

**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

No. 28 WAP 2024

**WASHINGTON COUNTY BOARD OF ELECTIONS, REPUBLICAN
NATIONAL COMMITTEE, AND REPUBLICAN PARTY OF
PENNSYLVANIA,**
Petitioners/Appellants,

v.

**CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP,
BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON,
ERIKA WOROBEK, SANDRA MACIOCE, KENNETH ELLIOTT, AND
DAVID DEAN,**
Respondents/Appellees.

**PRINCIPAL BRIEF OF APPELLANTS REPUBLICAN NATIONAL
COMMITTEE AND REPUBLICAN PARTY OF PENNSYLVANIA**

Appeal from the September 24, 2024 Memorandum Opinion and Order of the
Pennsylvania Commonwealth Court at Case No. 1172 C.D. 2024 affirming the
August 23, 2024 Memorandum Opinion of the Court of Common Pleas of
Washington County at No. 2024-3953

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STATEMENT OF JURISDICTION

The Court granted Appellants' Petition for Allowance of Appeal on October 5, 2024. *See* Order, No. 259 WAL 2024 (October 5, 2024) (per curiam).

ORDER IN QUESTION

The Commonwealth Court's order states: "AND NOW, this 24th day of September, 2024, the August 23, 2024 Order of the Court of Common Pleas of Washington County is **AFFIRMED**." *Ctr. for Coalfield Just. v. Washington Cnty. Bd. of Elections*, slip op. at 19, No. 1172 C.D. 2024 (Pa. Commw. Ct. Sept. 24, 2024) ("Commw. Ct. Op.").

SCOPE OF REVIEW AND STANDARD OF REVIEW

This appeal presents purely legal questions, for which the "scope of review is plenary and [the] standard of review is *de novo*." *Stilp v. Commonwealth*, 905 A.2d 918, 950 (Pa. 2006).

STATEMENT OF THE QUESTIONS INVOLVED

1. Whether the Commonwealth Court erred in holding the mail-in ballot return policy implemented by the Washington County Board of Elections resulted in violations of electors' procedural due process rights.

SUGGESTED ANSWER: Yes.

2. Whether the Commonwealth Court erred in affirming the trial court's injunction and order directing the board to (1) "notify any elector whose

mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects”; (2) “input the accurate status of the mail-in packet [in the SURE system] and provide the status to the elector if requested”; and (3) “properly document in the poll books that the elector ... has not ‘voted’” when an elector’s “mail-in packet is segregated for a disqualifying [defect] in accordance with 25 P.S. § 3150.16 [which will allow the elector the opportunity to cast a provisional ballot] and choose the most appropriate selection in the SURE system to reflect as such.”

SUGGESTED ANSWER: Yes.

STATEMENT OF THE CASE

A. The Election Code's Requirements For Mail Ballots And Provisional Ballots

“Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules.” *Brnovich v. DNC*, 594 U.S. 647, 669 (2021). Pennsylvania’s voting system is no exception. In recent years, two rules that govern mail voting have received extensive judicial attention. One, electors must seal their mail ballots in a secrecy envelope.¹ *See* 25 P.S. §§ 3146.6(a), 3150.16(a). Two, electors must seal the secrecy envelope in an outer envelope and “fill out, date and sign the declaration printed on” the outer envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). These requirements are “mandatory”; an elector’s “failure to comply ... renders the ballot invalid” and ineligible to be counted by election officials. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 372-80 (Pa. 2020); *see also Ball v. Chapman*, 289 A.3d 1 (Pa. 2023); *Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, 97 F.4th 120 (3d Cir. 2024).

The Commonwealth’s 67 boards of elections, rather than the Secretary of the Commonwealth, are vested with primary responsibility for administering elections in accordance with the General Assembly’s commands. *See generally* 25 P.S. § 2642. Thus, the boards rather than the Secretary are responsible for enforcing the

¹ This Brief uses “mail ballot” to refer to both absentee and mail-in ballots. *See* 25 P.S. §§ 3146.6, 3150.16.

secrecy-envelope, signature, and date requirements for mail ballots, for declining to count ballots that do not comply with any applicable requirements, and for counting ballots that are valid under the General Assembly's rules. *See id.*

Accordingly, once an elector has completed the mail-ballot packet, the elector must return it in time to “be received in the office of the county board of elections no later than [8] o’clock P.M. on the day of the primary or election.” *Id.* §§ 3146.6(c), 3150.16(c). Until commencement of the pre-canvass no earlier than 7 a.m. on Election Day, *see id.* § 3146.8(g)(1.1), the only actions the Election Code authorizes county boards to perform with respect to received mail-ballot packets are to scan and log them in the Statewide Uniform Registry of Electors (“SURE”), 25 Pa. C.S. § 1222(c)(19)-(20), and to “safely keep [them] in sealed or locked containers until they are to be canvassed by the county boards of elections,” 25 P.S. § 3146.8(a). Boards may not “inspect” or “open” ballot packets before the pre-canvass. *See id.* § 2602(q.1). Even after opening packets during the pre-canvass, boards are not allowed to “disclose the results” of their inspection or opening before “the close of the polls” on Election Day. *Id.* § 3146.8(g)(ii)(1.1).

In certain narrow circumstances, the General Assembly has given electors the right to cast a provisional ballot and have it counted. *See Pa. Democratic Party*, 238 A.3d at 375 n.28. Those circumstances include, for example, an elector who is unable to produce required identification at the polling place, *see, e.g.*, 25 P.S.

§ 3050(a.2), or whose registration to vote cannot be verified, *id.* § 3050(a.4)(1). They also include the scenario where an elector “requests a [mail] ballot [but] is not shown on the district register as having voted,” such as because the elector never returned a completed mail-ballot package to the board. *Id.* §§ 3146.6(b)(2), 3150.16(b)(2). The Election Code, however, unambiguously directs: “A provisional ballot ***shall not be counted*** if the elector’s absentee ballot or mail-in ballot is ***timely received*** by a county board of elections.” *Id.* § 3050(a.4)(5)(ii)(F) (emphasis added).

Thus, the rule is simple: There is no “notice and opportunity to cure” procedure” for voters to fix errors on mail ballots timely received by the board of elections, including failures to comply with the secrecy-envelope, signature, or date requirements. *Pa. Democratic Party*, 238 A.3d at 374. Instead, the General Assembly has decided that mail ballots must be “rejected due to” even “minor errors made in contravention of those requirements.” *Id.*

Although the boards bear primary responsibility for administering the Commonwealth’s elections, the Secretary has certain cabined duties touching on elections. One is the responsibility to prescribe the form of mail-ballot declarations and the accompanying instructions county boards provide to mail voters. *See* 25 P.S. §§ 2621, 3146.4, 3150.14. Wielding that authority, the Secretary issued a new Directive Concerning the Form of Absentee and Mail-in Ballot Materials on July 1,

2024 (“July 1 Directive”).² The purpose of the July 1 Directive, at least in part, is to facilitate electors’ compliance with the secrecy-envelope, signature, and date requirements. *See* July 1 Directive at 1-4, Appellants’ Appendix (“App.”) Ex. F at 60-63.

The July 1 Directive imposes specific requirements on county boards regarding the content of the instructions they send to voters. In particular, those instructions must be titled “Instructions—Make your ballot count!” *Id.* at Appendix D, App. Ex. F at 99. The Directive further requires all instructions to inform voters that they must “[p]ut [their] ballot in the [secrecy] envelope” and “[s]ign and date the” declaration. *Id.* It also requires this specific instruction: “**Put today’s date—**the date you are signing.” *Id.* (emphasis original).

The July 1 Directive also mandates changes to the outer-envelope declaration that eliminate the most common forms of dating errors in past elections. *First*, the Directive requires county boards to preprint the entire year in the date field, *see id.* Appendix A, App. Ex. F at 67-71, so it eliminates the error of an elector writing an incomplete or incorrect year. It also reduces, if not eliminates, the likelihood of voters writing their birthdate or another incorrect date in the date field.

² <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2024-Directive-Absentee-Mail-in-Ballot-Materials-v2.0.pdf>.

Second, the Directive requires county boards to print “Today’s date here (REQUIRED),” *id.* at 71, thus further specifying that the date the elector signs the declaration is required.

Third, the Directive requires county boards to print four boxes in the date field and to specify that the date should be written in MM/DD format. *See id.* It thus eliminates any confusion regarding whether voters should use the American or International dating conventions.

B. SURE And The Secretary’s Instructions And Automated Emails

Another of the Secretary’s statutorily defined responsibilities is to develop and establish SURE as “a single, uniform integrated computer system” for “maintain[ing] [voter] registration records” across the Commonwealth. 25 Pa. C.S. §§ 1222(a), (c). Among other functions, SURE must “[i]dentify registered electors who have been issued absentee ballots for an election” and “[i]dentify registered electors who vote in an election and the method by which their ballots are cast.” *Id.* § 1222(c)(19)-(20).

The Secretary has programmed SURE to permit county boards to track mail-ballot requests, to document the sending of mail-ballot materials in response to those requests, and to log mail-ballot packages received back from electors. At various times, the Secretary has issued instructions to county boards regarding SURE’s

ballot-tracking functions, including the logging of received mail-ballot packages. *See* Compl. ¶ 41, App. Ex. E at 17.

As relevant to this case, the Department issued an updated instruction for the 2024 Primary Election on March 11, 2024 (“the March Instruction”). *See* App. Ex. E at 111-28. The March Instruction introduced new programming codes for logging received mail-ballot packages: “PEND” (Pending) and “CANC” (Canceled). *See id.* at 116-21. “Pending” and “canceled” are not ballot statuses “referenced anywhere in the Election Code” and are not “legislatively-approved, or actual, ballot status[es].” *Genser v. Butler Cnty. Bd. of Elections*, MsD. No. 2024-40116, at 19-20 (Butler Cnty. Ct. of Common Pleas Aug. 16, 2024) (“*Genser* Common Pleas slip op.”), *rev’d on other grounds*, No. 1074 C.D. 2024, 2024 WL 4051375 (Pa. Commw. Ct. Sept. 5, 2024), *further appeal pending*, No. 27 WAP 2024 (Pa.).

Nonetheless, the March Instruction laid out “PEND” and “CANC” logging codes for various potential defects, including “INCORRECT DATE,” “NO DATE,” “NO SIGNATURE,” or “NO SECRECY ENVELOPE.” App. Ex. E at 111-28. The March Instruction advised county boards to use the “PEND” logging codes when a county board determines that a mail ballot may have a defect that the county board permits the elector to cure. *See id.* It also encouraged county boards to use “CANC” logging codes when a county board makes a disposition that a mail ballot may have a defect that the county board does not permit the elector to cure. *See id.*

As laid out in the March Instruction, SURE sends an automated email to the voter when the county board logs the voter's mail-ballot package as "PEND" or "CANC." *Id.* The Department of State prescribes the content of the automated email for each code, and county boards cannot change that content. *See id.* The automated emails purported to advise voters of various options for addressing the suspected defect. *See id.* Every version of the automated email told voters that if they were unable to cure the defect through another method, "you can go to your polling place on election day and cast a provisional ballot." *Id.*

Thus, during the 2024 Primary Election, the Department told voters whose mail-ballot packages were logged as "PEND" (and whose county boards permitted them to cure the suspected defect) and voters whose packages were logged as "CANC" (and whose county boards did not permit them to cure the suspected defect) that they had a right to cast a provisional ballot. *See id.* In other words, the Department notified *all* voters whose mail-ballot packets were timely received but logged as potentially defective of a purported right to cast a provisional ballot—*regardless* of whether the voter's county board permits curing at all or permits curing by provisional ballot. *See id.*

The Secretary has acknowledged that the "PEND" and "CANC" codes are optional, that county boards are not required to use them, and that county boards are not required to trigger the Secretary's automated emails to voters. *See Sec'y Br. in*

Opp. to King’s Bench Appl. 22-23 in *Republican Nat’l Comm. v. Schmidt*, No. 108 MM 2024 (Pa. filed Sept. 20, 2024); *see also* Genser Common Pleas slip op. at 20.

SURE also provides another logging code: “Record – Ballot Returned.” *See* App. Ex. E at 120. The March Instruction contemplates use of this code for any mail ballot that the county board does not believe is defective. *See id.* However, a county board that uses the “Record – Ballot Returned” code for any ballot, including one it believes to be defective, has complied with the Election Code. *See* 25 Pa. C.S. § 1222(c)(19)-(20); Deposition of Jonathan Marks, App. Ex. G at 5 (p. 35:10-23). The automated email triggered by the “Record – Ballot Returned” code makes no representation that the elector has a right to cure or to cast a provisional ballot. *See* App. Ex. E at 120. To the contrary, that email expressly states “you are no longer permitted to vote at your polling place location.” *Id.*

C. The Washington County Board Of Elections’ Curing Policy And Ballot Instructions For The 2024 Primary Election

In April 2024, the Washington County Board of Elections (“the Board”) adopted a policy (“the Policy”) regarding defective mail-ballot packets it received from voters in the 2024 Primary Election. In accordance with the Board’s understanding of the Election Code and the non-binding nature of the March Instruction, the Policy did not provide notice of, or an opportunity to cure, defects in mail-ballot packets. Commw. Ct. Op. at 2, App. Ex. A at 2. The Policy thus did not utilize the Secretary’s “PEND” or “CANC” codes or corresponding automated

emails. Instead, the Policy “mandated that all mail-in ballot packets received by the County Board were to be marked in the [SURE] system as ‘record-ballot returned.’” *Id.* Moreover, Board personnel were instructed to inform electors who called to inquire about the status of their mail ballots that every received mail-ballot packet was locked in a container as required by the Election Code and would be reviewed during the canvass. *See* Deposition of Melanie Ostrander, App. Ex. H at 23-25 (pp. 90:20-92:5).

The Board’s instructions to mail voters for the 2024 Primary Election were titled “**Instructions – How to pack your ballot.**” App. Ex. F at 44 (emphasis original). The instructions stated: “For your ballot to count, you must follow all of these steps.” *Id.* One of the steps was for the elector to “**Sign inside the yellow box and put today’s date on the return envelope.**” *Id.* (emphasis original). The instructions further specified that voters “**Sign your name inside the yellow box**” and “**Put today’s date—not your birthdate.**” *Id.* (emphasis original).

D. Plaintiffs’ Suit And Proceedings Below

On July 1, 2024, the Center for Coalfield Justice, the Washington Branch NAACP, and seven individual plaintiffs (collectively, “Plaintiffs”) sued the Board for declaratory and injunctive relief in the Court of Common Pleas. The individual plaintiffs each allege that they timely submitted mail ballots to the Board for the 2024 Primary Election, but that they failed to comply with the signature and/or date

requirements. Compl. ¶¶ 86, 94, 101, 108, 116, 123, 129, App. Ex. E at 31-37. The individual plaintiffs acknowledged that the Board therefore declined to count their mail ballots or to permit them to cast provisional ballots in accordance with the Policy. *See, e.g., id.*

Plaintiffs claimed that the Policy violated their procedural due process rights under the Pennsylvania Constitution. *See id.* ¶¶ 148-60, App. Ex. E at 42-45. Plaintiffs' sole theory in support of this due process claim is that the Constitution "entitles qualified, eligible voters to know when their mail-in ballot is disqualified in time to rescue their right to vote by casting a provisional ballot." *Id.* ¶ 160, App. Ex. E at 45.

Plaintiffs thus never asserted that the Board's instructions for mail ballots were inadequate or did not warn them of consequences for failing to comply with the signature or date requirements. *See id.; compare* App. Ex. F at 44. Plaintiffs, moreover, did not allege a due process right to notice and an opportunity to challenge the Board's determination that their mail-ballot packets were defective and, thus, could not be counted. *See* Compl. ¶ 160, App. Ex. E at 45. And they also did not assert a due process right to appeal any ruling by the Board on such a challenge under 25 P.S. § 3157. *See id.*

In fact, Plaintiff Washington Branch NAACP was aware of the Policy and raised objections to it in writing, and again on the record at the Board's April 18,

2024 meeting, prior to the 2024 Primary Election Day on April 23, 2024. *See* Joint Stipulation ¶¶ 36, 37, App. Ex. F at 12. As required by the Election Code, the Board provided “due notice” of the location of its public canvassing of ballots, which commenced “at nine o’clock A.M. on the third day following” the 2024 Primary Election Day. 25 P.S. § 3154(a). Nonetheless, no representative of any Plaintiff attended the canvass. *See* Joint Stipulation ¶¶ 48-50, App. F. at 14. Thus, no representative of any Plaintiff objected to any decision of the Board not to count a mail ballot with a secrecy-envelope, signature, or dating defect, or appealed any such decision to the Court of Common Pleas within two days as required by Section 3157. *See id.* Instead, Plaintiffs waited until months after the election was concluded and certified to file their suit as a declaratory judgment action, without any mention of Section 3157. *See* Compl. ¶ 11, App. Ex. E at 9.

The trial court granted intervention to Appellants The Republican National Committee and Republican Party of Pennsylvania to defend the Policy alongside the Board. On August 23—less than four weeks before the September 16 opening of the statutory mail-voting period for the 2024 General Election, *see* 25 P.S. § 3146.2a—the trial court issued an order. The trial court acknowledged that this Court’s decision in *Pennsylvania Democratic Party* “resolved the issue of ‘notice and opportunity to cure.’” Trial Court Op. at 2, App. Ex. B at 2. It further denied the parties’ summary judgment motions addressing the question whether “an elector

whose mail-in packet is deemed to have a disqualifying error did not vote,” specifically reasoning that “the Board and Republican Intervenors[] should have the opportunity to explore this issue further.” *Id.* at 26.

“Although [the court denied] summary judgment” on this issue, it “f[ound] that a permanent injunction is appropriate.” *Id.* The trial court thus ordered the Board to:

1. “[N]otify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects”;
2. “[I]nput the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested”; and
3. “[P]roperly document in the poll books that the elector whose mail-in packet is segregated for a disqualifying error has not ‘voted’ in accordance with 25 P.S. § 3150.16” and thus has a right to cast a provisional ballot.

Id. at 27-28, App. Ex. B at 27-28.

On September 24—*after* the September 16 opening of the statutory mail-voting period—a majority of a Commonwealth Court panel affirmed. *See* Commw. Ct. Op., App. Ex. A. Judge Dumas dissented. *See id.* at 18, App. Ex. A at 18.

An essential premise of the majority's decision was its reliance on a prior Commonwealth panel majority's decision in *Genser*. *See id.* at 13, App. Ex. A at 13. The majority was thus persuaded by *Genser*'s conclusions that *Pennsylvania Democratic Party* "is distinguishable from the instant matter," that "the Election Code created a statutory right to cast a provisional ballot as a 'failsafe' to ensure otherwise qualified electors may cast their vote and have it counted," and that this "failsafe" right "does not amount to 'curing' a defective mail-in ballot." *Id.*

The panel majority identified two other liberty interests that it believed were violated by the Policy: "the right to vote" and the right "to contest the [Board's] disqualification of the ballot" under Section 3157. *Id.* at 16, App. Ex. A at 16. It also rejected the argument that the "notification procedure" the trial court imposed on the Board was "too burdensome." *Id.* at 17, App. Ex. A at 17. The majority voiced its agreement "with the trial court in all other respects" and affirmed the injunction. *Id.*

Neither the trial court nor the panel majority identified any inadequacy in the Board's instructions to mail voters in the 2024 Primary Election. *See* Trial Ct. Op., App. Ex. B; Commw. Ct. Op., App. Ex. A. Nor did the trial court or the panel majority ever mention the Secretary's July 1 Directive. *See* Trial Ct. Op., App. Ex. B; Commw. Ct. Op., App. Ex. A. And the trial court and the panel majority did not explain why it was appropriate to issue and affirm an injunction in the midst of the

ongoing 2024 General Election. *See* Trial Ct. Op., App. Ex. B; Commw. Ct. Op., App. Ex. A.

