

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

COVER SHEET - NOTICE OF FILING OF MOTION OR PETITION UNDER  
LOCAL RULES OF CIVIL PROCEDURE

CASE CAPTION:

Sonja Keohane, Richard Keohane, and Barbara Welsh  
v. Delaware County Board of Elections

CIVIL CASE NO.

CV-2023-004458

NATURE OF MATTER FILED: *(please check one)*

- Petition Pursuant to Rule 206.1       Response to Petition       Motion for Judgment on the Pleadings Pursuant to Rule 1034(a)  
 Motion Pursuant to Rule 208.1       Response to Motion       Summary Judgment Pursuant to Rule 1035.2  
 Family Law Petition/Motion Pursuant to Rule 206.8

**FILING PARTY IS RESPONSIBLE FOR SERVICE OF THE RULE RETURNABLE  
DATE OR HEARING DATE UPON ALL PARTIES**

A motion or petition was filed in the above captioned matter on the 25 day of May, 2023, which:

Requires you, Respondent, to file an Answer within twenty (20) days of the above date to this notice, or risk the entry of an Order in favor of the Petitioner. Answers must be filed and time stamped by the Office of Judicial Support by 4:30 PM on the following date \_\_\_\_\_, \_\_\_\_\_.

Requires all parties, to appear at a hearing/conference on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_ in Courtroom \_\_\_, Delaware County Courthouse, Media, Pennsylvania. At this hearing/conference you must be prepared to present all testimony and/or argument, and must ensure that your witnesses will be present.

Was timely answered, thus requiring the scheduling of the following hearing in the above captioned matter on: \_\_\_\_\_, \_\_\_\_\_ at 10:00 AM in Courtroom \_\_\_\_\_.

At this hearing, all parties must be prepared to present all testimony and/or argument and must ensure that their witnesses will be present.

Qualifies as an Uncontested Motion or Petition, and as such requires neither an answer from the Respondent nor the scheduling of a hearing in this matter.

Has been assigned to Judge \_\_\_\_\_.

**FOR OFFICE USE ONLY**

Mailing date: \_\_\_\_\_

Processed by: \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

SONJA KEOHANE, RICHARD  
KEOHANE, and BARBARA WELSH,

Petitioners,

v.

DELAWARE COUNTY BOARD OF  
ELECTIONS,

Respondent.

CIVIL DIVISION

No. CV-2023-004458

ELECTION APPEAL

**[PROPOSED] ORDER**

THIS MATTER having come before the Court upon Petitioners' Petition for Review in the Nature of a Statutory Appeal pursuant to 25 P.S. § 3157 (the "Petition"), and the Court having reviewed the Petition, the papers in support thereof, and any response thereto;

IT IS HEREBY ORDERED AND DECREED that the Petition is GRANTED; and it is further

ORDERED that the May 23, 2023 decision of the Delaware County Board of Elections (the "Board") to not count Petitioners' provisional ballots cast in the May 16, 2023 primary election is REVERSED; and it is further

ORDERED that the Board must, as a matter of law, count otherwise valid provisional ballots timely cast by eligible voters whose previously submitted mail-in ballot submissions were rejected and/or canceled due to purported defects in the mail-in ballot submission.

BY THE COURT

Dated: May \_\_, 2023

\_\_\_\_\_

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FILED

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA**

**SONJA KEOHANE, RICHARD  
KEOHANE, and BARBARA WELSH,**

Petitioners,

v.

**DELAWARE COUNTY BOARD OF  
ELECTIONS,**

Respondent.

**CIVIL DIVISION**

No. CU-2023-004458

**ELECTION APPEAL**

**PETITION FOR REVIEW IN THE NATURE OF A STATUTORY APPEAL**

Petitioners Sonja Keohane, Richard Keohane, and Barbara Welsh, qualified registered electors of Delaware County, by and through their undersigned counsel, American Civil Liberties Union of Pennsylvania and the Public Interest Law Center, appeal pursuant to 25 P.S.

§ 3157 from the decision of the Delaware County Board of Elections (“Board”) on May 23, 2023, to not count their provisional ballots voted in the 2023 municipal primary,<sup>1</sup> and aver as follows:

### INTRODUCTION

1. “Voting is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). It includes the right of eligible voters both to cast their ballots and to have them counted.

2. This appeal concerns the decision of the Delaware County Board of Elections (the “Board”) to disenfranchise Petitioners, who each voted a provisional ballot at his or her polling place on May 16, 2023, after the Board had canceled the mail-in ballots they had previously submitted, because of purported defects on the outer envelope or a missing inner secrecy envelope.

3. Sometime prior to the May 16 primary, the Board established and implemented a policy of allowing voters to cure defects in mail ballots, but only if the voter followed a novel procedure found nowhere in state law, requiring the voter either to (a) obtain and complete a replacement ballot in person at the office of the Bureau of Elections (the “Bureau”) in Media, PA, or (b) request that the Bureau mail a replacement ballot to the voter in advance of election day. See <https://delcopa.gov/publicrelations/releases/2023/flawedvotebymailenvelopes.html> (last visited May 25, 2023). Meanwhile, guidance from the Pennsylvania Department of State

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<sup>1</sup> Petitioners are all voters in Pennsylvania House District 168. As Petitioners do not seek a recount or recanvass under sections 1701, 1702 or 1703 of the Election Code, and no race in their election district is close enough for the affected voters’ provisional ballots to potentially impact any outcomes, there is no need for the Court or the Board to suspend certification of any race in District 168, or in any other election district. Rather, Petitioners seek an order declaring the Board’s decision unlawful and requiring the Board to amend the final vote count to include Petitioners’ provisional ballots.

provided that a voter could obtain a provisional ballot at the polling place if, among other reasons, the voter “returned a completed absentee or mail-in ballot that was rejected by the county board of elections....” <https://www.vote.pa.gov/Voting-in-PA/Pages/Voting-by-Provisional-Ballot.aspx> (last visited May 25, 2023).

4. Petitioners did not complete the Board’s unique “cure” process, but instead went to their polling places on Election Day and completed provisional ballots after learning that the county had canceled their mail ballots, in order to ensure that they would get to have their votes counted in the primary election.

5. The Board itself has acknowledged that, in fairness, Petitioners’ provisional ballots should be counted in light of its previous decision to cancel their mail ballots, but the Board nevertheless decided on May 23, 2023 not to count six provisional ballots. The Board based this decision on a mistaken interpretation of the Election Code.

6. Petitioners are aggrieved by this order and decision and hereby appeal from it.

#### **JURISDICTION**

7. The Court has jurisdiction over this statutory appeal pursuant to 25 P.S. §3157(a).

#### **PARTIES**

8. Petitioner Sonja Keohane is an 80-year-old longtime qualified registered voter who resides in Delaware County and attempted to vote by mail ballot in the municipal primary. The Board notified Mrs. Keohane that it had canceled her ballot on May 10, 2023. *See* May 25, 2023 Declaration of S. Keohane (“SK Decl.”)<sup>2</sup> at ¶ 10. Mrs. Keohane completed and submitted a provisional ballot in person at her polling place on May 16, 2023. *Id.* ¶ 13.

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<sup>2</sup> A true and correct copy of Sonja Keohane’s Declaration is attached hereto at Exhibit A.

9. Petitioner Richard Keohane is an 81-year-old longtime qualified registered voter who resides in Delaware County and attempted to vote by mail ballot in the municipal primary. Prior to Election Day, the Board notified Mr. Keohane that it had canceled his ballot. *See* May 25, 2023 Declaration of R. Keohane (“RK Decl.”)<sup>3</sup> at ¶ 8. Despite serious physical challenges in getting to his polling place, Mr. Keohane completed and submitted a provisional ballot in person at his polling place on May 16, 2023, to ensure his participation in the primary election: *Id.* ¶ 10.

10. Petitioner Barbara Welsh is a 79-year-old longtime qualified registered voter and trained poll worker, who resides in Delaware County and attempted to vote by mail ballot in the municipal primary. The Delaware County Board of Elections notified Ms. Welsh that it had canceled her ballot on May 11, 2023. *See* May 24, 2023 Declaration of B. Welsh (“BW Decl.”)<sup>4</sup> at ¶ 10. Ms. Welsh completed and submitted a provisional ballot in person at her polling place on May 16, 2023. *Id.* ¶ 12.

11. Respondent, the Delaware County Board of Elections, is a local government agency responsible for overseeing the conduct of all elections in Delaware County, including adjudicating and deciding whether to count provisional ballots in accordance with the Election Code. *See* 25 P.S. § 2642 (powers and duties of boards of elections); *id.* § 3050(a.4) (adjudication of provisional ballots); *see also* Delaware County Home Rule Charter § 421.

#### **DECISION OF THE BOARD AT ISSUE**

12. Petitioners appeal from the decision of the Board not to count Petitioners’ provisional ballots, which these impacted voters completed after the Board had notified those

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<sup>3</sup> A true and correct copy of Richard Keohane’s Declaration is attached hereto at Exhibit B.

<sup>4</sup> A true and correct copy of Barbara Welsh’s Declaration is attached hereto at Exhibit C.

same voters that it had canceled – and therefore would not count – their previously submitted mail ballots because of purported defects involving the ballot envelopes.

13. The Board announced its decision orally at a public hearing on the disposition of provisional ballots on May 23, 2023. *See* 5/23/23 Tr. (Ex. E hereto) at 59:19 to 60:10.

### **FACTUAL BACKGROUND**

#### **Voting by Mail in Pennsylvania**

14. The Pennsylvania Election Code permits registered voters to vote by mail, either as an “absentee elector,” if the voter satisfies prescribed conditions, such as current military service, disability that prevents attendance at polling place, or absence from municipality on Election Day, *see* 25 P.S. § 3146.1, or as a “mail-in” elector if the voter applies for a mail ballot by the deadline, without any requirement that the voter provide a reason for voting by mail instead of in person, *see id.* § 3150.11.

15. Under Pennsylvania law, identical procedures govern how voters apply for, complete, and return both absentee and mail-in ballots.<sup>5</sup> Pennsylvania mail ballot applications require the voter to provide his or her name, address of registration, and proof of identification, 25 P.S. §§ 3146.2, 3150.12. Proof of identification includes either a Pennsylvania driver’s license number or the last 4 digits of the voter’s Social Security number. 25 P.S. § 2602(z.5)(3). Once the county board of elections verifies the voter’s identity and eligibility, it sends the voter a mailing that contains: 1) the ballot; 2) a “secrecy envelope” marked with the words “Official Election Ballot”; and 3) a pre-addressed outer return envelope that contains the voter declaration prescribed by law, which the voter must sign and date. The packet also contains instructions to the voter for properly marking and submitting the ballot.

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<sup>5</sup> We refer herein to both types of ballots simply as “mail-in” or “mail” ballots.

16. A mail-ballot voter is supposed to mark the ballot, place it in the secrecy envelope, and then place the secrecy envelope in the outer return envelope. *Id.* §§ 3146.6(a), 3150.16(a). The outer envelope includes a printed declaration that the voter “shall then fill out, date and sign.” *Id.* The voter delivers the entire package by mail or by hand to the county board of elections, and delivery is timely if made by 8:00 p.m. on Election Day. *Id.* §§ 3146.6(c), 3150.16(c).

17. Widespread voting by mail ballot in Pennsylvania is relatively new, having been adopted by the Pennsylvania Legislature in 2019 for implementation in May 2020. Act of Oct 31, 2019, P.L. 552, No. 77, § 8. Clerical mistakes by mail voters are not uncommon. In the November 2022 general election, more than 16,000 mail in ballots in Pennsylvania were set aside because they lacked secrecy envelopes, proper signatures, or dates. *See* <https://apnews.com/article/2022-midterm-elections-pennsylvania-united-states-government-a1c75c9cfc2f1bfca21ac4a4cbfe60f0>.

#### **The Board Canceled Petitioners' Mail Ballots**

18. Petitioners, and three other qualified voters, timely submitted their mail ballots prior to the May 16, 2023 primary election day, but the Board determined that their submissions could not be opened and counted because of mistakes in how these voters completed their mail ballot package. Either they forgot to sign the outer envelope, omitted the date or wrote an incorrect date, or forgot to insert the ballot into the secrecy envelope.

19. Upon information and belief, all of the impacted voters were otherwise qualified electors who were registered to vote, who validly requested and returned their mail ballots, and who properly completed and submitted provisional ballots at their polling places on May 16, 2023.



20. Upon receipt of the mail ballots at issue here, the Board reviewed the envelopes and determined that the voters had made errors that would prevent the Board from counting the ballots under Pennsylvania law.

21. Each of the Petitioners received notice by email that the Board had canceled their mail ballots and would not count them.

**Conflicting Guidance for Curing Cancelled Mail Ballots**

22. The Board posted guidance on flawed mail ballots on its website. *See Delaware County, Delaware County Bureau of Elections Issues Final Guidance Regarding Flawed Vote-by-Mail Envelopes* (May 6, 2023), available at <https://delcopa.gov/publicrelations/releases/2023/flawedvotebymailenvelopes.html>. This web page (the “Guidance”) identified “flawed ballots” as “those that are damaged, unsigned, undated, improperly dated, unsealed, or not placed in the ‘secrecy envelope’ before being placed in the larger ‘Ballot Return Envelope.’”

23. The Guidance instructed voters to cure their mail ballots in a process that is not provided under the Election Code, stating as follows: “Voters who receive notice that the ballot envelope is flawed must correct the ballot in-person at the Voter Service Center, located on the 1st floor of the Government Center Building, at 201 W. Front St., in Media, PA. If time permits, the voter can ask for a replacement ballot to be mailed. Voters will have the opportunity to receive a replacement ballot and complete and return their ballot during the same visit. Voter’s valid ID is required.”

24. In addition to the notice from the Pennsylvania Department of State, the Board also sent an email and a mailed a letter to Petitioners with instructions on how to “cure” the defect in the ballot.

25. The Guidance does not mention provisional ballot voting at all. Nor does the Guidance warn voters that if they cast a provisional ballot after submitting a defective mail ballot, the Board will not count the provisional ballot.

26. The instructions also did not advise voters that if they requested a replacement ballot in writing and did not return it, they could vote a provisional ballot and that ballot would be counted.

27. However, guidance from the Department of State instructed that voters could obtain a provisional ballot at their polling place if, among other reasons, the voter “returned a completed absentee or mail-in ballot that was rejected by the county board of elections....”  
<https://www.vote.pa.gov/Voting-in-PA/Pages/Voting-by-Provisional-Ballot.aspx>.

28. Upon information and belief, the Board’s email notice and the letter sent to voters also contained instructions to voters about how to correct their canceled ballot. The instructions did not mention provisional voting, nor warn that if the voter voted a provisional ballot, no ballot from the voter would not be counted.

29. Meanwhile, at least one Petitioner who contacted the Bureau of Elections in the days preceding the May 16, 2023 primary was instructed by the Bureau to cast a provisional ballot at her polling place. *See* SK Decl. at ¶ 11.

30. Upon information and belief, at the same May 23 meeting when the Board decided not to count the provisional ballots at issue in this appeal, it also decided to count at least five provisional ballots from voters who were very similarly situated to Petitioners. Like Petitioners, these voters had submitted defective mail ballots and then submitted provisional ballots at their polling places on Election Day.<sup>6</sup>

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<sup>6</sup> Petitioners do not challenge the Board’s decision to count these provisional ballots.

31. The Board did not advise voters through any ballot instructions, email or mail notice, or in the Guidance, that if they requested a replacement ballot in writing and did not return it, they could then vote a provisional ballot and that ballot would be counted.

**Petitioners' Efforts to Vote**

32. Although the Board notified each of the Petitioners that it had canceled their ballots and informed them they could correct their ballots in-person at the office in Media or request for a replacement ballot to be mailed to them, none of the Petitioners was able to go to Media in person, nor did time permit any of the Petitioners to have a replacement ballot mailed to them or for them to return it to the Board by the deadline.

33. All of the petitioners appeared in person at their polling places on May 16 and completed and submitted provisional ballots.

34. These provisional ballots were otherwise valid and acceptable for counting.

35. Each of the Petitioners had every reason to believe that they could go to their polling place and cast a provisional ballot, which would be counted.

36. Indeed, the Board's policy is to permit voters whose mail ballots were canceled to complete and submit a provisional ballot at the polls. In fact, Delaware County specifically trained poll workers (including Petitioner Welsh) to allow such voters to cast a provisional ballot. See Election Day Guide for Poll Workers, Primary election, May 16, 2023 at 51, available at [https://delcopa.gov/vote/pdf/2023/ElectionDayGuideforPollWorkers\(May2023\).pdf](https://delcopa.gov/vote/pdf/2023/ElectionDayGuideforPollWorkers(May2023).pdf)

**Petitioners Sonja and Richard Keohane:**

37. Petitioners Sonja and Richard Keohane are 80 and 81 years old respectively and vote in nearly every general and primary election. SK Decl. ¶ 5; RK Decl. ¶ 5.

38. On May 10, the Board sent Mr. and Mrs. Keohane emails letting them know that their mail ballots were canceled. SK Decl. ¶ 10; RK Decl. ¶ 8.

39. Mrs. Keohane called the Delaware County Bureau of Elections on speaker phone with her husband present. The woman who answered the phone told Mrs. Keohane that she would have to go to Media and fill out a new ballot. When Mrs. Keohane explained that she and her husband could not because of health and mobility concerns, the woman offered to mail replacement ballots but did not think they would arrive in time. The woman then told Mr. and Mrs. Keohane they could vote on a provisional ballot. SK Decl. ¶ 11; RK Decl. ¶ 9.

40. Mr. and Mrs. Keohane were not able to go to Media to fill out new mail ballots. Mr. Keohane uses a walker and has a catheter, Mrs. Keohane has bad knees, and they were concerned that they would not be able to find parking and walk to the building. SK Decl. ¶ 7; RK Decl. ¶ 9. Even getting to their polling place and voting a provisional ballot was difficult for Mr. Keohane. RK Declaration ¶ 13.

41. Voting is very important to Mrs. Keohane and is the only meaningful way she can let the government know what she thinks. SK Decl. ¶ 6. She believes her vote should count and is part of this lawsuit for herself and all the people who are not able to challenge a ruling like this. *Id.* ¶ 21

42. Likewise, voting is very important to Mr. Keohane. He was in the Navy and believes voting is part of his civic duty. Having served our country, Mr. Keohane has felt compelled to vote ever since leaving the service. RK Decl. ¶ 5. Mr. Keohane is very frustrated that somebody can simply throw out his vote. *Id.* ¶ 13

Petitioner Barbara Welsh:

43. Petitioner Barbara Welsh is 79 years old, a member of the League of Women Voters, and a trained poll worker. BW Decl. ¶ 6.

44. The Board notified Ms. Welsh by email on May 11, and by a letter she received on May 15, that the Board had canceled her mail ballot. *Id.* ¶ 10. There was not sufficient time to request a replacement ballot be mailed to her, and Ms. Welsh was unable to go in person to correct her ballot in Media on May 15. *Id.* ¶¶ 10-11.

45. However, Ms. Welsh is very familiar with voting by provisional ballot, both from her poll worker trainings in Media and working at the polls as a clerk in the November 2022 general election and in the May 2023 primary election *Id.* ¶ 7. Ms. Welsh thought it would not be a problem to account for any issues with her mail ballot by voting a provisional ballot on Election Day. *Id.* ¶ 10. Accordingly, after working the polls on May 16, Ms. Welsh went to her precinct and cast a provisional ballot. *Id.* ¶ 12.

46. As someone who has voted in nearly every general and primary election and who believes in the importance of voting in a democracy, Ms. Welsh was shocked and disappointed to be disenfranchised. She never imagined she would be denied the right to vote. *Id.* ¶¶ 3, 5, 15.

The Board's Decision to Disenfranchise Petitioners

47. The Board, through its designated provisional ballot review board, began review of the provisional ballots on May 17, 2023.

48. On May 18, 2023, at 9:00 a.m. the provisional ballot board held an "exhibition" session during which it disclosed its recommendations for counting or not counting provisional ballots.

49. The Board did not notify Petitioners of the exhibition or of the provisional ballot review board's recommended disposition, and Petitioners remained unaware of these events until after the exhibition session had already concluded.

50. The Board permitted representatives of candidates and political parties to review Board's recommendation but did not permit any voter or any other person to attend the exhibition of provisional ballot recommendations.

51. At the exhibition, the Board permitted representatives of parties and candidates to lodge challenges to the Board's recommended disposition of provisional ballots.

52. It is the Board's policy and practice to consider challenges thus lodged at a public hearing, and not to consider any other disputes over the disposition of provisional ballots.

53. Upon information and belief, an attorney or representative of a political party initially challenged the recommendation not to count the ballots at issue here, but then withdrew the challenge, and did not complete the process of "lodging" such a challenge.

54. Upon information and belief, the Board adopted the policy of not counting provisional ballots voted to cure flawed mail ballots because of its perception that such ballots "were vulnerable to being rejected by the courts."

55. On May 23, 2023, the Board considered the recommended disposition of the provisional ballots at a public hearing.

56. Upon unanimous vote, the Board decided not to count the ballots at issue in this appeal, despite various Board members' commentary acknowledging the unjust nature of this result. Tr: 11:13-21, 12:15-13:9, 38:14-39:15, 40:1-41:11.

## GROUNDS FOR APPEAL

### The Board Misapplied the Election Code

57. The Board based its decision on a misreading of the Election Code, relying solely on an unpublished and nonprecedential Commonwealth Court decision, *In Re Allegheny Cty. Provisional Ballots in the 2020 Gen. Election*, No.1161 C.D. 2020,2020 WL 6867946 (Pa. Commw. Ct. 2020). That decision did not fully engage with the question presented here and should not be applied in this case.

58. Although the Board felt bound by this unpublished and nonprecedential Commonwealth Court decision, Board members repeatedly stated on the record that they were troubled by the result and hoped the courts would reconsider. *See, e.g.*, Tr. at 11:13-21 (stating “it poses an unreasonable burden on folks where casting provisional ballot should be as good as coming into Media and curing a ballot. And so I do hope the courts have an opportunity to reconsider this question in the future.”); Tr. 12:18-24. (stating “I do think that a voter that comes in and cast a provisional ballot, that that court opinion should be reconsidered. And while we’re here as a Board to follow the election law, which usually in most cases favors the voter, I think that this one is also an undue burden.”).

59. One Board member even called the outcome a “travesty of justice.” Tr. 41:101-11.

60. In *In Re Allegheny County Provisional Ballots*, the Commonwealth Court construed the Pennsylvania Election Code to prohibit the counting of provisional ballots if “the elector’s absentee ballot or mail-in ballot is timely received by a county board of elections.” 25 P.S. § 3050(a.4)(5)(ii)(F).

61. The Commonwealth Court's decision ignored and did not address the preceding section in the statute, which states:

(5)(i) Except as provided in subclause (ii), if 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.*

25 P.S. § 3050(a.4)(5)(i) (emphasis added). This section reflects the goal of provisional ballots, namely, to preserve the fundamental right to vote.

62. The General Assembly added subsection (F) to the Election Code as part of Act 77, see 2019, Oct. 31, P.L. 552, No. 77, § 3.2. The *In re Allegheny County* decision read this subsection in a way that makes it inconsistent with § 3050(a.4)(5)(i)'s requirement that the Board must count provisional ballots upon confirming that the individual did not cast any other ballot in the election. When two separate statutory provisions can be read either as harmonious or as in conflict, courts should construe them as in harmony with each other. See, e.g., *In re Borough of Downingtown*, 161 A.3d 844, 871 (Pa. 2017); 1 Pa.C.S. §§ 1922(1)-(2), 1933.

63. Here, subsections 3050(a.4)(5)(i) and 3050(a.4)(5)(ii)(F) are readily harmonized. If a mail ballot is canceled and cannot be counted because of a defect on the envelope, and the voter does not cure that defect by 8:00 p.m. on election day, the mail ballot was not "timely received," nor was it "cast," because it is not a ballot that can be tabulated. Therefore, subsection 3050(a.4)(5)(ii)(F) does not bar the Board from counting the provisional ballot, and subsection 3050(a.4)(5)(i) requires the Board to count the provisional ballot.

64. This reading of the Election Code gives meaning to the General Assembly's intent. The General Assembly prohibited counting provisional ballots when the county has



received a voter's absentee or mail ballot exists to prevent double voting. And the General Assembly gave voters the fallback option of casting a provisional ballot to ensure that voters would have a safety net to protect them from disenfranchisement.

65. Because the provisional ballot is reviewed and adjudicated after Election Day, the Board will be able to determine whether the voter's mail ballot contained a fatal defect and count the provisional ballot. Alternatively, if the mail ballot was counted, then the Board will not count the provisional ballot.

66. This process is consistent with existing Pennsylvania Department of State ("DOS") Guidance regarding the use of provisional ballots as way of curing defects in mail ballots. The DOS website lists the reasons for which a person may be issued a provisional ballot, and includes a voter who "returned a completed absentee or mail-in ballot that was rejected by the county board of elections" and who believes they are otherwise eligible to vote. See Pa. Dep't of State, *Voting by Provisional Ballot*, <https://www.vote.pa.gov/Voting-in-PA/Pages/Voting-by-Provisional-Ballot.aspx>

67. This DOS guidance is an authoritative and correct reading of the Election Code, and an unreported, nonprecedential opinion does not render it invalid.

68. The Board's unique cure process creates an unacceptably high risk that voters will be disenfranchised because many will be unable to travel to Media on short notice, even though they may have been able to appear in person at their local polling place to vote provisionally.

69. The Board's policy of not counting provisional ballots that voters cast to cure canceled, deficient mail-in ballots frustrates the policy underlying the enactment of the Help America Vote Act ("HAVA"). 52 U.S.C. § 21082.

70. Section 3050(a.4) implements HAVA for Pennsylvania. And it goes further than HAVA, by ensuring the availability of provisional ballots in non-federal elections, such as this month's election. A voter's right to cast a provisional ballot under HAVA is mandatory and unambiguous. *See, e.g., Common Cause Ga. v. Kemp*, 347 F. Supp. 3d 1270, 1292–93 (N.D. Ga. 2018) (citing *Fla. Democratic Party v. Hood*, 342 F.Supp.2d 1073, 1079 (N.D. Fla. 2004)) (“The purpose of HAVA's provisional voting section is to ensure that voters are allowed to vote (and to have their votes counted) when they appear at the proper polling place and are otherwise eligible to vote.”).

71. The Election Code instruction to counties to count provisional ballots cast by eligible voters who appear at their correct polling place and who are found not to have cast any other ballot in the election, is the implementation of policy to avoid disenfranchisement. 25 P.S. § 3050(a.4)(5)(i).

**The Board's Decision to Not Count Petitioners' Provisional Ballots Violated Their Fundamental Right to Vote**

72. Article I, Section 5 of the Pennsylvania Constitution guarantees that “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.” Under this guarantee,

all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter's right to equal participation in the electoral process for the selection of his or her representatives in government.

*League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018).

73. The Pennsylvania constitution requires the Board to demonstrate a compelling interest to justify its policy of not counting provisional ballots voted to cure flawed mail ballots because such action will most assuredly disenfranchise voters. *See Perles v. Cty. Return Bd. of*

*Northumberland Cty.*, 202 A.2d 538, 540 (Pa. 1964) (“[E]ither an individual voter or a group of voters are not to be disenfranchised at an election except for compelling reasons.”); *see also Shambach v. Bickhart*, 845 A.2d 793, 801-02 (Pa. 2004) (the Election Code “must be liberally construed to protect voters’ right to vote”).

74. The Board cannot demonstrate a compelling interest that justifies its complete disenfranchisement of voters, especially when a procedure already exists to prevent the loss of the fundamental right to vote.

75. The Board’s requirement that a voter submit a request for a replacement ballot in writing before being entitled to cast a provisional ballot unconstitutionally burdens the fundamental right to vote. *See, e.g., In re Nader*, 858 A.2d 1167, 1181 (Pa. 2004) (noting that “the right to vote” is “fundamental”), *overruled on other grounds by In re Vodvarka*, 140 A.3d 639 (Pa. 2016). Pennsylvania law forbids counties from imposing rules applicable to the right to vote when such regulation denies the franchise, or “make[s] it so difficult as to amount to a denial.” *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914); *see also DeWalt v. Bartley*, 24 A. 185 (Pa. 1892) (“The test is whether legislation denies the franchise, or renders its exercise so difficult and inconvenient as to amount to a denial”).

76. The Board’s insistence that a voter who submitted a defective mail ballot must request a replacement ballot before being entitled to cast a provisional ballot is unnecessary and arbitrary, because the Board had already canceled the voter’s mail ballot and already determined that the ballot will not count. The request for a replacement ballot has no bearing on that and serves only to disenfranchise voters.

WHEREFORE, Petitioners respectfully request this Honorable Court to enter an order reversing the decision of the Delaware County Board of Elections, declaring that the Election

Code and Pennsylvania Constitution require the counting of Petitioners' ballots, directing the Board to count the provisional ballots cast by Petitioners in the May 16, 2023 election, and enter such other and further relief as provided by the Pennsylvania Election Code or as this Court deems just and appropriate.

Dated: May 25, 2023

MARY M. MCKENZIE (No. 47434)  
BENJAMIN D. GEFFEN (No. 310134)  
PUBLIC INTEREST LAW CENTER  
1500 JFK Blvd., Suite 802  
Philadelphia, PA 19102  
mmckenzie@pubintl.org  
267-546-1319  
bgeffen@pubintl.org  
267-546-1308

Respectfully submitted,



MARIAN K. SCHNEIDER (No. 50337)  
STEPHEN A. LONEY (No. 202535)  
KATE STEIKER-GINZBERG (No. 332236)  
ACLU OF PENNSYLVANIA  
P.O. Box 60173  
Philadelphia, PA 19102  
215-592-1513  
267-573-3054 (fax)  
mschneider@aclupa.org  
sloney@aclupa.org  
ksteiker-ginzberg@aclupa.org

*Counsel for Petitioners*

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

Sonja Keohane, et al.,  
Petitioners,

NO. CU-2023-004458

v.

