own records is inherent. E.g., Jackson v. Hendrick, 746 A.2d 574 (Pa. 2000). It is important to emphasize that this section does not provide a party who is dissatisfied with a court's decision, ruling or judgment a new avenue to appeal the same by merely alleging there is an error in the court's decision, ruling or judgment. Rather, this section permits a party to "fix" information that appears in a case record which is not, for one reason or another, correct.

Particularly in the context of Internet publication of court records, a streamlined process is appropriate for addressing clerical errors to allow for prompt resolution of oversights and omissions. For example, to the extent that a docket in a court's case management system incorrectly reflects a court's order, or a scanning error occurred with regard to an uploaded document, such clerical inaccuracies may be promptly corrected by the appropriate court staff, upon notification, without a court order. Since 2007, the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* has provided a similar procedure for any errors maintained on the web docket sheets of the PACMS, CPCMS and MDJS. The procedure has successfully addressed clerical errors on docket entries in a timely and administratively simple manner.

A party or party's attorney is not required to utilize the procedures set forth in this section before making a formal motion for correction of a case record in the first instance. Alleged inaccuracies in orders and judgments themselves must be brought to the attention of the court in accordance with existing procedures.

This section is not intended to provide relief for a party's or attorney's failure to comply with Sections 7.0 and 8.0 of this policy. Sections 7.0 and 8.0 already provide for remedial action in the event that non-compliance occurs.

With respect to this section, a custodian includes, but is not limited to, the county prothonotaries, clerks of orphans' court, and clerks of the court.

A log of all corrections made pursuant to this section may be maintained by the custodian, so that there is a record if an objection is made in the future. Such a log should remain confidential. It is suggested that custodians include a registry entry on the case docket when a request is received and a response is issued.

## **Section 12.0 Continuous Availability of Policy**

A copy of this policy shall be continuously available for public inspection in every court and custodian's office and posted on the Unified Judicial System's website.

**CONFIDENTIAL DOCUMENTS CERTIFICATION**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Keith E. Whitson  
Keith E. Whitson

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that the Brief in Support of Motion for Summary Relief was filed (or attempted to be filed) with the Commonwealth Court of Pennsylvania's PACFile System and is an accurate and complete representation of the paper version of the Brief filed by Intervenor-Petitioners. I further certify that the foregoing Brief complies with the length requirements set forth in Rule 2135(a) of the Pennsylvania Rules of Appellate Procedure as the Brief contains 13,484 words, not including the supplementary matter identified in Rule 2135(b), based on the word count of Microsoft Word 2010, the word processing system used to prepare the brief. It has been prepared in 14-point font.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via PACFile and/or email, this 10th day of August, 2022, upon the following:

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