This Court granted the petition for allowance of appeal on October 5, 2024. *See* Oct. 5 Order.

SUMMARY OF THE ARGUMENT

The panel majority committed numerous reversible errors both in holding that the Policy resulted in violations of electors' procedural due process rights and in affirming the trial court's injunction. The Court should reverse based on any one or all of these errors.

I. The panel majority erred in finding a due process violation and in affirming the injunction because it failed to identify a cognizable liberty interest entitled to due process protection and implicated by the Policy.

A. The panel majority's first purported liberty interest—a "right to cast a provisional ballot as a 'failsafe' to ensure otherwise qualified electors may cast their vote and have it counted"—contradicts both the plain terms of the Election Code and this Court's decision in *Pennsylvania Democratic Party*. The General Assembly's mandate in the Election Code is clear: A provisional ballot "***shall not*** be counted" if the elector's mail-ballot packet "is timely received by a county board of elections." 25 P.S. § 3050(a.4)(5)(ii)(F) (emphasis added). This Court, moreover, has already held that voters have no constitutional, statutory, or legal right to cure a mail-ballot

defect, through provisional voting or otherwise. *See Pa. Democratic Party*, 238 A.3d at 374. The panel majority's recognition of a purported "failsafe" right to vote by provisional ballot both departed from both the General Assembly's statutory commands and the Court's controlling precedent. The majority's sole rationale for this departure was the prior Commonwealth Court panel majority's decision in *Genser*, so it fails for all of the same reasons that the *Genser* majority opinion fails.

B. The panel majority also erred as a matter of law when it concluded that the right to vote and the right to appeal decisions of a county board under Section 3157 are protected liberty interests. Courts have routinely rejected the contention that the right to vote is a protected liberty interest triggering procedural due process protections of the kind the majority imposed. Moreover, a Section 3157 appeal is an *already*-open process designed to protect voters, not a protected liberty interest itself.

II. The panel majority also erred in finding a due process violation and in affirming the injunction because it never performed the requisite analysis to find that there was *any* risk of erroneous deprivation, that its additional procedures provided any meaningful benefit compared to existing procedures, or that the additional procedures' benefits outweighed the administrative burden on the Board.

Indeed, by concluding that the Board must provide notice of mail ballot defects to electors on a rolling basis, the panel majority not only disregarded but

contradicted the Election Code. It did so without even paying lip-service to the presumption of constitutionality, which carries especial weight in the election context. And in doing so, it *sub silentio* invalidated an inseverable provision of Act 77, and thus abrogated universal mail voting for the entire Commonwealth in the midst of the ongoing 2024 General Election.

III. Even if the Court thinks that the above errors present close questions (they do not), this Court should refuse to “countenance” the lower courts’ “substantial alterations to existing laws and procedures during the pendency of an ongoing election.” Order at 3, *New Pa. Project Educ. Fund v. Schmidt*, No. 112 MM 2024 (Pa. Oct. 5, 2024) (“*New Pa. Order*”). On the eve of the election, the lower courts would at the last minute require the Board to assess ballot validity *ahead* of the election, *and* invent a system for adjudicating challenges to those determinations before polls close.

Administering a Presidential election, even in the best of circumstances, would have “pose[d] significant logistical challenges” for the Board. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). The “[l]ate judicial tinkering” the lower courts engaged in is intolerable. *Id.* at 881. This Court should reverse.

ARGUMENT

Plaintiffs seeking to establish a constitutional violation, including a violation of procedural due process, bear the “heavy burden” of proving that the challenged act “clearly, palpably, and plainly violates the Constitution, and all doubts are to be resolved in favor of a finding of constitutionality.” *Stilp*, 905 A.2d at 963; *see also In re Canvass of Provisional Ballots in the 2024 Primary Election*, __A.3d__, 2024 WL 4181584, at *11 (Pa. Sept. 13, 2024) (Wecht, J., concurring) (“[T]he judiciary should act with restraint, in the election arena, subordinate to express statutory directives.” (citation omitted)). Moreover, plaintiffs seeking a permanent injunction “must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cnty. Bd. of Comm’rs*, 902 A.2d 476, 489 (Pa. 2006).

The Pennsylvania Constitution’s procedural due process guarantee “entails a balancing of three considerations: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state.” *Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); *see also Commonwealth v. Turner*,

80 A.3d 754, 763 (Pa. 2013) (noting that the federal and state “due process provisions are largely coextensive”). At its core, the inquiry takes place “in two steps: the first asks whether there is a life, liberty, or property interest that the state has interfered with; and the second examines whether the procedures attendant to that deprivation were constitutionally sufficient.” *Turner*, 80 A.3d at 764.

The panel majority’s holding that the Policy violated electors’ due process rights and affirmance of the injunction fails at every step of the analysis. The panel majority failed to identify a cognizable liberty interest even implicated, let alone violated, by the Policy. It also failed to identify any additional constitutionally mandated procedures that the Board must implement before it may decline to count a ballot that does not comply with the General Assembly’s ballot-casting rules. And even if it had properly identified a liberty interest or required additional procedures, the panel majority’s upholding of the injunction improperly “countenance[s]” the trial court’s “substantial alterations to existing laws and procedures during the pendency of [the] ongoing” 2024 General Election in which millions of Pennsylvanians will cast their votes for President, U.S. Senator, U.S. Representative, and scores of state and local offices. *New Pa.* Order at 3. The Court should reverse.

I. The Majority Failed To Identify A Cognizable Liberty Interest Implicated By The Policy.

The first step in the procedural due process analysis requires the Court to “consider the private interest that ... will be affected” if the claimants are “denied

the right to” additional notice of mail ballot defects. *Commonwealth v. Wallace*, 97 A.3d 310, 320 (Pa. 2014); *see also DA’s Off. v. Osborne*, 557 U.S. 52, 67 (2009) (“Process is not an end in itself.”). The majority identified three private interests: the purported “failsafe” right to cast a provisional ballot, the right to vote under Article I, section 5 of the Pennsylvania Constitution, and the right to appeal “any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election” under 25 P.S. § 3157. Commw. Ct. Op. at 16-17, App. Ex. A at 16-17. None of these is a cognizable liberty interest, so none can support the panel majority’s holding that the Policy violates due process or justify affirming the injunction. For this reason alone, the Court should reverse.

A. There Is No “Failsafe” Right To Cast A Provisional Ballot.

Neither Pennsylvania’s courts, the Secretary, nor the county boards may “ignore the clear mandates of the Election Code.” *In re Canvass of Absentee Ballots of Nov. 4, 2003 Election*, 843 A.2d 1223, 1231 (Pa. 2004); *see also Ball*, 289 A.3d at 36. “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. § 1921(b); *see also Commonwealth v. Coleman*, 285 A.3d 599, 605 (Pa. 2022) (“Generally, the best expression of the General Assembly’s intent ‘is found in the statute’s plain language.’”). After all, it is not the courts, but “the legislature that drafts, and the Governor that approves, the legal prerequisites to having a ballot

counted.” *In re Canvass of Provisional Ballots in 2024 Primary Election*, 2024 WL 4181584, at *11 (Wecht, J., concurring).

The General Assembly’s mandate here could not be clearer: “A provisional ballot ***shall not be counted 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) (emphases added). Thus, a county board may *not* count *any* provisional ballot cast by an elector whose mail ballot the county board “timely received” before the deadline of 8 p.m. on Election Day. *Id.* Nothing in this plain text uses the terms, much less turns on whether, the elector’s mail ballot is “valid” and will be “counted”; instead, the prohibition on counting a provisional ballot arises whenever the elector’s mail ballot has been “timely received.” *Id.* Accordingly, the Election Code is “unambiguous” on this point, and courts are “not at liberty to disregard the clear statutory mandate that the provisional ballots to which this language applies must not be counted,” even if the elector’s mail ballot is defective and also cannot be counted. *In re Allegheny Cnty. Provisional Ballots in the 2020 Gen. Election*, 2020 WL 6867946, at *4-5 (Pa. Commw. Ct. Nov. 20, 2020); *see also Pa. Democratic Party*, 238 A.3d at 374 (courts bound by the General Assembly’s rules for “casting *and counting* a vote by mail”) (emphasis added).

In light of this unambiguous and unequivocal statutory text, the panel majority’s conclusion that the Election Codes creates a roving “right to cast a

provisional ballot as a ‘failsafe’” when, as now, the elector’s mail-ballot packet was timely received, Commw. Ct. Op. 13, Ex. A at 13, is simply baffling. The majority’s preferred “failsafe” right is not one of the limited circumstances in which the General Assembly has authorized provisional voting, *see Pa. Democratic Party*, 238 A.3d at 375 n.28; 25 P.S. §§ 3050(a.2); 3050(a.4)(1); 3146.6(b)(2), 3150.16(b)(2), and runs headlong into the General Assembly’s directive that such “failsafe” provisional ballots “shall not be counted,” § 3050(a.4)(5)(ii)(F). The Election Code thus *forecloses*, rather than creates, the majority’s preferred “failsafe” liberty interest.

The majority arrived at this erroneous conclusion by adopting the reasoning of the prior Commonwealth Court panel majority in *Genser*. *See* Commw. Ct. Op. at 13, Ex. A at 13. But as the Republican National Committee and the Republican Party of Pennsylvania have explained at length, *Genser* is irreconcilable with the Election Code and wrongly decided. *See* Principal Br. of Appellants, *Genser v. Butler Cnty. Bd. of Elections*, No. 27 WAP 2024 (Pa. filed Sept. 24, 2024) (“*Genser* App. Br.”). It therefore provides no basis to *constitutionalize* a right to “failsafe” provisional voting that the General Assembly has unequivocally closed off.

The majority’s wholesale adoption of *Genser* tainted not only its reading of the Election Code but also its attempt to distinguish this Court’s decision in *Pennsylvania Democratic Party*. *See* Commw. Ct. Op. at 13, Ex. A at 13. *Pennsylvania Democratic Party*, however, is directly on point and controlling.

There, the Court held that a voter has no constitutional, statutory, or legal right to be provided notice of and an opportunity to cure a mail-ballot defect, through provisional voting or otherwise. *See Pa. Democratic Party*, 238 A.3d at 372-74. Rather, “[t]o the extent that a voter is at risk of having his or her ballot rejected” due to their failure to comply with the Election Code’s requirements for mail ballots, “the decision to provide a ‘notice and opportunity to cure’ procedure to alleviate that risk is one best suited for the Legislature.” *Id.* at 374. After all, it belongs to the General Assembly, not the courts, to decide “the procedures for casting and counting a vote by mail”—and the decision whether, and in what form, to mandate a notice and opportunity to cure procedure implicates “open policy questions” which are “best left to the legislative branch of Pennsylvania’s government.” *Id.*

The panel majority and the injunction it upheld, however, constitutionalized a right to notice and an opportunity to cure. The injunction requires the Board to “notify any elector whose mail-in packet is segregated for a disqualifying error” and “document in the poll books” that such a voter has a right to cast a provisional ballot and have it counted. Trial Court Op. 27-28, App. Ex. B at 27-28. Indisputably, then, the injunction confers on voters who submit a defective mail ballot a right to receive notice of and to remedy those defects by submitting a second ballot—a provisional ballot that, as explained below, is not authorized by the Election Code. That is both

notice and curing and, thus, a “procedure” only the General Assembly, not the courts, may mandate. *See Pa. Democratic Party*, 238 A.3d at 374.

The majority attempted to avoid this straightforward conclusion merely by agreeing with the *Genser* majority’s reasoning that *Pennsylvania Democratic Party* is “distinguishable from the instant matter” because, in its view, the provisional-voting right the majority recognized “does not amount to ‘curing’ a defective mail-in ballot.” Commw. Ct. Op. 13, App. Ex. A at 13. But as Appellants already have explained, this *ipse dixit* is mere wordplay—a distinction without a difference. *See Genser* App. Br. 23-24. *Pennsylvania Democratic Party* forecloses creating a “failsafe” right to provisional voting by judicial fiat, and the panel majority erred in concluding otherwise.

Finally, since the *Genser* majority issued its decision, the Secretary has argued in another case that federal law requires allowing electors who have submitted defective mail ballots to vote provisionally. *See* Secretary of the Commonwealth’s Response to the Application for the Exercise of the King’s Bench Power at 25-26, 108 MM 2024 (Sept. 20, 2024) (citing 52 U.S.C. § 21082(a)). That is wrong. An individual has no federal right to vote provisionally unless he “declares” that he is “eligible” to do so under state law, but an elector whose mail ballot has been timely received is not “eligible” to vote in person under Pennsylvania law. *See* 25 P.S. § 3050(a.4)(5)(ii)(F). Regardless, even if the Court believes 52 U.S.C. § 21082(a)

creates a blanket right to cast a provisional ballot, it obviously does not require election officials to count such ballots. In fact, 52 U.S.C. § 21082(a)(4) confirms such ballots can only be counted if they are valid “under State law.” *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 570 (6th Cir. 2004) (explaining such ballots are only counted if “the person was indeed entitled to vote at that time and place” (cleaned up)); *id.* at 576 (“[T]he ultimate legality of the vote cast provisionally is generally a matter of state law.”). Here, of course, the Election Code unambiguously prohibits counting provisional ballots where an individual’s mail ballot was “timely received” by election officials. 25 P.S. § 3050(a.4)(5)(ii)(F). Federal law thus also does not create the majority’s “failsafe” right to vote provisionally.

B. The Right To Vote And The Statutory Right To Appeal Are Not Cognizable Liberty Interests.

The panel majority’s attempts to elevate the right to vote and the right to appeal a county board’s computation or canvassing decision under Section 3157 to the status of liberty interests entitled to due process protection, *see* Commw. Ct. Op. 16-17, App. Ex. A 16-17, fare no better.

To begin, the majority gave no support for its assertion that the right to vote is a “life, liberty, or property interest.” *Turner*, 80 A.3d at 764. To Appellants’ knowledge, no court has ever described the right to vote as a life or property interest. *See Richardson v. Tex. Sec’y of State*, 978 F.3d 220, 230 (5th Cir. 2020) (“We have

found no court that has held that the right to vote ... is a property interest.”). That is for good reason. “[L]iberty interests that are protected by procedural due process are generally limited to freedom from restraint.” *Turner*, 80 A.3d at 765 (citing *Sandlin v. Conner*, 515 U.S. 472, 484 (1995)). The constitutional right to vote obviously does not fall within that category.

The majority’s assertion that the right to vote is “fundamental” also does nothing for its holding. “For procedural due process, the question is not whether the plaintiffs assert a *fundamental right*, but instead whether the right they assert is a *liberty interest*.” *Richardson*, 978 F.3d at 231. It is no wonder that numerous courts have thus rejected procedural due process claims predicated on the voting right. *See id.* at 232; *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 479 (6th Cir. 2008); *Memphis A. Phillip Randolph Inst. v. Hargett*, 482 F. Supp. 3d 673, 691 (M.D. Tenn. 2020), *aff’d on other grounds sub nom. Memphis A. Phillip Randolph Inst. v. Hargett*, 978 F.3d 378 (6th Cir. 2020); *Lecky v. Va. State Bd. of Elections*, 285 F. Supp. 3d 908, 918 (E.D. Va. 2018).

Even assuming that voting is a liberty or property interest referred to by the Pennsylvania Constitution’s procedural due process protection, the right to vote is simply not implicated by the Policy or this case. That right does not give every elector *carte blanche* to cast ballots in any way he or she chooses. There is “no authority” for the proposition that “the ‘right to vote’ encompasses the right to have

a ballot counted that is defective under state law.” *Pa. State Conf. of NAACP*, 97 F.4th at 133. “Even the most permissive voting rules must contain some requirements, and the failure to follow those rules constitutes the forfeiture of the right to vote, not the denial of that right.” *Ritter v. Migliori*, 142 S. Ct. 1824, 1824 (2022) (Alito, J., dissental).

Properly understood, the right to vote is not affected by the Policy, including the lack of notice of mail-ballot defects. Plaintiffs all but admit that they failed to comply with the Election Code’s mandatory requirements for casting a valid ballot. Compl. ¶¶ 83-132. And this Court has already held that, pursuant to its authority to regulate elections, the General Assembly has forbidden do-overs: Once a voter submits an invalid ballot, there is no cure procedure. *See Pa. Democratic Party*, 238 A.3d at 372-74. The Pennsylvania Constitution does not entitle noncompliant voters to notice of defects that they, by definition, cannot correct.

Relatedly, the right to appeal in Section 3157 is not a protected liberty interest and does not justify the majority’s holding. That provision gives a right to appeal to “[a]ny person aggrieved by any order or decision of any county board regarding the computation or canvassing of the *returns* of any primary or election.” 25 P.S. § 3157 (emphasis added). The right to appeal ballot rejections by itself cannot be a “liberty” interest within the meaning of procedural due process; after all, “[p]rocess is not an end in itself” under procedural due process doctrine. *Turner*, 80 A.3d at 765; *accord*

DA's Office, 557 U.S. at 67. And if there is no liberty or property interest in voting in any manner one prefers, there cannot be a liberty or property interest in challenging the Board's canvassing decisions to achieve the same result. *See Turner*, 80 A.3d at 765. The lower courts' invocation of Section 3157 serves only to dress up the right to vote interest in different garb—which may explain why the Plaintiffs themselves never invoked Section 3157 in their complaint.

Furthermore, the right to appeal in Section 3157 is a non-sequitur when it comes to Plaintiffs' demands that the Board give them notice of their mail-ballot defects. The canvassing and computation of election returns is "public[]." 25 P.S. § 3154(a). Anyone who wants to challenge the Board's "computation or canvassing of the returns," 25 P.S. § 3157(a), is already free to attend the computation and canvassing of the returns. It is implausible that any procedural due process right related to the Section 3157 right to appeal extends any farther.

II. The Board Provided All The Process That Was Due.

Even if this Court finds that Plaintiffs assert a cognizable liberty or property right, consideration of "the risk of an erroneous deprivation together with the value of additional or substitute safeguards" and "the state interest involved" only reinforces that Plaintiffs are not entitled to additional procedural protections. *Bundy*, 184 A.3d at 557. The Board, as guided by Pennsylvania law, already provides all the process that is due to protect even the hypothetical rights the majority conjured.

For this reason as well, there was no basis for the majority's holding that the Policy violates procedural due process, much less for affirming the injunction imposing grossly out-of-step additional procedures on the Board.

A. The Majority Erred In Holding That Pennsylvania Law's Robust Procedural Protections For Mail Voters Are Constitutionally Inadequate.

Pennsylvania law provides mail voters with several layers of protection for even the purported liberty interests the majority invoked, including detailed instructions for completing mail ballots and warnings of the consequences of noncompliance with the General Assembly's ballot-casting rules, *see supra* at 5-6, 10-11, public notice of and an opportunity observe the canvass of ballots, *see* 25 P.S. §§ 3153-3154, and the Section 3157 appeal right itself, *see id.* § 3157. The majority did not even *mention* some of those protections. Moreover, in any event, the majority erred in holding that these procedures are inadequate and, thus, in affirming the trial court's injunction imposing additional procedures.

1. The majority failed to demonstrate that the existing procedures mandated by Pennsylvania law and implemented by the Board create a "risk of an erroneous deprivation." *Bundy*, 184 A.3d at 557; *see Wallace*, 97 A.3d at 321 (rejecting procedural due process claim because the risk of erroneous deprivation was "slim"). Again, neither the lower courts nor Plaintiffs argue that the Board made a mistake in rejecting the individual Plaintiffs' defective mail ballots. *See Compl.*

¶¶ 83-132, App. Ex. E at 31-37. Indeed, the Complaint alleges that the individual Plaintiffs made such errors as “forg[etting] to sign and date the declaration envelope,” or “fail[ing] to complete the date on [their] declaration envelope.” *Id.* Those allegations prove that the supposed deprivation Plaintiffs experienced was not “erroneous”—in fact, it was legally required. *See Ball*, 289 A.3d 1 (Pa. 2023); *Pa. Democratic Party*, 238 A.3d at 83-97. For this reason alone, the majority erred in holding that the Policy violates due process and in affirming the injunction.