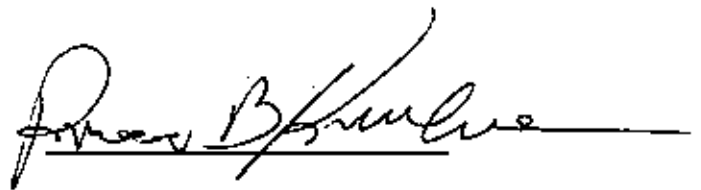
Delaware County Board of Elections,  
Respondent.

**VERIFICATION**

I verify that the statements made in this Petition for Review in the Nature of a Statutory Appeal  
are true and correct to the best of my knowledge, information, and belief. I understand  
that false statements made herein are subject to the penalties of 18 PA. C.S. Subsection  
4904, relating to unsworn falsification to authorities.

Date:

5/25/23



IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

Sonja Keohane, et al., NO. \_\_\_\_\_  
Petitioners,

v.

Delaware County Board of Elections,  
Respondent.

VERIFICATION

I verify that the statements made in this Petition for Review in the Nature of a  
are true and correct to the best of my knowledge, information, and belief. I understand Statutory  
that false statements made herein are subject to the penalties of 18 PA. C.S. Subsection Appeal  
4904, relating to unsworn falsification to authorities.

Date: May 25, 2023

Barbara A. Welsh

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

NO. CB-2023-004458

Sonja Keohane, et al.,  
Petitioners,

v.

Delaware County Board of Elections,  
Respondent.

VERIFICATION

I verify that the statements made in this Petition for Review in the Nature of a Statutory Appeal  
are true and correct to the best of my knowledge, information, and belief. I understand  
that false statements made herein are subject to the penalties of 18 PA. C.S. Subsection  
4904, relating to unsworn falsification to authorities.

Date: 25 May 2023

Sonja K Keohane

**EXHIBIT A**

Copying Prohibited



## DECLARATION OF SONJA K. KEOHANE

Pursuant to 18 Pa.C.S. § 4904, I, Sonja K. Keohane hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 80 years old and am otherwise competent to testify.

3. I am a resident of Delaware County and have lived at the same address in Wayne, Pennsylvania since 1975. I have been registered to vote in Delaware County since we moved here in 1975. Prior to that, we lived briefly in Annapolis because my husband was in the Navy.

4. My husband and I are both retired. When my children were growing up, I was a homemaker. I was also very active on the board of our local civic association—the North Wayne Protective Association—and we successfully applied to have North Wayne declared a national historic district.

5. I vote in nearly every general and primary election. There were always important local races and politicians that I cared about, particularly because of my involvement with the civic association. I have voted for both Republican and Democratic candidates. I was a registered Republican until the 2008 election, when I switched parties.

6. Voting is very important to me. It is the only meaningful way I can let the government know what I think. I could call these elected officials on the phone every day of the week and it would not have the same result. Voting speaks louder than anything else that I do.

7. I started voting by mail-in ballot a few years ago when it became available in Pennsylvania. At that time, my husband was getting chemotherapy at a rehabilitation center and could not physically go to the polls. This was during the COVID-19 pandemic, and I needed to be very careful because I was his caregiver. I also have bad knees and it is difficult for me to stand for long periods. Given all these health concerns, voting by mail was a very reasonable and easy option.

8. I requested my mail-in ballot application online before the May 16<sup>th</sup> primary election. I submitted my mail-in ballot application within the time required by the Board of Elections and received my mail-in ballot packet prior to the primary election date. When I received the packet, I marked the ballot, put it in the secrecy envelope, and filled out the outer envelope. I thought I had followed all the instructions correctly.

9. On May 8th, 2023, I received an email from the state that my ballot had been received by Delaware County. A true and correct copy of the email I received is attached as Exhibit 1. The email stated: "Your ballot status has been updated to reflect your official ballot has been received timely and recorded. Please note: You are no longer

**permitted to vote at your polling place location now that you have returned your ballot timely."**

10. On May 10, 2023, I received a second email from the state: **"Your ballot status has been updated to cancelled because you did not correctly date the declaration on your ballot envelope."** A true and correct copy of the email dated May 10, 2023, is attached as Exhibit 2.

11. When I received this email, I called the Delaware County Bureau of Elections in Media. I was informed that I had written the wrong date on the envelope and that I needed to cure it. When I asked how I could do that, I was told that I needed to come to Media and fill out a new ballot. I told the person on the phone that we could not get to Media because of the health and mobility concerns. She said they could send us new ballots, but did not think that it would get to us in time. She then told me we could vote a provisional ballot.

12. On Election Day, my husband and I went to our local polling place. We explained what had happened with our mail-in ballots. The poll workers gave us a provisional ballot and told us what we needed to fill out. Before we left, they gave us an identification number for our ballot so that I could check online to see whether the ballot had been counted. I checked 5 or 6 times, but there wasn't any information.

13. On or around May 18<sup>th</sup>, I spoke with an attorney named Shelley who I believe was from the Democratic Party. She informed me that Delaware

County was going to reject my provisional ballot.

14. On or around May 19<sup>th</sup>, I called the Delaware County Bureau of Elections to ask them to explain how I had gotten the date wrong, because the envelope does not specify the dating convention.

15. On May 19<sup>th</sup>, I received an email from Jim Warner of the Delaware County Bureau of Elections. A true and correct copy of the email dated May 19, 2023, is attached as Exhibit 3. It includes an attached image of my mail ballot envelope, which shows that my husband and I had accidentally signed each other's envelopes. We had also written the wrong date—4/4/23 instead of 5/4/23. On the day that we were dropping our mail ballots, my husband and I had been in a hurry to get to a doctor's appointment, and we made an honest mistake.

16. On the Department of State website, I found a page called "Voting by Provisional Ballot." It lists many reasons for which a person can be issued a provisional ballot, including: "You returned a completed absentee or mail-in ballot that was rejected by the county board of elections and you believe you are eligible to vote." <https://www.vote.pa.gov/Voting-in-PA/Pages/Voting-by-Provisional-Ballot.aspx>

17. On or around May 22, I spoke with Jim Warner at the Bureau of Elections. I explained that on the Department of State website there was a bulleted list of reasons for which people can vote a provisional ballot, including having voted a mail ballot that was rejected.

18. On May 22<sup>nd</sup>, Mr. Warner sent me an email that said the following:

After speaking with you today I was advised by our Director of Elections that, despite what the DOS website might suggest, we must follow a decision by the Court of the Commonwealth. This is why we sent out specific instructions for "Curing" a ballot package with "Legal Flaws".

A true and correct copy of the May 22, 2023 email from Mr. Warner is attached as Exhibit 4.

19. I later learned that, on May 23, 2023, the Delaware County Board of Elections voted to reject the provisional ballot that I cast on Election Day of the May 16<sup>th</sup> primary election.

20. I believe that it is my right to have my ballot counted. I read on the state website that I could vote a provisional ballot in this circumstance, and I went to the polls and was permitted to vote a provisional ballot. I feel that I am being taken advantage of by people who don't want me to vote.

21. I decided to be part of this lawsuit on behalf of all the people who are not able to challenge a ruling like this. I am doing this for myself and all the people who don't know they can challenge, aren't self-assured enough to challenge, or don't have the time to challenge it. I have the time and ability to fight this, and I believe that my vote should count.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25 of May, 2023 in Wayne, Pennsylvania.

Sonja K. Keohane

Sonja K. Keohane

Copying Prohibited

**EXHIBIT 1**

Copying Prohibited



Kate Steiker-Ginzberg <kstelker-ginzberg@aclupa.org>

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**Fwd: Your Ballot Has Been Received**

---

Sonja Keohane <[REDACTED]>  
To: kstelker-ginzberg@aclupa.org

Mon, May 22, 2023 at 8:24 PM

Sent from my iPad

Begin forwarded message:

**From:** RA-voterregstatcert@state.pa.us  
**Date:** May 8, 2023 at 2:47:18 PM EDT  
**To:** [REDACTED]  
**Subject:** Your Ballot Has Been Received

Dear SONJA K KEOHANE,

Your ballot has been received by DELAWARE County on 05/08/2023.

Your ballot status has been updated to reflect your official ballot has been received timely and recorded.

**Please note: You are no longer permitted to vote at your polling place location now that you have returned your ballot timely.**

If you have questions about your ballot, please contact DELAWARE County at 610-691-4659.

Thank you

\*\*\*\*Please do not reply to this email.\*\*\*\*

Copying Prohibited



**EXHIBIT 2**

Copying Prohibited



Kate Steiker-Ginzberg <kstelker-ginzberg@aclupa.org>

---

## Fwd: Your Ballot Has Been Received

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Sonja Keohane <[REDACTED]>  
To: kstelker-ginzberg@aclupa.org

Mon, May 22, 2023 at 8:23 PM

Sent from my iPad

Begin forwarded message:

**From:** RA-voterregstatcert@state.pa.us  
**Date:** May 10, 2023 at 1:49:46 PM EDT  
**To:** [REDACTED]  
**Subject:** Your Ballot Has Been Received

Dear SONJA K KEOHANE,

Your ballot has been received by DELAWARE County on 05/10/2023.

Your ballot status has been updated to cancelled because you did not correctly date the declaration on your ballot envelope.

If you have questions about your ballot, please contact DELAWARE County at 610-891-4659.

Thank you

\*\*\*\*Please do not reply to this email.\*\*\*\*

Copying Prohibited

**EXHIBIT 3**

Copying Prohibited



Kate Steiker-Ginzberg <ksteiker-ginzberg@aclupa.org>

**Fwd: Return Envelope Image**

Sonja Keohane <[REDACTED]>  
To: Kate Steiker-Ginzberg <ksteiker-ginzberg@aclupa.org>

Tue, May 23, 2023 at 4:13 PM

Sent from my iPad

Begin forwarded message:

From: "Warner, James" <WarnerJ@co.delaware.pa.us>  
Date: May 19, 2023 at 6:49:56 PM EDT  
To: [REDACTED]  
Subject: Return Envelope Image

Dear Ms Keohane,

Following up on our phone call today, I've attached an image of your return ballot-envelope. As the image shows, the signature is the name of another voter, and the date is incorrect because ballots had not been mailed out by April 4, 2023. Under orders issued by the Pennsylvania Supreme Court, we are forbidden from processing envelopes with incorrect dates or signatures.

If you have any further questions, please feel free to reply to this email or call us at the number below.

Thank you,

**Jim Warner**  
Bureau of Elections  
Delaware County, Pennsylvania  
Main: 610 891-4673

---

S.K.K Image.pdf  
40K

2023-17  
PAPER


### Voter's declaration

- I hereby declare that
  - I am qualified to vote in this election;
  - I have not already voted in this election;
  - I marked my ballot in secret; and,
  - 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.

Voter, sign here (required)

Russell B. Keohane

Today's Date  
Required

 04/04/2023



009979609-23  
SONJA K KEOHANE

38001001-1\_D\_MBL  
RADNOR 1W 1P


### Declaration for Voter who cannot sign

I hereby declare that I am unable to sign my declaration (above) for voting my ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

Voter, make mark here (required)



Today's Date  
Required

 \_\_\_\_\_ / \_\_\_\_\_ / 202 \_\_\_\_\_



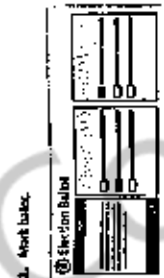
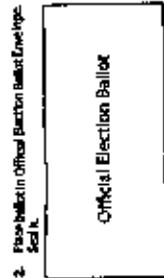
Witness street address

Witness city, state, ZIP code

Witness, sign here



05/08/23 12:50:51



Prohibited



Kate Steiker-Ginzberg <ksteiker-ginzberg@aclupa.org>

**Fwd: (EXTERNAL) Re: Return Envelope Image**

Sonja Keohane <[REDACTED]>  
To: ksteiker-ginzberg@aclupa.org

Mon, May 22, 2023 at 8:22 PM

This one is from today, I'll send the others shortly  
Sonja  
Sent from my iPad

Begin forwarded message:

**From:** "Warner, James" <WarnerJ@co.delaware.pa.us>  
**Date:** May 22, 2023 at 4:21:16 PM EDT  
**To:** Sonja Keohane [REDACTED]  
**Subject:** RE: (EXTERNAL) Re: Return Envelope Image

Hello Ms Keohane,

After speaking with you today I was advised by our Director of Elections that, despite what the DOS website might suggest, we must follow a decision by the Court of the Commonwealth. This is why we sent out specific instructions for "Curing" a ballot package with "Legal Flaws".

I hope this answers your question.

Best Regards,

**Jim Warner**  
Bureau of Elections  
Delaware County, Pennsylvania  
Main: 610 891-4673

**From:** Sonja Keohane <[REDACTED]>  
**Sent:** Friday, May 19, 2023 7:40 PM  
**To:** Warner, James <WarnerJ@co.delaware.pa.us>  
**Subject:** (EXTERNAL) Re: Return Envelope Image

**Caution:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. When in doubt, contact your IT Department

Thank you Jim, I appreciate your help.

Sonja Keohane

Sent from my iPad

On May 19, 2023, at 6:49 PM, Warner, James <WarnerJ@co.delaware.pa.us> wrote:

Dear Ms Keohane,

Following up on our phone call today, I've attached an image of your return ballot-envelope. As the image shows, the signature is the name of another voter, and the date is incorrect because ballots had not been mailed out by April 4, 2023. Under orders issued by the Pennsylvania Supreme Court, we are forbidden from processing envelopes with incorrect dates or signatures.

If you have any further questions, please feel free to reply to this email or call us at the number below.

Thank you,

**Jim Warner**

Bureau of Elections

Delaware County, Pennsylvania

Main: 610 891-4673

<S.K.K Image.pdf>

**EXHIBIT B**

Copying Prohibited



## DECLARATION OF RICHARD B. KEOHANE

Pursuant to 18 Pa.C.S. § 4904, I, Richard B. Keohane hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 81 years old and am otherwise competent to testify.

3. I am a resident of Delaware County and have lived at the same address in Wayne, Pennsylvania since 1975. I have been registered to vote in Delaware County since moving here in 1975.

4. I am currently retired. During my career, I was a radiologist at Pennsylvania Hospital.

5. My wife and I have voted in nearly every primary and general election. Voting is very important to me, because I was in the Navy and believe that it's part of our civic duty. Having served my country, I have felt compelled to vote ever since leaving the service.

6. I started voting by mail a few years ago. At that time, I was in a rehabilitation center undergoing chemotherapy and couldn't leave to go to the polls. We continued voting by mail because of the convenience, and to avoid being around other people during the pandemic.

7. I requested my mail ballot application online before the May 16<sup>th</sup>

primary election. I submitted my mail-in ballot application within the time required by the Board of Elections and received my mail-in ballot packet prior to the primary election date. When I received the ballot, I marked it, put it in the secrecy envelope, and filled out the outer envelope. I thought I had followed all the instructions correctly.

8. Before the election, I received an email that my ballot had been canceled because I had not correctly dated the outer envelope. I do not save the emails that I receive, but I believe that it was on the same date that my wife received similar emails.

9. When my wife called the Bureau of Elections to get information about how we could cure our ballots, I was listening on speaker phone. She was told to come down to Media to fix the problem. That wasn't possible for us because of my health issues; I use a walker and have a catheter. It would have been difficult for my wife and I to get to Media, find parking, and then walk to the proper building. The person on the phone told us that we could cast a provisional ballot at our local polling place.

10. On Election Day, my wife and I went to our local polling place because we thought we would be able to vote a provisional ballot. The people at our polling place were very nice, and after we explained that we had put our mail ballots in the drop box and they had been canceled, the pollworkers seemed to know exactly what we needed to do. We were provided with a provisional ballot, filled it out, and thought the situation had been resolved.

11. My wife and I called the election office to request additional information about the problem with our mail ballots, and we were informed that we had accidentally signed each other's envelopes. We were told we had also written the wrong date - 4/4/23 instead of 5/4/23. A true and correct copy of the email dated May 19, 2023, is attached hereto as Exhibit 1.

12. I later learned that, on May 23, 2023, the Delaware County Board of Elections voted to reject the provisional ballot that I cast in the May 16<sup>th</sup> primary election.

13. I am very frustrated that my vote will not count. We went through all that trouble of voting by mail, then going down to cast a provisional ballot, which was very difficult for me. It really irritates me that I went to all the trouble to do this and then somebody can simply throw out my vote.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25 of May, 2023 in Wayne, Pennsylvania.



Richard B. Keohane

**EXHIBIT 1**

Copying Prohibited



Kate Steiker-Ginzberg <ksteiker-ginzberg@aclupa.org>

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**Fwd: Return Envelope Image**

---

Richard Keohane <[REDACTED]>  
To: Kate Steiker-Ginzberg <ksteiker-ginzberg@aclupa.org>

Tue, May 23, 2023 at 5:21 PM

Sent from my iPad

Begin forwarded message:

From: "Warner, James" <WarnerJ@co.delaware.pa.us>  
Date: May 19, 2023 at 6:50:32 PM EDT  
To: [REDACTED]  
Subject: Return Envelope Image

Dear Mr Keohane,

Following up on my phone call today with Mrs Keohane, I've attached an image of your return ballot-envelope. As the image shows, the signature was the name of another voter, and the date is incorrect because ballots had not been mailed out by April 4, 2023. Under orders issued by the Pennsylvania Supreme Court, we are forbidden from processing envelopes with incorrect dates or signatures.

If you have any further questions, please feel free to reply to this email or call us at the number below.

Thank you,

**Jim Warner**  
Bureau of Elections  
Delaware County, Pennsylvania  
Main: 610 891-4673

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R.B.K. Image.pdf  
41K

*L*

**Voter's declaration**

- I hereby declare that
  - I am qualified to vote in this election;
  - I have not already voted in this election;
  - I marked my ballot in secret; and,
  - 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.

Voter, sign here (required)

*✕* Richard B. Keohane

Today's Date  
Required

*▶* 04/10/2023



009979608-23  
RICHARD B KEOHANE

35001001-1\_D\_MBLL  
RADNOR 1W 1P

**Declaration for Voter who cannot sign**

I hereby declare that I am unable to sign my declaration (above) for voting my ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

Voter, make mark here (required)

*✕*

Today's Date  
Required

*▶* \_\_\_ / \_\_\_ / 202\_\_



Witness street address

Witness city, state, ZIP code

Witness, sign here



3. Place Official Election Ballot, Envelope in this Return Envelope. Sign, date and seal this return envelope.  
05/08/23 12:50:50

2. Place Ballot in Official Election Ballot Envelope. Seal it.  
Official Election Ballot

1. Mark ballot.  
Official Election Ballot

PROHIBITED

**EXHIBIT C**

Copying Prohibited

## DECLARATION OF BARBARA W. WELSH

Pursuant to 18 Pa.C.S. § 4904, I, Barbara W. Welsh hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 79 years old and am otherwise competent to testify.

3. I have been a resident and registered voter in Delaware County for 50 years. In that time, I have voted in nearly every general and primary election.

4. I moved to Pennsylvania in 1973 because my late husband was hired as a professor at the University of Pennsylvania. In 1982, I received a master's degree in Library Science from Drexel University. I then worked at Drexel in the College for Information from 1987 to 2003. I have been retired for the past 20 years.

5. Voting—and anything having to do with elections—has always been important to me. I was a political science major at Northwestern University, and was passionate about politics and government. I like to be informed before I vote, and always read the local and national newspapers, as well as information from the Bar Association to learn about judicial elections. I understand how important democracy is, and how important the



act of voting is to democracy. I believe it is essential to protect the right to vote, both ensuring that there are not impediments on the voter's ability to cast a ballot and ensuring that the ballot is counted.

6. I have been a member of the League of Women Voters for approximately a decade. I have become more active in recent years since my husband passed away. In the last three years, I have done special projects for the Radnor League, which include maintaining the publicly available government directory of Radnor Township officeholders and keeping voter information updated at the Radnor public library.

7. I have also started working at the polls as a clerk. I did this for the November 2022 election and May 2023 election. For that role, I attended trainings in Media and had to pass an exam, which included learning about the provisional ballot procedure.

8. I began voting by mail a short time after the Pennsylvania legislature made that option available. Voting is so important to me, that I decided to vote by mail in case anything ever came up on Election Day and I couldn't make it to the polls in person. Around that time, my husband was sick with leukemia and the COVID-10 pandemic was at its peak, so it was better for us to vote by mail and avoid being around people. We also liked the reliability of being able to track when the mail ballot was received by the county. In prior elections when I voted by mail, I never had a problem with my envelope.

9. I requested my mail-in ballot application before the May 16<sup>th</sup> primary election. I submitted my mail-in ballot application within the time required by the Board of Elections and received my mail-in ballot packet prior to the primary election date. When I received the ballot, I marked it, put it in the secrecy envelope, and filled out the outer envelope. I thought I had followed all the instructions correctly. I brought my ballot to the drop box at the Radnor township administration building.

10. I received a letter and an email from the Delaware County Bureau of Elections shortly before the primary election date. A true and correct copy of the email dated May 11, 2023, is attached hereto as Exhibit 1. When I received the email on the Thursday before the primary election, I was in San Antonio for a family funeral. I returned on Saturday, May 13. I did not receive the letter until Monday, May 15<sup>th</sup> because my mail was on hold. A true and correct copy of the letter I received the day before the primary election is attached hereto as Exhibit 2.

11. On Monday, May 15<sup>th</sup>, I was unable to go to Media to fix the mail ballot. I was familiar with the provisional ballot process and thought it would not be a problem to account for any issues with my mail ballot by voting a provisional ballot on Election Day.

12. On Election Day, I worked as a clerk at the Radnor 5-2 precinct from 6am to 1pm. In the afternoon, I walked to my own precinct (Radnor 7-1) and cast a provisional ballot.

13. Several days after the election, I received a phone call from an attorney for the Democratic Party, who informed me that my provisional ballot would not be counted.

14. I later learned that, on May 23<sup>rd</sup>, 2023, the Delaware County Board of Elections voted to reject my provisional ballot. I learned about the outcome of that meeting when I received a phone call from Olivia Thorne of the Delaware County League.

15. I was very disappointed to learn that my provisional ballot would not count, and was shocked to be disenfranchised despite taking these steps to vote. I don't understand how this could have happened. I have read in the news about people being denied the right to vote, but never imagined that it would happen to me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 of May, 2023 in Bryn Mawr, Pennsylvania.

Barbara W. Welsh

Barbara W. Welsh

**EXHIBIT 1**

Copying Prohibited



Kate Steiker-Ginzberg <ksteiker-ginzberg@aclupa.org>

**Fwd: Primary Ballot Received Need Resolution**

Barbara Welsh <[REDACTED]>  
To: "ksteiker-ginzberg@aclupa.org" <ksteiker-ginzberg@aclupa.org>

Tue, May 23, 2023 at 7:06 PM

Hello, Kate,  
I am forwarding the email message I received and am attaching a photo of the physical letter I received. Barbara

----- Forwarded message -----  
From: **DelcoBallots** <DelcoBallots@co.delaware.pa.us>  
Date: Thu, May 11, 2023 at 3:45 PM  
Subject: **Primary Ballot Received Need Resolution**  
To: [REDACTED]

Barbara Welsh  
1444 County Line Road  
Bryn Mawr, PA 19010

5/11/2023

Dear Barbara Welsh,

The Mail-in or Absentee ballot envelope that the Board of Elections received from you has a legal flaw: Improper Date. By law, this legal flaw prevents us from counting any ballot inside.

You may correct this issue.

- Visit the Voter Service Center at the Delaware County Government Center, 201 W Front St, Media, PA, as soon as possible to obtain a replacement ballot and envelopes. You may mark the replacement ballot and submit it during that same visit. The Voter Service Center is open:

Mon-Tues – 8:30 am-4:30 pm

Wed – 8:30 am – 8 pm

Thu-Fri – 8:30 am-4:30 pm

Sat – 9 am-Noon

Election Day – Tues., May 16, 2023 – 7 am-8 pm

OR

- If time still permits, call us at **610-891-8683** to ask for a replacement ballot to be mailed to you.

Per the Election Code, if you do not take action, the original ballot cannot be counted.

Sincerely,



James P. Allen

Director of Election Operations



---

2 attachments



Image002.png  
23K



IMG\_2654.jpeg  
2704K

**EXHIBIT 2**

Copying Prohibited



Delaware County Bureau of Elections  
Government Center Building  
201 West Front Street, Media, PA 19063  
DelcoElection@co.delaware.pa.us



Barbara Welsh  
[REDACTED]

5/11/2023

Dear Barbara Welsh,

The Mail-in or Absentee ballot envelope that the Board of Elections received from you has a legal flaw: Improper Date. By law, this legal flaw prevents us from counting any ballot inside.

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- Visit the Voter Service Center at the Delaware County Government Center, 201 W Front St, Media, PA, as soon as possible to obtain a replacement ballot and envelopes. You may mark the replacement ballot and submit it during that same visit. The Voter Service Center is open:  
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OR

- If time still permits, call us at 610-891-8683 to ask for a replacement ballot to be mailed to you.

Per the Election Code, if you do not take action, the original ballot cannot be counted.

Sincerely,

James P. Allen  
Director of Election Operations



**EXHIBIT D**

Copying Prohibited



DOS Voting & Election Information > Voting in PA > Voting by Provisional Ballot

## Voting by Provisional Ballot

If you are a registered voter but your eligibility to vote at your polling place is uncertain, you have the right to vote a provisional ballot.

### What is a provisional ballot?

Sometimes county elections officials need more time to determine a voter's eligibility to vote. Election officials may ask that voter to vote a provisional ballot. A provisional ballot records your vote while the county board of elections determines whether it can be counted.

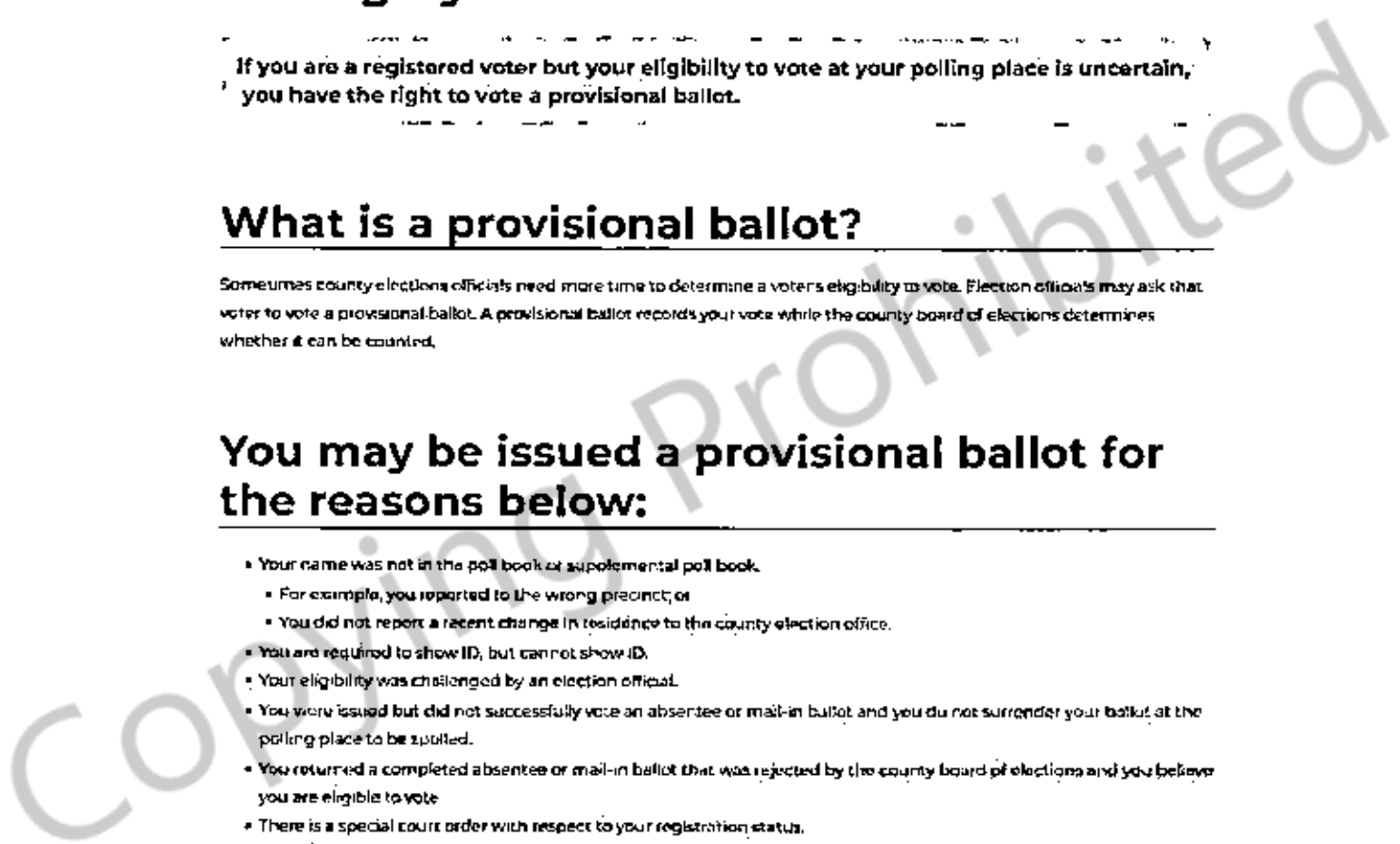
### You may be issued a provisional ballot for the reasons below:

- Your name was not in the poll book or supplemental poll book.
  - For example, you reported to the wrong precinct, or
  - You did not report a recent change in residence to the county election office.
- You are required to show ID, but cannot show ID.
- Your eligibility was challenged by an election official.
- You were issued but did not successfully vote an absentee or mail-in ballot and you do not surrender your ballot at the polling place to be spoiled.
- You returned a completed absentee or mail-in ballot that was rejected by the county board of elections and you believe you are eligible to vote.
- There is a special court order with respect to your registration status.
- There is a special court order related to extending the hours of voting.
- You believe that you are registered in a political party, but your voter record indicates otherwise (for primary elections only).