2. The majority’s holding and affirmance of the injunction fail for another independent reason: The majority did not demonstrate that the “additional or substitute safeguards” it would force on the Board have any meaningful incremental “value.” *Bundy*, 184 A.3d at 557. This inquiry requires courts to consider “the fairness and reliability of the existing ... procedures.” *Mathews*, 424 U.S. at 343. Where existing procedures already provide ample notice and process, additional safeguards have little, if any, value. *See id.*; *see also Telang v. Commonwealth Bureau of Pro. & Occupational Affs. Appeal of State Bd. of Med.*, 751 A.2d 1147, 1150 (Pa. 2000) (no procedural due process right to additional safeguards because “there was nothing that a second notice and/or hearing would remedy”).

Pennsylvania law already provides a host of robust procedural protections for mail voters—including protections the majority wholly ignored. For example, Pennsylvania law requires, and the Board provided to mail voters in the 2024

Primary Election, fulsome instructions for completing mail ballots and warnings regarding the consequences of noncompliance with General Assembly’s mandatory ballot-casting rules. *See supra* at 10-11. The Secretary’s July 1 Directive, moreover, provides even more explicit instructions to mail voters for the 2024 General Election and beyond. *See supra* at 5-6. “So long as the Secretary and the county boards of elections provide electors with adequate instructions for completing the declaration of the elector—including conspicuous warnings regarding the consequences of failing strictly to adhere—pre-deprivation notice is unnecessary” before a county board declines to count a mail ballot due to noncompliance with the General Assembly’s ballot-casting rules. *Pa. Democratic Party*, 238 A.3d at 389 (Wecht, J., concurring).

Plaintiffs, however, never even *attempted* to show that the Board’s instructions for the 2024 Primary Election or the instructions mandated by the Secretary’s new July 1 Directive are not constitutionally “adequate.” *Id.* Moreover, neither the trial court nor the Commonwealth Court made any finding to that effect—or even mentioned the July 1 Directive at all. *See* Trial Court Op., App. Ex. B; Commw. Ct. Op., App. Ex. A.

Nor could such a showing or finding have been possible, had they even been attempted. The Board’s “**Instructions – How to pack your ballot**” specifically told mail voters in the 2024 Primary Election: “For your ballot to count, you must follow

all of these steps.” App. Ex. F at 44 (emphasis original). One such step is for the elector to “**Sign inside the yellow box and put today’s date on the return envelope**” and “**Put today’s date—not your birthdate.**” *Id.*

The instructions and outer-envelope declaration now mandated by the Secretary’s July 1 Directive are even more explicit. The July 1 Directive requires county boards’ instructions to mail voters to be titled “Instructions—Make your ballot count!” July 1 Directive Appendix D, App. Ex. F at 98-103. It further requires the instructions to inform voters that they must “[p]ut [their] ballot in the [secrecy] envelope” and “[s]ign and date the” declaration, with the specific instruction to: “**Put today’s date**—the date you are signing.” *Id.* (emphasis original). And as explained, the Directive’s mandates for the date field eliminate the most common forms of dating errors in past elections. *See supra* at 6.

Absent a showing that these instructions are not “adequate” and “conspicuous,” the majority’s conclusion that the Board is constitutionally obligated to provide additional “pre-deprivation notice” and procedures simply collapses. *Pa. Democratic Party*, 238 A.3d at 389 (Wecht, J., concurring). This failure of Plaintiffs’ case and the panel majority’s holding is particularly glaring with respect to the upholding of the trial court’s prospective injunction. After all, without showing constitutional insufficiency in the new instructions now mandated under the July 1 Directive, Plaintiffs have failed to establish a “clear right” to injunctive

relief for the ongoing 2024 General Election in which millions of Pennsylvanians will cast their votes—not to mention future elections. *Kuznik*, 902 A.2d at 489. For this reason alone, the Court should reverse.

The majority also did not mention, much less consider, the procedural protections provided through the canvass. *See, e.g.*, Commw. Ct. Op. at 16-18, App. Ex. A at 16-18. Consistent with the Election Code, the Board “arrange[s] for the computation and canvassing of the returns of votes” at a “convenient public place,” with “adequate accommodations” for “watchers and attorneys” to witness the proceedings. 25 P.S. § 3153. The Board also “*publicly* commence[s] the computation and canvassing of the returns,” and gives “due notice” of that event. *Id.* § 3154 (emphasis added). Representatives of both major political parties are often present to observe the processing of ballots. *See, e.g., In re Canvassing Operation*, 241 A.3d 339, 150-51 (Pa. 2020).

The Board adhered to these procedures for the 2024 Primary Election, as it has in past elections and will in future elections. At least one Plaintiff here, Washington Branch NAACP, raised objections to the Policy prior to the 2024 Primary Election Day. But neither it nor any other plaintiff sent any representative to the post-Election Day canvass to observe, and preserve any objections to, the Policy, the Board’s implementation of the Policy, or the Board’s decision not to count any particular mail ballot. *See supra* at 12. The majority did not explain how

the public notice of and opportunity to observe the canvass—which no Plaintiff availed themselves of—is constitutionally inadequate to protect the purported liberty interests it identified. *See* Commw. Ct. Op. at 16-18, App. Ex. A at 16-18.

The majority, moreover, gave short shrift to the procedure it did consider: the Section 3157 appeal procedure for decisions made by a county board at the canvass. *See* Commw. Ct. Op. at 16-17, App. Ex. A at 16-17. The majority thought this protection was insufficient because “none of the Electors were aware that their ballots had not been counted until after election day” and “two of the Electors were unaware” of that fact “*for months* after the Primary.” *Id.* But *all* of the Electors would have become aware of the Board’s decision not to count their mail ballots had they (or interested parties on their behalf) attended the canvass. Indeed, attendance, or at least awareness of the decisions made, at the canvass is an essential prerequisite to exercising the Section 3157 appeal right. *See* 25 P.S. § 3157(a) (authorizing appeal of “*canvassing* of the returns of any primary or election”). The majority never explained how providing *public notice of and an opportunity to observe* the canvass does not adequately protect the supposed “liberty interest to contest the disqualification” of a defective mail ballot made *at* the canvass. Commw. Ct. Op. at 16, App. Ex. A at 16.

3. The majority’s due process analysis and affirmance of the injunction also fail because Plaintiffs’ and the lower courts’ preferred additional procedures

would impose a significant and unjustified “administrative burden” on the Board. *Bundy*, 184 A.3d at 557. Start with the lower courts’ apparent mandate that the Board provide *pre*-election notice to electors of the errors they made in filling out their mail ballots. To comply with that mandate, the Board must decide the validity of the mail ballots it receives *and* publish those results to the electors so that they have an opportunity to “contest their disqualification.” Commw. Ct. Op. at 17, App. Ex. A at 17. These initiatives would require the Board to divert its staff to process mail ballots before Election Day and to come up with a system for adjudicating mail-ballot validity disputes on a rolling basis—all in violation of the Election Code, *see infra* Part II.B.

Moreover, those efforts would result in voters within the county receiving differential treatment, potentially violating the Pennsylvania Constitution and the U.S. Constitution’s Equal Protection Clause. Some mail ballots would arrive at the last minute—just barely in time—so that the Board would be unable to provide pre-election notice of any defects. This would result in starkly disparate treatment of voters’ ballots depending solely on when they happened to be received by the Board. Consequently, determinations of whether mail ballots are valid would not be “uniform throughout the State,” in contravention of the Pennsylvania Constitution, Pa. Const. art. VII, § 6; *see also id.* art. I, § V, Pennsylvania law, *see* 25 P.S. § 2642(g) (elections must be “uniformly conducted” throughout Commonwealth),

and the Equal Protection Clause, *see Bush v. Gore*, 531 U.S. 98, 106-07 (2000) (U.S. Constitution forbids use of “varying standards to determine what [is] a legal vote” from “county to county”). Simply put, the Board has no way to ensure that the lower courts’ “amorphous” commands to give an opportunity to contest invalid ballots will be “implemented and fairly administered ... in the weeks between now and the general election.” *Pa. Democratic Party*, 238 A.3d at 389 (Wecht, J., concurring). That is no way to protect the rights of electors who seek to participate in a fair and orderly process.

The lower courts’ mandate fares no better even if it is read to be a *post*-election notice requirement. Once again, the lower courts have only provided “amorphous” instructions. *Id.* It is unclear how the Board is supposed to provide notice of mail ballot defects after the election, other than the ample procedures electors are *already* provided through the public canvassing process. *See* 25 P.S. §§ 3153, 3154, 3157. The Board previously suggested it could, after the canvass, publicly provide a list of whose mail ballots were rejected (thus allowing listed individuals to file appeals under § 3157(a)), but the Commonwealth Court majority summarily rejected that suggestion. *Commw. Ct. Op.* at 17, *App. Ex. A* at 17. In any event, as discussed, the Board already provides public notice of the canvass, and members of the public have the option to attend and observe the counting of ballots if they wish. *See supra* at 33-34. There is no justification for adding more notice obligations to the Board’s

already full plate after polls close, and the lower courts' holdings simply fail to grapple with the realities of election administration.

In short, the trial court was correct when it said that “[t]he procedural due process issue raised in this case is relatively straightforward.” Trial Ct. Op. at 2, App. Ex. B at 2. This Court has a menu of options to choose from, but all roads lead to the same conclusion: Procedural due process does not require additional notice to electors who fail to comply with Pennsylvania’s ballot rules.

B. The Consequences Of The Majority’s Rejection Of The Election Code Are Breathtakingly Broad.

In its haste to discover new constitutional rights, the majority bulldozed the Election Code in multiple ways. Under the majority’s ruling, the Board must “notify any elector whose mail-in ballot is segregated for a disqualifying error” so that he “has an opportunity to challenge” that determination, and it must do so prior to the end of the voting period. Commw. Ct. Op. at 8 (quoting Trial Ct. Op. at 27), App. Ex. A at 8. To state the obvious, the majority thus requires the Board (i) to determine whether an elector’s mail ballot is valid and (ii) to report that determination to the elector, all *before* the election is concluded.

The Election Code does not allow what the majority demands. “[U]pon receipt,” county boards are not permitted to inspect or open a mail-ballot package. 25 P.S. § 3146.8(a). Instead, county boards must “safely keep the ballots in sealed or locked containers until they are to be canvassed.” *Id.* The very earliest time the

county board is permitted to open and inspect mail ballots is at the “pre-canvass,” which takes place at 7:00 A.M. on Election Day. See *id.* §§ 2602(q.1), 3146.8(g)(ii)(1.1). And even then, “[n]o person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.” *Id.* § 3146.8(g)(ii)(1.1).

But inspection, opening, and disclosure are exactly what the majority demands of the Board. The Board cannot determine whether the elector made a disqualifying error without inspecting (and, in the case of the secrecy envelope requirement, opening) the ballot. It cannot inspect or open the ballot before Election Day itself. And even once it does, the Election Code prohibits telling the electors the results until *after* polls close.

In other words, the Election Code forecloses the majority’s directive to the Board. In fact, the majority’s directive would create a pre-canvass period coterminous with the 50-day statutory mail-voting period: It would require the Board, on a rolling basis as mail-ballot packets are received, to inspect, make determinations regarding the validity of, and notify voters of any defects. It is one thing to use procedural due process to supplement a statutory interest. It is quite another to use that doctrine to hold a duly-enacted statute unconstitutional. That difference appears to have escaped the attention of the courts below, as neither paid even lip service to the principle that “acts passed by the General Assembly are

strongly presumed to be constitutional.” *Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1103 (Pa. 2014). That presumption can only be overcome if the challenger demonstrates that the statute “clearly, palpably, and plainly violates the Constitution.” *Id.* But neither court below made any determination whatsoever that the Election Code “clearly, palpably, and plainly” falls short of the three-factor balancing test for procedural due process. Even if the Court thinks that the procedural due process question is close (it is not), the presumption of constitutionality does not permit rejection of broad swathes of the Election Code so easily.

If ever that presumption had purchase, it has it here. The presumption stems from the premise that “the power of judicial review must not be used as a means by which the courts might substitute [their] judgment as to the public policy for that of the legislature.” *Commonwealth v. Torsilieri*, 316 A.3d 77, 91 (Pa. 2024). Especially so in the context of elections. “The power to regulate elections is legislative, and has always been exercised by the lawmaking branch of the government.” *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914). “Errors of judgment in the execution of the legislative power, or mistaken views as to the policy of the law, or the wisdom of the regulations, do not furnish grounds for declaring an election law invalid unless there is a plain violation of some constitutional requirement.” *Id.*; see also *In re Canvass of Provisional Ballots in 2024 Primary*

Election, 2024 WL 4181584, at *11 (Wecht, J., concurring) (noting that “[c]hallenges to the counting of ballots or to the disregard of ballots inherently arise in a politics-laden area of the law” and that “[a]rguments about voting requirements and efforts to liberalize provisions of the Election Code should be directed to the[] political branches”).

Perhaps the majority thinks that it would be better to count ballots and publish the results on a rolling basis. And if it were to run the election, the majority certainly would opt for notice and an extensive administrative appeals process that permits voters to submit as many ballots as they want as long as they eventually comply with the initial ballot requirements. But those calls are for the General Assembly, not the courts. And unless the majority can identify a “gross abuse” (it cannot), it is unjustified in “striking down an election law demanded by the people, and passed by the lawmaking branch of government in the exercise of a power always recognized and frequently asserted.” *Winston*, 91 A. at 523; *see also In re Canvass of Provisional Ballots in 2024 Primary Election*, 2024 WL 4181584, at *11 (Wecht, J., concurring) (“[T]he judiciary should act with restraint, in the election arena, subordinate to express statutory directives.” (citation omitted)).

Perhaps the majority also thought that it could surgically excise those parts of the Election Code that contradicted its holding. It cannot. Act 77—the landmark bill in which the General Assembly expanded the ability to vote by mail ballot—is

“nonseverable,” and “[i]f any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.” 2019 Pa. SB 421, § 11. That Act directs the county boards to keep mail ballots “in sealed or locked containers until they are to be canvassed by the county board of elections.” *Id.* § 7. It also provides that “[t]he county board of elections shall meet no earlier than the close of polls ... to begin canvassing.” *Id.* Those provisions are invalid under the majority’s analysis; accordingly, if the majority’s opinion stands, Act 77—and its expansion of mail ballot availability—is void, and Pennsylvania’s universal mail-voting regime has just been invalidated in the midst of the ongoing 2024 General Election. *See Black Pol. Empowerment Project v. Schmidt*, 2024 WL 4002321, at *62-64 (Pa. Commw. Ct. Aug. 30, 2024) (McCullough, J., dissenting) (noting that invalidating any part of Act 77 would “void[] all absentee and mail-in voting in Pennsylvania”).

“It is not for the judiciary to usurp the General Assembly’s policy-making authority and exceed the parameters of legislation by engrafting statutory requirements that the General Assembly chose to omit.” *Keystone Rx LLC v. Bureau of Workers’ Comp. Fee Rev. Hearing Off.*, 265 A.3d 322, 334 (Pa. 2021) (Wecht, J., concurring). Here, not only did the General Assembly omit the majority’s chosen requirements—it actively *prohibited* them. The consequences of the majority’s decision are a reminder of the care courts must exercise when deciding whether to

hold duly-enacted legislation unconstitutional. The majority failed to exercise that care here, so the Court should reverse.

III. The Courts Below Erred By Imposing New Election Rules On The Eve Of The Election.

Even if the lower courts' rulings were legally plausible (they are not), they erred in changing election rules during the imminent and ongoing 2024 election.

The rule is simple: “This Court will neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election.” *New Pa.* Order at 3. That rule—known as the *Purcell* principle—is one of “common sense.” *Id.* (quoting *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016)). It is a “basic tenet of election law” that “[w]hen an election is close at hand, the rules of the road should be clear and settled.” *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). “[R]unning a statewide election is a complicated endeavor,” and involves “a host of difficult decisions about how best to structure and conduct the election.” *Id.* And those decisions must then be communicated to the “state and local officials” tasked with implementing them, who in turn “must communicate to voters how, when, and where they may cast their ballots through in-person voting on election day, absentee voting, or early voting.” *Id.*

Those procedures are the bailiwick of the General Assembly and the county boards who are tasked with executing its will—not judges. *See, e.g., In re Canvass*

of Provisional Ballots in 2024 Primary Election, 2024 WL 4181584, at *11 (Wecht, J., concurring). The responsibility for handling the “significant logistical challenges” and “enormous advance preparations” implicated by elections belongs to the General Assembly and the county boards, *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring)—not judges. And for good reason. “Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences.” *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). “If a court alters election laws near an election, election administrators must first understand the court’s injunction, then devise plans to implement that late-breaking injunction, and then determine as necessary how best to inform voters, as well as state and local election officials and volunteers, about those last-minute changes.” *Id.*

For these reasons, just last week this Court considered two King’s Bench applications challenging status-quo election rules and opted to leave those existing procedures in place without considering the merits of the challenges. *See Order, RNC v. Schmidt*, No. 108 MM 2024 (Oct. 5, 2024); *New Pa. Order*. And that was despite the fact that at least one of the applications raised “important questions” as to the county boards’ authority to create the challenged procedures. *See Concurring Statement of Justice Brobson, RNC v. Schmidt*, No. 108 MM 2024 (Oct. 5, 2024). No matter—judicial intervention at this point would have been “highly disruptive to

county election administration.” *Id.* This Court refused to allow judges to enter the fray so close to an election.

It should do so again here. The trial court entered its permanent injunction requiring notice of mail ballot defects on August 23, just a few weeks before the distribution of mail ballots. *See* 25 P.S. § 3146.2a (mail ballots for 2024 general election could be sent out starting on September 16). The Commonwealth Court majority affirmed on September 24, *after* ballots were already sent out and *during* the ongoing 2024 general election. The U.S. Supreme Court has applied the *Purcell* principle *several months* before the distribution of mail ballots. *See Robinson v. Callais*, 144 S. Ct. 1171 (2024) (stay of April 30, 2024 order in advance of 2024 general election); *see Merrill*, 142 S. Ct. at 879 (granting *Purcell* stay of order entered about two months before mail ballots were sent out). Thus, by any measure, the lower courts here impermissibly “alter[ed] existing laws and procedures during the pendency of an ongoing election.” *New Pa.* Order at 3.

Moreover, the procedural changes dictated by the lower courts are particularly disruptive. “[S]tate and local election officials need substantial time to plan for elections.” *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). And “[i]f a court alters election laws near an election, election administrators must first understand the court’s injunction, then devise plans to implement that late-breaking injunction, and then determine as necessary how best to inform voters, as well as state and local

election officials and volunteers, about those last-minute changes.” *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurring).

This case proves the point. To begin, the Board will have to make sense of the lower courts’ orders. What does it mean to give voters “the opportunity to contest their disqualification”? *See Commw. Ct. Op.* at 17, App. Ex. A at 17. Answering that question—and then implementing it—will take nigh “heroic efforts by ... state and local officials authorities in the next few weeks,” and “even heroic efforts likely would not be enough to avoid chaos and confusion.” *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). To comply with the injunction, the Board will have to make substantial procedural changes, and to move around personnel and resources to accomplish the judicially-mandated shifts. It must now inform electors of the validity of their ballots on an ongoing basis; this forces Board employees to carefully process mail ballots *before* Election Day, a substantial task it would have otherwise delayed until Election Day (as the Election Code commands, *see supra* Part II.B). And the Board must inform electors so that they can somehow “challenge” the Board’s validity determination—which of course requires devising a system of adjudicating such challenges on a rolling basis in the first place. *Commw. Ct. Op.* at 17, App. Ex. A at 17. Such “[l]ate judicial tinkering with election laws” will “lead to disruption and to unanticipated and unfair consequences

for candidates, political parties, and voters, among others.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

Because the trial court’s injunction “contravene[d] the *Purcell* principle by rewriting state election laws close to an election,” *DNC*, 141 S. Ct. at 32 (Kavanaugh, J., concurring), this Court can reverse the decisions below based solely on the *Purcell* principle. The Court should do so here and not “countenance” last-minute judicially-mandated election-rule changes “during the pendency of an ongoing election.” *New Pa.* Order at 3.

CONCLUSION

The Court should reverse.

Dated: October 9, 2024

Respectfully submitted,

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APPENDIX
TO
PRINCIPAL BRIEF OF APPELLANTS
REPUBLICAN NATIONAL COMMITTEE AND
REPUBLICAN PARTY OF PENNSYLVANIA

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EXHIBIT A

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Center for Coalfield Justice,
Washington Branch NAACP,
Bruce Jacobs, Jeffrey Marks,
June Devaughn Hython,
Erika Worobec, Sandra Macioce,
Kenneth Elliott, and David Dean

v.

Washington County Board of
Elections, Republican National
Committee and Republican Party
of Pennsylvania,

Appellants

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No. 1172 C.D. 2024
Submitted: September 10, 2024

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE LORI A. DUMAS, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: September 24, 2024

The Washington County Board of Elections (County Board), the Republican National Committee (RNC), and the Republican Party of Pennsylvania (RPP) (collectively, Appellants) appeal from an order of the Court of Common Pleas of Washington County (trial court), which granted summary judgment, in part, in favor of Center for Coalfield Justice, Washington Branch NAACP (Interest Groups), Bruce Jacobs, Jeffrey Marks, June Devaughn Hython, Erika Worobec, Sandra Macioce, Kenneth Elliott, and David Dean (Electors or the Electors) (collectively,

Appellees). The trial court determined that the County Board's ballot return notice policy (Policy), implemented for the 2024 Primary Election, violated Electors' procedural due process rights and ordered the County Board to: (1) notify electors whose mail-in ballot packets were segregated on suspicion of a disqualifying error, so that the voter may challenge, but not cure, the purported defect; and (2) document that the elector had not successfully voted in the elector's respective district poll register to ensure that the elector may cast a provisional ballot. On appeal, Appellants argue, *inter alia*, that the trial court erred by concluding the Policy implicated procedural due process as a legislative act. Upon careful review, we affirm.

The parties do not dispute the facts giving rise to this matter. For the purposes of the 2023 primary and municipal elections, the County Board implemented a notice and cure procedure for electors whose mail-in and absentee ballots contained disqualifying errors, e.g., the ballot lacked a signature or contained an incorrect date. However, at a meeting held on April 11, 2024, the County Board voted to discontinue this practice for the primary election held on April 23, 2024 - even though the County Board had already segregated 170 mail-in ballot packets for disqualifying errors. This new Policy mandated that all mail-in ballot packets received by the County Board were to be marked in the State Uniform Registry of Electors (SURE) system¹ as "record-ballot returned." The Policy also prevented inquiring electors from receiving notice as to whether their ballot had been segregated, and on election day, the district poll register only indicated whether an

¹ As this Court has previously explained, "[t]he SURE system is the Statewide Uniform Registry of Electors, the statewide database of voter registration maintained by the Department of State and administered by each county." *In re Nomination Petition of Morrison-Wesley*, 946 A.2d 789, 792-93 n.4 (Pa. Cmwlth. 2008).

elector had requested a mail-in packet and whether it was received; the register similarly did not indicate whether the ballot had been segregated.

Following a Right-to-Know Law² request, the County Board disclosed that 259 timely received mail-in ballots had been segregated and disqualified for errors. No such elector cast a provisional ballot on election day, nor did any elector contest the segregation of their ballot under Section 1407 of the Pennsylvania Election Code (Election Code).³

On July 1, 2024, Electors and Interest Groups filed a complaint in the trial court asserting that the Policy had violated their procedural due process right under the Pennsylvania Constitution and sought a preliminary injunction to enjoin the County Board from continuing the Policy for the 2024 General Election. Following the joinder of the RNC and RPP in the action, the parties agreed to resolve the dispute by way of cross-motions for summary judgment.

In an opinion and order filed on August 23, 2024, the trial court granted Appellees' motion for summary judgment, in part, as well as their motion for permanent injunction, while denying Appellants' cross-motion for summary

² Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101-67.3104.

³ Section 1407(a) of the Election Code provides in pertinent part:

(a) Any person aggrieved by any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election, or regarding any recount or recanvass thereof under sections 1701, 1702, and 1703 of this act, may appeal therefrom within two days after such order or decision shall have been made, whether then reduced to writing or not, to the court specified in this subsection, setting forth why he feels that an injustice has been done, and praying for such order as will give him relief.

Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §3157(a) (emphasis added).

judgment. First, however, the trial court resolved Appellants' arguments pertaining to justiciability. *See* Trial Court Op., 8/23/24, at 8-12. In relevant part, the trial court determined that both Electors and Interest Groups possess standing. *Id.* at 10-12. Electors suffered sufficient harm under the Policy to confer standing as they were not afforded notice of any disqualifying error such that they were not provided a meaningful opportunity to cast a provisional ballot or contest their disqualification. *Id.* at 10. Likewise, the trial court found that Interest Groups possess standing as their programs aimed at promoting voter participation were adversely impacted by the Policy, because Interest Groups could not provide clear and accurate information to electors. *Id.* at 11.

Next, the trial court concluded that Appellees' action was not precluded by ripeness or mootness. Trial Court Op. at 11-12. The trial court disagreed with Appellants' assertion that Appellees' proffered harm was entirely speculative and thus was not ripe for judicial review. *Id.* Rather, the trial court agreed that the Policy would continue "unless and until" the County Board undertook a new policy. *Id.* Regarding mootness, the trial court was unpersuaded by Appellants' argument that the Department of State's modification of the SURE system e-mail notification mooted the controversy. *Id.* at 13. In the trial court's view, any modification to the SURE system would nevertheless leave electors unaware of their ballot status, such that electors would still be without notice that they should cast a provisional ballot or contest their disqualification. *Id.*

Concerning the merits, the trial court concluded that the Policy violated Electors' procedural due process rights. In so doing, the trial court first found that the County Board's decision to segregate a mail-in ballot for a disqualifying error constituted an adjudication, rather than a legislative act:

Here, like in [*Londoner v. City and County of Denver*, 210 U.S. 373 (1908),] or *Washington v. Department of Corrections*, 306 A.3d 263 (Pa. 2023)], the process of elections office staff screening and segregating mail-in ballots for those with disqualifying errors and then coding the ballot in the SURE system in a manner which provides no way for an individual voter to know that their ballot has been segregated affects a small portion of all mail-in voters and results in an adjudicative action.

Trial Court Op. at 14-15.

Subsequently, the trial court determined that Electors possess a liberty interest in challenging the County Board's canvassing determination. Trial Court Op. at 17. In the trial court's view, Section 1407 of the Election Code created a statutory right in Electors to contest the County Board's determination that the Elector had failed to properly cast their ballot. *Id.* As such, the trial court sought to ascertain the procedural guarantees owed under this liberty interest. Ultimately, the court below declined to follow the County Board's suggestion to apply the *Anderson/Burdick* framework, as articulated in *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).⁴ Trial Court Op. at 18.

⁴ The *Anderson/Burdick* framework provides:

[T]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights [U.S. Const. amends. I, XIV]. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions.

Burdick, 504 U.S. at 434 (citations omitted).

Instead, the trial court applied the following three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976),⁵ by balancing: “(1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards, and (3) the governmental interest, including costs and administrative burdens of additional procedures.” Trial Court Op. at 18-19 (citing *C.S. v. Department of Human Services, Bureau of Hearings and Appeals*, 184 A.3d 600, 607 (Pa. Cmwlth. 2018)). In applying that test, the trial court considered the statutory right under Section 1407 of the Election Code to be the private right affected by the Policy, which incurred a high risk of erroneous deprivation because the Policy precluded the notice requisite to exercise that statutory right. Trial Court Op. at 21. Similarly, the trial court did not view providing notice to electors whose ballots were segregated to place a heavy burden on the County Board as it merely involved using a different code already available to the Board in the SURE system.⁶ *Id.*

Still, Appellants argued that Appellees’ claim was precluded by our Supreme Court’s decision in *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 372-74 (Pa. 2020). Trial Court Op. at 19. The trial court disagreed, finding that *Boockvar* was distinguishable from Appellees’ claim: the issue before the High Court therein was whether the free and equal elections clause⁷ of the Pennsylvania

⁵ Although the trial court stated that it considered all of the parties’ arguments before determining that the *Mathews* test was the proper test in this instance, it did not explain its reason for doing so. See Trial Court Op. at 19.

⁶ The trial court also observed that the *Anderson/Burdick* framework would not compel a different outcome. Trial Court Op. at 21.

⁷ The free and equal elections clause provides: “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.” Pa. Const. art. I, §5.

Constitution required all County Boards of Elections to develop notice *and* cure procedures. *Id.* at 19-20. Yet, here, Appellees assert that the County Board failed to guarantee Electors’ procedural due process rights⁸ by refusing to give notice that their ballots had been segregated, so that they might exercise their statutory right to contest this disqualification. *Id.* As such, the trial court did not view Elector-Appellees’ complaint as implicating an opportunity to cure procedure, as in *Boockvar*. *Id.* at 20-21.

Finally, the trial court rejected the County Board’s attempt to portray casting a provisional ballot as an “illusory” means of curing Elector-Appellees’ defective ballots and the attendant argument that Elector-Appellees’ sought-after relief would involve rewriting the Election Code to count a mail-in elector’s defective ballot. Trial Court Op. at 20-21. On that point, the trial court found the governing provisions of the Election Code to be ambiguous. For example, where Section 1306-D(b)(2), 25 P.S. §3150.16(b)(2)⁹ (emphasis added), provides that “[a]n elector who requests a mail-in ballot and who is not shown on the district register as having *voted* may vote by provisional ballot . . . [.]” Section 1210, 25 P.S. §3050 (emphasis added), provides “[a] provisional ballot shall not be counted if: . . . the elector’s absentee ballot or mail-in ballot is timely *received* by a county board of elections.” *Id.* at 25. Ultimately, the trial court resolved the ambiguity by determining that the term “voted” necessarily included having “the opinion expressed in the ballot” counted. *Id.* at 26. Because of the ambiguity, the trial court

⁸ Pennsylvania’s due process clause provides: “All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Pa. Const. art. I, §1.

⁹ Added by the Act of October 31, 2019, P.L. 552, No. 77 (Act 77).

denied Appellees' motion for summary judgment on this limited point, but also found a permanent injunction to be warranted due to the nature of the harm. *Id.* at 26-27.

Hence, the trial court entered the following order:

For the reasons set forth above, this [c]ourt finds there are not genuine issues of material fact and [Appellees] are entitled to judgment as a matter of law regarding their right to notice regarding their ballot status in order to challenge the canvass board's decisions. As such, [Appellees'] motion for summary judgment is GRANTED in that regard. [The County Board] is hereby ordered to notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects. [The County Board] shall input the accurate status of the mail-in packet and provide the status to the elector if requested.

This [c]ourt finds that [] there are genuine issues of material fact regarding all other matters[;] therefore, the remainder of the motion for summary judgment filed by the [Appellees] as well as the motions for summary judgment filed by [Appellants] are all DENIED. [Appellees'] request for a permanent injunction is GRANTED and [the County Board] shall properly document in the poll books that the elector whose mail-in packet is segregated for a disqualifying error has not "voted" in accordance with 25 P.S. §3150.16 and choose the most appropriate selection in the SURE system to reflect as such.

Trial Court Op. at 27-28.

On appeal to this Court, Appellants raise the following issues for our review: (1) whether Appellees' claim is justiciable; (2) whether *Boockvar* forecloses Appellees' claim; (3) whether the trial court erred by finding that the Policy violated Electors' procedural due process rights; (4) whether the trial court effectively mandated a notice and cure procedure; and (5) whether the trial court's order

contradicts the Election Code. We have no difficulty concluding that Appellants' arguments are unavailing - indeed, many of them have already been considered and flatly rejected by this Court's recent decision in *Genser v. Butler County Board of Elections* (Pa. Cmwlth., Nos. 1074, 1085 C.D. 2024, filed September 5, 2024), *petitions for allowance of appeal filed*, (Pa., Nos. 240-241, 241-243 WAL 2024, filed September 8, 2024).¹⁰

Preliminarily, the crux of Appellees' action is their request for injunctive relief, such that our inquiry focuses on the trial court's grant thereof. On that point, "appellate review in [cases involving the grant of a permanent injunction] is whether the lower court committed an error of law in granting or denying the permanent injunction. Our standard of review for a question of law is *de novo*. Our scope of review is plenary." *Buffalo Township v. Jones*, 813 A.2d 659, 664 n.4 (Pa. 2002).

Further, "[t]o justify the award of a permanent injunction, the party seeking relief must establish[] that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the requested relief." *Kuznik v. Westmoreland County Board of Commissioners*, 902 A.2d 476, 489 (Pa. 2006). "However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law." *Buffalo Township*, 813 A.2d at 663-64.

¹⁰ Unreported memorandum opinions of this Court filed after January 15, 2008, may be cited for their persuasive value pursuant to Rule 126(b) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 126(b), and Section 414(a) of the Court's Internal Operating Procedures, 210 Pa. Code §69.414(a).

Neither the trial court nor the parties had the benefit of this Court's recent decision in *Genser* at the time of hearing. Therein, two electors in Butler County attempted to vote by mail-in ballots in the 2024 Primary Election, but due to disqualifying errors,¹¹ the ballots were not counted. *Id.* at 2-3. As such, the Butler County Board of Elections (Butler County Board) updated the SURE system to reflect that the electors' ballots would not be counted, which triggered an automatic e-mail to be sent to the electors explaining the same. However, the email also stated: "you can go to your polling place on election day and cast a provisional ballot." *Id.* at 3 (emphasis removed). Despite casting provisional ballots in accord with the e-mail's instruction, the provisional ballots were also rejected. *Id.* The electors subsequently filed a petition for review in the Court of Common Pleas of Butler County (Common Pleas Court), arguing, *inter alia*, that the Butler County Board rejected their provisional ballots in violation of the Election Code. *Id.* Ultimately, the Common Pleas Court dismissed the electors' petition "as [the Butler County Board's] actions were in accord with Section [1210(a.4)(5)(i) and (ii)(F) of the Election Code,] 25 P.S. §3050(a.4)(5)(i), (ii)(F), which it read to foreclose the counting of provisional ballots cast by electors who had timely submitted mail-in ballots, even if those electors' timely submitted main-in ballots were previously rejected." *Id.* at 10-11.

On appeal, this Court considered the following provisions of the Election Code. *See Genser*, slip op. at 11-13. The "Having Voted Clause" under Section 1306-D(b)(2) of the Election Code provides: "An elector who requests a mail-in ballot and who is not shown on the district register as **having voted** may vote by provisional ballot under Section 1210(a.4)(1)." 25 P.S. §3150.16(b)(2)

¹¹ The electors failed to place their mail-in ballots in a secrecy envelope required by Section 1306-D(a) of the Election Code, 25 P.S. §3150.16(a). *See Genser*, slip op. at 3.

(emphasis added). However, the “Casting Clause” and the “Timely Received Clause” under Section 1210(a.4)(5)(i) and (ii)(F) of the Election Code provide:

(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.

(ii) A provisional ballot shall not be counted if:

* * *

(F) 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)(i), (ii)(F) (emphasis added).

In construing these three provisions, this Court determined that the Casting and Timely Received Clauses are ambiguous when considered alongside the Having Voted Clause. *Genser*, slip op. at 24. Specifically, the Court had to determine “the meaning of *vote*, *voted*, *timely received*, *cast*, and *ballot*.” *Id.* (emphasis in original). The Court explained:

There is no congruence across the language of these clauses. They use different verbs (sometimes used adjectivally as past participles). *Vote* or *having voted* is not *received* is not *cast*. All three sections refer to the noun *ballot* but none defines it. **This lack of congruence is apparent here where [the e]lectors’ ballots were timely received, but they had not voted.**

Id. at 24 n.16 (emphasis added).

To resolve this ambiguity, the Court first analyzed the Election Code's objective:

As observed by our Supreme Court in *Boockvar*, “the purpose of and objective of the Election Code, which contains Act 77 ^[12], is ‘to obtain freedom of choice, a fair election and an honest election return.’” This objective is advanced by ensuring that each qualified elector has the opportunity to vote exactly once in each primary or election. Not zero times, which would deprive an elector of the freedom of choice, and not twice, which would prevent an honest election return.

Genser, slip op. at 29 (citation omitted). The Court observed that the purpose of Act 77 was to make voting more convenient for qualified electors and stated: “Despite its use of ambiguous terms as described above, the General Assembly clearly included the Having Voted Clause to give mail-in electors the opportunity to vote provisionally so long as they are ‘not shown on the district register as having voted’ by mail.” *Id.* at 29-30.

In *Genser*, this Court ultimately held that:

The General Assembly obviously *did* intend that mail-in and absentee voters can vote by provisional ballot if they have not already voted an earlier ballot, as [Sections 1306(b)(2)¹³ and 1306-D(b)(2) of the Election Code, 25 P.S. §§3146.6(b)(2), 3150.16(b)(2)] provide. This entails the proposition that the provisional ballots so authorized could be counted under some circumstances. The General Assembly *did not* intend for those authorized provisional

¹² Act 77 established state wide universal mail-in voting. Section 1301-D-1307-D of the Election Code, added by Act 77, 25 P.S. §§3150.11-3150.17. In addition, however, “Act 77 eliminated the option for straight-ticket voting; moved the voter registration deadline from thirty to fifteen days before an election; allocated funding to provide for upgraded voting systems; and reorganized the pay structure for poll workers, along with other administrative changes.” *McLinko v. Department of State*, 279 A.3d 539, 543 (Pa. 2022).

¹³ Added by the Act of March 6, 1951, P.L. 3.

ballots to be rendered meaningless, essentially void *ab initio*, whenever the elector has made an earlier but unsuccessful *attempt* to cast or vote a ballot. . . .

We reject [the a]ppellees’ argument that reaching this result would effectively write a mandatory ballot-curing procedure into the [Election] Code the [Election] Code independently authorizes electors to vote by provisional ballot, and when properly construed, it requires the [c]ounty to count the provisional ballots here. That does not depend on any ballot curing process, whether optional or mandatory. The provisional ballot is a separate ballot, not a cured initial ballot. To conclude, as the [t]rial [c]ourt did, that ‘any chance . . . to cast[] a provisional vote[] constitutes a ‘cure’” is to both overread [*Boockvar*] and to read the provisional voting sections out of the [Election Code].

Genser, slip op. at 32-33 (emphasis added).

Therefore, we are persuaded by this Court’s decision in *Genser* and reject many of Appellants’ claims for the same reasons asserted therein: (1) *Boockvar* is distinguishable from the instant matter; (2) the Election Code created a statutory right to cast a provisional ballot as a “failsafe” to ensure otherwise qualified electors may cast their vote and have it counted; (3) which does not amount to “curing” a defective mail-in ballot. Hence, the remaining issues pertain to justiciability and whether procedural due process requires the County Board to afford Appellees notice of their disqualification. On those issues,¹⁴ we see no reason to depart from the laudable reasoning of the trial court.