### How do I vote a provisional ballot?

If you vote by provisional ballot, you will be asked to follow these instructions:

1. Complete the sections on the provisional envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials.
2. Mark your provisional ballot in an accessible and private area of the online place.



**EXHIBIT E**

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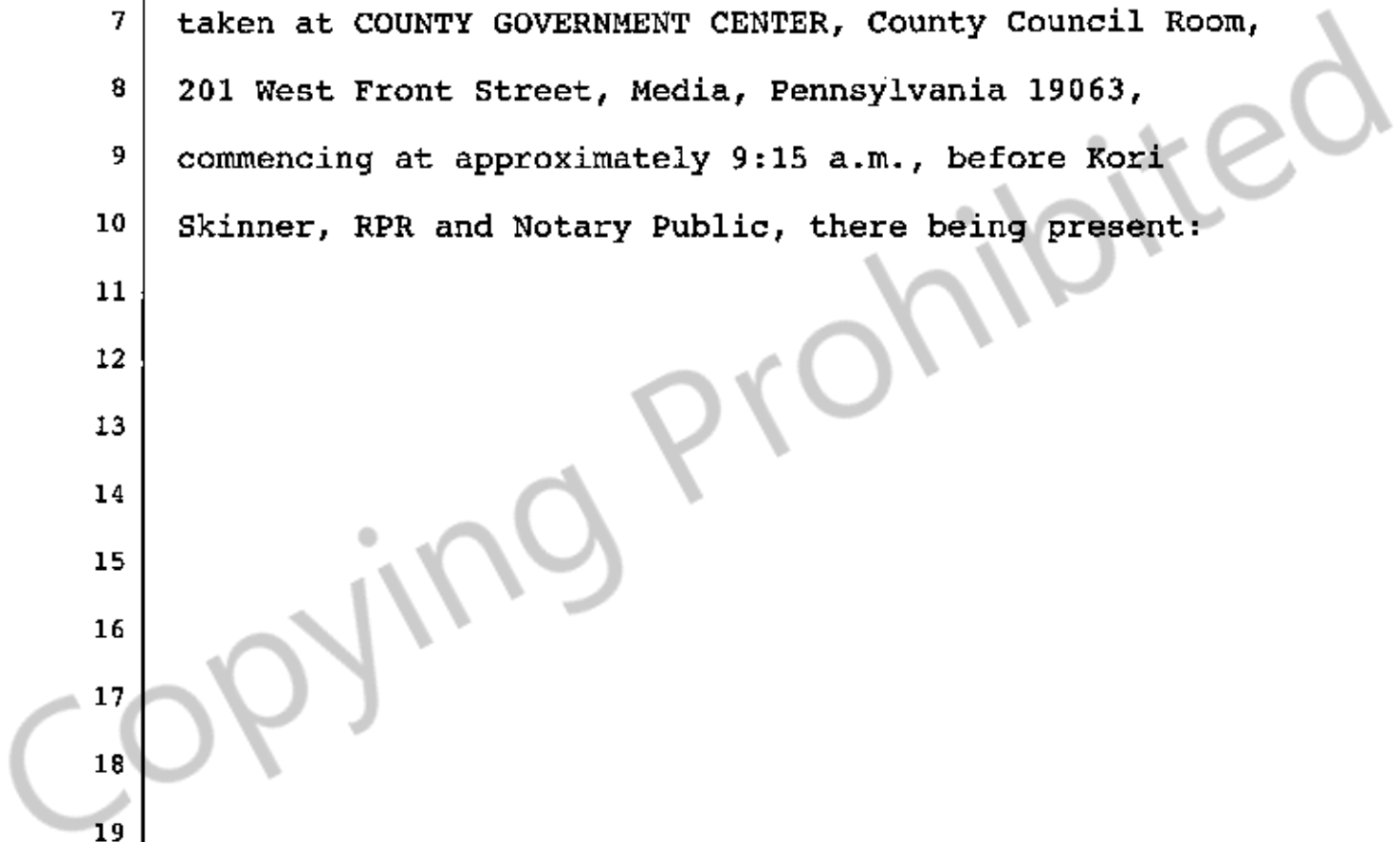
DELAWARE COUNTY BOARD OF ELECTIONS  
PROVISIONAL BALLOT CHALLENGE HEARING

- - -

May 23, 2023

- - -

Provisional Ballot Challenge Board Hearing  
taken at COUNTY GOVERNMENT CENTER, County Council Room,  
201 West Front Street, Media, Pennsylvania 19063,  
commencing at approximately 9:15 a.m., before Kori  
Skinner, RPR and Notary Public, there being present:



## 1 A P P E A R A N C E S :

2

3

4 DUANE MORRIS, LLP  
5 BY: J. MANLY PARKS, ESQUIRE  
6 30 South 17th Street  
Philadelphia, Pennsylvania 19103-4196  
(215) 979-1000  
JMParks@duanemorris.com

7

8

9 AMERICAN CIVIL LIBERTIES UNION  
10 MARIAN K. SCHNEIDER, ESQUIRE  
11 P.O. Box 60173  
Philadelphia, Pennsylvania 19102  
(215) 592-1513  
mschneider@aclupa.org  
12 Senior Voting Rights Policy Counsel

13

14

## 15 DELAWARE COUNTY BOARD OF ELECTIONS PANEL MEMBERS:

16 ASHLEY LUNKENHEIMER, CHAIR  
17 JOHN P. MCBLAIN  
SCOTT J. ALBERTS (VIA ZOOM)

18

19 JAMES P. ALLEN, DIRECTOR OF ELECTIONS

20

21

22

23

24

Page 3

1 THE CHAIRPERSON: Good morning. Thank you for  
 2 your patience. I call to order the Delaware County  
 3 Board of Elections Board meeting for May 23rd,  
 4 2023, and we'll start with the Pledge of  
 5 Allegiance. Please stand.  
 6 Our first item will be the consideration of  
 7 the agenda.  
 8 Mr. McBlain or Mr. Alberts -- Mr. Alberts, can  
 9 you hear us clearly?  
 10 MR. ALBERTS: Yeah. It's a little quiet, but  
 11 I can hear you speak if you speak into the  
 12 microphone.  
 13 THE CHAIRPERSON: Absolutely.  
 14 MR. ALBERTS: Thank you.  
 15 MR. MCBLAIN: I move to approve the agenda as  
 16 presented.  
 17 MR. ALBERTS: I'll second that.  
 18 THE CHAIRPERSON: With no comment then, all  
 19 those in favor say aye.  
 20 MR. MCBLAIN: Aye.  
 21 MR. ALBERTS: Aye.  
 22 THE CHAIRPERSON: The motion is approved.  
 23 Similarly, we have the minutes that were presented  
 24 to us. I think there were a couple of minor

Page 4

1 corrections. Mr. Alberts has the benefit of having  
 2 two first names in his name, so we fixed that as  
 3 well as a few other additions.  
 4 Does anybody have any concerns or just need  
 5 for a discussion about the minutes from last  
 6 meeting?  
 7 Now with that, then is there a motion?  
 8 MR. MCBLAIN: I move to approve the minutes of  
 9 the April meeting.  
 10 MR. ALBERTS: Was that a motion? I couldn't  
 11 hear.  
 12 THE CHAIRPERSON: Yeah, sorry. I can second  
 13 it. Mr. Alberts, I can second it.  
 14 Second.  
 15 All those in favor of the approval of the  
 16 minutes from the last meeting, all those say aye.  
 17 Aye.  
 18 MR. ALBERTS: Aye.  
 19 MR. MCBLAIN: Aye.  
 20 None opposed, that motion passes.  
 21 All right. This is a meeting primarily for  
 22 the next item of consideration, which is the  
 23 recommendations on provisional ballots and  
 24 consideration of objections, which I understand

Page 5

1 there are none, two recommendations on the  
 2 provisional ballots.  
 3 Ms. Winterbottom.  
 4 MR. SOLICITOR: Crystal, if you could, please  
 5 introduce yourself for the court reporter.  
 6 MS. WINTERBOTTOM: Good morning. Crystal  
 7 Winterbottom, Chief Clerk of Voter Registration.  
 8 So we have reviewed a total of 457 provisional  
 9 ballots. Our recommendation, after determination  
 10 that 306 were -- should be fully counted, 24 should  
 11 be partially counted, and 127 should be no count.  
 12 THE CHAIRPERSON: Okay. Ms. Winterbottom,  
 13 would you just explain a little bit behind the  
 14 numbers of the partial counts and the no counts?  
 15 MS. WINTERBOTTOM: Sure. So partial counts is  
 16 a voter goes to a precinct that they are not  
 17 registered in. So if they went to one precinct and  
 18 they're not registered there, it would be  
 19 determined that only the offices that are in common  
 20 with the district of where they're registered would  
 21 count. The ones that -- the offices that they're  
 22 not registered in those districts would not  
 23 count. So they would be considered partial.  
 24 The no count --

Page 6

1 THE CHAIRPERSON: Sorry, just to pause you.  
 2 Are all the 24 that are considered for partial  
 3 counts in that category?  
 4 MS. WINTERBOTTOM: Yes. Because they're  
 5 registered in a different district or precinct.  
 6 Yes.  
 7 THE CHAIRPERSON: Thank you. Please continue.  
 8 MR. SOLICITOR: Before we move on, Ms.  
 9 Winterbottom, I just want to ask for some  
 10 clarification because we did have some discussions  
 11 during the review of the provisionals about a  
 12 scenario where somebody is an independent and they  
 13 insisted that they were registered for one party or  
 14 the other and wanted to vote that party's ballot.  
 15 I believe there may have been some instance of  
 16 that. I don't know if those people turned out to  
 17 be actually registered independents. And in that  
 18 instance, our recommendation was to determine that  
 19 to be a partial count at least in the instance  
 20 where that person was in one of the special  
 21 election districts and the special election vote  
 22 could have been made by an independent voter as  
 23 they were actually registered.  
 24 MS. WINTERBOTTOM: Correct. And I don't

Page 7

1 believe we had any of those for the partial counts,  
 2 that they were all different precincts. I'll have  
 3 to look back over the notes, but I don't think we  
 4 did. But if there were a third-party voter that  
 5 voted in a precinct part of one of the special  
 6 elections, and it would be determined that that  
 7 office, just for that third-party if they weren't  
 8 registered and the other one, would be a partial  
 9 count.

10 THE CHAIRPERSON: Of course. Then they would  
 11 be eligible to vote in that election.

12 MS. WINTERBOTTOM: Yes. And then we did have,  
 13 I believe, two that were just third-parties and  
 14 just third-party ballots that were then considered  
 15 a full count. So, yes.

16 And then the no counts, there's quite a few  
 17 different reasons. It could be the affidavit of  
 18 the provisional ballot was not complete, whether it  
 19 wasn't signed or filled out. The secrecy envelope  
 20 could have been unsealed. That would be an  
 21 incomplete also. If they were registered a  
 22 different party and asked for a different party  
 23 ballot, that would be a no count. Not registered,  
 24 registered in a different county. I think that's

Page 8

1 the majority of the no counts that we have.

2 MR. ALLEN: Just to be clear for the record.  
 3 In the 48 precincts where the special election  
 4 occurred for the 163rd state house district as well  
 5 as the two precincts in Radnor that had a special  
 6 election for commissioner, there were third-party  
 7 provisional ballots supplied to the precincts. And  
 8 those were the only precincts that had third-party  
 9 provision.

10 MR. MCBLAIN: There were no votes at a  
 11 provisional.

12 MS. WINTERBOTTOM: For just third-party?  
 13 MR. MCBLAIN: Right.

14 MS. WINTERBOTTOM: Yes. No, there were a  
 15 couple. Yes. And they would be considered a full  
 16 count if it was just that third-party and there was  
 17 no other -- if they were registered in that  
 18 precinct, yes, there were a couple.

19 THE CHAIRPERSON: So just going back to what  
 20 you said a moment ago, there were several that, you  
 21 know, categorically you could say that the voter is  
 22 the impetus for perhaps the no count vote. I say  
 23 I'm one party and I'm really registered another or  
 24 I'm not registered. But there are a couple that

Page 9

1 you discussed that has secrecy ballot issues or  
 2 affidavit issues. Is there any -- were those  
 3 significant in number?

4 MS. WINTERBOTTOM: I would say not the no  
 5 secrecy. We had a few that had no secrecy and just  
 6 the ballot placed in there. I would say majority  
 7 of no counts would be the different political party  
 8 that they were registered.

9 THE CHAIRPERSON: Okay. Another reason I say  
 10 that is obviously there's the potential for the  
 11 Judge of Elections to assist and making sure that  
 12 the ones that are missing a secrecy envelope or the  
 13 affidavit is incompletely filled out, they could  
 14 help assist to make sure that that isn't an issue.

15 MS. WINTERBOTTOM: Yeah.

16 THE CHAIRPERSON: In principle. So I do think  
 17 that if, to the extent, Mr. Allen, that we're  
 18 reviewing training and other things to see who in  
 19 the Judges of Election we have concerns about. I  
 20 think any Judges of Election that allowed a  
 21 provisional ballot inadequately maintained and  
 22 should be retrained.

23 MS. WINTERBOTTOM: Correct, yes.

24 THE CHAIRPERSON: Mr. McBlain, do you have any

Page 10

1 questions?

2 MR. MCBLAIN: No.

3 THE CHAIRPERSON: Mr. Albert's, do you have  
 4 any questions?

5 MR. ALBERTS: Yes, I do.

6 Ms. Winterbottom, how many provisional ballots  
 7 were cast by voters who had sent in a vote by mail  
 8 ballot that was in some way defective and needed to  
 9 be cured? Was there a significant number of  
 10 provisional ballots voted in these situations?

11 MS. WINTERBOTTOM: Out of these 457, there  
 12 were six.

13 MR. ALBERTS: Six. Thank you.

14 MR. ALLEN: And just to be clear, we followed  
 15 the latest court ruling is from the Commonwealth  
 16 Court and it's very clear and explicit. It was a  
 17 split decision, but nonetheless, the majority  
 18 opinion directed election authorities, election  
 19 agencies to count -- or to not count provisional  
 20 ballots that were cast in the precinct by  
 21 individuals who had cast -- who had returned a vote  
 22 by mail ballot that had a fatal flaw. So if it had  
 23 a fatal flaw, such as not being signed, not being  
 24 dated, not having a secrecy envelope, we have the

Page 11

1 ability and exercise the ability to notify the  
 2 voter that they had the opportunity to cure that,  
 3 but it required coming into our office or calling  
 4 our office to have another vote by mail or absentee  
 5 ballot issued to them.  
 6 We explicitly did not tell voters to go to the  
 7 polling place and try to vote provisional ballot  
 8 because of that Commonwealth Court ruling. Because  
 9 we feel under the current situation that  
 10 provisional ballot would be in peril. So our  
 11 recommendations are consistent with the  
 12 Commonwealth Court ruling on this matter.  
 13 MR. ALBERTS: And I do say and will say I  
 14 think that is the appropriate course of action  
 15 given the current legal status based on that  
 16 ruling. I do think that, in the real world, it  
 17 poses an unreasonable burden on folks where casting  
 18 provisional ballot should be as good as coming into  
 19 Media and curing a ballot. And so I do hope the  
 20 courts have an opportunity to reconsider this  
 21 question in the future.  
 22 MR. ALLEN: I agree with you wholeheartedly,  
 23 but we don't get to pick and choose what we follow  
 24 and in order --

Page 12

1 MR. ALBERTS: Absolutely not, no.  
 2 MR. ALLEN: -- from people in black robes.  
 3 THE CHAIRPERSON: Well, and the question was  
 4 squarely before us at the last election. Today  
 5 it's it not squarely before us.  
 6 And that's because, Ms. Winterbottom, were  
 7 there any challenges, and if there were any, were  
 8 they withdrawn?  
 9 MS. WINTERBOTTOM: Yes. They were those six.  
 10 MR. ALLEN: And they were withdrawn?  
 11 MS. WINTERBOTTOM: Yes. Correct.  
 12 THE CHAIRPERSON: And that was a challenge of  
 13 the Democratic Party?  
 14 MS. WINTERBOTTOM: Yes.  
 15 THE CHAIRPERSON: But to the extent that  
 16 this -- we're commenting on the idea of it, which  
 17 we can during this vote, I agree with you,  
 18 Mr. Alberts, wholeheartedly. I do think that a  
 19 voter that comes in and cast a provisional ballot,  
 20 that that court opinion should be reconsidered.  
 21 And while we're here as a Board to follow the  
 22 election law, which usually in most cases favors  
 23 the voter, I think that this one is also an undue  
 24 burden. I agree to the voter under the

Page 13

1 circumstances and it would require a level of sort  
 2 of legal sophistication to figure out that on the  
 3 voter's level. When they don't follow the  
 4 directions, I understand Mr. Allen, we do a really  
 5 good job of trying to direct voters to do the right  
 6 thing so that their vote can count. But in this  
 7 case, a provisional ballot is something that should  
 8 be considered, but it cannot under the law, so  
 9 unfortunately we have no challenge to vote on it.  
 10 But if we did have a vote that would present a  
 11 legal obstacle in counting those ballots.  
 12 MS. WINTERBOTTOM: We did have one more that  
 13 was -- that they didn't have IDs at the polling  
 14 place. That voter, we contacted them three  
 15 different times. At 3:30 yesterday, they were able  
 16 to get us that ID, so that changed from a no count  
 17 to full count. And that was the only one with no  
 18 ID.  
 19 THE CHAIRPERSON: What a great example of how  
 20 great our team is and trying to make sure people  
 21 are able to vote. So I really appreciate that.  
 22 MR. ALBERTS: And it is within the statutory  
 23 deadline. It has to be proved up in this case by  
 24 the Monday after election day.

Page 14

1 MS. WINTERBOTTOM: Correct.  
 2 MR. MCBLAIN: Just curious, what was the most  
 3 common reason that a provisional ballot was cast  
 4 and it was a full count? I mean, was it that they  
 5 were not listed in the Registry of Voters at the  
 6 polling places and they turned out to be actually  
 7 registered or --  
 8 MS. WINTERBOTTOM: Not usually. So a lot of  
 9 the calls that we see on election day in voter  
 10 registration, but we have the ability to view the  
 11 poll book that was printed and that we gave out at  
 12 supplies, but they couldn't find the name. So we  
 13 were able to tell them what page that it was. And  
 14 then they would find them. Sometimes if they got  
 15 busy and maybe they didn't call us, that they could  
 16 have given a provisional ballot. So we do see  
 17 instances that they didn't need a provisional, they  
 18 were fine in the book, and that they could have  
 19 voted. That wasn't the majority of the reason.  
 20 I do believe a lot of them were that if they  
 21 never got their mail-in ballot or they never  
 22 returned their mail-in ballot, they're marked in  
 23 the poll book as they have to vote provisionally if  
 24 they're not able to surrender it.



Page 15

1 MR. ALLEN: Additionally, you can have a full  
 2 count if, let's say, there are two precincts that  
 3 vote in the same school gymnasium, for example, and  
 4 they were both entirely in the same jurisdiction.  
 5 So two precincts in Upper Darby, even though you're  
 6 voting in the wrong precinct, you're entitled to  
 7 vote on all the contents on that ballot if you're  
 8 registered with that party as well.

9 THE CHAIRPERSON: Mr. McBlain, any additional  
 10 questions?

11 MR. MCBLAIN: No. But before we move on to  
 12 any sort of vote, Madam Chair, I guess just to  
 13 point order, I guess looking at our agenda, the  
 14 public comments are listed as number nine.

15 THE CHAIRPERSON: I know. I talked to Mr.  
 16 Allen about that. They're not normally. And, you  
 17 know, I do think on reflection, we're going to have  
 18 to -- if we're going to take the vote now, we're  
 19 going to have to move the public comment up.

20 MR. MCBLAIN: Yeah, that's what I mean. I  
 21 believe we should receive public comment before we  
 22 vote on a matter of substance here.

23 THE CHAIRPERSON: Yes, I agree. And we  
 24 should -- we have -- do you have any campaign final

Page 16

1 advance waiver?  
 2 MR. ALLEN: Yes.  
 3 THE CHAIRPERSON: All right. Then let's go  
 4 back and in consideration of the agenda, I would  
 5 move to have the public comment moved after the  
 6 number 4 before or as part of number 5, but before  
 7 number 5. I would move to have the agenda amended  
 8 to take that opportunity so that we can vote on the  
 9 action items after public comment.

10 MR. MCBLAIN: Without objection.  
 11 THE CHAIRPERSON: Okay. I consider that a  
 12 second. All those in favor, say aye.  
 13 MR. MCBLAIN: Aye.  
 14 THE CHAIRPERSON: Aye.  
 15 That motion mass passes. All right. Let's  
 16 just make sure we completed our conversation for  
 17 the Board.  
 18 Mr. Alberts, any other comments on the  
 19 consideration of the recommendation of  
 20 Ms. Winterbottom?  
 21 MR. ALBERTS: Not at this time.  
 22 MS. WINTERBOTTOM: Thank you, Your Honor.  
 23 THE CHAIRPERSON: Thank you, Ms. Winterbottom.  
 24 With that, it has been our tradition over the

Page 17

1 year to move public comment up to the top of the  
 2 items. This was a little bit of a different  
 3 hearing or sort of Board meeting, so we did not do  
 4 that. But I do think that there may be people who  
 5 would like to be heard on this issue. And,  
 6 regardless, it is required by us to have public  
 7 comment before we vote on an action item.

8 So those two stars aligning, I would like to  
 9 open up the forum for public comment on the  
 10 consideration of the recommendations of  
 11 Ms. Winterbottom. Or any other public comment that  
 12 anyone should wish to make. I also want to note  
 13 for anybody who's not familiar, Ms. Schwartz is  
 14 familiar and she's already standing up. So I'm  
 15 guessing she may want to be first and that would be  
 16 fine. She's familiar with the procedures:

17 You do need to state your name and where  
 18 you're from. If you're in the district, your  
 19 address. And if you're not in the district, who  
 20 you represent. And then you will have three  
 21 minutes, the three minutes will be timed on the  
 22 clock for your comments, after which if the Board  
 23 has any other comments or the Solicitor or the  
 24 Director, they will make theirs.

Page 18

1 So, Ms. Schwartz, would you like to go first?  
 2 MS. SCHWARTZ: Go ahead, that's fine.  
 3 MS. SCHNEIDER: Thank you. I appreciate that.  
 4 Good morning, Chair Lunkenheimer, Member  
 5 McBlain and Member Alberts. My name is Marian  
 6 Schneider. And I'm an attorney with the ACLU of  
 7 Pennsylvania. And I'm here today on behalf of  
 8 three voters, namely, Richard Cohain, Sonya Cohain  
 9 and Lee Constegan. And I also represent the League  
 10 of Women Voters of Pennsylvania, who, one of those  
 11 members are Barbara Welsh. All four of those  
 12 voters are in the category of the six ballots that  
 13 are recommended as not count.

14 They previously submitted a mail-in ballot.  
 15 They were notified that their ballot was canceled  
 16 and would not count. And they voted a provisional  
 17 ballot so that they would not lose their  
 18 fundamental right to vote.

19 I'm going to make a couple points hopefully  
 20 within three minutes. We appeared, my colleague  
 21 Kate who is in the audience, appeared on Thursday  
 22 to go to the exhibition of the provisional ballot,  
 23 so that we can learn what the universe of voters  
 24 were who were in this category. We were not

Page 19

1 permitted to attend because we were not a  
 2 representative of a candidate or a party.  
 3 I understand that there was a challenge to  
 4 these ballots, but the party withdrew them and  
 5 that's a perfect example of where the party's  
 6 interest and the voter's interest diverge. So  
 7 there was no opportunity to raise a challenge for  
 8 you to consider at this meeting and I believe  
 9 that's a denial of due process.  
 10 The provisional ballots should be counted. I  
 11 understand there's a Commonwealth Court decision.  
 12 It is a 3 Judge panel decision that is unpublished,  
 13 which means it has no Presidential authority. It  
 14 also only considered one aspect -- there's only one  
 15 paragraph on these provisional ballots. There was  
 16 not a full analysis. There is a conflict in the  
 17 election code that the court did not wrestle with,  
 18 and that conflict has to do with a pre -- so the  
 19 provision about mail and absentee ballots was added  
 20 by Act 77. Previously, in 2002, when this section  
 21 of the election code was enacted, they said except  
 22 as provided, if it is determined that an individual  
 23 was registered and entitled to vote at the election  
 24 district where the ballot was cast, the County

Page 20

1 Board of Elections shall compare the signature on  
 2 the provisional ballot envelope with the signature  
 3 on the elector's registration form. And if the  
 4 signatures are determined to be genuine, shall  
 5 count the ballot if the County Board of Election  
 6 confirms that the individual did not cast any other  
 7 ballot, including an absentee ballot in the  
 8 election. Where the mail ballot has been canceled,  
 9 there's no chance of double voting.  
 10 Now, I understand that's the only decision out  
 11 there. The request for replacement ballot in  
 12 writing is an undue burden on the fundamental right  
 13 to vote, but there are decades of authority from  
 14 the Pennsylvania Supreme Court that says the  
 15 election code must be construed in favor of  
 16 enfranchising voters and not disenfranchising  
 17 voters. And we urge you to reconsider the  
 18 recommendation and count those six ballots.  
 19 We believe we have a right of appeal should  
 20 you decide not to count those ballots, but that's  
 21 going to result in litigation.  
 22 But we believe that --  
 23 MR. ALLEN: Time's expired.  
 24 THE CHAIRPERSON: Yeah, no, but, I mean, given

Page 21

1 that she represents four voters, please finish your  
 2 comments.  
 3 MR. ALLEN: Okay, thank you.  
 4 THE CHAIRPERSON: You're right, Mr. Allen.  
 5 You do represent four different individuals I  
 6 understand is what you said.  
 7 MS. SCHNEIDER: And I understand -- yes, we  
 8 represent one organization and three individuals at  
 9 this moment. We hope to be more individuals. But  
 10 the point is that the provisional ballot was  
 11 created by the Help America Vote Act in 2002.  
 12 Section 3050 -- 25PS Section 3050 is Pennsylvania's  
 13 implementation of the Help America Vote Act. The  
 14 provisional ballot process is to safeguard the  
 15 right to vote. The whole purpose of it is that no  
 16 voters will not be disenfranchised. By not  
 17 counting these ballots, it defeats the purpose of  
 18 having professional ballots in the law at all.  
 19 Now, I firm -- I let -- you can decide, based on  
 20 the fact that the Commonwealth Court decision is  
 21 not Presidential to count those ballots and there  
 22 may or may not be litigation. But I assure you, if  
 23 the ballots are not counted, we will be challenging  
 24 that decision in court. Thank you for your time.