¹⁴ On the issue of justiciability, we rely on the trial court’s opinion. However, we also observe that the County Board held a public meeting on September 12, 2024. Per the meeting agenda, the County Board elicited public comment and also discussed the “[s]tatus of [the] RNC [a]ppeal.” However, there is no indication that the County Board did, in fact, undertake a new policy for the 2024 General Election. The agenda is available on the County Board’s website: [9_12_24_Board_of_Elections_Public_Agenda_cc5b0a08ff.pdf](#) (washingtoncopa.gov) (last visited 9/19/24). See *Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017) (Courts **(Footnote continued on next page...)**)

Appellants once again argue that the Legislative Act Doctrine bars the application of procedural due process here. Appellants' Brief at 22-23. More particularly, Appellants believe the County Board's choice of input in the SURE system is merely a policy choice rather than an adjudication. *Id.* We reject that view.

The Legislative Act Doctrine distinguishes between government conduct which is legislative in character or adjudicatory in character. *Washington*, 306 A.3d at 297-97; *Small v. Horn*, 722 A.2d 664, 676 (Pa. 1998). As indicated, procedural due process protections only extend to adjudicatory government conduct. *Id.*

Adjudicative agency actions are those that affect one individual or a few individuals, and apply existing laws or regulations to facts that occurred prior to the adjudication. Agency actions that are legislative in character result in rules of prospective effect and bind all, or at least a broad class of, citizens.

Sutton v. Bickell, 220 A.3d 1027, 1032 (Pa. 2019).

Here, as the trial court aptly reasoned, the County Board's canvassing determinations amount to an adjudication because the canvassing determinations apply the existing provisions of the Election Code and prevent a small number of otherwise qualified electors from having their vote counted. It is true that the Policy ensures that all mail-in and absentee voters are left unaware as to whether they will have their vote counted. The critical difference, however, is that some voters, like Electors, are thereby deprived of their two-day window to contest their disqualification and do not have the requisite notice of their right to cast a provisional

may take judicial notice of information made publicly available by government entities, including on their websites.).

ballot on election day. Hence, unlike a legislative act, the Policy effectively only binds a small class of citizens, who are prevented from exercising their constitutional and statutory rights, even if it leaves all mail-in voters in Washington County in the dark.

Next, Appellants repeat their argument that Electors possess no liberty interest in contesting the segregation and disqualification of their mail-in ballot under Section 1407 or the right to have their provisional ballot counted as a failsafe under Section 1306-D. Appellants' Brief at 23-30. In their view, the trial court's decision is aimed at the Elections Office staff's initial segregation of the ballot and the attendant SURE system input, such that Section 1407 is inapplicable because it pertains to the *canvass board's* decision which takes place after election day. *Id.* at 26-27. Appellants even go so far as to suggest that the trial court's holding otherwise betrays the court's ulterior motive: to judicially mandate a notice and cure procedure. *Id.* We firmly disagree.

First, "[t]he protections of due process afforded under the Pennsylvania Constitution are broader than the protections afforded under the United States Constitution." *Marchionni v. Southeastern Pennsylvania Transportation Authority*, 715 A.2d 559, 562 n.2 (Pa. Cmwlth. 1998).¹⁵ Pennsylvania's due process clause provides: "All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." Pa. Const. art. I, §1. To succeed on a procedural due process claim, the aggrieved party must establish that the government has

¹⁵ For example, the Pennsylvania Constitution guarantees a fundamental liberty interest to one's reputation. *See D.C. v. Department of Human Services*, 150 A.3d 558, 566 (Pa. Cmwlth. 2016) (citing Pa. Const. art. I, §§1,11)).

deprived them of a protected property interest or liberty interest. *Save Our Saltsburg Schools v. River Valley School District*, 285 A.3d 692, 697-98 (Pa. Cmwlth. 2022) (citing *Miller v. Workers' Compensation Appeal Board (Pavex, Inc.)*, 918 A.2d 809, 812 (Pa. Cmwlth. 2007)). If a liberty interest is identified, then procedural due process protections must attach, meaning: “adequate notice, opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction of the case.” *Lawson v. Department of Public Welfare*, 744 A.2d 804, 806-07 (Pa. Cmwlth. 2000).

Article I, section 5 of the Pennsylvania Constitution, Pa. Const. art. I, §5, also known as the free and equal elections clause, protects the right to vote as a fundamental right. *See Banfield v. Cortes*, 110 A.3d 155, 176 (Pa. 2015). In fact, this right “is pervasive of other basic civil and political rights[.]” *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999).¹⁶

Presently, the General Assembly has directed that electors aggrieved by a county board of elections may seek redress for an injury done to them in the process of exercising the fundamental right to vote. Thus, we conclude that electors possess a liberty interest to contest the disqualification, as to hold otherwise would render Section 1407 perfunctory in contravention of the above discussed provisions of the Pennsylvania Constitution. Indeed, here, none of the Electors were aware that their

¹⁶ *See also* article I, section 11 of the Pennsylvania Constitution, Pa. Const. art. I, §11 (“Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.”); Section 1407(a) of the Election Code, 25 P.S. §3157(a) (“Any person aggrieved by any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election . . . may appeal to the court . . . specified in this subsection”); Section 1407(b) of the Election Code, 25 P.S. §3157(b) (“The court on an appeal shall have full power and authority to hear and determine all matters pertaining to any fraud or error committed in any election district to which such appeal relates”).

ballots had not been counted until after election day. *See* Joint Stipulation of Facts ¶¶9-15. In fact, at least two of the Electors were unaware that their ballots had not been counted *for months* after the Primary. *Id.* ¶¶11, 15. We do not believe our Constitution countenances such a deprivation without notice and an opportunity to be heard; thus, we conclude the Policy contravenes due process.¹⁷

Finally, Appellants assert that the trial court erred by requiring too burdensome of a notification procedure. Appellants' Brief at 31-32. If anything, Appellants argue that the trial court should have ordered an alternative procedure to afford notice under the *Mathews* test, *e.g.*, publishing a list of voters whose mail-in or absentee ballots were not counted. Appellants' Brief at 31. We reject this view, especially because, per the Joint Stipulation of Facts, the County Board afforded notice to electors whose ballots were segregated for the 2023 elections. Joint Stipulation of Facts ¶¶26-27.

To conclude, the current Policy emasculates the Election Code's guarantees by depriving voters - like Electors herein - the opportunity to contest their disqualification or to avail themselves of the statutory failsafe of casting a provisional ballot. Thus, the trial court's award of permanent injunctive relief is proper, because: (1) Appellees possess a clear right to relief; (2) the harm electors will continue to suffer under the Policy cannot be compensated by damages; and (3) continuing to deny electors procedural due process will cause far greater injury than granting the requested injunctive relief (which the County Board is easily capable of doing). We similarly agree with the trial court in all other respects.

¹⁷ Additionally, we are not persuaded by Appellants' distinction between segregation and canvassing. Although the trial court's remedy was aimed at the conduct which would best apprise Electors that their ballots were not counted, *i.e.*, the initial segregation, it was for the purpose of ensuring the Electors' liberty interest in challenging the County Board's canvassing decision.

Accordingly, the trial court's order is AFFIRMED.¹⁸

Michael H. Wojcik

MICHAEL H. WOJCIK, Judge

Judge Dumas dissents and wishes to merely be so noted.

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¹⁸ On September 10, 2024, Appellants filed an Application for Relief seeking to file a corrected brief after discovering technical errors in their otherwise timely filed brief. The Application for Relief is GRANTED. On September 11, 2024, after timely filing their briefs, Appellees filed an Application for Relief seeking to file corrected copies of their brief in this Court. The Application for Relief is GRANTED.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Center for Coalfield Justice,
Washington Branch NAACP,
Bruce Jacobs, Jeffrey Marks,
June Devaughn Hython,
Erika Worobec, Sandra Macioce,
Kenneth Elliott, and David Dean

V.

No. 1172 C.D. 2024

Washington County Board of
Elections, Republican National
Committee and Republican Party
of Pennsylvania,

Appellants

ORDER

AND NOW, this 24th day of September, 2024, the August 23, 2024 Order of the Court of Common Pleas of Washington County is **AFFIRMED**. The parties' respective Applications for Relief to file corrected briefing in this matter is GRANTED.

Michael H. Wojcik
MICHAEL H. WOJCIK, Judge

EXHIBIT B

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IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

CENTER FOR COALFIELD JUSTICE,
WASHINGTON BRANCH NAACP,
BRUCE JACOBS, JEFFREY MARKS,
JUNE DEVAUGHN HYTHON,
ERIKA WOROBEK, SANDRA MACIOCE,
KENNETH ELLIOTT, AND DAVID DEAN,
Plaintiffs,

vs.

WASHINGTON COUNTY BOARD OF
ELECTIONS,
Defendant.

vs.

REPUBLICAN NATIONAL COMMITTEE and
REPUBLICAN PARTY OF PENNSYLVANIA
Intervenors.

No. 2024-3953

SUMMARY

According to current law, the Washington County Board of Elections may decide to have a policy that does not notify qualified electors of an error on their mail-in packets and an opportunity to cure the error. As the law stands today, it is clear that only the legislature can address that specific issue. However, any policy the Washington County Board of Elections adopts must not go beyond the scope of “notice and opportunity to cure” by including provisions which violate a qualified electors’ statutory rights. The current Washington County Board of Elections’ policy violates an elector’s right to challenge the canvass boards determination that there is an error on the mail-in packet.¹ The Washington County Board of Elections’ policy also seemingly violates the law by preventing a qualified elector from casting a provisional ballot when the elector has not “voted”.

¹ This Court uses the term mail-in packet to denote the entire item sent in by an elector including the ballot itself as well as the declaration envelope.

The Pennsylvania Supreme Court in *Pennsylvania Democratic Party v. Boockvar*², resolved the issue of “notice and opportunity to cure.” The issues being addressed in this opinion are issues of first impression.

The procedural due process issue raised in this case is relatively straightforward. The legislature included a provision in the Election Code to allow electors the right to challenge the decision of the canvass board, an unelected body.³ The policy adopted by the Washington County Board of Elections clearly did not give notice to any elector whose mail-in packet had an error and that their ballot would not be counted. The elector has a statutory right to challenge the decision of the canvass board. This challenge may not ultimately be successful; however, the elector still has a right to be heard by a fair and impartial tribunal. A governmentally appointed board does not have unfettered decision-making power to decide if a ballot will be cast and counted. The policy adopted by the Washington County Board of Elections clearly violated the statutory right to allow a person checks and balances against the government. Plaintiffs’ motion for summary judgment is GRANTED on this issue.

The Washington County Board of Elections shall notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects. The Washington County Board of Elections shall input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested.

The next issue is whether a qualified elector whose mail-in packet has been segregated for a disqualifying error should be able to cast a provisional ballot. This issue is also addressed by Pennsylvania’s Election Code. 25 P.S. § 3150.16(2) provides that “[a]n elector who requests a

² 662 Pa. 39, 238 A.3d 345 (2020).

³ 25 P.S. § 3157.

mail-in ballot and who is not shown on the district register as having **voted** may vote by provisional ballot.”⁴

The legislature and current law do not define the word voted. Based on the current information this Court received, this Court finds an elector whose mail-in packet is segregated for a disqualifying error and whose ballot will not be counted, did not vote. Taking into consideration all of the information provided to this Court, the motions for summary judgment requested by all parties for this issue are DENIED. However, the plaintiff’s request for an injunction is GRANTED. The Washington County Board of Elections shall indicate in each district poll register a person whose mail-in packet is being segregated as a person who has not voted, allowing the individual to submit a provisional ballot at the polls.

⁴ Emphasis added.

OPINION AND ORDER

AND NOW, this 23rd day of August, 2024, upon consideration of the cross-filed motions for Summary Judgment, the materials attached thereto, the Parties' Joint Stipulation of Facts, the deposition transcripts provided to the Court, and the arguments of Counsel, the Court ORDERS, ADJUDGES, and DECREES that the Plaintiff's Motion for Summary Judgment against Defendant Washington County Board of Elections is GRANTED in part and DENIED in part and Plaintiff's request for a permanent injunction is GRANTED in part. Defendant Washington County Board of Elections' and Intervenor Republican National Committee and Republican Party of Pennsylvania's Motions for Summary Judgment are DENIED. Defendant Washington County Board of Elections is hereby ordered to notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects. The Washington County Board of Elections shall input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested.

Defendant Washington County Board of Elections is hereby ordered to properly document in the poll books that the elector has not "voted" when an elector's mail-in packet is segregated for a disqualifying defect in accordance with 25 P.S. § 3150.16 (which will allow the elector the opportunity to cast a provisional ballot) and choose the most appropriate selection in the SURE system to reflect as such.

FACTUAL BACKGROUND

In 2023, the Washington County Board of Elections (“Board”) adopted a “notice and cure” policy regarding mail-in packets cast in the 2023 primary and general elections.⁵ In conjunction with this policy, voters who submitted defective packets were notified and permitted to “cure” their packets by going to the Elections office to correct a defective signature, request a replacement mail-in packet, or vote a provisional ballot on Election Day.⁶ At a meeting on March 12th, 2024, the Board discussed whether it would continue this policy for the 2024 primary election.⁷ On April 11th, 2024, after mail-in packets had already been sent out, the Board voted to enact a policy that does not provide any notice or cure for mail-in packets.⁸ Despite public comment opposing the Board’s decision and their awareness that 170 packets had already been segregated for disqualifying errors, the Board did not change their decision at an April 18th, 2024 meeting.⁹

In accordance with this policy, all packets received by the Elections office were marked in the State’s SURE system as “record – ballot returned” regardless of whether they were segregated for disqualifying errors or not.¹⁰ Electors who inquired about the status of their mail-in packet were told whether their packet had been received, but were not informed if their packet had been segregated.¹¹ The poll books on election day indicated only whether a voter had requested a mail-in packet and whether that packet had been received, but did not note whether the packet had a

⁵ Joint Stip. of Facts, ¶ 26.

⁶ *Id.* ¶ 27-28.

⁷ *Id.* ¶ 29.

⁸ *Id.* ¶ 31, 33-35.

⁹ *Id.* ¶ 36-39.

¹⁰ *Id.* ¶ 41-42.

¹¹ *Id.* ¶ 44.

disqualifying error.¹² No voters whose packets had been set aside cast a provisional ballot on election day and no voter plaintiff contested their vote under 25 P.S. § 3157.¹³

On May 17th, 2024, the Board responded to a Right-To-Know-Law request which revealed 259 timely received mail-in packets were not counted due to various errors including “incomplete date[s]”, “incorrect date[s]”, lack of signature, ect.¹⁴ These mail-in packets accounted for 2% of all timely-received mail-in packets and included both Democratic and Republican voters.¹⁵ On July 1st, 2024, Plaintiffs filed their Complaint against the Board alleging a violation of Plaintiffs’ Procedural Due Process. Plaintiffs are composed of the Center for Coalfield Justice (“CCJ”) and the Washington Branch NAACP (“Washington NAACP”), both non-profit organizations, as well as seven named voter plaintiffs.¹⁶

On July 3rd, 2024, Plaintiffs filed a motion for a preliminary injunction. Parties appeared before this Court on July 9th, 2024, to present this motion and engaged in a scheduling conference to expedite this matter. As a result, no ruling was made on this motion and the parties submitted a joint stipulation which was confirmed by this Court permitting the Republican National Committee and the Republican Party of Pennsylvania (“Republican Intervenors”) to intervene. The Joint Stipulation also agreed that the matter would be settled through motions for summary judgment and set forth a schedule for motions, briefs, response, and a stipulation of facts to be submitted to the Court. On July 26th, per the joint stipulation order, the parties filed a Joint Stipulation of Facts along with Motions for Summary Judgment and accompanying briefs. This Court heard Argument

¹² *Id.* ¶ 46.

¹³ *Id.* ¶ 49-50.

¹⁴ *Id.* ¶ 51-52.

¹⁵ *Id.* ¶ 52.

¹⁶ *Id.* ¶ 1-4, 7-15.

on August 5th, 2024, regarding the motions for Summary Judgment filed by the Plaintiffs, Board, and Republican Intervenors, and this opinion and order follows.

DISCUSSION

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”¹⁷ “As the Supreme Court of the United States has explained, the right to vote comprises not just ‘the right of qualified voters within a state to cast their ballots,’ but also the right ‘to have their ballots counted.’”¹⁸

“A trial court should grant summary judgment only in cases where the record contains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”¹⁹ The trial court “must accept as true all well-pleaded facts in the non-moving party’s pleadings, and give to [them] the benefit of all reasonable inferences to be drawn therefrom.”²⁰ “[T]he court may grant summary judgment only when the right to such a judgment is clear and free from doubt.”²¹ “If there is evidence that would allow a fact-finder to render a verdict in favor of the non-moving party, then summary judgment should be denied.”²²

Further, to be awarded a permanent injunction, the party seeking relief must establish “(1) that his right to relief is clear, (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages, and (3) that greater injury will result from refusing rather than granting

¹⁷ *Pennsylvania Democratic Party v. Boockvar*, 662 Pa. 39, 238 A.3d 345, 386-87 (2020).

¹⁸ *Id.* at 387.

¹⁹ *Bourgeois v. Snow Time, Inc.*, 242 A.3d 637, 649-50 (Pa. 2020), citing *Summers v. Certainteed Corporation*, 997 A.2d 1152, 1159 (Pa. 2010).

²⁰ *Jefferson v. State Farm Ins. Companies*, 551 A.2d 283, 284 (Pa. Super. 1988).

²¹ *Erie Insurance Exchange v. Moore*, 175 A.3d 999, 1008 (Pa. Super. 2017)(citations omitted).

²² *Reinoso v. Heritage Warminster SPE LLC*, 108 A.3d 80, 85 (Pa. Super. 2015), quoting *Mull v. Ickes*, 994 A.2d 1137, 1139-40 (Pa. Super. 2010).

the relief requested.”²³ “However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.”²⁴

1. Justiciability Issues

Before this Court can determine whether summary judgment should be granted on the merits of the case, issues related to the justiciability of the matter must be addressed.²⁵ Both the Board and the Republican Intervenors raised the issues of whether the Plaintiffs have standing, and whether the matter is either not yet ripe to be addressed or moot.²⁶ This Court addresses each issue as follows.

a. Standing

To establish standing, “courts require a plaintiff to demonstrate he or she has been ‘aggrieved’ by the conduct he or she challenges.”²⁷ “To determine whether the plaintiff has been aggrieved, Pennsylvania courts traditionally examine whether the plaintiff’s interest in the outcome of the lawsuit is substantial, direct, and immediate.”²⁸ “A party’s interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party’s interest is immediate when the causal connection with the alleged harm is neither remote nor speculative.”²⁹

²³ *City of Philadelphia v. Armstrong*, 271 A.3d 555, 560-61 (Pa. Commw. Ct. 2022) (quoting *Kuznik v. Westmoreland County Board of Commissioners*, 902 A.2d 476, 489 (Pa. 2006)).

²⁴ *Id.* (quoting *Buffalo Township v. Jones*, 813 A.2d 659, 663-64 (Pa. 2003)).

²⁵ See, *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021).

²⁶ Defendant Washington Cnty. Bd of Elections Motion for Summary Judgment, ¶ 1-5; Intervenor’s Motion for Summary Judgment ¶ 5.

²⁷ *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021).

²⁸ *Id.*

²⁹ *Id.*

i. Voters

The Board alleges the voter plaintiffs lack standing because any harm they face is speculative and lacks a causal connection between the harm and relief.³⁰ Republican Intervenors allege voter plaintiffs lack standing because their interests are no different than any other voter in Washington County.³¹ In response, the Plaintiffs argue it is not speculative that if subjected to the Board's policy during the general election,³² if any errors are made on voter plaintiffs mail-in ballots, they will not know they made an error which caused their ballot to be disqualified or what kind of error was made.³³ Plaintiffs argue there is a direct causal connection between the relief they seek - being provided with information about whether their ballot was segregated due to a disqualifying error, and the harm they seek to address - their vote not counting, because having accurate information about their ballot would allow them to vote a provisional ballot, thereby providing a remedy.³⁴ Plaintiffs also argue the right to notice they are seeking under due process does not require a concrete relief, rather the pre-deprivation process itself is a form of relief.³⁵ In response to the arguments presented by the Republican Intervenors, Plaintiffs argue "the fundamental thrust of the 'substantial interest' inquiry is whether the Board's actions have 'some discernible adverse effect' on Voter Plaintiffs' procedural due process rights beyond an 'abstract

³⁰ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 18.