Page 22

1 THE CHAIRPERSON: I do have some questions for  
 2 you and it looks like the Solicitor would like to  
 3 speak as well.  
 4 MS. SCHNEIDER: Sure.  
 5 THE CHAIRPERSON: But I just want to start by  
 6 saying that I don't think Mr. Alberts and I, in  
 7 principle, disagree with you. There is a question  
 8 of -- and we'll get to Mr. Solicitor -- of whether  
 9 or not we even need a standing to vote on it under  
 10 the circumstances. And I do want to ask you some  
 11 questions about the circumstances that led you to  
 12 not have standing before us. Because -- and,  
 13 Mr. Solicitor, you can correct me if I'm wrong.  
 14 But this Board had the opportunity to balance the  
 15 provision that you're talking about, the favors in  
 16 franchising the voter, against the provision that  
 17 the court ruled on that does not allow that vote to  
 18 be casted at the last election. And, in fact, this  
 19 Board, all three members unanimously voted in favor  
 20 of counting the ballots. And the reason for that  
 21 was that there was explicit guidance that went to  
 22 those voters from the State Department that was in  
 23 contradiction to the court ruling. And so under  
 24 those circumstances, it wasn't a partisan issue for

Page 23

1 any of us. It was an enfranchisement issue.  
 2 MS. SCHNEIDER: Of course.  
 3 THE CHAIRPERSON: That we believe that the  
 4 voter had directly been improperly misled,  
 5 potentially. And therefore, we voted in favor. At  
 6 least that's why -- I don't want to speak for why  
 7 the other Board members voted that way.  
 8 So when properly presented with this question,  
 9 we were given the opportunity to balance the  
 10 different legal opportunities under the law to  
 11 either consider whether enfranchisement controls or  
 12 an unpublished decision controls.  
 13 Under these circumstances, I think even if we  
 14 had the opportunity, we wanted to consider that. I  
 15 don't think that there's proper standing here and  
 16 that is because we do not have the objection that  
 17 we had before us. So I will like just to -- and  
 18 bear with me, you may want to comment on that. But  
 19 I would like the Solicitor to speak to that point  
 20 because I think that does lead you with a  
 21 litigation route only and that we're not the proper  
 22 forum for that objection.  
 23 But, please, Mr. Solicitor.  
 24 MR. SOLICITOR: I think your analysis is

Page 24

1 correct I believe that the issue to be presented  
 2 here today and as contemplated by the election code  
 3 is the adjudication of challenges to provisional  
 4 ballot adjudications or recommended adjudications,  
 5 and there is no challenge pending before this Board  
 6 as to those ballots.  
 7 So I think that that -- and, frankly, as I  
 8 read the code, no challenge could be brought by  
 9 anyone other than the representative of a party or  
 10 a campaign because that's the way the code is  
 11 written. So that is a distinguishing  
 12 characteristic between the time the Board  
 13 considered this in the last election or the general  
 14 election of 2022 and now. So procedurally we have  
 15 a different scenario.  
 16 The other distinguishing point is that there  
 17 was evidence presented to the Board that the  
 18 Department of State notices or auto-gen  
 19 communications to the voter contained misleading  
 20 information. This time I'm not aware one way or  
 21 the other no information has been presented to this  
 22 Board about that.  
 23 I would note that there is a Department of  
 24 State guidance about this point from 2020, but the

Page 25

1 Commonwealth Court decision that seems to control  
 2 this question postdates that Department of State  
 3 guidance. And I think that's important.  
 4 And finally I will note that although the  
 5 decision we've been referencing was originally not  
 6 published, it was subsequently published.  
 7 MS. SCHNEIDER: Thank you for your question.  
 8 I really appreciate it.  
 9 So two points are the pa.gov guidance is still  
 10 on the Pennsylvania Department of State website and  
 11 we did not get notice of the identifies of these  
 12 voters until 4:11 p.m. yesterday, but one of our  
 13 clients said that she found that guidance and  
 14 relied on it and voted a provisional ballot because  
 15 of that.  
 16 And, secondly, others of our clients called --  
 17 called voter services -- actually, that's what we  
 18 called it in Chester County, but Bureau of  
 19 Elections and was told to go vote for provisional  
 20 ballot on election day. So I think that there is  
 21 some evidence of reliance again in the same way in  
 22 2022. And I'll doublecheck that, but when I looked  
 23 at that case on Westlaw the other day, there was no  
 24 citation. It was reported as unreported on

Page 26

1 Westlaw. So the -- so I think that there is an  
 2 element of reliance here on, and there -- because  
 3 there was little analysis, there were other  
 4 provisional ballots in that case that the court  
 5 spent most of their time talking about. And there  
 6 was -- this was only a single paragraph and they  
 7 did not reconcile the conflicting language of the  
 8 election code, which they should have.  
 9 So I agree. I hear what you're saying. All  
 10 I've got is a legal argument.  
 11 THE CHAIRPERSON: And you may have a second  
 12 legal argument, so let's talk about that so  
 13 clearly, Mr. Solicitor, it is not possible for the  
 14 ACLU to directly or the voter itself make a  
 15 challenge to the provisional ballot?  
 16 MR. SOLICITOR: That's correct. The code does  
 17 not contemplate a voter appearing at the  
 18 provisional ballot exhibition and lodging  
 19 challenges. That is only for campaigns or parties.  
 20 THE CHAIRPERSON: And if he wants me to, I  
 21 want to ask you a question. You mentioned the due  
 22 process challenge.  
 23 MS. SCHNEIDER: Yes.  
 24 THE CHAIRPERSON: But due process challenge

Page 27

1 would be if the voter has no avenue to challenge  
 2 those. And it may not be that forum, right, but  
 3 there's opportunity for the voters to bring --  
 4 MS. SCHNEIDER: Well, I --  
 5 THE CHAIRPERSON: Sorry, let me just finish  
 6 with my Solicitor. Please.  
 7 MR. SOLICITOR: I think that you are correct  
 8 with respect to the fact that what the code  
 9 contemplates, the event the code contemplates does  
 10 not seem to provide the opportunity for voters to  
 11 participate. But that does not mean that voters  
 12 don't have other avenues available to them. That's  
 13 the distinction. I think that, you know, if a  
 14 candidate or a party appeared here today at this  
 15 hearing and wanted to raise challenges to  
 16 adjudications and did not previously raise them  
 17 during, you know, the exhibition of the provisional  
 18 ballots, then they would basically have a  
 19 fundamentally -- you know, a fundamental procedural  
 20 defect to that. And I don't think they have the  
 21 right to raise a challenge at this point.  
 22 There is nothing in the code that says that a  
 23 voter would be similarly procedurally constrained.  
 24 They don't have to go to the provisional. They

Page 28

1 don't even have the opportunity to go to the  
 2 exhibition of the provisional ballot, so you  
 3 certainly couldn't fault the voter for not having  
 4 initiated a challenge at a proceeding that they're  
 5 not contemplated to participate in and the code  
 6 doesn't even say they can even raise challenges in.  
 7 MS. SCHNEIDER: May I respond to that?  
 8 THE CHAIRPERSON: Yes.  
 9 MS. SCHNEIDER: The code is silent as it says  
 10 you shall -- that candidates, representatives of  
 11 candidates and parties shall be permitted to attend  
 12 the exhibition and be in the room. It has  
 13 nothing -- says nothing about prohibiting anyone  
 14 else from attending. So it is with -- it's the  
 15 strict construction of the code that prohibits --  
 16 that prohibited us from going up on Thursday when  
 17 we showed up and attempted to do so.  
 18 So I don't think that there is a prohibition  
 19 in the code. There could have been a challenge  
 20 lodged if we had been permitted to go in and lodge  
 21 it.  
 22 Having said that, I -- you know, I believe  
 23 that that's a floor not a ceiling and that that  
 24 Board could have allowed process that all

Page 29

1 challenges could have been presented to you at this  
 2 time so that you could have ruled on them. And the  
 3 interest of the parties and the interest of the  
 4 voters are not identical, especially in this case,  
 5 where the voters are harmed because they will have  
 6 been denied their fundamental right to vote if  
 7 their ballot is not counted. And there's no risk  
 8 of double voting here. So while there may not  
 9 be -- I mean, we can argue about this at a later  
 10 time, but so maybe --  
 11 THE CHAIRPERSON: I don't want to argue about  
 12 it. I want to be able to support you, personally.  
 13 MS. SCHNEIDER: Right. No, I understand that.  
 14 THE CHAIRPERSON: I just am struggling with  
 15 the ability to do so. Please finish your comments,  
 16 because I think Mr. Solicitor is going to respond  
 17 and then there may be other questions as well.  
 18 MS. SCHNEIDER: The only reason that you don't  
 19 have a challenge before you is because we were not  
 20 permitted to lodge it last Thursday. We would have  
 21 lodged the challenge had we been permitted to go to  
 22 the meeting and lodge such a challenge.  
 23 THE CHAIRPERSON: Thank you.  
 24 MR. SOLICITOR: Just so the record is clear,

Page 30

1 and folks following along at home or the Board  
 2 members have the language fresh in their mind,  
 3 here's the code section language: One authorized  
 4 representative of each candidate in an election and  
 5 one representative from each political party shall  
 6 be permitted to remain in the room in which the  
 7 determination is being made. And, by the way, the  
 8 determination here references back to a pry  
 9 sentence. It says: Within seven calendar days of  
 10 the election, the County Board of Elections shall  
 11 examine each provisional ballot envelope that is  
 12 received to determine if the individual voting that  
 13 ballot is entitled to vote at the election district  
 14 in the election.  
 15 So that's the determination that's being  
 16 referred to in this sentence I just read.  
 17 The code goes on. Representatives, in other  
 18 words, referring back to the representatives of  
 19 each candidate or of each political party,  
 20 representatives shall be permitted to keep a list  
 21 of those persons who cast a provisional ballot. By  
 22 the way, there's no obligation for the Board to  
 23 create such a list. I think the 4:12 yesterday  
 24 reference was a reference to the fact the Board did

Page 31

1 create and provide such a list upon request, which  
 2 is the courtesy, because the Board has no  
 3 obligations of code contemplates, and the party's  
 4 representatives have to go to the provisional  
 5 ballot exhibition and make such a list but we  
 6 didn't insist on that.

7 Representatives shall be permitted to keep a  
 8 list of those persons who cast a provisional ballot  
 9 and shall be entitled to challenge any  
 10 determination of the County Board of Elections with  
 11 respect to the counting or partial counting of the  
 12 ballot under this section. Upon challenge of any  
 13 provisional ballot under this clause, the ballot  
 14 envelope shall be marked challenged, together with  
 15 the reason for the challenge, and the provisional  
 16 ballot shall be set aside pending final  
 17 determination of the challenge according to the  
 18 following procedure: And it goes on to describe  
 19 what ultimately brings us here today.

20 So it's very clear from this language, at  
 21 least to me, that what is contemplated by this  
 22 process is representatives of the candidate and the  
 23 party will attend the exhibition of the provisional  
 24 ballots, that those representatives shall be

Page 32

1 entitled to raise challenges and those challenges  
 2 would be adjudicated at a hearing like this. It  
 3 does not -- it's totally silent as to an individual  
 4 voter having any role in this challenge process  
 5 that brings us here today.

6 THE CHAIRPERSON: But what you said,  
 7 Mr. Solicitor, and what she said, what if the voter  
 8 came here today?

9 MR. ALLEN: The only instance where we would  
 10 notify the voter would be if we determined that the  
 11 vote should count and there was an objection filed  
 12 by a political party or a candidate that tried to  
 13 deny that voter's full count or partial count of  
 14 their ballot. Then we would notify the voter and  
 15 invite them to come and defend or argue with our --  
 16 you know, in tandem with our staff's  
 17 recommendation.

18 MR. SOLICITOR: Yeah, there would be no such  
 19 challenges, there's no notification process.

20 MS. SCHNEIDER: I would suggest that the  
 21 portion of the election code that Mr. Parks read is  
 22 a floor, not a ceiling. Those are the ones you  
 23 must -- you would be violating the election code if  
 24 you prohibited any of the candidate representatives

Page 33

1 or party representatives from going to the  
 2 exhibition of ballots, as you call.

3 That doesn't -- because the -- if the  
 4 legislature wanted to prohibit everybody, they  
 5 could easily have said that no one else shall be  
 6 permitted to attend, but they didn't say that. So  
 7 if the Board could, by its own policy, allow people  
 8 like me, who are here as representatives of those  
 9 voters who couldn't attend today, to attend on  
 10 Thursday. I mean, I understand everybody is trying  
 11 to do their level best to count as many ballots as  
 12 possible. And I don't want you to think I don't  
 13 understand that. I do.

14 I just believe that you have the ability as  
 15 the Board to consider the points that were made and  
 16 to count those ballots and another party aggrieved  
 17 by that decision could file suit as well. But by  
 18 not counting them, then the voters whose ballots  
 19 who have been disenfranchised will need to pursue  
 20 their rights in court.

21 MR. MCBLAIN: First of all, none of the six  
 22 people that you say you represent are here today,  
 23 right? None of the voters who claim to be  
 24 disenfranchised appeared today for this hearing?

Page 34

1 MS. SCHNEIDER: We have three individuals and  
 2 one organization and no representatives on this  
 3 issue are here. I mean, there's -- people from the  
 4 league are here, but they're not here on this  
 5 issue.

6 MR. MCBLAIN: And you indicated that these are  
 7 individuals who have defect in their mail-in  
 8 ballot, and I'll turn you to Mr. Allen.

9 When we receive a defective mail-in ballot, do  
 10 we send notice to the voter indicating that the --  
 11 what they returned to us was defective and giving  
 12 them instructions as to what to do?

13 MR. ALLEN: Yes, we do.

14 MR. MCBLAIN: What are the instructions that  
 15 we give to them?

16 MR. ALLEN: Our explicit instructions, whether  
 17 it's by email or letter, are that the voter has two  
 18 options, both involved obtaining a new vote by mail  
 19 or absentee ballot, either by visiting the voters  
 20 service center or by contacting us, even by phone,  
 21 and requesting that we cancel the original and that  
 22 we mail out a new ballot.

23 We explicitly do not mention the option of  
 24 going to the polling place on election day out of

Page 35

1 concern that that ballot is in legal peril based on  
 2 the current published decision.  
 3 MR. MCBLAIN: So, I'm sorry, just for at least  
 4 one of the individuals you state that your  
 5 organization represents indicated -- you indicated  
 6 that that voter took it upon themselves to go to  
 7 the Chester County --  
 8 MS. SCHNEIDER: No, no.  
 9 MR. MCBLAIN: I'm sorry, looked at the State  
 10 website --  
 11 MS. SCHNEIDER: Yes.  
 12 MR. MCBLAIN: -- where they looked at  
 13 different advice?  
 14 MS. SCHNEIDER: They looked at the guidance  
 15 that the Pennsylvania Department of State has  
 16 published regarding provisional ballots and curing  
 17 mail -- defects in mail ballots. They saw that  
 18 guidance and then went to voter provisional ballot.  
 19 MR. MCBLAIN: But they didn't follow the  
 20 explicit advice that was provided to them by the  
 21 Delaware County Board of Elections.  
 22 MS. SCHNEIDER: Well, I -- the -- I think  
 23 that's correct. I do want to -- there's -- I took  
 24 a screenshot of the notice.

Page 36

1 MR. MCBLAIN: And it's correct that in  
 2 Pennsylvania, there is no statutory requirement or  
 3 court requirement that Boards of election allow  
 4 voters to cure defective mail-in ballots.  
 5 MS. SCHNEIDER: That's correct. The election  
 6 code is silent, but there's -- several courts have  
 7 ruled that counties may implement a notice in cure  
 8 process if they so choose. But the provisional  
 9 ballot process is available, does exist.  
 10 I do want to mention that --  
 11 MR. MCBLAIN: And, in fact, Delaware County  
 12 has -- and I think we unanimously voted to allow  
 13 voters --  
 14 MS. SCHNEIDER: Yes.  
 15 MR. MCBLAIN: -- to cure their ballot. So we  
 16 gave them -- we gave these voters an opportunity  
 17 that they did not -- they don't have by law or in  
 18 many counties in the Commonwealth.  
 19 And just, lastly, my question is -- I'm not  
 20 familiar with the case that you're speaking about,  
 21 I just learned of this issue when I walked in this  
 22 morning.  
 23 But if Mr. Parks is correct that the  
 24 Commonwealth Court has now published the decision

Page 37

1 that you indicated was unpublished, you would agree  
 2 that our Board, lower courts, court of common pleas  
 3 are bound by that. As an attorney, you're -- as an  
 4 officer of the court --  
 5 MS. SCHNEIDER: Of course.  
 6 MR. MCBLAIN: -- you're not able to advocate  
 7 that we take action in -- adverse to what a court  
 8 requires us to do?  
 9 MS. SCHNEIDER: Well -- and I'm sure Mr. Parks  
 10 will appreciate this, but some clients continue to  
 11 advocate for a change in the law until the highest  
 12 court in the state rules on that, and that would be  
 13 the Pennsylvania Supreme Court, and they have not  
 14 ruled on this issue, so I would still continue to  
 15 advocate for you to count the ballots until the  
 16 Supreme Court says, no, don't count them.  
 17 But I just want to point out that two of our  
 18 clients are husband and wife and they're in their  
 19 80s, and it would have been incredibly burdensome  
 20 for them to come to Media. They don't live nearby.  
 21 But they were able to go to their polling place,  
 22 with some difficulty, which is why they voted by  
 23 mail in the first place.  
 24 So it does -- you do have a cure process, I'm

Page 38

1 not saying don't have the cure process. It should  
 2 coexist with the provisional ballot process, which  
 3 is there for precisely this type of thing.  
 4 THE CHAIRPERSON: I've already told you I  
 5 agree with you in principle. But, Mr. Allen, you  
 6 did say that one of the opportunities would be to  
 7 call and have a new ballot sent; is that correct?  
 8 MR. ALLEN: Yes.  
 9 MS. SCHNEIDER: Right, if there was enough  
 10 time for it to get there and then to be returned  
 11 right?  
 12 MR. ALLEN: Again, what -- what's being  
 13 suggested here, even though I agree with the idea  
 14 behind it in that we should not -- if we received a  
 15 mail-in ballot that has a fatal flaw, it only makes  
 16 sense that they should be able to cast a  
 17 provisional ballot. However, we have this  
 18 Commonwealth Court ruling that says you shall not  
 19 do that. We don't have any liberty to just make  
 20 our own rules.  
 21 So I fully agree with you that, yeah, it needs  
 22 to be reconsidered or perhaps it will be  
 23 reconsidered or perhaps it can be taken all the way  
 24 up to the Supreme Court. But that has not been

Page 39

1 done.

2 And in the interim, as an election

3 administrator, I would be remiss -- I would be

4 extremely wrong to take a ballot that a court has

5 told me I should not count, mix that egg into the

6 omelette so it could never be withdrawn, and then

7 be told, no.

8 Again, we told you already you cannot count

9 this ballot. I mean, that's -- I feel for these

10 voters, I agree with them in principal, but I'm

11 limited by what the court has instructed us to do,

12 and I hope you can appreciate that.

13 And until or unless, you know, a new person in

14 a black robe gives me a new order, this is what I

15 have to do.

16 MS. SCHNEIDER: Well, I certainly appreciate

17 that, and I will continue to advocate on behalf of

18 all Pennsylvania voters.

19 THE CHAIRPERSON: I don't know if Mr. Alberts,

20 he hasn't had a chance to speak, and you've been

21 very patient. I hope you've been able to hear the

22 dialogue, Mr. Alberts. But did you have any

23 comments that might solicit a response from

24 Ms. Schneider?

Page 40

1 MR. ALBERTS: Well, one of the advantages of

2 remoteing in is that I have access to my laptop

3 here, and I can clearly say that the provisional

4 ballot guidance is still up on the Department of

5 State web page, and I do think that that's to the

6 voters, and I sympathize completely with the --

7 that this represents a travesty of justice.

8 Structurally, I think the -- I mean, the best

9 way to pursue that is to take it to the highest

10 court because I do think that, you know, asking

11 election officials to violate a court order that

12 they've been given is sort of a dicey proposition.

13 I think advocating for the fundamental rights of

14 voters and winning that decision will have a far

15 greater impact for more voters for a longer time

16 than us, I don't know, making a wildcat decision.

17 As much as I'm inclined to -- you know, if

18 this was put up for a vote before me, I would say

19 yes, count them, right? I mean, that would be my

20 instinct, my impulse, my feeling, that it's -- it's

21 not up for a vote before me today, so it's --

22 because of perhaps a process that we need to

23 improve on.

24 But I do think that the best remedy for this,

Page 41

1 given the confusion, you know, put out there by the

2 Department of State, can't seem to figure out how

3 to scrub their website of misleading information, I

4 do think that the voters are put at a disadvantage

5 at several stages in this process.

6 So I think that, you know, we're not able to

7 change the law, we're not legislatures. But I do

8 hope that -- again, I do hope the Courts get an

9 opportunity to reconsider these questions, because

10 I do think that there is a miscarriage of justice

11 happening here.

12 THE CHAIRPERSON: Thank you.

13 MS. SCHNEIDER: Thank you for your time.

14 THE CHAIRPERSON: Ms. Schwartz.

15 MS. SCHWARTZ: Good morning, Board of

16 Elections. Can you hear me?

17 Yes, my name is Joy Schwartz, 514 Lombardy

18 Road in Drexel Hill. Thank you to everyone who has

19 worked on the election -- on the primary election

20 this year. For all your hard work, appreciate it.

21 I have some questions also somewhat related to

22 Ms. Schneider's questions concerning the role of

23 political bodies as opposed to political parties.

24 I know that there has been an update on the

Page 42

1 Secretary of State's website concerning guidance

2 for poll watchers and authorized representatives.

3 In the past, it was -- you know, I believe

4 that the authorized representatives that

5 represented political bodies would be permitted to

6 watch various election procedures, and they have

7 been in the past. This year apparently that was

8 not the case. So I would love some clarification

9 on that issue.

10 I understand that the guidance from the

11 Secretary of State says that a political body

12 should have a candidate in the race if they are to

13 allow observers or, as they're now called,

14 authorized representatives, to watch various

15 election procedures. I don't believe that that was

16 the case last year or, you know, prior to last

17 November. So I would love some clarification on

18 that.

19 Also, I wondered, has the Board of elections

20 decided to go with the electronic poll pads from No

21 Ink. I wondered if that was a decision that has

22 been made or not.

23 And also, I have a question as to how many

24 ballots that were made on demand --

Page 43

1 ballot-on-demand votes, early votes that were  
 2 brought to the government center bureau of  
 3 elections office, how many of those votes were cast  
 4 early?  
 5 MR. ALLEN: I'm sorry, I didn't --  
 6 MS. SCHWARTZ: So those are my few questions.  
 7 MR. ALLEN: Could you repeat that last  
 8 question?  
 9 MS. SCHWARTZ: Certainly, yes. Just how --  
 10 what is the number of votes that were cast early  
 11 through the voting center here in the government  
 12 center for the primary election.  
 13 MR. ALLEN: I don't have that number  
 14 available. We can definitely try to pull that data  
 15 both from the touch writers to see if there were --  
 16 if we can give you an idea of how many of the  
 17 records came through the voter service center.  
 18 MS. SCHWARTZ: All right. Thank you.  
 19 THE CHAIRPERSON: And as to your question  
 20 about the electronic poll pads, that would be --  
 21 there was a pilot project, which was very  
 22 successful in my view, but we'll talk about that in  
 23 a little bit.  
 24 But, ultimately, the decision whether or not

Page 44

1 to fund the electronic poll pads will be made by  
 2 the county council and surely, with consideration  
 3 before that of the Board, I'm sure they would -- I  
 4 expect that they would want our view of that.  
 5 MS. SCHWARTZ: Okay.  
 6 THE CHAIRPERSON: So that has not been made.  
 7 I -- just as to your other two questions, I'm  
 8 not quite sure I understood the political body  
 9 question. And I'm not familiar with the observer  
 10 issue being new.  
 11 But, Mr. Solicitor, is there anything that you  
 12 can say to clarify that for, Ms. Schwartz?  
 13 MR. SOLICITOR: There have been extensive  
 14 communications between Ms. Schwartz and Mr. Allen  
 15 about this issue, including, you know, that have  
 16 been informed by my legal research and my guidance  
 17 to Mr. Allen, and I don't think this is even a  
 18 remotely close question. I don't think the  
 19 Department of State got this one wrong or was on a  
 20 lark. The code is very clear as to who's permitted  
 21 to be part of different procedures and, you know, I  
 22 noticed Ms. Schwartz said that observers are now  
 23 called representative. They're not. These are all  
 24 different categories in the election. A poll

Page 45

1 watcher is different that an observer at the canvas  
 2 than an authorized representative at the  
 3 provisional ballot exhibition. And it's important  
 4 to understand that these things are not co-equal or  
 5 interchangeable. Each one is governed by its own  
 6 provision of the code and the rules about that.  
 7 MS. SCHWARTZ: If I just may make one comment  
 8 following that up. There's nothing in the most  
 9 recent October 2022 guidance from the Secretary of  
 10 State regarding observers. The only guidance  
 11 that's provided is regarding poll watchers and  
 12 regarding authorized representative. I'm not an  
 13 attorney, but I have haven't found anything in the  
 14 election code about observers.  
 15 MR. ALLEN: Well, we tend to use the words  
 16 authorized representatives with the word observer,  
 17 but it's clear -- you have the guidance, correct?  
 18 You sent it to me.  
 19 MS. SCHWARTZ: Yes, of course.  
 20 MR. ALLEN: So I think you've answered your  
 21 own question. The guidance is clear. There is a  
 22 distinction between a political body and a  
 23 political party.  
 24 MS. SCHWARTZ: I understand that, Mr. Allen.

Page 46

1 My question is basically related to Ms. Schneider's  
 2 questions concerning political bodies.  
 3 Now, as I would understand it, the League of  
 4 Woman Voters is a political body, not a political  
 5 party. And they were excluded from watching a part  
 6 of the processes in the election, correct?  
 7 MR. ALLEN: Correct.  
 8 THE CHAIRPERSON: I'm not going to open this  
 9 up into a Q&A. I -- if this really goes to the  
 10 heart of whether or not a political candidate can  
 11 come into a poll place and ask questions, that  
 12 answer is so clearly established, I think you were  
 13 informed of that correctly by a member of this  
 14 Board. And you were not the only candidate who was  
 15 informed of that issue during the election.  
 16 So if that's what we're dancing around and I'm  
 17 just missing the lyrics, I understand it now, and I  
 18 do think that there's been clear guidance on this  
 19 issue. I don't want to continue with a Q&A on this  
 20 point.  
 21 But, Mr. McBlain, if you do have a comment, of  
 22 course you can make it.  
 23 MR. MCBLAIN: Well, I mean, again, you  
 24 reference political body and I was about to ask



Page 47

1 you, which political body was excluded? I mean,  
 2 political body I believe is defined under the  
 3 election code as a political party that hasn't  
 4 obtained a certain level of support in the state.  
 5 MS. SCHWARTZ: Correct.  
 6 MR. MCBLAIN: As far as I understand, there's  
 7 only three political parties --  
 8 MS. SCHWARTZ: Right.  
 9 MR. MCBLAIN: -- that right now are recognized  
 10 by the state, there's democratic, republican and  
 11 the libertarian.  
 12 MS. SCHWARTZ: Yes.  
 13 MR. MCBLAIN: And then there are political  
 14 bodies, such as the Green Party, the People before  
 15 Profit, whatever, I mean, you know, the different  
 16 ones are.  
 17 So, I mean, that's different than a group that  
 18 is interested in political matters, such as League  
 19 of Woman Voters.  
 20 I mean, so I don't -- when you say political  
 21 bodies, the legal -- in my beliefs, the League of  
 22 Women Voters is not a political body. They say  
 23 that they're nonpartisan. They don't support, you  
 24 know, any particular party or candidate.

Page 48

1 MS. SCHWARTZ: Correct.  
 2 MR. MCBLAIN: I mean, but just so we're  
 3 clear --  
 4 MS. SCHWARTZ: So political -- by political --  
 5 MR. MCBLAIN: -- bodies --  
 6 MS. SCHWARTZ: Right. By political bodies, so  
 7 right now -- so I think what you're saying is  
 8 you're making a distinction between a political  
 9 group and a political body. And the reason I  
 10 brought the question up is that in -- back in  
 11 October of 2022, I had made a request on behalf of  
 12 a political group, if you would like to call it  
 13 that, to do some observation of L&A testing. And I  
 14 was permitted to do that by Mr. Allen, very  
 15 grateful for that. However, I'm confused about the  
 16 interpretation.  
 17 So thank you for the clarification. And  
 18 that's all. Thank you so much.  
 19 THE CHAIRPERSON: Thank you.  
 20 Is there any other public comment?  
 21 Please.  
 22 MS. WILSON: Yes. Marguerite Wilson,  
 23 824 Drexel Avenue. I'm also known as Peggy.  
 24 I had an emergency appointment to be the judge

Page 49

1 of elections for the Upper Darby 75. The Upper  
 2 Darby 75 is co-located with two other precincts in  
 3 Bywood Elementary. We all got there before 6:00 so  
 4 that we could have everything up and running by  
 5 7:00. There was nobody there to let us in. We  
 6 started calling the warehouse. We were told  
 7 repeatedly that, oh, we're working on it, we're  
 8 working on it.  
 9 At one point somebody -- the guy I was talking  
 10 to said, oh, I can hear my co-worker talking to  
 11 somebody about it, and it turned out to be one of  
 12 the other JOEs who was also calling.  
 13 Finally, at 6:45, the local Upper Darby  
 14 councilman called somebody that he knows on the  
 15 school Board who had the personal phone number of  
 16 the superintendent and that's how we finally got in  
 17 at 6:55.  
 18 There was a line of people who were there so  
 19 that they could vote before they went to work. We  
 20 got in there, and we were like little ants crawling  
 21 all over everything. We got everything up and  
 22 running by 7:30.  
 23 The councilman stayed outside and tried to  
 24 keep everybody really calm.

Page 50

1 My issue is that I feel like we were totally  
 2 unsupported by the people at the warehouse. Nobody  
 3 there had an emergency phone number. We were using  
 4 the online directory for the Upper Darby school  
 5 district and getting voicemail, but it wasn't until  
 6 we found somebody who had the superintendent's  
 7 personal phone number that we actually got the  
 8 support we needed to get in that building.  
 9 And it concerns me that nobody had a provision  
 10 in case of an emergency like this. I mean, what if  
 11 we had walked in and it was a roof leak. We just  
 12 need -- we needed support, and we did not get it.  
 13 And I'm not going to -- I think from now --  
 14 from this point on, you need to have some kind of  
 15 process in place. And it would have been great if  
 16 any of the JOEs had had that number, because we  
 17 were the first on the scene and saw the problem.  
 18 But from 5:45 to 6:55, we were standing  
 19 outside twiddling our thumbs because we could not  
 20 get in to set up the equipment.  
 21 MR. ALLEN: I share your sentiments on this.  
 22 This was extremely frustrating for us. The  
 23 warehouse does, by the way, have multiple contacts  
 24 for each location. In this case, the principal and

Page 51

1 I believe the custodian or someone in that  
 2 capacity, so that when we make a delivery and need  
 3 to make a pickup, we have people we can call.  
 4 This was not a problem across Upper Darby  
 5 schools. This was exclusively at Bywood and it was  
 6 extremely frustrating for us too. We want you to  
 7 get inside there at 6:00 a.m. We did not have  
 8 problems with this at other places. They were  
 9 making calls to everyone that they had. You know,  
 10 they did not have a personal phone number for the  
 11 superintendent.  
 12 But we regret that situation, but we were  
 13 powerless short of, you know, sending a fire  
 14 brigade and a battering ram --  
 15 MS. WILSON: It would have been nice to have  
 16 some updates. All we were told is that we're  
 17 working on it, we're working on it, we're working  
 18 on it.  
 19 And also, you may not need the  
 20 superintendent's personal phone number, but you  
 21 need somebody's personal phone number, because the  
 22 numbers you guys were calling were apparently the  
 23 same ones we were finding on the online directory  
 24 and calling.

Page 52

1 MR. ALLEN: I don't know what numbers you were  
 2 calling versus what -- I'll look into that.  
 3 THE CHAIRPERSON: No. I just want to say,  
 4 first of all, thank you for your service. Thank  
 5 you for your diligence in favor of the voter.  
 6 That's a tremendous effort obviously that you put  
 7 forward. Clearly it sounds like -- we intend in  
 8 every way to have that process. There are numbers  
 9 and people and contacts made and arrangements made  
 10 well in advance to make sure that that doesn't  
 11 happen. And I'm really saddened and disappointed  
 12 to hear that it did. It happens in human error,  
 13 obviously something went wrong, we've got to get to  
 14 the root cause of that and solve for that.  
 15 But I really appreciate you bringing it to  
 16 this Board's attention. It sounds like  
 17 Mr. Allen -- I had heard about this, that they were  
 18 aware of it.  
 19 Anyway, but it's important to acknowledge  
 20 that -- that that was an imperfect moment and it  
 21 could have had great affect and I appreciate that  
 22 the voters --  
 23 MS. WILSON: I'm sure there were some  
 24 disenfranchised voters, because they were there at

Page 53

1 7:00 to vote and then get off to work and we  
 2 weren't even open until 7:30.  
 3 THE CHAIRPERSON: Let's hope not. And that  
 4 isn't a common -- it is not a common problem that  
 5 we have here. I think we've done an excellent job,  
 6 but it happened, and we'll acknowledge it, and that  
 7 needs to be remedied. And I'm sure it will be. We  
 8 really do have a great team. And if part of it's  
 9 just communication to say, hey, we're not just  
 10 working on it but we're trying this and we're --  
 11 you know, whatever it is to make that also feel,  
 12 when you're in that moment -- because I worked at  
 13 the polls many, many, many years, that moment where  
 14 you've got voters outside, you're trying to do  
 15 what's right, you're under pressure, and no one's  
 16 telling you what's actually -- when it's going to  
 17 be solved, that's very frustrating as well.  
 18 MS. WILSON: We solved it ourselves, so...  
 19 THE CHAIRPERSON: You did. Thank you. Thank  
 20 you.  
 21 MR. ALBERTS: Madam Chair, I just want to add  
 22 a comment to this if I may.  
 23 THE CHAIRPERSON: Yes, please.  
 24 MR. ALBERTS: So I was actually in Upper Darby

Page 54

1 7th District at the time and received phone calls  
 2 from several of the poll workers and the 7th  
 3 District Councilperson in question, Mr. Hafiz  
 4 Tunis. And I just want to say that the poll  
 5 workers in that polling place behaved admirably and  
 6 impressively in terms of very quickly setting up  
 7 their machines and getting voters processed and  
 8 allowing them to vote as quickly as humanly  
 9 possible due in no small part to the training that  
 10 they received that enabled them to prioritize  
 11 appropriately in a crisis. And I think all of them  
 12 should be commended.  
 13 I also would like to commend that their  
 14 councilperson, to alleviate the concerns expressed  
 15 by Ms. Wilson, it was communicated to me that this  
 16 councilperson stayed at that line and kept every  
 17 single voter in that line in that they did not, in  
 18 fact, leave to go -- you know, to not cast a vote.  
 19 I will say, however, that that location, this  
 20 is not the first time we've had this problem. We  
 21 had this problem during a presidential election  
 22 before I was on the Board and I was the person in  
 23 that -- trying to keep people in that line. And I  
 24 can tell you, that line was snaking around the

Page 55

1 building and quite a few people did have to leave  
 2 for work. So I want to make sure that we have a  
 3 very frank and robust conversation with the school  
 4 district about that location to ensure that that  
 5 does not happen again.  
 6 I know that, you know, inevitably, there's  
 7 always some location, somewhere in the county,  
 8 where one of our hosts, you know, oversleeps, drops  
 9 the ball, doesn't adequately communicate internally  
 10 with their staff and it does happen from time to  
 11 time. The fact that this is the second time I'm  
 12 aware of that it's happened at this location is  
 13 certainly cause for concern.  
 14 THE CHAIRPERSON: And, Mr. Alberts, is that  
 15 the root caused, to your understanding, having been  
 16 present and nearby?  
 17 MR. ALBERTS: My understanding is that there  
 18 is just a breakdown in communication between the  
 19 staff who's charged with opening the facility. I  
 20 don't know where that breakdown happened, whether  
 21 it's between the superintendent and the principal  
 22 or between the principal and the custodian or two  
 23 custodians, you know, one delegates it to the  
 24 other. I have no idea about that internal

Page 56

1 discussion.  
 2 But I do know that this is the second time  
 3 it's happened and both times there was just  
 4 no one -- I believe in this case, I -- well, it was  
 5 reported to me was that the way the building was  
 6 opened was a custodian showing up to work the  
 7 regular shift. You know, with the efforts that  
 8 were being made by superintendent McGarry and Board  
 9 members were happening, but then someone just  
 10 happened to show up to open the building as they  
 11 normally would.  
 12 So I think, clearly, there's an issue with  
 13 that location that needs to be discussed with the  
 14 school Board and the school district administration  
 15 to figure out a solution that we can count on,  
 16 because it's -- it is a crucial location. We have  
 17 three polling places that are in that -- three  
 18 precincts that vote in there. There's not a lot of  
 19 public buildings in that neighborhood, and I do  
 20 know it becomes quite the scene at a Presidential  
 21 election.  
 22 MS. WILSON: And later on in the day --  
 23 MR. MCBLAIN: If you could please. Thank you.  
 24 MS. WILSON: Later on in the day, maybe about

Page 57

1 5 o'clock, the guard left her -- her shift was over  
 2 and she went home and she locked the door. And the  
 3 only reason we knew about it was because one of the  
 4 poll watchers outside kind of ran in the door  
 5 before it closed and told us. And we had to go  
 6 find one of the administrators who said, oh, she  
 7 shouldn't have done that, you know. So there is --  
 8 there is a problem there.  
 9 THE CHAIRPERSON: Thank you.  
 10 MR. ALLEN: Thank you.  
 11 THE CHAIRPERSON: All right. Is there any  
 12 other public comment?  
 13 Okay. Then that comment includes comments on  
 14 any issue, not just the item that's right before us  
 15 that we've been discussing, originally discussing,  
 16 the recommendations on the provisional ballot.  
 17 Now, are you trying to give additional public  
 18 comment.  
 19 MS. SCHNEIDER: I just wanted to correct the  
 20 record on the unpublished nature of the decision.  
 21 THE CHAIRPERSON: I think that that would be  
 22 welcomed. Go ahead.  
 23 MS. SCHNEIDER: Thank you, Madam Chair, for  
 24 allowing me to speak.

Page 58

1 The opinion that Mr. Parks is relying on, we  
 2 just looked it up on Westlaw. The opinion is not  
 3 reported. The A second citation we put in our  
 4 letter was to a table of disposition of the case.  
 5 The petition for allowance of appeal was denied by  
 6 the Pennsylvania Supreme Court, so it's not a  
 7 reported decision. And the A second citation is  
 8 just to a table of the summary disposition.  
 9 So I just wanted to clear the record that it  
 10 is not -- it's not a presidential opinion. And  
 11 because it's a three-judge panel, it does not -- it  
 12 is not binding for the future. It's only binding  
 13 in that case.  
 14 MR. MCBLAIN: The Supreme Court has looked at  
 15 whether or not they want to consider the question  
 16 and they decided not to consider the question  
 17 and --  
 18 MS. SCHNEIDER: In that case, they --  
 19 MR. MCBLAIN: -- just kept the Commonwealth  
 20 Court case in place.  
 21 MR. SOLICITOR: Yeah, so there was a petition  
 22 for allowance of appeal that was denied. And the  
 23 table citation, which is what I was referring to,  
 24 is A 241 -- I'm sorry, 241 A 3rd 695.

Page 59

1 MS. SCHNEIDER: But it was a discretionary  
 2 appeal, not appeal as of right?  
 3 MR. SOLICITOR: On this context, most  
 4 decisions --  
 5 THE CHAIRPERSON: I would think it would be.  
 6 MR. SOLICITOR: -- would be.  
 7 MS. SCHNEIDER: Right. No, right. So I  
 8 mean --  
 9 THE CHAIRPERSON: I thought you were going to  
 10 clear it all up. All right. We're good.  
 11 MS. SCHNEIDER: I still think -- I mean, I  
 12 think it is persuasive --  
 13 THE CHAIRPERSON: As we say, the thing stands  
 14 for itself here. Whatever it is, it is, but it's  
 15 not going to change how we proceed today.  
 16 But I understand you're going to appeal, and I  
 17 wish you luck.  
 18 MS. SCHNEIDER: Thank you.  
 19 THE CHAIRPERSON: All right. With that, then,  
 20 do we have a motion to accept the recommendations  
 21 on provisional ballots made by Ms. Winterbottom?  
 22 MR. MCBLAIN: So moved.  
 23 THE CHAIRPERSON: And I will second that.  
 24 Any further discussion?

Page 60

1 No?  
 2 Hearing none, all those in favor say aye.  
 3 MR. MCBLAIN: Aye.  
 4 THE CHAIRPERSON: Aye.  
 5 All those opposed.  
 6 I couldn't hear you, Mr. Alberts, but did  
 7 you --  
 8 MR. ALBERTS: I did say aye, yes.  
 9 THE CHAIRPERSON: Okay. Thank you.  
 10 All right. Then the motion passes.  
 11 Mr. Allen, it's the director of elections  
 12 report.  
 13 MR. ALLEN: Madam chair, I'll try to keep  
 14 these as short as I can, but it's got a lot to  
 15 cover.  
 16 A few announcements first.  
 17 I want to congratulate the new full-time  
 18 teammates, some of whom who worked with us us  
 19 nearly year-round or essentially year-round temps  
 20 previously. Lisa Jackson is now officially  
 21 Campaign Finance Supervisor. James Warner has --  
 22 I'm so glad to report -- taken the vacant role of  
 23 Deputy Chief Clerk for mail/absentee applications.  
 24 Also, Pam Lairson is our new poll worker

Page 61

1 coordinator, but not new, she also has served as a  
 2 poll worker for many years and has worked with us  
 3 in the past prior to taking this very mission  
 4 critical role.  
 5 And I want to tell you all three of these  
 6 individuals did a great job. The training, we  
 7 received compliments on it for the poll workers.  
 8 We received praise for the team's work to  
 9 streamline the drop-off process. We already had  
 10 the pickup process nailed down by our voter  
 11 registration team and now the drop-off process went  
 12 really, really well.  
 13 And I also want to recognize Shantel James who  
 14 has joined as a balloting systems specialist.  
 15 And now --  
 16 THE CHAIRPERSON: Wait.  
 17 Thank you for that. So excited for all of  
 18 you. It got to meet Pam and see Lisa in action.  
 19 On election day, Pam, I think, turned to me and  
 20 said who are you, like what are you doing here  
 21 talking to Crystal about election stuff.  
 22 But, no, we have a great team, and we're  
 23 really glad Mr. Allen advocated very strongly for  
 24 all of you and rightfully so.

Page 62

1 So thank you.  
 2 MR. ALLEN: I'm also please to announce -- you  
 3 know, we look to cultivate within our staff, and  
 4 there's one person who has really stood head and  
 5 shoulders, you know, in terms of performance and  
 6 dedication and I'm very pleased to announce that  
 7 Amanda Wallace, who's now serving as our chief  
 8 administrative officer, which include various  
 9 financial budgeting and long-term planning and  
 10 contingency plan supervisory functions. And she's  
 11 had a long career already with us, and I'm very  
 12 delighted that she's agreed to pursue and take that  
 13 position with us.  
 14 THE CHAIRPERSON: That's also excellent. And  
 15 you were always in action at the Wharf on election  
 16 day and every other day. Thank you.  
 17 MR. ALLEN: On a much sadder note, we are  
 18 grieving the very recent loss of a colleague in  
 19 front -- excuse me -- Jeanette Walsh, who was  
 20 working with us at the Wharf nearly until election  
 21 day. She went on medical leave in early May, and  
 22 just the next week, right before election day, we  
 23 received word that Jeanette had passed.  
 24 One of my first and fondest memories here in

Page 63

1 Delco was observing Jeanette lead a poll worker  
 2 training session when we were doing those at the  
 3 Media Borough Community Center.  
 4 Jeanette was witty. She was brusque. But she  
 5 was also very caring. She was one of our best call  
 6 takers at the Bureau of Elections, often walking  
 7 voters step-by-step with however much patience and  
 8 care was needed through whatever process that  
 9 individual voter needed to complete. And just one  
 10 aside of her kindness, Jeanette, at Christmastime,  
 11 gifted her coworkers with beautiful hand-made items  
 12 always. It was no trip to Wawa for Jeanette. It  
 13 was -- she made things.  
 14 So I'd just like us to take a moment.  
 15 THE CHAIRPERSON: Thank you, Mr. Allen.  
 16 If there's an opportunity for the Board to  
 17 send something on our behalf to her family, please  
 18 let us know, and I'm sure we would all --  
 19 MR. ALLEN: Absolutely.  
 20 THE CHAIRPERSON: Thank you.  
 21 MR. ALLEN: We had enormous success at this  
 22 election. I am so grateful, and I hope the voters  
 23 and the poll workers are too, to the efforts of our  
 24 team.

Page 64

1 Our staff managers, Jackie Dunn at the  
 2 warehouse, Crystal Winterbottom at the voter  
 3 registration, Laureen Hagan heading up the massive  
 4 operation at the Bureau, especially at the Wharf.  
 5 Amanda Wallace. Jim Warner, who worked out the  
 6 smooth -- out the process of opening the envelopes  
 7 at the Wharf. We got done earlier than ever.  
 8 Chavon Flores, who helped work out a smoother than  
 9 ever before return of the drop-box contents, all at  
 10 the Wharf by 8:45 p.m.  
 11 Karen Brooks, who worked out more effective  
 12 outreach to voters who needed to verify ID or to  
 13 address in many, many -- I just want to emphasize,  
 14 many, many voters -- dozens of voters were able to  
 15 successfully cure their ballot issues. And it was  
 16 due to the outreach of Karen Brooks and all of our  
 17 staff making phone calls out there.  
 18 Jean Fleschute, a temp, who focused on the  
 19 successful revamp of the poll worker drop-offs at  
 20 the Government Center. And then at the other end  
 21 of the process, Rob Wright, who built up the team  
 22 that uploaded the precinct results at the Wharf.  
 23 Tim Boyd, Director Tim Boyd, and Inder Bains  
 24 of Emergency Services helped so much. Chief Diehl

Page 65

1 and Lieutenant Cahall and the Park Police Team.  
 2 Christine Keck and her team in personnel. Chief  
 3 Michelle Conte and Captain Rick Bailey of the  
 4 Sheriff's department and their teammates.  
 5 John Becht and the information technology  
 6 team. Adrienne Marovsky in public relations. And  
 7 many, many others.  
 8 So we had smoother than ever drop-off for  
 9 judges to keep the line moving quickly. We came up  
 10 with a solution where persons who did not have  
 11 their materials in order were pulled out of line so  
 12 they didn't delay the orderly process of the others  
 13 who did come with their materials in order so that,  
 14 you know, problems didn't grow and fester.  
 15 And here's what the Delco teams achieved. For  
 16 the first time ever, even if you look back to the  
 17 old Danher equipment and before that, the lever  
 18 machines, we had results from each and every  
 19 precinct at the central count by midnight. I want  
 20 to emphasize again -- John Barton, who's been doing  
 21 this for decades, said they've never, ever, ever  
 22 had that before.  
 23 We had super smooth drop-off for the JOEs.  
 24 Even during the peak period, most were in and out

Page 66

1 in ten minutes. The exceptions were these who did  
 2 not have their materials in order. But even those  
 3 at the peak period were in and out in 22 minutes.  
 4 All mail and absentee ballots were out of the  
 5 envelopes by 2:00 p.m. on election day. They were  
 6 scanned by 7:00 p.m., with results beginning to  
 7 post at 8:10 p.m.  
 8 The only exceptions, of course, were the ones  
 9 that arrived on election day, and the last pickups  
 10 from the drop boxes, which were shut down at  
 11 8:00 p.m.  
 12 Those items, along with the mail, were loaded  
 13 into SURE, sorted and processed and scanned by  
 14 12:45 a.m.  
 15 We had results reporting starting at 8:10 p.m.  
 16 and then through the night. We performed a pilot  
 17 program in Middletown, Brookhaven in Upper Darby  
 18 with electronic poll books that overall won rave  
 19 reviews from our poll workers. Faster voter  
 20 check-ins, clear and consistent instructions for  
 21 every voter situation. And a list of acceptable ID  
 22 that shows up right on the screen for those who are  
 23 required to show ID. So no one had to rely on what  
 24 they think they remembered from a class two and a

Page 67

1 half weeks earlier.

2 So the E-poll books have information that's

3 more up-to-date than the paper poll books. As

4 Crystal referenced earlier, there was no problem

5 finding a voter by typing in the first three

6 letters of the last name and the first three

7 letters of their first name. Or if that didn't

8 work, the date of birth.

9 It's simply things you cannot do easily with

10 giant New York City phone books that are the paper

11 poll books.

12 Fifth, we could not have done all this without

13 our poll workers. Ahead of election day, we were

14 getting great feedback on the manual they work

15 from. What we call the election day guide. And

16 the poll workers were hoping that we could get rid

17 of the speed bumps in the drop-off process, and we

18 did.

19 Sixth, we had fewer than ever provisional

20 ballots and our Voter Registration Department did

21 an excellent job of getting through them

22 efficiently and accurately.

23 Seventh, we recruited, on a pilot program,

24 high school students who had the day off in all but

Page 69

1 two high schools in Delco. But, you know, we only

2 got some from certain high schools. We want to

3 expand this. They were seniors, ages -- seniors

4 aged 17 and 18. And they were paid a good wage,

5 they worked solid six-hour or more shifts, and we

6 look forward to expanding that project with

7 civic-minded students from high schools in the

8 fall. We think it's probably one of the best

9 lessons in how this electoral system works,

10 whether you want to call it a democracy or a

11 republic. They really get to see where the rubber

12 meets the road.

13 Eighth, if all works out like we planned out

14 ahead of time with the controller's office, our

15 next change will be trying to get the poll workers

16 checks out to them sooner. And I'll gladly take

17 any questions from the Board.

18 THE CHAIRPERSON: Mr. McBlain.

19 MR. MCBLAIN: I just want to say thank you to

20 Mr. Allen and all the staff. I was able to be at

21 the Wharf for a good amount of time on the day of

22 election and during the day moved around from place

23 to place. I was able to watch the -- observe the

24 poll books in action at Upper Darby, and it seemed

Page 69

1 to be going well, and the poll workers all seemed

2 to like it.

3 And so, you know, we'll, you know, I guess,

4 hear more about that in the future.

5 And I got to see Chairwoman Monica Taylor

6 outside the polling place there, and I joked that I

7 was happy that it's not no longer my job to figure

8 out where to get the money to buy the poll books.

9 So she laughed.

10 But, you know, everything went smoothly that

11 day. And like I said, I think by the time I

12 arrived down at the Wharf at about 7:00, I was

13 amazed, and happily amazed to find that everything

14 had been scanned in and was ready to go at 8:00.

15 And we posted the results right away and

16 continued to update those during the night. So I

17 thought that was fantastic.

18 The one question I do -- and I've asked

19 Mr. Allen privately, but we could probably say

20 this, is just that I've gotten several inquiries --

21 because it's a local municipal election this year,

22 you have people writing in for different offices,

23 what's the process -- when do they find out when --

24 where can people look to see, you know, whether

Page 70

1 they got 10 write-in votes somewhere, and if they

2 need to cumulate, what's the process for doing

3 that.

4 MR. ALLEN: So Ms. Hagan and her team

5 completed yesterday going through all the write-in

6 votes. We're posting that to the web. If it's not

7 done already, it should be done this morning. So

8 if you just simply searched Delco votes, and you

9 want to go to candidate resources.

10 We also have the petition at candidate

11 resources already posted to the web where say a

12 candidate's name is John F. Jones, Jr., and he gets

13 some votes for John Jones, some for Johnny Jones,

14 some for John Jones, Jr. and all kinds of different

15 variations. We have a petition form on the

16 candidate resources page where the candidate in

17 this case could file all the different variations

18 that show up on that report with one vote, two

19 votes, whatever, to get them across the threshold,

20 whether that's to meet the minimum required of ten.

21 Or if they think they've got enough to beat someone

22 who's on the ballot to cumulate all the different

23 variations of John F. Jones, Jr., or whatever the

24 name may be. And they need to file that petition

Page 71

1 with us with all the variations that they want us  
 2 to cumulate by Thursday, this Thursday, the 25th,  
 3 by noon.  
 4 MR. MCBLAIN: By noon on Thursday?  
 5 MR. ALLEN: We'll certainly extend that if --  
 6 you know, if we get to some late ones, but we want  
 7 to get those organized as much as possible ahead of  
 8 the certification next week.  
 9 MR. MCBLAIN: Thank you.  
 10 THE CHAIRPERSON: Mr. Alberts.  
 11 MR. ALBERTS: Yes, I -- I also had the  
 12 opportunity to witness the electronic poll book  
 13 pilot in action at Upper Darby high school. And,  
 14 yeah, universally every poll worker I spoke with in  
 15 that building was raving about it. I personally  
 16 observed that some of the chaos that happens  
 17 inevitably in these kind of multiprecinct polling  
 18 places where people walk in, they look around  
 19 confused, they go to like three tables before they  
 20 find the right one. That was all eliminated.  
 21 People were being very efficiently checked in.  
 22 I think probably some lessons were learned  
 23 about, you know, where new bottlenecks might happen  
 24 and how to more efficiently manage that, which is

Page 72

1 why we do these projects -- these pilot projects in  
 2 the field. But they were all enthusiastically  
 3 embracing of new technology, which is not always  
 4 the case. So it was it's encouraging to see, and I  
 5 was very pleased with what I was able to observe.  
 6 THE CHAIRPERSON: Thank you.  
 7 Well, we all did our supervisory duties of  
 8 going and observing the poll books in action at the  
 9 pilot program, and I also had the same opportunity  
 10 to observe a location that had four precincts in a  
 11 long hallway in Chester High School where the poll  
 12 books were not piloted and could immediately see  
 13 the benefits to all the voters of having an  
 14 efficient understanding of which precinct that they  
 15 should walk to. And, unfortunately, you know,  
 16 there were some that had to walk much farther than  
 17 they needed to, which is a stressor on our elderly  
 18 voters.  
 19 So I agree with you. Everybody who worked  
 20 with the poll books was very pleased with how well  
 21 they were received, and I think probably surprised  
 22 that people who are less familiar with styluses. I  
 23 think the biggest question I was told that the poll  
 24 book workers were getting was which side of the

Page 73

1 stylus is the side I use. So if that's the biggest  
 2 question we're having, I think that's a pretty good  
 3 one. So I look forward to advocating for that  
 4 program and understanding more from Mr. Allen about  
 5 the cost, and I think the benefits are obvious.  
 6 I think also it will be important to  
 7 understand how this project of the piloting,  
 8 promoting it as a -- potentially a general  
 9 county-wide program will fit into the consolidation  
 10 and expansion analysis of our precinct site and  
 11 which ones could be consolidated and which ones  
 12 have grown too big for their britches and need to  
 13 be expanded. And I think the e-poll books will  
 14 greatly play into that analysis on how to make sure  
 15 that we have, and continue to have, very few  
 16 hiccups the most -- I think the best run elections  
 17 in Pennsylvania. And I'm really proud of  
 18 everybody.  
 19 Thank you all for your hard work and we really  
 20 appreciate it. Everyone I talk to, just in the  
 21 general public, raved about how this election went,  
 22 and every poll worker I talked to said, literally,  
 23 they couldn't imagine the poll worker book  
 24 continuing to get better every year, but they loved

Page 74

1 the checklist, they loved certain things about it.  
 2 It just made their job so much easier. And I hope,  
 3 in a pinch, made it easier to set up the polls more  
 4 efficiently.  
 5 So thank you all. It was really wonderful to  
 6 see and I'm really proud of our county. And once  
 7 again, the eyes of the state and the country were  
 8 upon us, because we had an election that had a  
 9 major ripple effect on the Commonwealth and as well  
 10 as national news, so you all performed amazingly.  
 11 I don't think you need the scrutiny of the national  
 12 news to perform amazingly, but it's even better  
 13 that perhaps there are people out there outside of  
 14 our county who understand how well run our  
 15 elections are.  
 16 So I really appreciate it.  
 17 MR. ALLEN: I would like to advise the Board,  
 18 though, that we do have some work to do still.  
 19 We're going to be processing these provisional  
 20 ballots this afternoon.  
 21 THE CHAIRPERSON: Are you saying you want us  
 22 to move forward so we can get to those ballots,  
 23 because if you are, I think we're done our  
 24 comments.

1 MR. ALLEN: But -- and I also want to advise  
 2 the Board that, you know, we hear often about  
 3 veterans who sacrificed everything to make sure  
 4 that we have the right to vote, and I wish more  
 5 people would honor their dedication and service.  
 6 The turnout was not exactly high by any stretch of  
 7 the imagination. And any doubts that every single  
 8 vote counts can pretty much be wiped away at this  
 9 election.

10 We have one contest that's currently tied, and  
 11 that may or may not be decided by these provisional  
 12 ballots. We have another one that's separated  
 13 right now by one vote. We have another one that's  
 14 separated by three votes.

15 So to all the people who say, ah, somebody  
 16 else will decide it, well that somebody else is  
 17 you. Register to vote. Show up.

18 That's all I have to add.

19 THE CHAIRPERSON: Thank you.

20 Ms. Jackson.

21 MS. JACKSON: Good morning. Lisa Jackson,  
 22 campaign finance supervisor.

23 THE CHAIRPERSON: If you could speaker louder  
 24 for the court reporter.

1 MS. JACKSON: Lisa Jackson, campaign finance  
 2 supervisor.

3 So cycle two deadline was May the 5th, and  
 4 since then we've received five petitions to waive  
 5 campaign finance fees. One is from a committee and  
 6 five are from candidates.

7 The first committee we received was Upper  
 8 Darby democratic committee. They cite that there  
 9 was an emergency -- a personal emergency was the  
 10 reason why their form came in late. And they have  
 11 a \$60 fee. Their first-time offense.

12 We have candidate Monai Riley who cites that  
 13 she didn't need to sign the waiver. Her petition  
 14 says she was unaware of her filing requirements --

15 ---

16 (Whereupon, a brief discussion was held  
 17 off the record.)

18 ---

19 (Whereupon, the hearing concluded at  
 20 approximately 10:38 a.m.)

21 ---



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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter and that this is a correct transcript of the same.