³¹ Intervenors' Br. in Support of Motion for Summary Judgment, p. 23.

³² The Board and Republican Intervenors argue that the Board has not yet decided what policy will be in place for the November general election, however, there has been no indication that the policy will be changed and therefore the policy used in the April primary is still in effect. "Past practice in 2023, what was followed in the primary, was again voted and decided to follow in the general election, so based on that, most likely it will be the same." Ostrander Depo. Tr. 127:10-14.

³³ Pl. Omnibus Memo. of Law in Opposition, p. 45.

³⁴ *Id.* at 53-54.

³⁵ *Id.* at 54.

interest' in ensuring the Board does not violate the Pennsylvania Constitution" and voter plaintiffs have "concrete, identifiable interests that distinguish them from the public at large."³⁶

After considering all the arguments, this Court finds the voter plaintiffs have a substantial interest in protecting their due process rights in the upcoming election. This Court finds the Board's failure to notify the voter plaintiffs as to disqualifying errors deprived qualified electors the ability to challenge the decision made by the canvass board to reject the elector's mail-in packet.³⁷ Electors also were deprived of their right to have an opportunity to cast a provisional ballot. Finally, this Court finds the voter plaintiffs' interest is immediate as the November general election is only a few months away and voter plaintiffs intend to cast their votes via mail-in packets subject to the Board's actions. As such, this Court finds the voter plaintiffs have standing.

ii. Organizational Standing

The Board and Republican Intervenors both allege the organizational plaintiffs lack standing because "an organization's expenditure of resources alone ordinarily does not confer standing," and an organization cannot "base standing on the diversion of resources from one program to another" and because a causal connection is lacking.³⁸ Organizational Plaintiffs argue they have established cognizable legal interests in the litigation as the Board's conduct interferes with their ability to conduct their respective missions by forcing them to mitigate the impact of the Board's actions on their members.³⁹

³⁶ *Id.* at 44. See also, *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975); *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009).

³⁷ This Court notes that the Parties focused on whether there was a causal connection between harm and relief, however, this is not what the "direct" aspect of standing requires. A party's interest "is direct when the asserted violation shares a causal connection with the alleged harm." *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021) (emphasis added).

³⁸ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 21; Intervenors' Br. in Support of Motion for Summary Judgment, p. 26. See also, *Ball v. Chapman*, 289 A.3d at 19 n.103.

³⁹ Pl. Omnibus Memo. of Law in Opposition, p. 50-51.

Organizational plaintiffs must establish that their interest in the outcome of the lawsuit is substantial, direct, and immediate, the same as individual plaintiffs. Here, both Organizational Plaintiffs have programs targeted toward increasing civic engagement and voting participation.⁴⁰ Unlike members of the general public, the Organizational Plaintiffs business activities were directly interfered with by the Boards actions as they provide voting information to their members and the public in Washington County. Organizational plaintiffs' interests are direct because the Board's actions in failing to provide notice to individuals has interfered with organizational plaintiffs' ability to provide clear and accurate information in their civil engagement programs. Organizational plaintiffs' resources were drawn away from all other initiatives. This interest is immediate as it will remain ongoing through the November general election as organizational plaintiffs work to ensure their members are able to actively participate in the election process. Based on the above reasoning, this Court finds the organizational plaintiffs have standing in this matter.

b. Timing Issues

i. Ripeness

To decide whether the doctrine of ripeness bars consideration of an action, it must be determined "whether the issues are adequately developed for judicial review and what hardships the parties will suffer if review is delayed."⁴¹ Factors in an inquiry as to if the issues are adequately developed include: "whether the claim involves uncertain and contingent events that may not occur as anticipated or at all; the amount of fact finding required to resolve the issue; and whether the parties to the action are sufficiently adverse."⁴² "Under the 'hardship' analysis, we may address

⁴⁰ Joint Stip. of Facts, ¶ 1, 3.

⁴¹ *Twp. of Derry v. Pennsylvania Dep't of Lab. & Indus.*, 593 Pa. 480, 482, 932 A.2d 56, 58 (2007).

⁴² *Id.*

the merits even if the case is not as fully developed as we would like, if refusal to do so would place a demonstrable hardship on the party.”⁴³ “[T]he justiciability doctrines of standing and ripeness are closely related because both may encompass allegations that the plaintiff’s harm is speculative or hypothetical and resolving the matter would constitute an advisory opinion.”⁴⁴ “However, ripeness is distinct from standing as it addresses whether the factual development is sufficient to facilitate a judicial decision.”⁴⁵

The Board and Republican Intervenors argue the matter is not ripe as the alleged harm is entirely speculative.⁴⁶ Plaintiffs argue the matter is clearly ripe as the procedures put into place by the Board ahead of the April 2024 primary remain in place “unless and until the Board decides to change course.”⁴⁷ In considering all of the factors and arguments made, this Court finds although the Board may change its policy, the policy used at the April 2024 primary election is still in effect; the parties have stipulated to sufficient factual findings for this Court to resolve the issue, and the parties are sufficiently adverse. Additionally, this Court finds that even if the case could be developed more, doing so would place a hardship on the parties in not having a result in time for the November general election. Therefore, this Court finds that the matter is ripe to be addressed.

ii. Mootness

“[A]t every stage of the judicial process, an actual case or controversy must usually exist to avoid dismissal for mootness.”⁴⁸ “Moreover, a change in the facts may render a case moot even

⁴³ *Id.*

⁴⁴ *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 482 (Pa. 2021).

⁴⁵ *Id.*

⁴⁶ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 18; Intervenors’ Br. in Support of Motion for Summary Judgment, p. 19.

⁴⁷ Pl. Omnibus Memo. of Law in Opposition, p. 40-42. Plaintiffs point to the fact that in 2023, the Board conducted a vote prior to the May primary but no new vote was held in September in order to continue the policy, therefore while the Board may meet to discuss whether or not to maintain the policy for the November 2024 general election, no vote will be needed unless the policy is being changed.

⁴⁸ *Erie Ins. Exch. v. Claypoole*, 673 A.2d 348, 353 (Pa.Super.Ct. 1996).

though it had once been actual.”⁴⁹ In addition to their claim the case is not ripe, the Board also claims that Plaintiff’s case is moot because the SURE-generated emails sent in response to the codes entered by the Election Office are being modified by the Pennsylvania Department of State for the November election.⁵⁰ In response, Plaintiffs argue even if this Court were to find the matter moot if the Board could guarantee all voter plaintiffs’ votes would be counted in November, it may still consider this matter for two reasons: 1) that the matter is capable of repetition yet evading review, and 2) that the matter is of public importance.⁵¹

This Court need not consider any exceptions to the mootness doctrine as this Court finds that Plaintiff’s claims are not moot. Any changes to the SURE generated emails do not address the issue of plaintiff voters and any other similarly situated individuals being unaware that their mail-in ballots have been segregated and will not be counted due to disqualifying errors.

2. Procedural Due Process

Having determined the matter presented to this Court is justiciable, this Court’s analysis shifts to address Plaintiffs’ claim that the Board’s actions “concealing voters’ mail-in ballot status and affirmatively misleading many voters violates Plaintiffs’ procedural due process rights.”⁵²

Under the United States Constitution, no state may “deprive any person of life, liberty, or property, without due process of law.”⁵³ “This axiom of American jurisprudence, termed procedural due process, ‘imposes constraints on governmental decisions which deprive individuals’ of any of these fundamental rights.”⁵⁴ “Courts examine procedural due process in two

⁴⁹ *Id.*

⁵⁰ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 16-17.

⁵¹ Pl. Omnibus Memo. of Law in Opposition, p. 46.

⁵² Pl. Compl. ¶ 153.

⁵³ U.S. CONST. amend. XIV § 1.

⁵⁴ *Washington v. PA Dep’t of Corr.*, 306 A.3d 263, 284 (Pa. 2023). *See also, Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

steps: the first asks whether there is a life, liberty, or property interest with which the state has interfered, and the second examines whether the procedure attendant to that deprivation are constitutionally sufficient.”⁵⁵

“[T]he basic elements of procedural due process are ‘adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case.’”⁵⁶ “Importantly, the right to procedural due process is distinct from the right the government seeks to impair.”⁵⁷ “Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.”⁵⁸ Numerous issues related to Plaintiffs’ due process claim have been raised by the parties such as whether Plaintiffs’ claim is barred by the Legislative Act Doctrine, whether Plaintiffs have a cognizable liberty interest, and whether Plaintiffs’ claim has been previously decided under *Pennsylvania Democratic Party v. Boockvar*.⁵⁹ This Court addresses each issue and any related matters as follows.

a. Legislative Act Doctrine

“It is well settled that procedural due process concerns are implicated only by adjudications, not by state actions that are legislative in character.”⁶⁰ The Board and Republican Intervenors argue that Plaintiffs are challenging a purely legislative act by challenging the Board’s policy, and therefore their due process claim must fail.⁶¹ In response, Plaintiffs argue they “are challenging the series of individualized determinations the election staff have made and will make

⁵⁵ *S.F. v. Pennsylvania Dep’t of Hum. Servs.*, 298 A.3d 495, 510 (Pa. Commw. Ct. 2023). *See also, Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989).

⁵⁶ *S.F. v. Pennsylvania Dep’t of Hum. Servs.*, 298 A.3d 495, 510 (Pa. Commw. Ct. 2023).

⁵⁷ *Washington v. PA Dep’t of Corr.*, 306 A.3d 263, 285 (Pa. 2023).

⁵⁸ *Id.* *See also, Carey v. Piphus*, 435 U.S. 247, 259, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978).

⁵⁹ 662 Pa. 39, 238 A.3d 345 (2020).

⁶⁰ *Small v. Horn*, 554 Pa. 600, 613, 722 A.2d 664, 671 (1998).

⁶¹ *Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment*, p. 23-24; *Intervenors’ Br. in Support of Motion for Summary Judgment*, p. 46.

going forward: to set aside a voter's mail ballot because it has a known disqualifying error on the envelope; to miscode that ballot in the SURE system so that the voter never knows the ballot will not count even though there is still time for the voter to preserve their fundamental right to vote; and ultimately to not count the voter's mail ballot."⁶²

"Adjudicative agency actions are those that affect one individual or a few individuals, and apply existing laws or regulations to facts that occurred prior to the adjudication. Agency actions that are legislative in character result in rules of prospective effect and bind all, or at least a broad class of, citizens."⁶³ For example, a bulletin requiring all inmates to wear prison uniforms rather than civilian clothing⁶⁴ and a city-wide assessment value increase on taxable property⁶⁵ were legislative in character while a tax for the cost of paving a road abutting a group of landowners property⁶⁶ and a Department of Corrections policy for deducting funds from inmates accounts⁶⁷ were adjudicative.

Here, like in *Londoner* or *Washington*, the process of elections office staff screening and segregating mail-in ballots for those with disqualifying errors and then coding the ballot in the SURE system in a manner which provides no way for an individual voter to know that their ballot has been segregated affects a small portion of all mail-in voters and results in an adjudicative action.

Further, the Supreme Court of Pennsylvania has established that "a local ordinance is invalid if it stands 'as an obstacle to the execution of the full purposes and objectives' of the

⁶² Pl. Omnibus Memo. of Law in Opposition, p. 14.

⁶³ *Sutton v. Bickell*, 656 Pa. 278, 286, 220 A.3d 1027, 1032 (2019), quoting *Small v. Horn*, 554 Pa. 600, 613 n.12, 722 A.2d 664, 671 n.12 (1998).

⁶⁴ See, *Small v. Horn*, 554 Pa. 600, 722 A.2d 664 (1998).

⁶⁵ See, *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

⁶⁶ See, *Londoner v. City & Cnty. of Denver*, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (1908).

⁶⁷ See, *Washington v. PA Dep't of Corr.*, 306 A.3d 263 (Pa. 2023).

General Assembly, as expressed in a state law.”⁶⁸ “To determine whether the county has created such an obstacle, we assess the effect of the challenged ordinance on the proper functioning and application of the state enactment.”⁶⁹ “If the local ordinance impedes the operation of the state statute, the ordinance is preempted.”⁷⁰ “County legislation tailored to the particular locality is permitted, if the enactment merely aids and furthers the goals of the state statute.”⁷¹ “But, ‘local legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow.’”⁷²

As this Court finds that the Board’s policy is an adjudicative action and that this Court may properly examine whether the Board’s policy is valid under state law, this Court finds that the Plaintiffs’ claims are not barred by the Legislative Acts Doctrine.

b. Liberty Interest at stake in Due Process

“In order to determine whether a constitutional violation has occurred, a determination must initially be made that a protected liberty interest exists and, if so, what process is due.”⁷³ “Protected liberty interests may be created by either the Due Process Clause itself or by state law.”⁷⁴ The Board and Republican intervenors argue that Plaintiffs lack an underlying liberty interest protected by due process as no Pennsylvania Court has ever held that voting is a liberty interest protected by due process.⁷⁵ Plaintiffs argue “[t]his position is directly at odds with the

⁶⁸ *Fross v. Cnty. of Allegheny*, 610 Pa. 421, 438, 20 A.3d 1193, 1203 (2011) (quoting *Holt's Cigar Co. v. City of Philadelphia*, 608 Pa. 146, 10 A.3d 902, 907 (2011)).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* (quoting *Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont*, 600 Pa. 207, 964 A.2d 855, 862 (2009)).

⁷³ *Wilder v. Dep't of Corr.*, 673 A.2d 30, 32 (Pa. Commw. Ct. 1996).

⁷⁴ *Id.* See also, *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995); *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

⁷⁵ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 25-28; Intervenor’s Br. in Support of Motion for Summary Judgment, p. 39-40.

Pennsylvania Supreme Court's recognition of the inextricable link between the Pennsylvania Constitution's enumerated fundamental rights and the interests protected by the Due Process Guarantee. The Board's view also flies in the face of the origins of the right to vote in the constitution, and its place in the Declaration of Rights alongside entitlements to other individual freedoms."⁷⁶

Here, this Court finds that it is the right to challenge the decisions made by the county board at the canvass that constitute a liberty interest. Under 25 P.S. § 3157, "any person aggrieved by any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election...may appeal therefrom within two days after such order or decision shall have been made...setting forth why he feels that an injustice has been done, and praying for such order as will give him relief." At deposition, Director of the Washington County Board of Elections, Melanie Ostrander, confirmed that electors have the right to challenge the canvass board:

Q: For someone whose ballot is not counted because it's missing a signature or a date, do they have a right to challenge that action or appeal from that decision if you know?

A: During the canvass, the voter can challenge a decision made by the canvass board.

Protected liberty interests for purposes of procedural due process may be created by state law. Here, Pennsylvania has created a statutory right to receive due process regarding decisions made by the county board canvassing election returns. Additionally, under 25 P.S. 3150.16(2), electors have a statutory right to cast a provisional ballot if they are not shown on the district register as having voted. It is these protected liberty interests at issue in Plaintiffs complaint. As such, this Court must determine what process is due and whether Constitutional violations have occurred.

⁷⁶ Pl. Omnibus Memo. of Law in Opposition, p. 17-18.

c. *Anderson/Burdick* test vs *Mathews* test

Having found that the Plaintiffs set forth a cognizable liberty interest for procedural due process, this Court will proceed to a due process analysis.

In examining whether the procedures associated with any deprivation of Plaintiffs' right to challenge canvass decisions made by the canvass board are constitutionally sufficient or whether Plaintiffs' due process rights have been violated, this Court must first decide upon the applicable standard. Plaintiffs argue that the applicable test is a three-part balancing test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976).⁷⁷ The *Mathews* test "determine[s] what procedural due process requires in a given context...balanc[ing] (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards, and (3) the governmental interest, including costs and administrative burdens of additional procedures."⁷⁸ The Board argues that the appropriate test is the *Anderson/Burdick* framework.⁷⁹ Under *Anderson/Burdick*, "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'"⁸⁰ "But when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of

⁷⁷ Pl. Omnibus Memo. of Law in Opposition, p. 22-25.

⁷⁸ *C.S. v. Commonwealth, Dep't of Hum. Servs., Bureau of Hearings & Appeals*, 184 A.3d 600, 607 (Pa. Commw. Ct. 2018).

⁷⁹ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 35-39. This Court notes the Republican Intervenors do not make this argument.

⁸⁰ *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Norman v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 705, 116 L.Ed.2d 711 (1992)).

voters, ‘the State’s important regulatory interests are generally sufficient to justify the restrictions.’”⁸¹

Considering all of the parties’ arguments, this Court finds that the appropriate test is *Mathews*. As such, this Court balances (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards, and (3) the governmental interest, including costs and administrative burdens of additional procedures.⁸²

d. Free and Fair Elections vs Due Process

Further, the Board and Republican Intervenors argue if this Court finds that Plaintiffs’ claim has not yet been barred by the preceding reasons discussed above, it is precluded by the Pennsylvania Supreme Court’s decision in *Pennsylvania Democratic Party v. Boockvar*, 662 Pa. 39, 238 A.3d 345 (2020).⁸³ The Board and Republican Intervenors argue “the Pennsylvania Supreme Court has found that no constitutional, statutory, or legal right to notice and an opportunity to cure a defective mail-in ballot exists.”⁸⁴ In *Pennsylvania Democratic Party v. Boockvar*, Petitioners filed suit against Secretary of the Commonwealth and all 67 County Election Boards regarding a number of issues related to mail-in voting.⁸⁵ The issue raised in *Pennsylvania Democratic Party v. Boockvar* relevant here is whether Boards of Election should be required to “contact qualified electors whose mail-in or absentee ballots contain minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail, and provide them

⁸¹ *Id.*

⁸² *C.S. v. Commonwealth, Dep’t of Hum. Servs., Bureau of Hearings & Appeals*, 184 A.3d 600, 607 (Pa. Commw. Ct. 2018).

⁸³ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 28-29; Intervenors’ Br. in Support of Motion for Summary Judgment, p. 27-29.

⁸⁴ *Id.* at 28 (citing *Pennsylvania Democratic Party v. Boockvar*, 662 Pa. 39, 238 A.3d 345, 372-74 (2020)). See also, Intervenors’ Br. in Support of Motion for Summary Judgment, p. 27.

⁸⁵ 662 Pa. 39, 51, 238 A.3d 345, 352 (2020).

with an opportunity to cure those defects.”⁸⁶ In supporting their claims, Petitioner in *Pennsylvania Democratic Party v. Boockvar* relied upon the Free and Equal Elections Clause.⁸⁷ The Court in *Pennsylvania Democratic Party v. Boockvar* denied Petitioner’s claim on this matter concluding that “the Boards are not required to implement a ‘notice and opportunity to cure’ procedure for mail-in and absentee ballots that voters have failed out incompletely or incorrectly.”⁸⁸ The Court further stated “[p]ut simply, as argued by the parties in opposition to the requested relief, Petitioner has cited no constitutional or statutory basis that would countenance imposing the procedure Petition seeks to require...”⁸⁹

Unlike in *Pennsylvania Democratic Party v. Boockvar*, Plaintiffs here do not argue that relief should be granted under the Free and Equal Elections Clause, rather the actions of the Board are a violation of Plaintiffs due process rights. As the Petitioners in *Pennsylvania Democratic Party v. Boockvar* did not raise due process and the Pennsylvania Supreme Court therefore did not conduct a due process analysis, their holding does not bar Plaintiffs’ claim before this Court.

i. Notice under 25 P.S. § 3157 vs “notice and opportunity to cure”

Additionally, the matter before this Court is distinguishable from *Pennsylvania Democratic Party v. Boockvar* as Plaintiffs are not asking this Court to direct the Board to adopt a “notice and opportunity to cure” policy.⁹⁰ Instead “Plaintiffs are asking for pre-deprivation notice under Article I, Section 1 of the Pennsylvania Constitution so voters have an opportunity to exercise their right to vote.”⁹¹ As set forth above, “the basic elements of procedural due process are ‘adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and

⁸⁶ *Pennsylvania Democratic Party*, 662 Pa. 39, 83, 238 A.3d 345, 372 (2020).

⁸⁷ *Id.* at 84, 372. *See also* Pa. Const. art. I, § 5.

⁸⁸ *Id.* at 86, 374.

⁸⁹ *Id.*

⁹⁰ Pl. Omnibus Memo. of Law in Opposition, p. 5.

⁹¹ *Id.* at 5-6.

impartial tribunal having jurisdiction over the case.”⁹² As such, the issue before this Court is merely whether electors have a right to know that their vote will not be counted and be afforded the opportunity to challenge the canvass board’s decision. This case does not attempt to overturn or contradict the holding of *Pennsylvania Democratic Party v. Boockvar* as it relates to the Free and Fair Election Clause and “notice and opportunity to cure.”

Here, Pennsylvania Election law provides electors a clear and unequivocal right to challenge the decisions made by the canvass board under 25 P.S. § 3157. As set forth above, “any person aggrieved by any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election...may appeal therefrom within two days after such order or decision shall have been made...setting forth why he feels that an injustice has been done, and praying for such order as will give him relief.”⁹³ This is the private interest affected under *Mathews*. The risk of erroneous deprivation of that interest is high as electors have no notice that their ballot has been segregated and presumptively will not be counted. The burden on the government is low as there is a framework in place where a different entry code can be placed into a computer to provide notice to an elector that their ballot will not be counted and is subject to challenge. Also, the great staff in the elections office have proven to be more than capable of contacting electors based on the Board’s 2023 policy. Weighing all of these factors, this Court finds that under the *Mathews* test, the Board has violated Plaintiffs procedural due process.

In the alternative, if this Court were to evaluate Plaintiffs’ due process claims under the *Anderson/Burdick* framework as proposed by the Board, the result remains the same. Here, the Board’s regulation burdens Plaintiffs’ First and Fourteenth Amendment rights by depriving them of any notice whatsoever that their ballot – their vote – will not be counted. This lack of notice

⁹² *S.F. v. Pennsylvania Dep’t of Hum. Servs.*, 298 A.3d 495, 510 (Pa. Commw. Ct. 2023).

⁹³ 25 P.S. § 3157.

further deprives Plaintiffs any meaningful ability to challenge this decision.⁹⁴ This Court finds no state interest of compelling importance supported by this regulation. Therefore, even under the test proposed by the Board, the Board's regulation fails as it violates Plaintiffs' due process rights.

Therefore, this Court finds that there is no issue of material fact and Plaintiffs' are entitled to judgment as a matter of law and grants Plaintiffs' motion for summary judgment on this issue.

ii. "Cure" vs Provisional ballot and the Pennsylvania Election Law under 25 P.S. § 3150.11, 25 P.S. § 3150.16, and 25 P.S. § 3050.

The Board and Republican Intervenors argue that the relief sought by plaintiffs is illusory as provisional ballots cannot be used to "cure" deficient mail-in ballots.⁹⁵ The Board and Republican Intervenors also argue any grant of relief in favor of the Plaintiffs would essentially force this Court to rewrite election law.⁹⁶ Plaintiffs argue voting a provisional ballot is not "curing" as "the federal Help America Vote Act ("HAVA") and the Pennsylvania Election Code have long mandated the availability of provisional voting as a distinct failsafe to prevent voter disenfranchisement."⁹⁷

According to Miriam Webster dictionary, "to cure" is defined as "1) to restore to health, soundness, or normality, 2) to bring about recovery from, or 3) to deal with in a way that eliminates or rectifies."⁹⁸ For the 2023 election cycle, Washington County adopted a voluntary "notice and cure" policy. Under this policy, if a voter's ballot was segregated for a disqualifying error, such as a missing or incorrect date, or a missing signature, the voter could come into the elections' office

⁹⁴ The Board argued at the hearing that any elector wishing to challenge whether their ballot will count or not is able to attend the canvass board meeting which is advertised on the Board's website. This Court likens this procedure to conducting a sheriff's sale of property without any advertisement of which properties are to be sold and expecting any concerned individual to appear to ensure that their property is not one affected.

⁹⁵ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 24-26; Intervenors' Br. in Support of Motion for Summary Judgment, p. 30-34.

⁹⁶ Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 14-15, 19; Intervenors' Br. in Support of Motion for Summary Judgment, p. 29, 44.

⁹⁷ Pl. Omnibus Memo. of Law in Opposition, p. 9.

⁹⁸ *Cure*, Miriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/cure>, accessed August 14th, 2024.

and sign the declaration envelope to resolve a missing signature or fill out a new ballot and declaration envelope to resolve a missing or incorrect date.⁹⁹ These methods enabled voters to restore or recover their mail-in ballot. On the other hand, a provisional ballot is a separate ballot entirely. “A provisional ballot records your vote while the county board of elections determines whether it can be counted.”¹⁰⁰ Further, in *Pennsylvania Democratic Party v. Boockvar*, the Court makes no mention of provisional ballots, rather it agreed with respondents that procedures to “cure” minor or facial defects are best left to the legislature to address the precise contours.¹⁰¹ Upon this analysis, this Court finds that the process of a voter submitting a provisional ballot is not a “cure” of their deficient mail-in packet, but an altogether independent action. It is important to point out that are proper safeguards in place to ensure double voting does not occur and that the integrity of our elections is upheld.

Nevertheless, the Board and Republican Intervenors argue that the Election Code prohibits a provisional ballot from being counted if the elections office has received and found a voter’s mail-in ballot deficient.¹⁰² The Elections code addresses mail-in voting and provisional ballots in primarily three Sections: 25 P.S. § 3150.11, 25 P.S. § 3150.16, and 25 P.S. § 3050. Under 25 P.S. § 3150.11(a), “a qualified mail-in elector shall be entitled to **vote** by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.”¹⁰³ 25 P.S. § 3150.16 dictates that “(1) [a]ny elector who receives and **votes** a mail-in ballot under section 1301-D1¹⁰⁴ shall not be eligible to vote at a polling place on election day. The district

⁹⁹ Ostrander Depo. Tr. 40:1-11, 42:22-43:6.

¹⁰⁰ Voting by Provisional Ballot, Official Website of the Commonwealth of Pennsylvania, <https://www.pa.gov/en/agencies/vote/voter-support/provisional-ballot.html>, accessed August 14th, 2024.

¹⁰¹ 662 Pa. 39, 83-86, 238 A.3d 345, 372-74 (2020).

¹⁰² Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 24; Intervenors’ Br. in Support of Motion for Summary Judgment, p. 32.

¹⁰³ Emphasis added.

¹⁰⁴ 25 P.S. § 3150.11.

register at each polling place shall clearly identify electors who have received and **voted** mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who **voted** a mail-in ballot to vote at the polling place and (2) An elector who requests a mail-in ballot and who is not shown on the district register as having **voted** may vote by provisional ballot under section 1210(a.4)(1)¹⁰⁵.¹⁰⁶ Finally under 25 P.S. § 3050(5)(ii)(F), “[a] provisional ballot shall not be counted if: the elector’s absentee ballot or mail-in ballot is timely **received** by a county board of elections.”¹⁰⁷

When read individually, each statute appears clear and unambiguous, however, reading them *in pari materia* they appear to conflict, and this Court must examine further to determine if ambiguity truly exists. “A statute is ambiguous when there are at least two reasonable interpretations of the text.”¹⁰⁸ In construing and giving effect to the text, “we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear.”¹⁰⁹ The United States Supreme Court also takes a contextual approach in assessing statutes and in determining predicate ambiguity.¹¹⁰

¹⁰⁵ 25 P.S. § 3150.11.

¹⁰⁶ Emphasis added.

¹⁰⁷ Emphasis added.

¹⁰⁸ *A.S. v. Pennsylvania State Police*, 636 Pa. 403, 418-19, 143 A.3d 896, 905-06 (2016). See *Freedom Med. Supply*, 131 A.3d at 984; *Warrantech Consumer Prod. Servs. v. Reliance Ins. Co. in Liquidation*, 626 Pa. 218, 96 A.3d 346, 354-55 (2014); *Delaware County v. First Union Corp.*, 605 Pa. 547, 992 A.2d 112, 118 (2010).

¹⁰⁹ *Id.* at 420, 906.

¹¹⁰ See generally *King v. Burwell*, — U.S. —, 135 S.Ct. 2480, 2489, 192 L.Ed.2d 483 (2015) (“If the statutory language is plain, we must enforce it according to its terms. But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, **we must read the words in their context and with a view to their place in the overall statutory scheme.**” (internal quotation marks and citations omitted and emphasis added)); *Yates v. United States*, — U.S. —, 135 S.Ct. 1074, 1081-82, 191 L.Ed.2d 64 (2015) (“Whether a statutory term is unambiguous, however, does not turn solely on dictionary definitions of its component words. Rather, ‘[t]he plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole.’ Ordinarily, a word’s usage accords with its dictionary definition. In law as in life, however, the same words, placed in different contexts, sometimes mean different things.” (internal citations omitted)).

“The Statutory Construction Act provides that the object of all statutory interpretation ‘is to ascertain and effectuate the intention of the General Assembly.’”¹¹¹ “Generally, the best expression of the General Assembly’s intent ‘is found in the statute’s plain language.’”¹¹² “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”¹¹³ “Moreover, ‘we should not insert words into [a statute] that are plainly not there.’”¹¹⁴ “Only in instances of ambiguous statutory language ‘may courts consider statutory factors to discern legislative intent.’”¹¹⁵ “Words and phrases shall be construed according to rules of grammar and according to their common and approved usage,” though “technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in [the Statutory Construction Act] shall be construed according to such peculiar and appropriate meaning or definition.”¹¹⁶ “We also presume that ‘the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable,’ and that ‘the General Assembly intends the entire statute to be effective and certain.’”¹¹⁷

Here, the statutory scheme under 25 P.S. § 3150.11, 25 P.S. § 3150.16, and 25 P.S. § 3050 is ambiguous as 25 P.S. § 3150.16(2) provides that “[a]n elector who requests a mail-in ballot and who is not shown on the district register as having **voted** may vote by provisional ballot” while 25 P.S. § 3050 states that “[a] provisional ballot shall not be counted if: the elector’s absentee ballot or mail-in ballot is timely **received** by a county board of elections.” There is no argument that “received” means when the ballot is delivered by mail to the elections office or brought to the

¹¹¹ *Commonwealth v. Coleman*, 285 A.3d 599, 605 (Pa. 2022), citing 1 Pa. C.S. § 1921(a).

¹¹² *Id.* citing *Commonwealth v. Howard*, — Pa. —, 257 A.3d 1217, 1222 (2021).

¹¹³ 1 Pa. C.S. § 1921(b).

¹¹⁴ *Commonwealth v. Coleman*, 285 A.3d 599, 605 (Pa. 2022), citing *Frazier v. Workers’ Comp. Appeal Bd. (Bayada Nurses, Inc.)*, 616 Pa. 592, 52 A.3d 241, 245 (2012).

¹¹⁵ *Id.* citing *Commonwealth v. Howard*, — Pa. —, 257 A.3d 1217, 1222 (2021).

¹¹⁶ 1 Pa. C.S. § 1903(a).

¹¹⁷ *Berner v. Montour Twp. Zoning Hearing Bd.*, 655 Pa. 137, 217 A.3d 238, 245 (2019) (quoting 1 Pa. C.S. § 1922(1)-(2)). *Commonwealth v. Coleman*, 285 A.3d 599, 605 (Pa. 2022).

elections office in person. The meaning of “voted” is not so straightforward. The Board argues that an elector has “voted” a mail-in ballot when they remit it either by placing it in the mail or handing it over at the elections office regardless of any possible defect. However, common sense meaning of the word “voted” denotes an expectation that the opinions expressed through that vote will be counted.¹¹⁸

When an elector votes at a polling place, they know their vote is counted once their paper ballot is scanned into the machine. To the contrary, mail-in packets with a disqualifying error are never opened and the ballot remains in the packet. It is clear that an elector whose mail-in packet is deemed to have a disqualifying error did not vote.

Nonetheless, this Court finds that “accept[ing] as true all well-pleaded facts in the [Board and Republican Intervenor’s] pleadings, and [giving] [them] the benefit of all reasonable inferences to be drawn therefrom” summary judgment is inappropriate, and the Board and Republican Intervenor’s should have the opportunity to explore this issue further.¹¹⁹

Although, summary judgment is denied on this issue, this Court finds that a permanent injunction is appropriate. To be awarded a permanent injunction, the party seeking relief must establish “(1) that his right to relief is clear, (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages, and (3) that greater injury will result from refusing rather than granting the relief requested.”¹²⁰ “However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final

¹¹⁸ See, 52 USCA § 10101(e) (“When used in this subsection, the word “vote” includes **all action necessary to make a vote effective** including, but not limited to, registration or other action required by State law prerequisite to voting, **casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast** with respect to candidates for public office and propositions for which votes are received in an election.”) (emphasis added).

¹¹⁹ *Jefferson v. State Farm Ins. Companies*, 551 A.2d 283, 284 (Pa. Super. 1988).

¹²⁰ *City of Philadelphia v. Armstrong*, 271 A.3d 555, 560-61 (Pa. Commw. Ct. 2022) (quoting *Kuznik v. Westmoreland County Board of Commissioners*, 902 A.2d 476, 489 (Pa. 2006)).

injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.”¹²¹

Here, this Court finds Plaintiffs have established a right to relief, an injunction is necessary to avoid an injury that cannot be compensated by damages, and greater injury will result by the refusal of the relief requested. As such, this Court finds the most uniform resolution is to GRANT a preliminary injunction as requested by Plaintiffs and directs that the elections office must properly document in the poll books that the elector whose mail-in packet is segregated for a disqualifying error has not “voted” in accordance with 25 P.S. § 3150.16 and choose the most appropriate selection in the SURE system to reflect as such.¹²²

CONCLUSION

For the reasons set forth above, this Court finds there are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law regarding their right to notice regarding their ballot status in order to challenge the canvass board’s decisions. As such, Plaintiffs’ motion for summary judgment is GRANTED in that regard. Defendant Washington County Board of Elections is hereby ordered to notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects. The Washington County Board of Elections shall input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested.

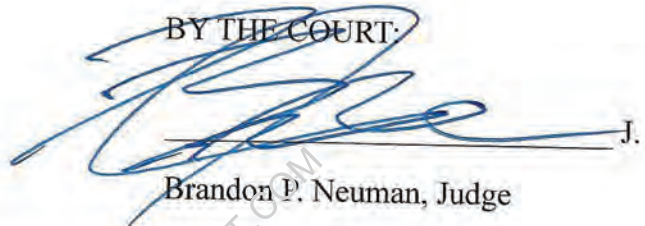
This Court finds that as there are genuine issues of material fact regarding all other matters, therefore, the remainder of the motion for summary judgment filed by the Plaintiffs, as well as the motions for summary judgment filed by Defendant Washington County Board of Elections and

¹²¹ *Id.* (quoting *Buffalo Township v. Jones*, 813 A.2d 659, 663-64 (Pa. 2003)).

¹²² This Court acknowledges that this injunction will not provide relief for *every* elector, however, it is the most uniform resolution available.

Intervenors Republican National Committee and Republican Party of Pennsylvania are all DENIED. Plaintiffs' request for a permanent injunction is GRANTED and Defendant Washington County Board of Elections shall properly document in the poll books that the elector whose mail-in packet is segregated for a disqualifying error has not "voted" in accordance with 25 P.S. § 3150.16 and choose the most appropriate selection in the SURE system to reflect as such.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'Brandon P. Neuman', is written over a horizontal line. The signature is stylized and cursive.

Brandon P. Neuman, Judge

EXHIBIT C

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3 IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,

4 PENNSYLVANIA

5 CIVIL DIVISION

6 CENTER FOR COALFIELD)
JUSTICE, WASHINGTON BRANCH)
7 NAACP, BRUCE JACOBS, JEFFREY)
MARKS, JUNE DEVAUGHN)
8 HYTHON, ERIKA WOROBEK,)
SANDRA MACIOCE, KENNETH)
9 ELLIOTT, and DAVID DEAN,)
Plaintiffs,)

10 V.)

2024-3953

11 WASHINGTON COUNTY BOARD)
12 OF ELECTIONS,)
Defendant,)

13 V.)

14 REPUBLICAN NATIONAL)
15 COMMITTEE and REPUBLICAN)
PARTY OF PENNSYLVANIA,)
16 Intervenors.)

17 PROCEEDING IN THE
18 ABOVE-ENTITLED CAUSE
19 BEFORE THE HONORABLE
BRANDON NEUMAN, JUDGE,
HELD ON AUGUST 5, 2024
20 IN COURTROOM NO. 4

21 TRANSCRIPT OF PROCEEDINGS

22 Transcribed by:
23 Amanda Rader
24 Court Reporter

25 Transcript filed in the
Office of the Prothonotary
this 12th day of September, 2024

- - -

APPEARANCES:

Witold J. Walczak, Esquire
Representing the Plaintiffs

Marian K. Schneider, Esquire
Representing the Plaintiffs

David J. Berardinelli, Esquire
Representing the Defendant

Kathleen Gallagher, Esquire
Representing the Intervenors

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I N D E X

WITNESS: MELANIE OSTRANDER

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55, 63

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P R O C E E D I N G S

THE COURT: Okay. We are on the record.
Good morning, everyone. We obviously have an
argument today and that argument will begin shortly.

However, we do have a lot of people in the
stands today. I just want to let you know I'm going
to keep it as much as a controlled atmosphere as
possible. We have microphones everywhere, and part
of the reasons that we can't have a lot of noise is
we are being recorded and this is going to be
transcribed, and so the words that we are saying are
very important to the court reporter who has to
listen and take everything down to what is being
said. So I expect everyone who is here today to use
their ears and not their mouths. I was given sound
advice years ago, never met someone that got in
trouble using their ears.

This is Case No. 3953-2024. We have a
number of attorneys present in the courtroom here
today. This was scheduled in an expedited fashion
based on the request of the parties. There has been
many documents filed through C-Track and two
depositions that were recorded and provided to me.

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So we're going to start by having the attorneys introduce themselves and who they are representing today. We will start with the moving party.

MR. WALCZAK: Thank you, Your Honor. Witold Walczak on for the American Civil Liberties Union of Pennsylvania on behalf of all petitioners.

MS. SCHNEIDER: Good morning, Your Honor. Marian Schneider for the ACLU of Pennsylvania on behalf of the petitioners.

MS. STEIKER: Good morning. Kate Steiker for the ACLU of Pennsylvania on behalf of the petitioners.

MR. BERARDINELLI: Good morning, Judge. David Berardinelli for the Washington County Board of Elections.

MS. GALLAGHER: Kathleen Gallagher on behalf of the Republican National Committee and for purposes of today's argument, the Republican Party of Pennsylvania.

MR. SWEAT: Gary Sweat, Washington County Solicitor.

THE COURT: All right. So we are going to

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begin. Any matters that we need to handle prior to
me calling Ms. Ostrander up for some questions?

MR. BERARDINELLI: No, Judge. That document
I thought wasn't in is in as joint Exhibit I. Thank
you, Judge.

THE COURT: Okay. Thank you.

MR. WALCZAK: Nothing, Your Honor.

THE COURT: Just watch your step on the way
up, and we are going to swear you in before you sit
down.