*Kori Skinner*

Kori Skinner, RPR and Notary Public

**WORD INDEX**

&lt;\$&gt;

\$60 76:11

&lt;1&gt;

10 70:1

10:38 76:20

12:45 66:14

127 5:11

163rd 8:4

17 68:4

17th 2:5

18 68:4

19063 1:8

19102 2:10

19103-4196 2:5

&lt;2&gt;

2:00 66:5

2002 19:20 21:11

201 1:8

2020 24:24

2022 24:14 25:22

45:9 48:11

2023 1:4 3:4

215 2:6, 11

22 66:3

23 1:4

23rd 3:3

24 5:10 6:2

241 58:24

25PS 21:12

25th 71:2

&lt;3&gt;

3 19:12

3:30 13:15

30 2:5

3050 21:12

306 5:10

3rd 58:24

&lt;4&gt;

4 16:6

4:11 25:12

4:12 30:23

457 5:8 10:11

48 8:3

&lt;5&gt;

5 16:6, 7 57:1

5:45 50:18

514 41:17

592-1513 2:11

5th 76:3

&lt;6&gt;

6:00 49:3 51:7

6:45 49:13

6:55 49:17 50:18

60173 2:10

695 58:24

&lt;7&gt;

7:00 49:5 53:1 66:6

69:12

7:30 49:22 53:2

75 49:1, 2

77 19:20

7th 54:1, 2

&lt;8&gt;

8:00 66:11 69:14

8:10 66:7, 15

8:45 64:10

80s 37:19

824 48:23

&lt;9&gt;

9:15 1:9

979-1000 2:6

&lt;A&gt;

a.m 1:9 51:7 66:14

76:20

ability 11:1 14:10

29:15 33:14

able 13:15, 21 14:13,

24 29:12 37:6, 21

38:16 39:21 41:6

64:14 68:20, 23 72:5

absentee 11:4 19:19

20:7 34:19 66:4

Absolutely 3:13 12:1

63:19

accept 59:20

acceptable 66:21

access 40:2

accurately 67:22

77:4

achieved 65:15

acknowledge 52:19

53:6

ACLU 18:6 26:14

Act 19:20 21:11, 13

action 11:14 16:9

17:7 37:7 61:18

62:15 68:24 71:13

72:8

add 53:21 75:18

added 19:19

additional 15:9 57:17

Additionally 15:1

additions 4:3

address 17:19 64:13

adequately 55:9

adjudicated 32:2

adjudication 24:3

adjudications 24:4

27:16

administration 56:14

administrative 62:8

administrator 39:3

administrators 57:6

admirably 54:5

Adrienne 65:6

advance 16:1 52:10

advantages 40:1

adverse 37:7

advice 35:13, 20

advise 74:17 75:1

advocate 37:6, 11, 15

39:17

advocated 61:23

advocating 40:13

73:3

affect 52:21

affidavit 7:17 9:2, 13

afternoon 74:20

aged 68:4

agencies 10:19

agenda 3:7, 15 15:13

16:4, 7

ages 68:3

aggrieved 33:16

ago 8:20

agree 11:22 12:17,

24 15:23 26:9 37:1

38:5, 13, 21 39:10

72:19

agreed 62:12

ah 75:15

ahead 18:2 57:22

67:13 68:14 71:7

ALBERTS 2:17 3:8,

10, 14, 17, 21 4:1, 10,

13, 18 10:5, 13 11:13

12:1, 18 13:22 16:18,

21 18:5 22:6 39:19,

22 40:1 53:21, 24

55:14, 17 60:6, 8

71:10, 11

Albert's 10:3

aligning 17:8

Allegiance 3:5

ALLEN 2:19 8:2

9:17 10:14 11:22

12:2, 10 13:4 15:1,

16 16:2 20:23 21:3,

4 32:9 34:8, 13, 16

38:5, 8, 12 43:5, 7, 13

44:14, 17 45:15, 20,

24 46:7 48:14 50:21

52:1, 17 57:10 60:11,

13 61:23 62:2, 17

63:15, 19, 21 68:20

69:19 70:4 71:5

73:4 74:17 75:1

alleviate 54:14

allow 22:17 33:7

36:3, 12 42:13

allowance 58:5, 22

allowed 9:20 28:24

allowing 54:8 57:24

Amanda 62:7 64:5

amazed 69:13

amazingly 74:10, 12

amended 16:7

America 21:11, 13

AMERICAN 2:9

amount 68:21

analysis 19:16 23:24

26:3 73:10, 14

announce 62:2, 6

announcements 60:16

answer 46:12

answered 45:20

ants 49:20  
 anybody 4:4 17:13  
 Anyway 52:19  
 apparently 42:7  
 51:22  
 appeal 20:19 58:5,  
 22 59:2,16  
 appeared 18:20,21  
 27:14 33:24  
 appearing 26:17  
 applications 60:23  
 appointment 48:24  
 appreciate 13:21  
 18:3 25:8 37:10  
 39:12,16 41:20  
 52:15,21 73:20  
 74:16  
 appropriate 11:14  
 appropriately 54:11  
 approval 4:15  
 approve 3:15 4:8  
 approved 3:22  
 approximately 1:9  
 76:20  
 April 4:9  
 argue 29:9,11 32:15  
 argument 26:10,12  
 arrangements 52:9  
 arrived 66:9 69:12  
 ASHLEY 2:16  
 aside 31:16 63:10  
 asked 7:22 69:18  
 asking 40:10  
 aspect 19:14  
 assist 9:11,14  
 assure 21:22  
 attempted 28:17  
 attend 19:1 28:11  
 31:23 33:6,9  
 attending 28:14  
 attention 52:16  
 attorney 18:6 37:3  
 45:13  
 audience 18:21  
 authorities 10:18  
 authority 19:13  
 20:13  
 authorized 30:3  
 42:2,4,14 45:2,12,

16  
 auto-gen 24:18  
 available 27:12 36:9  
 43:14  
 avenue 27:1 48:23  
 avenues 27:12  
 aware 24:20 52:18  
 55:12  
 aye 3:19,20,21 4:16,  
 17,18,19 16:12,13,  
 14 60:2,3,4,8

< B >

back 7:3 8:19 16:4  
 30:8,18 48:10 65:16  
 Bailey 65:3  
 Bains 64:23  
 balance 22:14 23:9  
 ball 55:9  
 BALLOT 1:2,6  
 6:14 7:18,23 9:1,6,  
 21 10:8,22 11:5,7,  
 10,18,19 12:19 13:7  
 14:3,16,21,22 15:7  
 18:14,15,17,22  
 19:24 20:2,5,7,8,11  
 21:10,14 24:4 25:14,  
 20 26:15,18 28:2  
 29:7 30:11,13,21  
 31:5,8,12,13,16  
 32:14 34:8,9,19,22  
 35:1,18 36:9,15  
 38:2,7,15,17 39:4,9  
 40:4 45:3 57:16  
 64:15 70:22  
 balloting 61:14  
 ballot-on-demand  
 43:1  
 ballots 4:23 5:2,9  
 7:14 8:7 10:6,10,20  
 13:11 18:12 19:4,10,  
 15,19 20:18,20  
 21:17,18,21,23  
 22:20 24:6 26:4  
 27:18 31:24 33:2,11,  
 16,18 35:16,17 36:4  
 37:15 42:24 59:21  
 66:4 67:20 74:20,22  
 75:12

Barbara 18:11  
 Burton 65:20  
 based 11:15 21:19  
 35:1  
 basically 27:18 46:1  
 battering 51:14  
 bear 23:18  
 beat 70:21  
 beautiful 63:11  
 Becht 65:5  
 beginning 66:6  
 behalf 18:7 39:17  
 48:11 63:17  
 behaved 54:5  
 beliefs 47:21  
 believe 6:15 7:1,13  
 14:20 15:21 19:8  
 20:19,22 23:3 24:1  
 28:22 33:14 42:3,15  
 47:2 51:1 56:4  
 benefit 4:1  
 benefits 72:13 73:5  
 best 33:11 40:8,24  
 63:5 68:8 73:16  
 better 73:24 74:12  
 big 73:12  
 biggest 72:23 73:1  
 binding 58:12  
 birth 67:8  
 bit 5:13 17:2 43:23  
 black 12:2 39:14  
 BOARD 1:1,6 2:15  
 3:3 12:21 16:17  
 17:3,22 20:1,5  
 22:14,19 23:7 24:5,  
 12,17,22 28:24 30:1,  
 10,22,24 31:2,10  
 33:7,15 35:21 37:2  
 41:15 42:19 44:3  
 46:14 49:15 54:22  
 56:8,14 63:16 68:17  
 74:17 75:2  
 Boards 36:3  
 Board's 52:16  
 bodies 41:23 42:5  
 46:2 47:14,21 48:5,  
 6  
 body 42:11 44:8  
 45:22 46:4,24 47:1,  
 2,22 48:9

book 14:11,18,23  
 71:12 72:24 73:23  
 books 66:18 67:2,3,  
 10,11 68:24 69:8  
 72:8,12,20 73:13  
 Borough 63:3  
 bottlenecks 71:23  
 bound 37:3  
 Box 2:10  
 boxes 66:10  
 Boyd 64:23  
 breakdown 55:18,20  
 brief 76:16  
 brigade 51:14  
 bring 27:3  
 bringing 52:15  
 brings 31:19 32:5  
 britches 73:12  
 Brookhaven 66:17  
 Brooks 64:11,16  
 brought 24:8 43:2  
 48:10  
 brusque 63:4  
 budgeting 62:9  
 building 50:8 55:1  
 56:5,10 71:15  
 buildings 56:19  
 built 64:21  
 bumps 67:17  
 burden 11:17 12:24  
 20:12  
 burdensome 37:19  
 Bureau 25:18 43:2  
 63:6 64:4  
 busy 14:15  
 buy 69:8  
 Bywood 49:3 51:5

< C >

Cahall 65:1  
 calendar 30:9  
 call 3:2 14:15 33:2  
 38:7 48:12 51:3  
 63:5 67:15 68:10  
 called 25:16,17,18  
 42:13 44:23 49:14  
 calling 11:3 49:6,12  
 51:22,24 52:2  
 calls 14:9 51:9 54:1

64:17  
 calm 49:24  
 campaign 15:24  
 24:10 60:21 75:22  
 76:1,5  
 campaigns 26:19  
 cancel 34:21  
 canceled 18:15 20:8  
 candidate 19:2  
 27:14 30:4,19 31:22  
 32:12,24 42:12  
 46:10,14 47:24 70:9,  
 10,16 76:12  
 candidates 28:10,11  
 76:6  
 candidate's 70:12  
 canvas 45:1  
 capacity 51:2  
 Captain 65:3  
 care 63:8  
 career 62:11  
 caring 63:5  
 case 13:7,23 25:23  
 26:4 29:4 36:20  
 42:8,16 50:10,24  
 56:4 58:4,13,18,20  
 70:17 72:4  
 cases 12:22  
 cast 10:7,20,21  
 12:19 14:3 19:24  
 20:6 30:21 31:8  
 38:16 43:3,10 54:18  
 casted 22:18  
 casting 11:17  
 categorically 8:21  
 categories 44:24  
 category 6:3 18:12,  
 24  
 cause 52:14 55:13  
 caused 55:15  
 ceiling 28:23 32:22  
 CENTER 1:7 34:20  
 43:2,11,12,17 63:3  
 64:20  
 central 65:19  
 certain 47:4 68:2  
 74:1  
 certainly 28:3 39:16  
 43:9 55:13 71:5

certification 71:8  
 77:1  
 certify 77:3  
 CHAIR 2:16 15:12  
 18:4 53:21 57:23  
 60:13  
 CHAIRPERSON 3:1,  
 13,18,22 4:12 5:12  
 6:1,7 7:10 8:19 9:9,  
 16,24 10:3 12:3,12,  
 15 13:19 15:9,15,23  
 16:3,11,14,23 20:24  
 21:4 22:1,5 23:3  
 26:11,20,24 27:5  
 28:8 29:11,14,23  
 32:6 38:4 39:19  
 41:12,14 43:19 44:6  
 46:8 48:19 52:3  
 53:3,19,23 55:14  
 57:9,11,21 59:5,9,  
 13,19,23 60:4,9  
 61:16 62:14 63:15,  
 20 68:18 71:10 72:6  
 74:21 75:19,23  
 Chairwoman 69:5  
 CHALLENGE 1:2,6  
 12:12 13:9 19:3,7  
 24:5,8 26:15,22,24  
 27:1,21 28:4,19  
 29:19,21,22 31:9,12,  
 15,17 32:4  
 challenged 31:14  
 challenges 12:7 24:3  
 26:19 27:15 28:6  
 29:1 32:1,19  
 challenging 21:23  
 chance 20:9 39:20  
 change 37:11 41:7  
 59:15 68:15  
 changed 13:16  
 chaos 71:16  
 characteristic 24:12  
 charged 55:19  
 Chavon 64:8  
 checked 71:21  
 check-ins 66:20  
 checklist 74:1  
 checks 68:16  
 Chester 25:18 35:7  
 72:11

Chief 5:7 60:23  
 62:7 64:24 65:2  
 choose 11:23 36:8  
 Christine 65:2  
 Christmastime 63:10  
 circumstances 13:1  
 22:10,11,24 23:13  
 citation 25:24 58:3,  
 7,23  
 cite 76:8  
 cites 76:12  
 City 67:10  
 civic-minded 68:7  
 CIVIL 2:9  
 claim 33:23  
 clarification 6:10  
 42:8,17 48:17  
 clarify 44:12  
 class 66:24  
 clause 31:13  
 clear 8:2 10:14,16  
 29:24 31:20 44:20  
 45:17,21 46:18 48:3  
 58:9 59:10 66:20  
 clearly 3:9 26:13  
 40:3 46:12 52:7  
 56:12  
 Clerk 5:7 60:23  
 clients 25:13,16  
 37:10,18  
 clock 17:22  
 close 44:18  
 closed 57:5  
 code 19:17,21 20:15  
 24:2,8,10 26:8,16  
 27:8,9,22 28:5,9,15,  
 19 30:3,17 31:3  
 32:21,23 36:6 44:20  
 45:6,14 47:3  
 co-equal 45:4  
 coexist 38:2  
 Cohain 18:8  
 colleague 18:20  
 62:18  
 co-located 49:2  
 come 32:15 37:20  
 46:11 65:13  
 comes 12:19  
 coming 11:3,18

commanded 54:12  
 commencing 1:9  
 commend 54:13  
 comment 3:18 15:19,  
 21 16:5,9 17:1,7,9,  
 11 23:18 45:7 46:21  
 48:20 53:22 57:12,  
 13,18  
 commenting 12:16  
 comments 15:14  
 16:18 17:22,23 21:2  
 29:15 39:23 57:13  
 74:24  
 commissioner 8:6  
 committee 76:5,7,8  
 common 5:19 14:3  
 37:2 53:4  
 Commonwealth  
 10:15 11:8,12 19:11  
 21:20 25:1 36:18,24  
 38:18 58:19 74:9  
 communicate 55:9  
 communicated 54:15  
 communication 53:9  
 55:18  
 communications  
 24:19 44:14  
 Community 63:3  
 compare 20:1  
 complete 7:18 63:9  
 completed 16:16  
 70:5  
 completely 40:6  
 compliments 61:7  
 concern 35:1 55:13  
 concerning 41:22  
 42:1 46:2  
 concerns 4:4 9:19  
 50:9 54:14  
 concluded 76:19  
 confirms 20:6  
 conflict 19:16,18  
 conflicting 26:7  
 confused 48:15 71:19  
 confusion 41:1  
 congratulate 60:17  
 consider 16:11 19:8  
 23:11,14 33:15  
 58:15,16

consideration 3:6  
 4:22, 24 16:4, 19  
 17:10 44:2  
 considered 5:23 6:2  
 7:14 8:15 13:8  
 19:14 24:13  
 consistent 11:11  
 66:20  
 consolidated 73:11  
 consolidation 73:9  
 Constegan 18:9  
 constrained 27:23  
 construction 28:15  
 construed 20:15  
 contacted 13:14  
 contacting 34:20  
 contacts 50:23 52:9  
 contained 24:19 77:4  
 Conte 65:3  
 contemplate 26:17  
 contemplated 24:2  
 28:5 31:21  
 contemplates 27:9  
 31:3  
 contents 15:7 64:9  
 contest 75:10  
 context 59:3  
 contingency 62:10  
 continue 6:7 37:10,  
 14 39:17 46:19  
 73:15  
 continued 69:16  
 continuing 73:24  
 contradiction 22:23  
 control 25:1  
 controller's 68:14  
 controls 23:11, 12  
 conversation 16:16  
 55:3  
 coordinator 61:1  
 Correct 6:24 9:23  
 12:11 14:1 22:13  
 24:1 26:16 27:7  
 35:23 36:1, 5, 23  
 38:7 45:17 46:6, 7  
 47:5 48:1 57:19  
 77:6  
 corrections 4:1  
 correctly 46:13

cost 73:5  
 Council 1:7 44:2  
 councilman 49:14, 23  
 Councilperson 54:3,  
 14, 16  
 Counsel 2:12  
 count 5:11, 21, 24  
 6:19 7:9, 15, 23 8:16,  
 22 10:19 13:6, 16, 17  
 14:4 15:2 18:13, 16  
 20:5, 18, 20 21:21  
 32:11, 13 33:11, 16  
 37:15, 16 39:5, 8  
 40:19 56:15 65:19  
 counted 5:10, 11  
 19:10 21:23 29:7  
 counties 36:7, 18  
 counting 13:11  
 21:17 22:20 31:11  
 33:18  
 country 74:7  
 counts 5:14, 15 6:3  
 7:1, 16 8:1 9:7 75:8  
 COUNTY 1:1, 7  
 2:15 3:2 7:24 19:24  
 20:5 25:18 30:10  
 31:10 35:7, 21 36:11  
 44:2 55:7 74:6, 14  
 county-wide 73:9  
 couple 3:24 8:15, 18,  
 24 18:19  
 course 7:10 11:14  
 23:2 37:5 45:19  
 46:22 66:8  
 court 5:5 10:15, 16  
 11:8, 12 12:20 19:11,  
 17 20:14 21:20, 24  
 22:17, 23 25:1 26:4  
 33:20 36:3, 24 37:2,  
 4, 7, 12, 13, 16 38:18,  
 24 39:4, 11 40:10, 11  
 58:6, 14, 20 75:24  
 courtesy 31:2  
 courts 11:20 36:6  
 37:2 41:8  
 cover 60:15  
 co-worker 49:10  
 coworkers 63:11  
 crawling 49:20

create 30:23 31:1  
 created 21:11  
 crisis 54:11  
 critical 61:4  
 crucial 56:16  
 Crystal 5:4, 6 61:21  
 64:2 67:4  
 cultivate 62:3  
 cumulate 70:2, 22  
 71:2  
 cure 11:2 36:4, 7, 15  
 37:24 38:1 64:15  
 cured 10:9  
 curing 11:19 35:16  
 curious 14:2  
 current 11:9, 15 35:2  
 currently 75:10  
 custodian 51:1  
 55:22 56:6  
 custodians 55:23  
 cycle 76:3  
  
 < D >  
 dancing 46:16  
 Danher 65:17  
 Darby 15:5 49:1, 2,  
 13 50:4 51:4 53:24  
 66:17 68:24 71:13  
 76:8  
 data 43:14  
 date 67:8  
 dated 10:24  
 day 13:24 14:9  
 25:20, 23 34:24  
 56:22, 24 61:19  
 62:16, 21, 22 66:5, 9  
 67:13, 15, 24 68:21,  
 22 69:11  
 days 30:9  
 deadline 13:23 76:3  
 decades 20:13 65:21  
 decide 20:20 21:19  
 75:16  
 decided 42:20 58:16  
 75:11  
 decision 10:17 19:11,  
 12 20:10 21:20, 24  
 23:12 25:1, 5 33:17  
 35:2 36:24 40:14, 16

42:21 43:24 57:20  
 58:7  
 decisions 59:4  
 dedication 62:6 75:5  
 defeats 21:17  
 defect 27:20 34:7  
 defective 10:8 34:9,  
 11 36:4  
 defects 35:17  
 defend 32:15  
 defined 47:2  
 definitely 43:14  
 DELAWARE 1:1  
 2:15 3:2 35:21  
 36:11  
 delay 65:12  
 Delco 63:1 65:15  
 68:1 70:8  
 delegates 55:23  
 delighted 62:12  
 delivery 51:2  
 demand 42:24  
 democracy 68:10  
 Democratic 12:13  
 47:10 76:8  
 denial 19:9  
 denied 29:6 58:5, 22  
 deny 32:13  
 Department 22:22  
 24:18, 23 25:2, 10  
 35:15 40:4 41:2  
 44:19 65:4 67:20  
 Deputy 60:23  
 describe 31:18  
 determination 5:9  
 30:7, 8, 15 31:10, 17  
 determine 6:18 30:12  
 determined 5:19 7:6  
 19:22 20:4 32:10  
 dialogue 39:22  
 dicey 40:12  
 Diehl 64:24  
 different 6:5 7:2, 17,  
 22, 24 9:7 13:15  
 17:2 21:5 23:10  
 24:15 35:13 44:21,  
 24 45:1 47:15, 17  
 69:22 70:14, 17, 22  
 difficulty 37:22

diligence 52:5  
 direct 13:5  
 directed 10:18  
 directions 13:4  
 directly 23:4 26:14  
**DIRECTOR** 2:19  
 17:24 60:11 64:23  
 directory 50:4 51:23  
 disadvantage 41:4  
 disagree 22:7  
 disappointed 52:11  
 discretionary 59:1  
 discussed 9:1 56:13  
 discussing 57:15  
 discussion 4:5 56:1  
 59:24 76:16  
 discussions 6:10  
 disenfranchised  
 21:16 33:19, 24  
 52:24  
 disenfranchising  
 20:16  
 disposition 58:4, 8  
 distinction 27:13  
 45:22 48:8  
 distinguishing 24:11,  
 16  
 district 5:20 6:5 8:4  
 17:18, 19 19:24  
 30:13 50:5 54:1, 3  
 55:4 56:14  
 districts 5:22 6:21  
 diverge 19:6  
 doing 61:20 63:2  
 65:20 70:2  
 door 57:2, 4  
 double 20:9 29:8  
 doublecheck 25:22  
 doubts 75:7  
 dozens 64:14  
 Drexel 41:18 48:23  
 drop 66:10  
 drop-box 64:9  
 drop-off 61:9, 11  
 65:8, 23 67:17  
 drop-offs 64:19  
 drops 55:8  
**DUANE** 2:4  
 due 19:9 26:21, 24

54:9 64:16  
 Dunn 64:1  
 duties 72:7  
 <E>  
 earlier 64:7 67:1, 4  
 early 43:1, 4, 10  
 62:21  
 easier 74:2, 3  
 easily 33:5 67:9  
 effect 74:9  
 effective 64:11  
 efficient 72:14  
 efficiently 67:22  
 71:21, 24 74:4  
 effort 52:6  
 efforts 56:7 63:23  
 egg 39:5  
 Eighth 68:13  
 either 23:11 34:19  
 elderly 72:17  
 election 6:21 7:11  
 8:3, 6 9:19, 20 10:18  
 12:4, 22 13:24 14:9  
 19:17, 21, 23 20:5, 8,  
 15 22:18 24:2, 13, 14  
 25:20 26:8 30:4, 10,  
 13, 14 32:21, 23  
 34:24 36:3, 5 39:2  
 40:11 41:19 42:6, 15  
 43:12 44:24 45:14  
 46:6, 15 47:3 54:21  
 56:21 61:19, 21  
 62:15, 20, 22 63:22  
 66:5, 9 67:13, 15  
 68:22 69:21 73:21  
 74:8 75:9  
**ELECTIONS** 1:1  
 2:15, 19 3:3 7:6  
 9:11 20:1 25:19  
 30:10 31:10 35:21  
 41:16 42:19 43:3  
 49:1 60:11 63:6  
 73:16 74:15  
 electoral 68:9  
 elector's 20:3  
 electronic 42:20  
 43:20 44:1 66:18  
 71:12

element 26:2  
 Elementary 49:3  
 eligible 7:11  
 eliminated 71:20  
 email 34:17  
 embracing 72:3  
 emergency 48:24  
 50:3, 10 64:24 76:9  
 emphasize 64:13  
 65:20  
 enabled 54:10  
 enacted 19:21  
 encouraging 72:4  
 enfranchisement 23:1,  
 11  
 enfranchising 20:16  
 enormous 63:21  
 ensure 55:4  
 enthusiastically 72:2  
 entirely 15:4  
 entitled 15:6 19:23  
 30:13 31:9 32:1  
 envelope 7:19 9:12  
 10:24 20:2 30:11  
 31:14  
 envelopes 64:6 66:5  
 E-poll 67:2 73:13  
 equipment 50:20  
 65:17  
 error 52:12  
 especially 29:4 64:4  
**ESQUIRE** 2:4, 9  
 essentially 60:19  
 established 46:12  
 event 27:9  
 everybody 33:4, 10  
 49:24 72:19 73:18  
 evidence 24:17  
 25:21 77:4  
 exactly 75:6  
 examine 30:11  
 example 13:19 15:3  
 19:5  
 excellent 53:5 62:14  
 67:21  
 exceptions 66:1, 8  
 excited 61:17  
 excluded 46:5 47:1  
 exclusively 51:5

excuse 62:19  
 exercise 11:1  
 exhibition 18:22  
 26:18 27:17 28:2, 12  
 31:5, 23 33:2 45:3  
 exist 36:9  
 expand 68:3  
 expanded 73:13  
 expanding 68:6  
 expansion 73:10  
 expect 44:4  
 expired 20:23  
 explain 5:13  
 explicit 10:16 22:21  
 34:16 35:20  
 explicitly 11:6 34:23  
 expressed 54:14  
 extend 71:5  
 extensive 44:13  
 extent 9:17 12:15  
 extremely 39:4  
 50:22 51:6  
 eyes 74:7  
 <F>  
 facility 55:19  
 fact 21:20 22:18  
 27:8 30:24 36:11  
 54:18 55:11  
 fall 68:8  
 familiar 17:13, 14, 16  
 36:20 44:9 72:22  
 family 63:17  
 fantastic 69:17  
 far 40:14 47:6  
 farther 72:16  
 Faster 66:19  
 fatal 10:22, 23 38:15  
 fault 28:3  
 favor 3:19 4:15  
 16:12 20:15 22:19  
 23:5 52:5 60:2  
 favors 12:22 22:15  
 fee 76:11  
 feedback 67:14  
 feel 11:9 39:9 50:1  
 53:11  
 feeling 40:20  
 fees 76:5

fester 65:14  
 fewer 67:19  
 field 72:2  
 Fifth 67:12  
 figure 13:2 41:2  
 56:15 69:7  
 file 33:17 70:17,24  
 filed 32:11  
 filing 76:14  
 filled 7:19 9:13  
 final 15:24 31:16  
 finally 25:4 49:13,16  
 Finance 60:21 75:22  
 76:1,5  
 financial 62:9  
 find 14:12,14 57:6  
 69:13,23 71:20  
 finding 51:23 67:5  
 fine 14:18 17:16  
 18:2  
 finish 21:1 27:5  
 29:15  
 fire 51:13  
 firm 21:19  
 first 3:6 4:2 17:15  
 18:1 33:21 37:23  
 50:17 52:4 54:20  
 60:16 62:24 65:16  
 67:5,6,7 76:7  
 first-time 76:11  
 fit 73:9  
 five 76:4,6  
 fixed 4:2  
 flaw 10:22,23 38:15  
 Fleschute 64:18  
 floor 28:23 32:22  
 Flores 64:8  
 focused 64:18  
 folks 11:17 30:1  
 follow 11:23 12:21  
 13:3 35:19  
 followed 10:14  
 following 30:1 31:18  
 45:8  
 fondest 62:24  
 foregoing 77:5  
 form 20:3 70:15  
 76:10  
 forum 17:9 23:22  
 27:2

forward 52:7 68:6  
 73:3 74:22  
 found 25:13 45:13  
 50:6  
 four 18:11 21:1,5  
 72:10  
 franchising 22:16  
 frank 55:3  
 frankly 24:7  
 fresh 30:2  
 Front 1:8 62:19  
 frustrating 50:22  
 51:6 53:17  
 full 7:15 8:15 13:17  
 14:4 15:1 19:16  
 32:13  
 full-time 60:17  
 fully 5:10 38:21  
 77:4  
 functions 62:10  
 fund 44:1  
 fundamental 18:18  
 20:12 27:19 29:6  
 40:13  
 fundamentally 27:19  
 further 59:24  
 future 11:21 58:12  
 69:4  
 <G>  
 general 24:13 73:8,  
 21  
 genuine 20:4  
 getting 50:5 54:7  
 67:14,21 72:24  
 giant 67:10  
 gifted 63:11  
 give 34:15 43:16  
 57:17  
 given 11:15 14:16  
 20:24 23:9 40:12  
 41:1  
 gives 39:14  
 giving 34:11  
 glad 60:22 61:23  
 gladly 68:16  
 go 11:6 16:3 18:1,2,  
 22 25:19 27:24 28:1,  
 20 29:21 31:4 35:6  
 37:21 42:20 54:18

57:5,22 69:14 70:9  
 71:19  
 goes 5:16 30:17  
 31:18 46:9  
 going 8:19 15:17,18,  
 19 18:19 20:21  
 28:16 29:16 33:1  
 34:24 46:8 50:13  
 53:16 59:9,15,16  
 69:1 70:5 72:8  
 74:19  
 Good 3:1 5:6 11:18  
 13:5 18:4 41:15  
 59:10 68:4,21 73:2  
 75:21  
 gotten 69:20  
 governed 45:5  
 GOVERNMENT 1:7  
 43:2,11 64:20  
 grateful 48:15 63:22  
 great 13:19,20  
 50:15 52:21 53:8  
 61:6,22 67:14  
 greater 40:15  
 greatly 73:14  
 Green 47:14  
 grieving 62:18  
 group 47:17 48:9,12  
 grow 65:14  
 grown 73:12  
 guard 57:1  
 guess 15:12,13 69:3  
 guessing 17:15  
 guidance 22:21  
 24:24 25:3,9,13  
 35:14,18 40:4 42:1,  
 10 44:16 45:9,10,17,  
 21 46:18  
 guide 67:15  
 guy 49:9  
 guys 51:22  
 gymnasium 15:3  
 <H>  
 Hafiz 54:3  
 Hagan 64:3 70:4  
 half 67:1  
 hallway 72:11  
 hand-made 63:11

happen 52:11 55:5,  
 10 71:23  
 happened 53:6  
 55:12,20 56:3,10  
 happening 41:11  
 56:9  
 happens 52:12 71:16  
 happily 69:13  
 happy 69:7  
 hard 41:20 73:19  
 harmed 29:5  
 head 62:4  
 heading 64:3  
 hear 3:9,11 4:11  
 26:9 39:21 41:16  
 49:10 52:12 60:6  
 69:4 75:2  
 heard 17:5 52:17  
 HEARING 1:2,6  
 17:3 27:15 32:2  
 33:24 60:2 76:19  
 heart 46:10  
 held 76:16  
 help 9:14 21:11,13  
 helped 64:8,24  
 hey 53:9  
 hiccups 73:16  
 high 67:24 68:1,2,7  
 71:13 72:11 75:6  
 highest 37:11 40:9  
 Hill 41:18  
 home 30:1 57:2  
 Honor 16:22 75:5  
 hope 11:19 21:9  
 39:12,21 41:8 53:3  
 63:22 74:2  
 hopefully 18:19  
 hoping 67:16  
 hosts 55:8  
 house 8:4  
 human 52:12  
 humanly 54:8  
 husband 37:18  
 <I>  
 ID 13:16,18 64:12  
 66:21,23  
 idea 12:16 38:13  
 43:16 55:24

identical 29:4  
 identities 25:11  
 IDs 13:13  
 imagination 75:7  
 imagine 73:23  
 immediately 72:12  
 impact 40:15  
 imperfect 52:20  
 impetus 8:22  
 implement 36:7  
 implementation 21:13  
 important 25:3 45:3  
 52:19 73:6  
 impressively 54:6  
 improperly 23:4  
 improve 40:23  
 impulse 40:20  
 inadequately 9:21  
 inclined 40:17  
 include 62:8  
 includes 57:13  
 including 20:7 44:15  
 incomplete 7:21  
 incompletely 9:13  
 incredibly 37:19  
 independent 6:12, 22  
 independents 6:17  
 Inder 64:23  
 indicated 34:6 35:5  
 37:1  
 indicating 34:10  
 individual 19:22  
 20:6 30:12 32:3  
 63:9  
 individuals 10:21  
 21:5, 8, 9 34:1, 7  
 35:4 61:6  
 inevitably 55:6 71:17  
 information 24:20, 21  
 41:3 65:5 67:2  
 informed 44:16  
 46:13, 15  
 initiated 28:4  
 Ink 42:21  
 inquiries 69:20  
 inside 51:7  
 insist 31:6  
 insisted 6:13  
 instance 6:15, 18, 19

32:9  
 instances 14:17  
 instinct 40:20  
 instructed 39:11  
 instructions 34:12, 14,  
 16 66:20  
 intend 52:7  
 interchangeable 45:5  
 interest 19:6 29:3  
 interested 47:18  
 interim 39:2  
 internal 55:24  
 internally 55:9  
 interpretation 48:16  
 introduce 5:5  
 invite 32:15  
 involved 34:18  
 issue 9:14 17:5  
 22:24 23:1 24:1  
 34:3, 5 36:21 37:14  
 42:9 44:10, 15 46:15,  
 19 50:1 56:12 57:14  
 issued 11:5  
 issues 9:1, 2 64:15  
 item 3:6 4:22 17:7  
 57:14  
 items 16:9 17:2  
 63:11 66:12  
 its 33:7 45:5  
 <J>  
 Jackie 64:1  
 Jackson 60:20 75:20,  
 21 76:1  
 JAMES 2:19 60:21  
 61:13  
 Jean 64:18  
 Jeanette 62:19, 23  
 63:1, 4, 10, 12  
 Jim 64:5  
 JMParks@duanemorr  
 ls.com 2:6  
 job 13:5 53:5 61:6  
 67:21 69:7 74:2  
 JOES 49:12 50:16  
 65:23  
 JOHN 2:16 65:5, 20  
 70:12, 13, 14, 23  
 Johnny 70:13

joined 61:14  
 joked 69:6  
 Jones 70:12, 13, 14,  
 23  
 Joy 41:17  
 Jr 70:12, 14, 23  
 Judge 9:11 19:12  
 48:24  
 Judges 9:19, 20 65:9  
 jurisdiction 15:4  
 justice 40:7 41:10

## &lt; K &gt;

Karen 64:11, 16  
 Kate 18:21  
 Keck 65:2  
 keep 30:20 31:7  
 49:24 54:23 60:13  
 65:9  
 kept 54:16 58:19  
 kind 50:14 57:4  
 71:17  
 kindness 63:10  
 kinds 70:14  
 knew 57:3  
 know 6:16 8:21  
 15:15, 17 27:13, 17,  
 19 28:22 32:16  
 39:13, 19 40:10, 16,  
 17 41:1, 6, 24 42:3,  
 16 44:15, 21 47:15,  
 24 51:9, 13 52:1  
 53:11 54:18 55:6, 8,  
 20, 23 56:2, 7, 20  
 57:7 62:3, 5 63:18  
 65:14 68:1 69:3, 10,  
 24 71:6, 23 72:15  
 75:2  
 known 48:23  
 knows 49:14  
 Kori 1:9 77:12

## &lt; L &gt;

L&A 48:13  
 Lairson 60:24  
 language 26:7 30:2,  
 3 31:20  
 laptop 40:2  
 lark 44:20

lastly 36:19  
 late 71:6 76:10  
 latest 10:15  
 laughed 69:9  
 Lauren 64:3  
 law 12:22 13:8  
 21:18 23:10 36:17  
 37:11 41:7  
 lead 23:20 63:1  
 League 18:9 34:4  
 46:3 47:18, 21  
 leak 50:11  
 learn 18:23  
 learned 36:21 71:22  
 leave 54:18 55:1  
 62:21  
 led 22:11  
 Lee 18:9  
 left 57:1  
 legal 11:15 13:2, 11  
 23:10 26:10, 12 35:1  
 44:16 47:21  
 legislature 33:4  
 legislatures 41:7  
 lessons 68:9 71:22  
 letter 34:17 58:4  
 letters 67:6, 7  
 level 13:1, 3 33:11  
 47:4  
 lever 65:17  
 libertarian 47:11  
 LIBERTIES 2:9  
 liberty 38:19  
 Lieutenant 65:1  
 limited 39:11  
 line 49:18 54:16, 17,  
 23, 24 65:9, 11  
 Lisa 60:20 61:18  
 75:21 76:1  
 list 30:20, 23 31:1, 5,  
 8 66:21  
 listed 14:5 15:14  
 literally 73:22  
 litigation 20:21  
 21:22 23:21  
 little 3:10 5:13 17:2  
 26:3 43:23 49:20  
 live 37:20  
 LLP 2:4



<p>loaded 66:12  local 49:13 69:21  location 50:24 54:19  55:4, 7, 12 56:13, 16  72:10  locked 57:2  lodge 28:20 29:20, 22  lodged 28:20 29:21  lodging 26:18  Lombardy 41:17  long 62:11 72:11  longer 40:15 69:7  long-term 62:9  look 7:3 52:2 62:3  65:16 68:6 69:24  71:18 73:3  looked 25:22 35:9,  12, 14 58:2, 14  looking 15:13  looks 22:2  lose 18:17  loss 62:18  lot 14:8, 20 56:18  60:14  louder 75:23  love 42:8, 17  loved 73:24 74:1  lower 37:2  luck 59:17  <b>LUNKENHEIMER</b>  2:16 18:4  lyrics 46:17</p> <p>&lt;M&gt;  machines 54:7 65:18  Madam 15:12 53:21  57:23 60:13  mail 10:7, 22 11:4  19:19 20:8 34:18, 22  35:17 37:23 66:4, 12  mail/absentee 60:23  mail-in 14:21, 22  18:14 34:7, 9 36:4  38:15  maintained 9:21  major 74:9  majority 8:1 9:6  10:17 14:19  making 9:11 40:16</p>	<p>48:8 51:9 64:17  manage 71:24  managers 64:1  <b>MANLY</b> 2:4  manual 67:14  Marguerite 48:22  <b>MARIAN</b> 2:9 18:5  marked 14:22 31:14  Marovsky 65:6  mass 16:15  massive 64:3  materials 65:11, 13  66:2  matter 11:12 15:22  77:5  matters 47:18  <b>MCBLAIN</b> 2:16 3:8,  15, 20 4:8, 19 8:10,  13 9:24 10:2 14:2  15:9, 11, 20 16:10, 13  18:5 33:21 34:6, 14  35:3, 9, 12, 19 36:1,  11, 15 37:6 46:21, 23  47:6, 9, 13 48:2, 5  56:23 58:14, 19  59:22 60:3 68:18, 19  71:4, 9  McGarry 56:8  mean 14:4 15:20  20:24 27:11 29:9  33:10 34:3 39:9  40:8, 19 46:23 47:1,  15, 17, 20 48:2 50:10  59:8, 11  means 19:13  Media 1:8 11:19  37:20 63:3  medical 62:21  meet 61:18 70:20  meeting 3:3 4:6, 9,  16, 21 17:3 19:8  29:22  meets 68:12  Member 18:4, 5  46:13  <b>MEMBERS</b> 2:15  18:11 22:19 23:7  30:2 56:9  memories 62:24</p>	<p>mention 34:23 36:10  mentioned 26:21  Michelle 65:3  microphone 3:12  Middletown 66:17  midnight 65:19  mind 30:2  minimum 70:20  minor 3:24  minutes 3:23 4:5, 8,  16 17:21 18:20 66:1,  3  miscarriage 41:10  misleading 24:19  41:3  misled 23:4  missing 9:12 46:17  mission 61:3  mix 39:5  moment 8:20 21:9  52:20 53:12, 13  63:14  Monai 76:12  Monday 13:24  money 69:8  Monica 69:5  morning 3:1 5:6  18:4 36:22 41:15  70:7 75:21  <b>MORRIS</b> 2:4  motion 3:22 4:7, 10,  20 16:15 59:20  60:10  move 3:15 4:8 6:8  15:11, 19 16:5, 7  17:1 74:22  moved 16:5 59:22  68:22  moving 65:9  mschneider@aclupa.or  g 2:11  multiple 50:23  multiprecinct 71:17  municipal 69:21</p> <p>&lt;N&gt;  nailed 61:10  name 4:2 14:12  17:17 18:5 41:17</p>	<p>67:6, 7 70:12, 24  names 4:2  national 74:10, 11  nature 57:20  nearby 37:20 55:16  nearly 60:19 62:20  need 4:4 14:17  17:17 22:9 33:19  40:22 50:12, 14 51:2,  19, 21 70:2, 24 73:12  74:11 76:13  needed 10:8 50:8, 12  63:8, 9 64:12 72:17  needs 38:21 53:7  56:13  neighborhood 56:19  never 14:21 39:6  65:21  new 34:18, 22 38:7  39:13, 14 44:10  60:17, 24 61:1 67:10  71:23 72:3  news 74:10, 12  nice 51:15  night 66:16 69:16  nine 15:14  nonpartisan 47:23  noon 71:3, 4  normally 15:16  56:11  Notary 1:10 77:12  note 17:12 24:23  25:4 62:17  notes 7:3 77:5  notice 25:11 34:10  35:24 36:7  noticed 44:22  notices 24:18  notification 32:19  notified 18:15  notify 11:1 32:10, 14  November 42:17  number 9:3 10:9  15:14 16:6, 7 43:10,  13 49:15 50:3, 7, 16  51:10, 20, 21  numbers 5:14 51:22  52:1, 8</p> <p>&lt;O&gt;</p>
--	---	--	---

<p>objection 16:10 23:16, 22 32:11 objections 4:24 obligation 30:22 obligations 31:3 observation 48:13 observe 68:23 72:5, 10 observed 71:16 observer 44:9 45:1, 16 observers 42:13 44:22 45:10, 14 observing 63:1 72:8 obstacle 13:11 obtained 47:4 obtaining 34:18 obvious 73:5 obviously 9:10 52:6, 13 occurred 8:4 o'clock 57:1 October 45:9 48:11 offense 76:11 office 7:7 11:3, 4 43:3 68:14 officer 37:4 62:8 offices 5:19, 21 69:22 officially 60:20 officials 40:11 oh 49:7, 10 57:6 Okay 5:12 9:9 16:11 21:3 44:5 57:13 60:9 old 65:17 omelette 39:6 once 74:6 ones 5:21 9:12 32:22 47:16 51:23 66:8 71:6 73:11 one's 53:15 online 50:4 51:23 open 17:9 46:8 53:2 56:10 opened 56:6 opening 55:19 64:6 operation 64:4 opinion 10:18 12:20 58:1, 2, 10</p>	<p>opportunities 23:10 38:6 opportunity 11:2, 20 16:8 19:7 22:14 23:9, 14 27:3, 10 28:1 36:16 41:9 63:16 71:12 72:9 opposed 4:20 41:23 60:5 option 34:23 options 34:18 order 3:2 11:24 15:13 39:14 40:11 65:11, 13 66:2 orderly 65:12 organization 21:8 34:2 35:5 organized 71:7 original 34:21 originally 25:5 57:15 outreach 64:12, 16 outside 49:23 50:19 53:14 57:4 69:6 74:13 overall 66:18 oversleeps 55:8 &lt;P&gt; p.m 25:12 64:10 66:5, 6, 7, 11, 15 P.O 2:10 pa.gov 25:9 pads 42:20 43:20 44:1 page 14:13 40:5 70:16 paid 68:4 Pam 60:24 61:18, 19 PANEL 2:15 19:12 58:11 paper 67:3, 10 paragraph 19:15 26:6 Park 65:1 PARKS 2:4 32:21 36:23 37:9 58:1 part 7:5 16:6 44:21 46:5 53:8 54:9</p>	<p>partial 5:14, 15, 23 6:2, 19 7:1, 8 31:11 32:13 partially 5:11 participate 27:11 28:5 particular 47:24 parties 26:19 28:11 29:3 41:23 47:7 partisan 22:24 party 6:13 7:22 8:23 9:7 12:13 15:8 19:2, 4 24:9 27:14 30:5, 19 31:23 32:12 33:1, 16 45:23 46:5 47:3, 14, 24 party's 6:14 19:5 31:3 passed 62:23 passes 4:20 16:15 60:10 patience 3:2 63:7 patient 39:21 pause 6:1 peak 65:24 66:3 Peggy 48:23 pending 24:5 31:16 Pennsylvania 1:8 2:5, 10 18:7, 10 20:14 25:10 35:15 36:2 37:13 39:18 58:6 73:17 Pennsylvania's 21:12 people 6:16 12:2 13:20 17:4 33:7, 22 34:3 47:14 49:18 50:2 51:3 52:9 54:23 55:1 69:22, 24 71:18, 21 72:22 74:13 75:5, 15 perfect 19:5 perform 74:12 performance 62:5 performed 66:16 74:10 peril 11:10 35:1 period 65:24 66:3 permitted 19:1 28:11, 20 29:20, 21</p>	<p>30:6, 20 31:7 33:6 42:5 44:20 48:14 person 6:20 39:13 54:22 62:4 personal 49:15 50:7 51:10, 20, 21 76:9 personally 29:12 71:15 personnel 65:2 persons 30:21 31:8 65:10 persuasive 59:12 petition 58:5, 21 70:10, 15, 24 76:13 petitions 76:4 Philadelphia 2:5, 10 phone 34:20 49:15 50:3, 7 51:10, 20, 21 54:1 64:17 67:10 pick 11:23 pickup 51:3 61:10 pickups 66:9 pilot 43:21 66:16 67:23 71:13 72:1, 9 piloted 72:12 piloting 73:7 pinch 74:3 place 11:7 13:14 34:24 37:21, 23 46:11 50:15 54:5 58:20 68:22, 23 69:6 placed 9:6 places 14:6 51:8 56:17 71:18 plan 62:10 planned 68:13 planning 62:9 play 73:14 pleas 37:2 Please 3:5 5:4 6:7 21:1 23:23 27:6 29:15 48:21 53:23 56:23 62:2 63:17 pleased 62:6 72:5, 20 Pledge 3:4 point 15:13 21:10 23:19 24:16, 24 27:21 37:17 46:20 49:9 50:14</p>
---	--	--	--

points 18:19 25:9  
33:15  
Police 65:1  
Policy 2:12 33:7  
political 9:7 30:5, 19  
32:12 41:23 42:5, 11  
44:8 45:22, 23 46:2,  
4, 10, 24 47:1, 2, 3, 7,  
13, 18, 20, 22 48:4, 6,  
8, 9, 12  
poll 14:11, 23 42:2,  
20 43:20 44:1, 24  
45:11 46:11 54:2, 4  
57:4 60:24 61:2, 7  
63:1, 23 64:19 66:18,  
19 67:3, 11, 13, 16  
68:15, 24 69:1, 8  
71:12, 14 72:8, 11, 20,  
23 73:22, 23  
polling 11:7 13:13  
14:6 34:24 37:21  
54:5 56:17 69:6  
71:17  
polls 53:13 74:3  
portion 32:21  
poses 11:17  
position 62:13  
possible 26:13 33:12  
54:9 71:7  
post 66:7  
postdates 25:2  
posted 69:15 70:11  
posting 70:6  
potential 9:10  
potentially 23:5 73:8  
powerless 51:13  
praise 61:8  
pre 19:18  
precinct 5:16, 17 6:5  
7:5 8:18 10:20 15:6  
64:22 65:19 72:14  
73:10  
precincts 7:2 8:3, 5,  
7, 8 15:2, 5 49:2  
56:18 72:10  
precisely 38:3  
present 1:10 13:10  
55:16

presented 3:16, 23  
23:8 24:1, 17, 21  
29:1  
Presidential 19:13  
21:21 54:21 56:20  
58:10  
pressure 53:15  
pretty 73:2 75:8  
previously 18:14  
19:20 27:16 60:20  
primarily 4:21  
primary 41:19 43:12  
principal 39:10  
50:24 55:21, 22  
principle 9:16 22:7  
38:5  
printed 14:11  
prior 42:16 61:3  
prioritize 54:10  
privately 69:19  
probably 68:8 69:19  
71:22 72:21  
problem 50:17 51:4  
53:4 54:20, 21 57:8  
67:4  
problems 51:8 65:14  
procedural 27:19  
procedurally 24:14  
27:23  
procedure 31:18  
procedures 17:16  
42:6, 15 44:21  
procced 59:15  
procceding 28:4  
proceedings 77:3  
process 19:9 21:14  
26:22, 24 28:24  
31:22 32:4, 19 36:8,  
9 37:24 38:1, 2  
40:22 41:5 50:15  
52:8 61:9, 10, 11  
63:8 64:6, 21 65:12  
67:17 69:23 70:2  
processed 54:7 66:13  
processes 46:6  
processing 74:19  
professional 21:18  
Profit 47:15  
program 66:17

67:23 72:9 73:4, 9  
prohibit 33:4  
prohibited 28:16  
32:24  
prohibiting 28:13  
prohibition 28:18  
prohibits 28:15  
project 43:21 68:6  
73:7  
projects 72:1  
promoting 73:8  
proper 23:15, 21  
properly 23:8  
proposition 40:12  
proud 73:17 74:6  
proved 13:23  
provide 27:10 31:1  
provided 19:22  
35:20 45:11  
provision 8:9 19:19  
22:15, 16 45:6 50:9  
PROVISIONAL 1:2,  
6 4:23 5:2, 8 7:18  
8:7, 11 9:21 10:6, 10,  
19 11:7, 10, 18 12:19  
13:7 14:3, 16, 17  
18:16, 22 19:10, 15  
20:2 21:10, 14 24:3  
25:14, 19 26:4, 15, 18  
27:17, 24 28:2 30:11,  
21 31:4, 8, 13, 15, 23  
35:16, 18 36:8 38:2,  
17 40:3 45:3 57:16  
59:21 67:19 74:19  
75:11  
provisionally 14:23  
provisionals 6:11  
pry 30:8  
Public 1:10 15:14,  
19, 21 16:5, 9 17:1, 6,  
9, 11 48:20 56:19  
57:12, 17 65:6 73:21  
77:12  
published 25:6 35:2,  
16 36:24  
pull 43:14  
pulled 65:11  
purpose 21:15, 17  
pursue 33:19 40:9  
62:12

put 40:18 41:1, 4  
52:6 58:3  
<Q>  
Q&A 46:9, 19  
question 11:21 12:3  
22:7 23:8 25:2, 7  
26:21 36:19 42:23  
43:8, 19 44:9, 18  
45:21 46:1 48:10  
54:3 58:15, 16 69:18  
72:23 73:2  
questions 10:1, 4  
15:10 22:1, 11 29:17  
41:9, 21, 22 43:6  
44:7 46:2, 11 68:17  
quickly 54:6, 8 65:9  
quiet 3:10  
quite 7:16 44:8  
55:1 56:20  
<R>  
race 42:12  
Radnor 8:5  
raise 19:7 27:15, 16,  
21 28:6 32:1  
ram 51:14  
ran 57:4  
rave 66:18  
raved 73:21  
raving 71:15  
read 24:8 30:16  
32:21  
ready 69:14  
real 11:16  
really 8:23 13:4, 21  
25:8 46:9 49:24  
52:11, 15 53:8 61:12,  
23 62:4 68:11 73:17,  
19 74:5, 6, 16  
reason 9:9 14:3, 19  
22:20 29:18 31:15  
48:9 57:3 76:10  
reasons 7:17  
receive 15:21 34:9  
received 30:12 38:14  
54:1, 10 61:7, 8  
62:23 72:21 76:4, 7  
recognize 61:13  
recognized 47:9

<p>recommendation 5:9 6:18 16:19 20:18 32:17 recommendations 4:23 5:1 11:11 17:10 57:16 59:20 recommended 18:13 24:4 reconcile 26:7 reconsider 11:20 20:17 41:9 reconsidered 12:20 38:22, 23 record 8:2 29:24 57:20 58:9 76:17 records 43:17 recruited 67:23 reference 30:24 46:24 referenced 67:4 references 30:8 referencing 25:5 referred 30:16 referring 30:18 58:23 reflection 15:17 regarding 35:16 45:10, 11, 12 regardless 17:6 Register 75:17 registered 5:17, 18, 20, 22 6:5, 13, 17, 23 7:8, 21, 23, 24 8:17, 23, 24 9:8 14:7 15:8 19:23 Registration 5:7 14:10 20:3 61:11 64:3 67:20 Registry 14:5 regret 51:12 regular 56:7 related 41:21 46:1 relations 65:6 reliance 25:21 26:2 relied 25:14 rely 66:23 relying 58:1 remain 30:6 remedied 53:7</p>	<p>remedy 40:24 remembered 66:24 remiss 39:3 remotely 44:18 remoting 40:2 repeat 43:7 repeatedly 49:7 replacement 20:11 report 60:12, 22 70:18 reported 25:24 56:5 58:3, 7 reporter 5:5 75:24 reporting 66:15 represent 17:20 18:9 21:5, 8 33:22 representative 19:2 24:9 30:4, 5 44:23 45:2, 12 representatives 28:10 30:17, 18, 20 31:4, 7, 22, 24 32:24 33:1, 8 34:2 42:2, 4, 14 45:16 represented 42:5 represents 21:1 35:5 40:7 republic 68:11 republican 47:10 request 20:11 31:1 48:11 requesting 34:21 require 13:1 required 11:3 17:6 66:23 70:20 requirement 36:2, 3 requirements 76:14 requires 37:8 research 44:16 resources 70:9, 11, 16 respect 27:8 31:11 respond 28:7 29:16 response 39:23 result 20:21 results 64:22 65:18 66:6, 15 69:15 retrained 9:22 return 64:9 returned 10:21</p>	<p>14:22 34:11 38:10 revamp 64:19 review 6:11 reviewed 5:8 reviewing 9:18 reviews 66:19 Richard 18:8 Rick 65:3 rid 67:16 right 4:21 8:13 13:5 16:3, 15 18:18 20:12, 19 21:4, 15 27:2, 21 29:6, 13 33:23 38:9, 11 40:19 43:18 47:8, 9 48:6, 7 53:15 57:11, 14 59:2, 7, 10, 19 60:10 62:22 66:22 69:15 71:20 75:4, 13 rightfully 61:24 Rights 2:12 33:20 40:13 Riley 76:12 ripple 74:9 risk 29:7 Road 41:18 68:12 Rob 64:21 robe 39:14 robes 12:2 robust 55:3 role 32:4 41:22 60:22 61:4 roof 50:11 Room 1:7 28:12 30:6 root 52:14 55:15 route 23:21 RPR 1:10 77:12 rubber 68:11 ruled 22:17 29:2 36:7 37:14 rules 37:12 38:20 45:6 ruling 10:15 11:8, 12, 16 22:23 38:18 run 73:16 74:14 running 49:4, 22 &lt;S&gt;</p>	<p>sacrificed 75:3 saddened 52:11 sadder 62:17 safeguard 21:14 saw 35:17 50:17 saying 22:6 26:9 38:1 48:7 74:21 says 20:14 27:22 28:9, 13 30:9 37:16 38:18 42:11 76:14 scanned 66:6, 13 69:14 scenario 6:12 24:15 scene 50:17 56:20 SCHNEIDER 2:9 18:3, 6 21:7 22:4 23:2 25:7 26:23 27:4 28:7, 9 29:13, 18 32:20 34:1 35:8, 11, 14, 22 36:5, 14 37:5, 9 38:9 39:16, 24 41:13 57:19, 23 58:18 59:1, 7, 11, 18 Schneider's 41:22 46:1 school 15:3 49:15 50:4 55:3 56:14 67:24 71:13 72:11 schools 51:5 68:1, 2, 7 Schwartz 17:13 18:1, 2 41:14, 15, 17 43:6, 9, 18 44:5, 12, 14, 22 45:7, 19, 24 47:5, 8, 12 48:1, 4, 6 SCOTT 2:17 screen 66:22 screenshot 35:24 scrub 41:3 scrutiny 74:11 searched 70:8 second 3:17 4:12, 13, 14 16:12 26:11 55:11 56:2 58:3, 7 59:23 secondly 25:16 secrecy 7:19 9:1, 5, 12 10:24 Secretary 42:1, 11 45:9</p>
---	--	--	---

section 19:20 21:12  
 30:3 31:12  
 see 9:18 14:9,16  
 43:15 61:18 68:11  
 69:5,24 72:4,12  
 74:6  
 send 34:10 63:17  
 sending 51:13  
 Senior 2:12  
 seniors 68:3  
 sense 38:16  
 sent 10:7 38:7 45:18  
 sentence 30:9,16  
 sentiments 50:21  
 separated 75:12,14  
 served 61:1  
 service 34:20 43:17  
 52:4 75:5  
 services 25:17 64:24  
 serving 62:7  
 session 63:2  
 set 31:16 50:20 74:3  
 setting 54:6  
 seven 30:9  
 Seventh 67:23  
 Shantel 61:13  
 share 50:21  
 Sheriff's 65:4  
 shift 56:7 57:1  
 shifts 68:5  
 short 51:13 60:14  
 shoulders 62:5  
 show 56:10 66:23  
 70:18 75:17  
 showed 28:17  
 showing 56:6  
 shows 66:22  
 shut 66:10  
 side 72:24 73:1  
 sign 76:13  
 signature 20:1,2  
 signatures 20:4  
 signed 7:19 10:23  
 significant 9:3 10:9  
 silent 28:9 32:3 36:6  
 Similarly 3:23 27:23  
 simply 67:9 70:8  
 single 26:6 54:17  
 75:7  
 site 73:10  
 situation 11:9 51:12  
 66:21  
 situations 10:10  
 six 10:12,13 12:9  
 18:12 20:18 33:21  
 six-hour 68:5  
 Sixth 67:19  
 Skinner 1:10 77:12  
 small 54:9  
 smooth 64:6 65:23  
 smoother 64:8 65:8  
 smoothly 69:10  
 snaking 54:24  
 solicit 39:23  
**SOLICITOR** 5:4  
 6:8 17:23 22:2,8,13  
 23:19,23,24 26:13,  
 16 27:6,7 29:16,24  
 32:7,18 44:11,13  
 58:21 59:3,6  
 solid 68:5  
 solution 56:15 65:10  
 solve 52:14  
 solved 53:17,18  
 somebody 6:12 49:9,  
 11,14 50:6 75:15,16  
 somebody's 51:21  
 somewhat 41:21  
 Sonya 18:8  
 sooner 68:16  
 sophistication 13:2  
 sorry 4:12 6:1 27:5  
 35:3,9 43:5 58:24  
 sort 13:1 15:12  
 17:3 40:12  
 sorted 66:13  
 sounds 52:7,16  
 South 2:5  
 speak 3:11 22:3  
 23:6,19 39:20 57:24  
 speaker 75:23  
 speaking 36:20  
 special 6:20,21 7:5  
 8:3,5  
 specialist 61:14  
 speed 67:17  
 spent 26:5  
 split 10:17  
 spoke 71:14  
 squarely 12:4,5  
 staff 55:10,19 62:3  
 64:1,17 68:20  
 staff's 32:16  
 stages 41:5  
 stand 3:5  
 standing 17:14 22:9,  
 12 23:15 50:18  
 stands 59:13  
 stars 17:8  
 start 3:4 22:5  
 started 49:6  
 starting 66:15  
 state 8:4 17:17  
 22:22 24:18,24 25:2,  
 10 35:4,9,15 37:12  
 40:5 41:2 42:11  
 44:19 45:10 47:4,10  
 74:7  
 State's 42:1  
 status 11:15  
 statutory 13:22 36:2  
 stayed 49:23 54:16  
 stenographic 77:5  
 step-by-step 63:7  
 stood 62:4  
 streamline 61:9  
 Street 1:8 2:5  
 stressor 72:17  
 stretch 75:6  
 strict 28:15  
 strongly 61:23  
 Structurally 40:8  
 struggling 29:14  
 students 67:24 68:7  
 stuff 61:21  
 stylus 73:1  
 styluses 72:22  
 submitted 18:14  
 subsequently 25:6  
 substance 15:22  
 success 63:21  
 successful 43:22  
 64:19  
 successfully 64:15  
 suggest 32:20  
 suggested 38:13  
 suit 33:17  
 summary 58:8  
 super 65:23  
 superintendent 49:16  
 51:11 55:21 56:8  
 superintendent's 50:6  
 51:20  
 Supervisor 60:21  
 75:22 76:2  
 supervisory 62:10  
 72:7  
 supplied 8:7  
 supplies 14:12  
 support 29:12 47:4,  
 23 50:8,12  
 Supreme 20:14  
 37:13,16 38:24 58:6,  
 14  
 Sure 5:15 9:11,14  
 13:20 16:16 22:4  
 37:9 44:3,8 52:10,  
 23 53:7 55:2 63:18  
 66:13 73:14 75:3  
 surely 44:2  
 surprised 72:21  
 surrender 14:24  
 sympathize 40:6  
 system 68:9  
 systems 61:14  
 < T >  
 table 58:4,8,23  
 tables 71:19  
 take 15:18 16:8  
 37:7 39:4 40:9  
 62:12 63:14 68:16  
 taken 1:7 38:23  
 60:22 77:5  
 takers 63:6  
 talk 26:12 43:22  
 73:20  
 talked 15:15 73:22  
 talking 22:15 26:5  
 49:9,10 61:21  
 tandem 32:16  
 Taylor 69:5  
 team 13:20 53:8  
 61:11,22 63:24  
 64:21 65:1,2,6 70:4  
 teammates 60:18  
 65:4  
 teams 65:15

team's 61:8  
 technology 65:5 72:3  
 tell 11:6 14:13  
   54:24 61:5  
 telling 53:16  
 temp 64:18  
 temps 60:19  
 ten 66:1 70:20  
 tend 45:15  
 terms 54:6 62:5  
 testing 48:13  
 Thank 3:1, 14 6:7  
   10:13 16:22, 23 18:3  
   21:3, 24 25:7 29:23  
   41:12, 13, 18 43:18  
   48:17, 18, 19 52:4  
   53:19 56:23 57:9, 10,  
   23 59:18 60:9 61:17  
   62:1, 16 63:15, 20  
   68:19 71:9 72:6  
   73:19 74:5 75:19  
 theirs 17:24  
 thing 13:6 38:3  
   59:13  
 things 9:18 45:4  
   63:13 67:9 74:1  
 think 3:24 7:3, 24  
   9:16, 20 11:14, 16  
   12:18, 23 15:17 17:4  
   22:6 23:13, 15, 20, 24  
   24:7 25:3, 20 26:1  
   27:7, 13, 20 28:18  
   29:16 30:23 33:12  
   35:22 36:12 40:5, 8,  
   10, 13, 24 41:4, 6, 10  
   44:17, 18 45:20  
   46:12, 18 48:7 50:13  
   53:5 54:11 56:12  
   57:21 59:5, 11, 12  
   61:19 66:24 68:8  
   69:11 70:21 71:22  
   72:21, 23 73:2, 5, 6,  
   13, 16 74:11, 23  
 third-parties 7:13  
 third-party 7:4, 7, 14  
   8:6, 8, 12, 16  
 thought 59:9 69:17  
 three 13:14 17:20,  
   21 18:8, 20 21:8  
   22:19 34:1 47:7  
   56:17 61:5 67:5, 6  
   71:19 75:14  
 three-judge 58:11  
 threshold 70:19  
 thumbs 50:19  
 Thursday 18:21  
   28:16 29:20 33:10  
   71:2, 4  
 tied 75:10  
 Tim 64:23  
 time 16:21 21:24  
   24:12, 20 26:5 29:2,  
   10 38:10 40:15  
   41:13 54:1, 20 55:10,  
   11 56:2 65:16 68:14,  
   21 69:11  
 timed 17:21  
 times 13:15 56:3  
 Time's 20:23  
 Today 12:4 18:7  
   24:2 27:14 31:19  
   32:5, 8 33:9, 22, 24  
   40:21 59:15  
 told 25:19 38:4  
   39:5, 7, 8 49:6 51:16  
   57:5 72:23  
 top 17:1  
 total 5:8  
 totally 32:3 50:1  
 touch 43:15  
 tradition 16:24  
 training 9:18 54:9  
   61:6 63:2  
 transcript 77:6  
 travesty 40:7  
 tremendous 52:6  
 tried 32:12 49:23  
 trip 63:12  
 try 11:7 43:14 60:13  
 trying 13:5, 20  
   33:10 53:10, 14  
   54:23 57:17 68:15  
 Tunis 54:4  
 turn 34:8  
 turned 6:16 14:6  
   49:11 61:19  
 turnout 75:6  
 twiddling 50:19  
 two 4:2 5:1 7:13  
   8:5 15:2, 5 17:8  
   25:9 34:17 37:17  
   44:7 49:2 55:22  
   66:24 68:1 70:18  
   76:3  
 type 38:3  
 typing 67:5  
  
 <U>  
 ultimately 31:19  
   43:24  
 unanimately 22:19  
   36:12  
 unaware 76:14  
 understand 4:24  
   13:4 19:3, 11 20:10  
   21:6, 7 29:13 33:10,  
   13 42:10 45:4, 24  
   46:3, 17 47:6 59:16  
   73:7 74:14  
 understanding 55:15,  
   17 72:14 73:4  
 understood 44:8  
 undue 12:23 20:12  
 unfortunately 13:9  
   72:15  
 UNION 2:9  
 universally 71:14  
 universe 18:23  
 unpublished 19:12  
   23:12 37:1 57:20  
 unreasonable 11:17  
 unreported 25:24  
 unsealed 7:20  
 unsupported 50:2  
 update 41:24 69:16  
 updates 51:16  
 uploaded 64:22  
 Upper 15:5 49:1, 13  
   50:4 51:4 53:24  
   66:17 68:24 71:13  
   76:7  
 up-to-date 67:3  
 urge 20:17  
 use 45:15 73:1  
 usually 12:22 14:8  
  
 <V>  
 vacant 60:22  
 variations 70:15, 17,  
   23 71:1  
 various 42:6, 14 62:8  
 verify 64:12  
 versus 52:2  
 veterans 75:3  
 view 14:10 43:22  
   44:4  
 violate 40:11  
 violating 32:23  
 visiting 34:19  
 voicemail 50:5  
 vote 6:14, 21 7:11  
   8:22 10:7, 21 11:4, 7  
   12:17 13:6, 9, 10, 21  
   14:23 15:3, 7, 12, 18,  
   22 16:8 17:7 18:18  
   19:23 20:13 21:11,  
   13, 15 22:9, 17 25:19  
   29:6 30:13 32:11  
   34:18 40:18, 21  
   49:19 53:1 54:8, 18  
   56:18 70:18 75:4, 8,  
   13, 17  
 voted 7:5 10:10  
   14:19 18:16 22:19  
   23:5, 7 25:14 36:12  
   37:22  
 Voter 5:7, 16 6:22  
   7:4 8:21 11:2 12:19,  
   23, 24 13:14 14:9  
   22:16 23:4 24:19  
   25:17 26:14, 17 27:1,  
   23 28:3 32:4, 7, 10,  
   14 34:10, 17 35:6, 18  
   43:17 52:5 54:17  
   61:10 63:9 64:2  
   66:19, 21 67:5, 20  
 voters 10:7 11:6  
   13:5 14:5 18:8, 10,  
   12, 23 20:16, 17 21:1,  
   16 22:22 25:12 27:3,  
   10, 11 29:4, 5 33:9,  
   18, 23 34:19 36:4, 13,  
   16 39:10, 18 40:6, 14,  
   15 41:4 46:4 47:19,  
   22 52:22, 24 53:14  
   54:7 63:7, 22 64:12,  
   14 72:13, 18  
 voter's 13:3 19:6  
   32:13

votes 8:10 43:1, 3,  
10 70:1, 6, 8, 13, 19  
75:14  
Voting 2:12 15:6  
20:9 29:8 30:12  
43:11

<W>  
wage 68:4  
Wait 61:16  
waive 76:4  
waiver 16:1 76:13  
walk 71:18 72:15, 16  
walked 36:21 50:11  
walking 63:6  
Wallace 62:7 64:5  
Walsh 62:19  
want 6:9 17:12, 15  
22:5, 10 23:6, 18  
26:21 29:11, 12  
33:12 35:23 36:10  
37:17 44:4 46:19  
51:6 52:3 53:21  
54:4 55:2 58:15  
60:17 61:5, 13 64:13  
65:19 68:2, 10, 19  
70:9 71:1, 6 74:21  
75:1  
wanted 6:14 23:14  
27:15 33:4 57:19  
58:9  
wants 26:20  
warehouse 49:6 50:2,  
23 64:2  
Warner 60:21 64:5  
watch 42:6, 14 68:23  
watcher 45:1  
watchers 42:2 45:11  
57:4  
watching 46:5  
Wawa 63:12  
way 10:8 23:7  
24:10, 20 25:21 30:7,  
22 38:23 40:9 50:23  
52:8 56:5  
web 40:5 70:6, 11  
website 25:10 35:10  
41:3 42:1  
week 62:22 71:8

weeks 67:1  
welcomed 57:22  
well 4:3 8:4 12:3  
15:8 22:3 27:4  
29:17 33:17 35:22  
37:9 39:16 40:1  
45:15 46:23 52:10  
53:17 56:4 61:12  
69:1 72:7, 20 74:9,  
14 75:16  
Welsh 18:11  
went 5:17 22:21  
35:18 49:19 52:13  
57:2 61:11 62:21  
69:10 73:21  
we're 9:17 12:16, 21  
15:17, 18 23:21 41:6,  
7 46:16 48:2 49:7  
51:16, 17 53:9, 10  
59:10 61:22 70:6  
73:2 74:19, 23  
West 1:8  
Westlaw 25:23 26:1  
58:2  
we've 25:5 52:13  
53:5 54:20 57:15  
76:4  
Wharf 62:15, 20  
64:4, 7, 10, 22 68:21  
69:12  
wholeheartedly 11:22  
12:18  
wife 37:18  
wildcat 40:16  
WILSON 48:22  
51:15 52:23 53:18  
54:15 56:22, 24  
winning 40:14  
Winterbottom 5:3, 6,  
7, 12, 15 6:4, 9, 24  
7:12 8:12, 14 9:4, 15,  
23 10:6, 11 12:6, 9,  
11, 14 13:12 14:1, 8  
16:20, 22, 23 17:11  
59:21 64:2  
wiped 75:8  
wish 17:12 59:17  
75:4  
withdrawn 12:8, 10

39:6  
withdrew 19:4  
witness 71:12  
witty 63:4  
Woman 46:4 47:19  
Women 18:10 47:22  
won 66:18  
wondered 42:19, 21  
wonderful 74:5  
word 45:16 62:23  
words 30:18 45:15  
work 41:20 49:19  
53:1 55:2 56:6 61:8  
64:8 67:8, 14 73:19  
74:18  
worked 41:19 53:12  
60:18 61:2 64:5, 11  
68:5 72:19  
worker 60:24 61:2  
63:1 64:19 71:14  
73:22, 23  
workers 54:2, 5 61:7  
63:23 66:19 67:13,  
16 68:15 69:1 72:24  
working 49:7, 8  
51:17 53:10 62:20  
works 68:9, 13  
world 11:16  
wrestle 19:17  
Wright 64:21  
write-in 70:1, 5  
writers 43:15  
writing 20:12 69:22  
written 24:11  
wrong 15:6 22:13  
39:4 44:19 52:13

<Y>  
Yeah 3:10 4:12  
9:15 15:20 20:24  
32:18 38:21 58:21  
71:14  
year 17:1 41:20  
42:7, 16 69:21 73:24  
year-round 60:19  
years 53:13 61:2  
yesterday 13:15  
25:12 30:23 70:5  
York 67:10

<Z>  
ZOOM 2:17

**WORD LIST**

<\$>	< 5 >	additional (2)	America (2)
\$60 (1)	5 (3)	Additionally (1)	AMERICAN (1)
< 1 >	5:45 (1)	additions (1)	amount (1)
10 (1)	514 (1)	address (2)	analysis (5)
10:38 (1)	592-1513 (1)	adequately (1)	announce (2)
12:45 (1)	5th (1)	adjudicated (1)	announcements (1)
127 (1)	< 6 >	adjudication (1)	answer (1)
163rd (1)	6:00 (2)	adjudications (3)	answered (1)
17 (1)	6:45 (1)	administration (1)	ants (1)
17th (1)	6:55 (2)	administrative (1)	anybody (2)
18 (1)	60173 (1)	administrator (1)	Anyway (1)
19063 (1)	695 (1)	administrators (1)	apparently (2)
19102 (1)	< 7 >	admirably (1)	appeal (6)
19103-4196 (1)	7:00 (4)	Adrienne (1)	appeared (4)
< 2 >	7:30 (2)	advance (2)	appearing (1)
2:00 (1)	75 (2)	advantages (1)	applications (1)
2002 (2)	77 (1)	adverse (1)	appointment (1)
201 (1)	7th (2)	advice (2)	appreciate (11)
2020 (1)	< 8 >	advise (2)	appropriate (1)
2022 (4)	8:00 (2)	advocate (4)	appropriately (1)
2023 (2)	8:10 (2)	advocated (1)	approval (1)
215 (2)	8:45 (1)	advocating (2)	approve (2)
22 (1)	80s (1)	affect (1)	approved (1)
23 (1)	824 (1)	affidavit (3)	approximately (2)
23rd (1)	< 9 >	afternoon (1)	April (1)
24 (2)	9:15 (1)	aged (1)	argue (3)
241 (2)	979-1000 (1)	agencies (1)	argument (2)
25PS (1)	< A >	agenda (5)	arrangements (1)
25th (1)	a.m (4)	ages (1)	arrived (2)
< 3 >	ability (5)	aggrieved (1)	ASHLEY (1)
3 (1)	able (14)	ago (1)	aside (2)
3:30 (1)	absentee (5)	agree (11)	asked (2)
30 (1)	Absolutely (3)	agreed (1)	asking (1)
3050 (2)	accept (1)	ah (1)	aspect (1)
306 (1)	acceptable (1)	ahead (5)	assist (2)
3rd (1)	access (1)	ALBERTS (32)	assure (1)
< 4 >	accurately (2)	Albert's (1)	attempted (1)
4 (1)	achieved (1)	aligning (1)	attend (6)
4:11 (1)	acknowledge (2)	Allegiance (1)	attending (1)
4:12 (1)	ACLU (2)	ALLEN (50)	attention (1)
457 (2)	Act (3)	alleviate (1)	attorney (3)
48 (1)	action (9)	allow (5)	audience (1)
	add (2)	allowance (2)	authorities (1)
	added (1)	allowed (2)	authority (2)
		allowing (2)	authorized (7)
		Amanda (2)	auto-gen (1)
		amazed (2)	available (3)
		amazingly (2)	avenue (2)
		amended (1)	avenues (1)



aware (3)	Boyd (2)	casting (1)	clearly (6)
aye (14)	breakdown (2)	categorically (1)	Clerk (2)
< B >	brief (1)	categories (1)	clients (4)
back (7)	brigade (1)	category (3)	clock (1)
Bailey (1)	bring (1)	cause (2)	close (1)
Bains (1)	bringing (1)	caused (1)	closed (1)
balance (2)	brings (2)	ceiling (2)	code (25)
ball (1)	britches (1)	CENTER (8)	co-equal (1)
BALLOT (71)	Brookhaven (1)	central (1)	coexist (1)
balloting (1)	Brooks (2)	certain (3)	Cohain (2)
ballot-on-demand (1)	brought (3)	certainly (5)	colleague (2)
ballots (40)	brusque (1)	certification (2)	co-located (1)
Barbara (1)	budgeting (1)	certify (1)	come (4)
Barton (1)	building (5)	CHAIR (6)	comes (1)
based (3)	buildings (1)	CHAIRPERSON (72)	coming (2)
basically (2)	built (1)	Chairwoman (1)	commanded (1)
battering (1)	bumps (1)	CHALLENGE (23)	commencing (1)
bear (1)	burden (3)	challenged (1)	commend (1)
beat (1)	burdensome (1)	challenges (9)	comment (17)
beautiful (1)	Bureau (4)	challenging (1)	commenting (1)
Becht (1)	busy (1)	chance (2)	comments (9)
beginning (1)	buy (1)	change (4)	commissioner (1)
behalf (4)	Bywood (2)	changed (1)	committee (3)
behaved (1)	< C >	chaos (1)	common (5)
beliefs (1)	Cahall (1)	characteristic (1)	Commonwealth (11)
believe (17)	calendar (1)	charged (1)	communicate (1)
benefit (1)	call (9)	Chavon (1)	communicated (1)
benefits (2)	called (6)	checked (1)	communication (2)
best (6)	calling (6)	check-ins (1)	communications (2)
better (2)	calls (4)	checklist (1)	Community (1)
big (1)	calm (1)	checks (1)	compare (1)
biggest (2)	campaign (6)	Chester (3)	complete (2)
binding (2)	campaigns (1)	Chief (5)	completed (2)
birth (1)	cancel (1)	choose (2)	completely (1)
bit (3)	canceled (2)	Christine (1)	compliments (1)
black (2)	candidate (16)	Christmastime (1)	concern (2)
BOARD (41)	candidates (3)	circumstances (5)	concerning (3)
Boards (1)	candidate's (1)	citation (4)	concerns (4)
Board's (1)	canvas (1)	cite (1)	concluded (1)
bodies (7)	capacity (1)	cites (1)	confirms (1)
body (9)	Captain (1)	City (1)	conflict (2)
book (6)	care (1)	civic-minded (1)	conflicting (1)
books (11)	career (1)	CIVIL (1)	confused (2)
Borough (1)	caring (1)	claim (1)	confusion (1)
bottlenecks (1)	case (17)	clarification (4)	congratulate (1)
bound (1)	cases (1)	clarify (1)	consider (7)
Box (1)	cast (13)	class (1)	consideration (7)
boxes (1)	casted (1)	clause (1)	considered (7)
		clear (13)	consistent (2)

consolidated (1)	co-worker (1)	delivery (1)	drop-box (1)
consolidation (1)	coworkers (1)	demand (1)	drop-off (5)
Constegan (1)	crawling (1)	democracy (1)	drop-offs (1)
constrained (1)	create (2)	Democratic (3)	drops (1)
construction (1)	created (1)	denial (1)	DUANE (1)
construed (1)	crisis (1)	denied (3)	due (5)
contacted (1)	critical (1)	deny (1)	Dunn (1)
contacting (1)	crucial (1)	Department (11)	duties (1)
contacts (2)	Crystal (5)	Deputy (1)	< E >
contained (2)	cultivate (1)	describe (1)	earlier (3)
Conte (1)	cumulate (3)	determination (6)	early (4)
contemplate (1)	cure (7)	determine (2)	casier (2)
contemplated (3)	cured (1)	determined (5)	easily (2)
contemplates (3)	curing (2)	dialogue (1)	effect (1)
contents (2)	curious (1)	dicey (1)	effective (1)
contest (1)	current (3)	Diehl (1)	efficient (1)
context (1)	currently (1)	different (22)	efficiently (4)
contingency (1)	custodian (3)	difficulty (1)	effort (1)
continue (6)	custodians (1)	diligence (1)	efforts (2)
continued (1)	cycle (1)	direct (1)	egg (1)
continuing (1)	< D >	directed (1)	Eighth (1)
contradiction (1)	dancing (1)	directions (1)	either (2)
control (1)	Danher (1)	directly (2)	elderly (1)
controller's (1)	Darby (11)	DIRECTOR (4)	election (63)
controls (2)	data (1)	directory (2)	ELECTIONS (19)
conversation (2)	date (1)	disadvantage (1)	electoral (1)
coordinator (1)	date (1)	disagree (1)	elector's (1)
Correct (20)	dated (1)	disappointed (1)	electronic (5)
corrections (1)	day (20)	discretionary (1)	element (1)
correctly (1)	days (1)	discussed (2)	Elementary (1)
cost (1)	deadline (2)	discussing (2)	eligible (1)
Council (2)	decades (2)	discussion (4)	eliminated (1)
councilman (2)	decide (3)	discussions (1)	email (1)
Councilperson (3)	decided (3)	disenfranchised (4)	embracing (1)
Counsel (1)	decision (18)	disenfranchising (1)	emergency (6)
count (34)	decisions (1)	disposition (2)	emphasize (2)
counted (5)	dedication (2)	distinction (3)	enabled (1)
counties (2)	defeats (1)	distinguishing (2)	enacted (1)
counting (6)	defect (2)	district (12)	encouraging (1)
country (1)	defective (4)	districts (2)	enfranchisement (2)
counts (9)	defects (1)	diverge (1)	enfranchising (1)
COUNTY (18)	defend (1)	doing (4)	enormous (1)
county-wide (1)	defined (1)	door (2)	ensure (1)
couple (5)	definitely (1)	double (2)	enthusiastically (1)
course (7)	DELAWARE (5)	doublecheck (1)	entirely (1)
court (34)	delay (1)	doubts (1)	entitled (5)
courtesy (1)	Delco (4)	dozens (1)	envelope (6)
courts (4)	delegates (1)	Drexel (2)	envelopes (2)
cover (1)	delighted (1)	drop (1)	

E-poll (2)  
 equipment (2)  
 error (1)  
 especially (2)  
 ESQUIRE (2)  
 essentially (1)  
 established (1)  
 event (1)  
 everybody (5)  
 evidence (3)  
 exactly (1)  
 examine (1)  
 example (3)  
 excellent (3)  
 exceptions (2)  
 excited (1)  
 excluded (2)  
 exclusively (1)  
 excuse (1)  
 exercise (1)  
 exhibition (9)  
 exist (1)  
 expand (1)  
 expanded (1)  
 expanding (1)  
 expansion (1)  
 expect (1)  
 expired (1)  
 explain (1)  
 explicit (4)  
 explicitly (2)  
 expressed (1)  
 extend (1)  
 extensive (1)  
 extent (2)  
 extremely (3)  
 eyes (1)

< F >

facility (1)  
 fact (7)  
 fall (1)  
 familiar (6)  
 family (1)  
 fantastic (1)  
 far (2)  
 farther (1)  
 Faster (1)  
 fatal (3)

fault (1)  
 favor (8)  
 favors (2)  
 fee (1)  
 feedback (1)  
 feel (4)  
 feeling (1)  
 fees (1)  
 fester (1)  
 fewer (1)  
 field (1)  
 Fifth (1)  
 figure (4)  
 file (3)  
 filed (1)  
 filing (1)  
 filled (2)  
 final (2)  
 finally (3)  
 Finance (4)  
 financial (1)  
 find (6)  
 finding (2)  
 fine (3)  
 finish (3)  
 fire (1)  
 firm (1)  
 first (16)  
 first-time (1)  
 fit (1)  
 five (2)  
 fixed (1)  
 flaw (3)  
 Fleschute (1)  
 floor (2)  
 Flores (1)  
 focused (1)  
 folks (2)  
 follow (4)  
 followed (1)  
 following (3)  
 fondest (1)  
 foregoing (1)  
 form (3)  
 forum (3)  
 forward (4)  
 found (3)  
 four (4)  
 franchising (1)

frank (1)  
 frankly (1)  
 fresh (1)  
 Front (2)  
 frustrating (3)  
 full (7)  
 full-time (1)  
 fully (3)  
 functions (1)  
 fund (1)  
 fundamental (5)  
 fundamentally (1)  
 further (1)  
 future (3)

< G >

general (3)  
 genuine (1)  
 getting (5)  
 giant (1)  
 gifted (1)  
 give (3)  
 given (6)  
 gives (1)  
 giving (1)  
 glad (2)  
 gladly (1)  
 go (20)  
 goes (4)  
 going (20)  
 Good (11)  
 gotten (1)  
 governed (1)  
 GOVERNMENT (4)  
 grateful (2)  
 great (8)  
 greater (1)  
 greatly (1)  
 Green (1)  
 grieving (1)  
 group (3)  
 grow (1)  
 grown (1)  
 guard (1)  
 guess (3)  
 guessing (1)  
 guidance (16)  
 guide (1)  
 guy (1)

guys (1)  
 gymnasium (1)

< H >

Hafiz (1)  
 Hagan (2)  
 half (1)  
 hallway (1)  
 hand-made (1)  
 happen (4)  
 happened (5)  
 happening (2)  
 happens (2)  
 happily (1)  
 happy (1)  
 hard (2)  
 harmed (1)  
 head (1)  
 heading (1)  
 hear (11)  
 heard (2)  
 HEARING (8)  
 heart (1)  
 held (1)  
 help (3)  
 helped (2)  
 hey (1)  
 hiccups (1)  
 high (7)  
 highest (2)  
 Hill (1)  
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< I >

ID (5)  
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imagine (1)	introduce (1)	L&A (1)	Lombardy (1)
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improperly (1)	<J>	Laureen (1)	loss (1)
improve (1)	Jackie (1)	law (7)	lot (4)
impulse (1)	Jackson (6)	lead (2)	louder (1)
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include (1)	Jeanette (6)	learn (1)	lower (1)
includes (1)	Jim (1)	learned (2)	luck (1)
including (2)	JMParks@duanemorr	leave (3)	<b>LUNKENHEIMER</b>
incomplete (1)	is.com (1)	led (1)	(2)
incompletely (1)	job (6)	Lee (1)	lyrics (1)
incredibly (1)	JOEs (3)	left (1)	<M>
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independents (1)	Johnny (1)	legislature (1)	Madam (4)
Inder (1)	joined (1)	legislatures (1)	mail (12)
indicated (4)	joked (1)	lessons (2)	mail/absentee (1)
indicating (1)	Jones (5)	letter (2)	mail-in (7)
individual (5)	Joy (1)	letters (2)	maintained (1)
individuals (8)	Jr (3)	level (4)	major (1)
inevitably (2)	Judge (3)	lever (1)	majority (4)
information (5)	Judges (3)	libertarian (1)	making (5)
informed (3)	jurisdiction (1)	<b>LIBERTIES</b> (1)	manage (1)
initiated (1)	justice (2)	liberty (1)	managers (1)
Ink (1)	<K>	Lieutenant (1)	<b>MANLY</b> (1)
inquiries (1)	Karen (2)	limited (1)	manual (1)
inside (1)	Kate (1)	line (7)	Marguerite (1)
insist (1)	Keck (1)	Lisa (4)	<b>MARIAN</b> (2)
insisted (1)	keep (6)	list (6)	marked (2)
instance (4)	kept (2)	listed (2)	Marovsky (1)
instances (1)	kind (3)	literally (1)	mass (1)
instinct (1)	kindness (1)	litigation (3)	massive (1)
instructed (1)	kinds (1)	little (6)	materials (3)
instructions (4)	knew (1)	live (1)	matter (3)
intend (1)	know (50)	LLP (1)	matters (1)
interchangeable (1)	known (1)	loaded (1)	<b>MCBLAIN</b> (44)
interest (4)	knows (1)	local (2)	McGarry (1)
interested (1)	Kori (2)	location (8)	mean (19)
interim (1)	<L>	locked (1)	means (1)
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interpretation (1)		lodging (1)	

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 Member (3)  
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 microphone (1)  
 Middletown (1)  
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 minutes (9)  
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 misleading (2)  
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 mission (1)  
 mix (1)  
 moment (6)  
 Monai (1)  
 Monday (1)  
 moncy (1)  
 Monica (1)  
 morning (7)  
 MORRIS (1)  
 motion (7)  
 move (9)  
 moved (3)  
 moving (1)  
 mschneider@aclupa.org (1)  
 multiple (1)  
 multiprecinct (1)  
 municipal (1)

## &lt; N &gt;

nailed (1)  
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## &lt; O &gt;

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 obviously (3)  
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 October (2)  
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 officer (2)  
 offices (3)  
 officially (1)  
 officials (1)

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 Okay (7)  
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 once (1)  
 ones (9)  
 one's (1)  
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 opening (2)  
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 originally (2)  
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 overall (1)  
 oversleeps (1)

## &lt; P &gt;

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 P.O (1)  
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 peak (2)  
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 people (22)  
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 perform (1)  
 performance (1)  
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 plan (1)  
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 Please (12)  
 pleased (3)  
 Pledge (1)  
 point (10)

points (3)	processes (1)	raving (1)	repeatedly (1)
Police (1)	processing (1)	read (3)	replacement (1)
Policy (2)	professional (1)	ready (1)	report (3)
political (30)	Profit (1)	real (1)	reported (4)
poll (36)	program (5)	really (19)	reporter (2)
polling (9)	prohibit (1)	reason (9)	reporting (1)
polls (2)	prohibited (2)	reasons (1)	represent (5)
portion (1)	prohibiting (1)	receive (2)	representative (7)
poses (1)	prohibition (1)	received (10)	representatives (16)
position (1)	prohibits (1)	recognize (1)	represented (1)
possible (4)	project (3)	recognized (1)	represents (3)
post (1)	projects (2)	recommendation (5)	republic (1)
postdates (1)	promoting (1)	recommendations (6)	republican (1)
posted (2)	proper (2)	recommended (2)	request (3)
posting (1)	properly (1)	reconcile (1)	requesting (1)
potential (1)	proposition (1)	reconsider (3)	require (1)
potentially (2)	proud (2)	reconsidered (3)	required (4)
powerless (1)	proved (1)	record (5)	requirement (2)
praise (1)	provide (2)	records (1)	requirements (1)
pre (1)	provided (3)	recruited (1)	requires (1)
precinct (11)	provision (6)	reference (3)	research (1)
precincts (10)	PROVISIONAL (55)	referenced (1)	resources (3)
precisely (1)	provisionally (1)	references (1)	respect (2)
present (3)	provisionals (1)	referencing (1)	respond (2)
presented (7)	pry (1)	referred (1)	response (1)
Presidential (5)	Public (17)	referring (2)	result (1)
pressure (1)	published (5)	reflection (1)	results (5)
pretty (2)	pull (1)	regarding (4)	retrained (1)
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primarily (1)	purpose (2)	Register (1)	returned (4)
primary (2)	pursue (3)	registered (19)	revamp (1)
principal (4)	put (5)	Registration (6)	review (1)
principle (3)	< Q >	Registry (1)	reviewed (1)
printed (1)	Q&A (2)	regret (1)	reviewing (1)
prior (2)	question (22)	regular (1)	reviews (1)
prioritize (1)	questions (14)	related (2)	Richard (1)
privately (1)	quickly (3)	relations (1)	Rick (1)
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problem (7)	quite (4)	relied (1)	right (38)
problems (2)	< R >	rely (1)	rightfully (1)
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procedure (1)	raise (6)	remedied (1)	ripple (1)
procedures (4)	ram (1)	remedy (1)	risk (1)
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## &lt;S&gt;

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## &lt;T&gt;

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