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MELANIE OSTRANDER, a witness herein, having
been first duly sworn, was examined and testified as
follows:

THE COURT: You may be seated. This
microphone moves. I promise you this won't be seven
and a half hours, rehashing your seven and a half
hours of your deposition.

If there are any objections by either
counsel, knowing that there has been a deposition and
stipulation of the facts, of me asking questions of
the Washington County elections director, and then
opening up to you for questions?

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MR. BERARDINELLI: No, Judge. My only issue would be with scope after you're done.

THE COURT: Yeah. We can talk about that.

MR. WALCZAK: No objection, Your Honor.

THE COURT: Can you please state your name for the record?

MS. OSTRANDER: Melanie Ostrander.

THE COURT: And can you please spell your first and last name?

MS. OSTRANDER: Melanie, M-E-L-A-N-I-E, Ostrander, O-S-T-R-A-N-D-E-R.

THE COURT: And what is your title?

MS. OSTRANDER: I'm the elections director for Washington County.

THE COURT: So that makes you the head of the elections office here in Washington County; is that correct?

MS. OSTRANDER: Of the office. The Board of Elections are the governing body, but I am the --

THE COURT: You manage the office.

MS. OSTRANDER: I manage the office, yes.

THE COURT: How long have you been in that capacity?

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MS. OSTRANDER: I've been the director since February of 2019.

THE COURT: And you know why we are here today; right?

MS. OSTRANDER: Yes.

THE COURT: Okay. So I'm just going to get to some questions that I have for you. Because of the deposition and the stipulation of facts, they are going to jump around a little bit because I have so much information already that has been provided to me, but we're going to start with when you -- in 2023, because there is some difference between 2023 and 2024.

MS. OSTRANDER: Yes.

THE COURT: Focus on 2023 for a second. How did you -- it's called a poll book; correct? That you send to the different districts?

MS. OSTRANDER: Yes.

THE COURT: Okay. And was it an electronic poll book in 2023?

MS. OSTRANDER: Yes.

THE COURT: And you send that to each one of the voting districts; is that correct?

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MS. OSTRANDER: Yes.

THE COURT: And they only include eligible voters for that district; is that correct?

MS. OSTRANDER: Yes.

THE COURT: And they also have a designation next to them if they send in a mail-in or absentee; is that correct?

MS. OSTRANDER: Yes.

THE COURT: In 2023 if you set aside a mail-in ballot for a discrepancy or for an error, what did you have next to that person's name in the poll book?

MS. OSTRANDER: It would have said that the voter was issued a mail-in or absentee ballot and then there was a notation that they had to surrender the ballot and envelope, declaration envelope, or vote provisionally.

THE COURT: Okay. So if I am a mail-in voter and I mail in my vote to you, you received it, but there is an error on it, do you set it aside?

MS. OSTRANDER: Yes, in 2023.

THE COURT: That's what it said next to my name. What would it say next to my name?

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MS. OSTRANDER: It would have said to have the surrender mail in. You were issued a mail-in or absentee ballot and that you would have to surrender it or vote provisionally.

THE COURT: Okay. So it was a catchall?

MS. OSTRANDER: Yes.

THE COURT: So it was either you didn't receive it or you received it and there was an error -- or, I guess, you didn't receive it, but if they couldn't surrender it, they would vote provisionally.

MS. OSTRANDER: Yes.

THE COURT: Okay. Sorry if that was confusing.

MS. OSTRANDER: That's okay. Because we set it aside and we would have marked in the SURE system that we set it aside. It still would have said that the ballot was issued to the voter and that they had to surrender or vote provisionally.

THE COURT: If I was a mail-in voter, in 2023 still, and you received my mail-in vote, but it had -- I followed all the directions to a T, had no errors, and you did not segregate it, what would it say next to my name in the poll book?

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MS. OSTRANDER: It would have said you returned your ballot. So you voted. So you were, I believe it said, ineligible, because you already had returned your ballot and voted, and then if, you know -- anyone can vote provisional. So if they wanted to contest that, the poll worker would allow them to vote provisional.

THE COURT: Okay. And now we are going to go to this past primary, the only election that occurred in Pennsylvania in 2024.

MS. OSTRANDER: Yes.

THE COURT: And so now in 2024, same circumstance, I am a mail-in, qualified voter, mail-in voter, I send you my ballot, and there is an error. You segregated it. What would it say next to my name on the poll book in 2024?

MS. OSTRANDER: In 2024 it would have said that you had returned your ballot, you had voted, and, I believe, the words ineligible are in there, but I can't recall for certain. But it does say that your ballot was returned, and that, you know, again, if you contest that, anyone can vote provisional.

THE COURT: And would it say the same if I

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voted and filled out everything correctly in the poll book?

MS. OSTRANDER: Yes.

THE COURT: So no matter if they -- if you received it in 2024, no matter if you segregated it or didn't segregate it, the poll book got the same designation?

MS. OSTRANDER: Yes.

THE COURT: We are going to go to on election day in general.

MS. OSTRANDER: Okay.

THE COURT: No specific year, just on election day. I am not a mail-in voter. I am a poll voter. I show up. On election day, what type of issues would cause that person, if they are designated to that poll, what type of issues would cause that person not to be able to vote in a traditional way on election day?

MS. OSTRANDER: And this is if they didn't request --

THE COURT: Nothing. No mail-in at all.

MS. OSTRANDER: They just show up to the polls. Okay. If they are a first-time voter, all

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first-time voters are required to show ID. So if they are unable to produce that ID, they would have to vote provisionally. If they did not change -- that is their correct polling place, but they failed to change their address with our office, so we would have them in the poll book for a different precinct. They can either go to the old precinct and vote one last time or they can vote provisionally at the new precinct. The law states that they have one last time to do that, to vote there. If they forgot to change their address with us, they can vote one last time at their old precinct and then come to the new -- then change their address for the next election.

THE COURT: Okay. Any other issues where a qualified voter would come to their poll and they would not be allowed to vote, they would have to vote provisionally and not in the traditional way?

MS. OSTRANDER: No. That would be it.

THE COURT: Okay. And are -- who would then tell the voter that day that you have the wrong address, you have to vote provisionally? Or you weren't able to show your ID because you are a first-time voter here, you have to vote

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provisionally. Who would give them that information?

MS. OSTRANDER: The head poll worker, which is referred to as the judge of elections. It's an elected position or appointed in Pennsylvania.

THE COURT: Okay. So I walk into a polling place. There's generally, depending how big your poll is; right? In mine there is two that you go up to and you tell them who you are and you have to sign your name; is that correct?

MS. OSTRANDER: Yes, that's correct.

THE COURT: And is that who the judge of election is, or is it a different person?

MS. OSTRANDER: It's a different person.

THE COURT: So the judge of elections is there at all times?

MS. OSTRANDER: Yes.

THE COURT: So if I go in to vote and I go to the initial person and they say, hold on one second, do they go to the judge of elections and the judge of elections comes and sees what's wrong?

MS. OSTRANDER: Yes.

THE COURT: Okay. And then the judge of elections says you are either at the wrong polling

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place because you didn't change your address or you're at the wrong place in general, but tells them why they either cannot vote here traditionally or you have to vote provisionally; is that correct?

MS. OSTRANDER: Correct.

THE COURT: And who instructs the judge of elections? Who gives them their instructions or educates them on how to deal with voters that show up that have to vote provisionally because of these issues?

THE WITNESS: The elections office. We have training classes as well as a manual that has the information in it as well.

THE COURT: And so when they have to vote provisionally, what instructions do they give to the voter?

THE WITNESS: They give them two envelopes and a ballot. The envelope -- there are written instructions on the envelope as to how the voter needs to complete the envelope, but we also instruct the judge of election to explain it. So they have to complete the large, first envelope with their name, address, birth date, phone number, and they sign it.

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The judge of election and one of the other poll workers, which is referred to as the minority inspector, they complete the precinct name, the reason why the voter is voting provisionally, and there is the options -- what is outlined in the election code are listed as the different options that they can choose. The judge of election and the minority inspector then sign. Then the voter is instructed to vote their ballot, and it's a hand-marked ballot, when they are done to fold it and place it in a smaller, like, business-size envelope, and then place that envelope in the large green. And then when they're done, the judge of election will let them know that they're finished. The judge of election will come back over and there's an additional spot that the voter has to sign. There are four instruction areas on it, and they have to complete and sign in section one and also sign section four. Once they are finished, they seal the outside envelope, and then they hand it to the judge of election.

THE COURT: Okay. And are those the same instructions -- strike that. You stated earlier

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anyone who shows up to a poll can vote provisionally if they are not able to vote in what I'm calling a traditional fashion; is that correct?

MS. OSTRANDER: Yes.

THE COURT: Are those instructions the same no matter who is voting provisionally at the poll that day?

MS. OSTRANDER: Yes.

THE COURT: Okay. So there is not different instructions for someone -- like, if I didn't have my ID versus someone that's not even on the voter polls, they get the same instructions?

MS. OSTRANDER: Correct. The only thing the ID person would be told is that they have to go to the election office. They have until that following Monday, show someone on my staff their ID in order for the provisional to be counted.

THE COURT: Yeah. And there is a whole section of law that deals with identity and proving their identity to the Board of Elections for provisional ballots.

MS. OSTRANDER: Yes.

THE COURT: If the voter that shows up that

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day wants to challenge the reason that they have to vote provisionally, in this instance, bad address. So you come in and say your address is a different address and I say, well, I've changed it with the Board of Elections and I want to challenge you so that I can vote traditionally versus provisional. Is there a mechanism for that?

MS. OSTRANDER: At the poll?

THE COURT: No. With you or with -- at the poll, any mechanism?

MS. OSTRANDER: Okay. So if they do end up voting on election day provisionally and they want to challenge the provisional ballot we have that during the canvass, which begins the Friday after election day.

THE COURT: Okay. And you testified about all of that at your deposition; correct?

MS. OSTRANDER: Yes.

THE COURT: And does the judge of elections instruct them that if you have any challenges, either call your office or show up to the canvass? Show up for the canvass, do they tell them that?

MS. OSTRANDER: Not to show up for the

THE COURT: So a part of the instructions is hey, if you have an issue with this, call the Board of Elections. Is there certain language that you tell them to use or no?

THE COURT: Is it written on the form, or is it the judge of elections tells them?

THE COURT: Okay. And so if I call you after I voted provisionally and I'm not a mail-in voter, you actually give them instruction either to fix it without them showing up or come to the office or you have to show up for canvass board; correct?

MS. OSTRANDER: Yes. Depending on what their issue is we can then review our database and we can then instruct them as to what their next step would be.

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THE COURT: Okay. In 2023, just to give you where we are, in 2023 I send you my mail-in ballot, everything is correct on it. What was it designated? Was it designated received and returned?

MS. OSTRANDER: The code is record ballot returned.

THE COURT: Record ballot returned?

MS. OSTRANDER: Yes.

THE COURT: In 2024 same thing, I send in my mail-in, everything is correct. What is it designated?

THE WITNESS: The same code, record ballot returned.

THE COURT: And what does that mean?

MS. OSTRANDER: That means that we have received your ballot in our office whether it be in person, you bring in your mail-in to our office, or we received it through the mail system.

THE COURT: Okay. Is there a reason why they use two different words and none of them are received?

MS. OSTRANDER: I don't know.

THE COURT: I didn't know if the departments

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-- they give you any definition section or any guidance to that.

MS. OSTRANDER: No. That is just the wording they chose.

THE COURT: Okay. And in 2023 -- strike that. That was covered in the deposition. 2024, just remind me, if I send in my mail-in ballot and it has an error on it, how would you record it?

MS. OSTRANDER: Record ballot returned.

THE COURT: Record ballot returned. What is your understanding as director of elections in Washington County as to what the word received means as it relates to mail-in ballots?

MS. OSTRANDER: Received would mean, in my opinion, that your ballot was given to our office. Either the voter brought it in in person and handed their ballot to us, or it came through the mail system and we received it.

THE COURT: Okay. Now I'm going to jump a total different direction on you. Absentee ballots, the traditional absentee ballots prior to mail-in ballots. Do you remember those?

MS. OSTRANDER: Yes.

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THE COURT: When they were, and I'm just using these terms loosely, when they were received in your office, what would be a reason that they would be discarded? Or if you found an error, what would be the reason that they would be set aside or discarded?

MS. OSTRANDER: They weren't signed.

THE COURT: Okay. So that was the only issue, generally?

MS. OSTRANDER: Yes. I believe the date was the issue as well, but I can't recall prior to 2020 how we handled it.

THE COURT: That's fine. I'm asking a lot of you. So that's fine. So the -- you canvass absentee ballots as well before mail-in ballots; correct?

MS. OSTRANDER: Yes.

THE COURT: Okay, and they went through a process similar to mail-in ballots; is that correct?

MS. OSTRANDER: As in --

THE COURT: So they went to the Canvass Board. The Canvass Board determined if there was a discrepancy or an error.

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MS. OSTRANDER: Yes.

THE COURT: Did you, for absentee ballots, did you set them aside if they lacked a signature, for example?

MS. OSTRANDER: Yes.

THE COURT: So they were segregated?

MS. OSTRANDER: Yes.

THE COURT: Okay. Did the Department of State give you any guidance to what the word received means?

MS. OSTRANDER: Not that I recall. I don't believe so.

THE COURT: What is your general understanding as to what the word voted means in the past tense?

MS. OSTRANDER: Voted is you've cast a ballot. So your ballot whether it be in person or by absentee or mail-in.

THE COURT: Okay. Did the Department of State give you any guidance as to what the word voted means?

MS. OSTRANDER: Not that I recall.

THE COURT: I don't have any other

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questions. I'm going to give some leeway in terms of -- your scope right now is limited to what I just asked. Your scope is not going to be limited to -- if you want to ask more questions as to what you're asking right now, if that makes sense.

MR. BERARDINELLI: It does, Judge. Thank you.

MR. WALCZAK: Just a minute, Your Honor. I'm figuring out what I can fit into the areas that you covered.

THE COURT: I'll fill up my water while you are thinking about it.

MR. WALCZAK: Your Honor, I am going to question Ms. Ostrander a little bit about the SURE entrees, which Your Honor asked about the received designated code. Just, sort of, make sure we understand exactly how that operates in there.

THE COURT: And there was a lot of it covered in the deposition as well.

MR. WALCZAK: There was, yeah. I just want to clarify that. So I'm going to ask her to take a look at joint stipulation Exhibit D that I've got.

May I approach the witness?

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THE COURT: Yes. You do not have to ask.
You can approach as needed.

CROSS-EXAMINATION

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BY MR. WALCZAK:

Q. Good morning, Ms. Ostrander. So I just want to make sure I understand the process of what you do when the mail ballot comes in. Do you understand mail ballot and what the judge referred to as absentee ballot as essentially having the same process?

A. Yes.

MR. WALCZAK: So I'm just going to just use mail ballot to cover both of those.

THE COURT: Understood.

Q. So when the ballot comes in, the first thing you do is you actually put a physical date stamp on the ballot; is that correct?

A. Yes.

Q. I said you. It may not be you, it may be one of your four office staff who do that or a couple, I guess, I think, you testified handled that; is that correct?

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3 A. Correct.

4 Q. The next thing you do is that you scan the
5 outer envelope; is that correct?

6 A. Yes.

7 Q. Now, just to make sure we're clear, the
8 voter's ballot comes back in a double-envelope
9 package; correct?

10 A. Yes.

11 Q. Okay. So the ballot is in what's called a
12 secrecy envelope; right?

13 A. Yes.

14 Q. And that secrecy envelope is inside an
15 outer, what we'll call the return envelope; correct?

16 A. Yes.

17 Q. So you never see the ballot at this point?

18 A. Correct.

19 Q. So it's only the outer envelope?

20 A. Yes.

21 Q. And on that outer envelope there is a
22 declaration, and then below that there's a place to
23 sign and date; correct?

24 A. Yes.

25 Q. And then below that, your office at the time

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of sending the ballot to the voter has affixed a
barcode sticker; is that right?

A. Yes.

Q. And that barcode has a unique identifier
for every voter; correct?

A. Yes.

Q. So when you scan that barcode, what does it
do?

A. It marks the voter's record that we have
record ballot returned in the SURE system.

Q. So let me ask you to look at -- let me mark
this as Ostrander Hearing Exhibit 1?

(Petitioner's Exhibit 1 was marked for
identification.)

THE COURT: You could just be one.

MR. BERARDINELLI: So Exhibit 1 are the SURE
instructions?

THE COURT: Exhibit D on the joint
stipulation as Exhibit 1.

BY MR. WALCZAK:

Q. So if you'll turn to what says page 4 of 18
on the bottom, it's the fifth page. So is that an
approximation of what comes up on whoever is entering

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this into the SURE system on their computer screen?

A. Yes.

Q. And so you got the name at the top.
Presumably, you have their voting district below
that. Do you see that in the upper left?

A. Yes.

Q. And then below that ballot received method,
and then next to that it says status reason; correct?

A. Yes.

Q. Okay. If you'll turn to the preceding page,
which is 3 of 18, at the bottom, that's just a slight
blow-up of the picture we were looking at a minute
ago. So if you click that box next to where it says
response type, it pulls down that list of potential
codes; correct?

A. Yes.

Q. And those codes have changed, let's just
say, between '23 and '24; correct?

A. Yes.

Q. And Washington County has no control over
what these codes are?

A. Correct.

Q. This is all done by the Department of State?

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A. Yes.

Q. But when it comes in, your staff person has to decide which of those codes to put in; correct?

A. Yes.

Q. So in 2023 you used what are called CANC, C-A-N-C, codes; is that correct?

A. Yes.

Q. And CANC, does that stand for canceled?

A. Yes.

Q. And there are a number of choices including no signature, incorrect date, no date, no idea, et cetera; correct?

A. Yes.

Q. So you would simply hit that pull-down and enter whatever the corresponding code is; correct?

A. Yes.

Q. One of those options is record ballot returned; right? We see that at the bottom?

A. Yes.

Q. So that was in 2023. Now, in 2024, the only code you used was record ballot returned; correct?

A. Yes.

Q. And that's because the Board of Elections

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3 voted on April 11th that you use only the record
4 ballot returned code; correct?

5 A. Yes.

6 Q. And you had explained the consequence of
7 doing that to the Board at both the March 12th and
8 April 11th meeting, didn't you?

9 A. Yes.

10 MR. BERARDINELLI: Judge, I'm sorry. I
11 missed the last answer.

12 THE COURT: Yes. Repeat that. We had our
13 cup delivery.

14 BY MR. WALCZAK:

15 Q. In 2024 -- I'm sorry. So at both the March
16 12th and April 11th meetings you had explained to the
17 Board the consequence of putting in no record -- or
18 record ballot returned versus one of the canceled
19 codes; correct?

20 A. Yes.

21 Q. And so they knew that as a consequence of
22 doing that, the voter would not receive any
23 information by e-mail, if they had an e-mail on file,
24 telling them that there is a potential problem with
25 their ballot; correct?

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A. Yes.

Q. And that potential problem is no signature, no date, missing date, incomplete date, all of which under state law will not count; is that right?

A. Yes.

Q. So the directive was, to your office, specifically, to not give any notice, in 2024, not to give any notice to the voters if there's a defect with their ballot; is that right?

A. Correct.

Q. And even if the voter called your office, you would not be able to tell them whether or not there is a defect on their ballot?

A. No. It would be decided at canvass.

Q. Okay. But if somebody called your office and said hey, I submitted my ballot, I don't remember if I forgot the date on that, you would simply tell them that the ballot was received. It's locked up and it will be reviewed at the canvass?

A. Yes.

Q. Okay. So you would not tell them that there's a problem with their ballot?

A. No, because the Canvass Board makes the

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final determination.

Q. And the commissioners were aware, were they not, by April of 2024 that because of this new policy, some mail voters would have their ballots disqualified; right?

A. Yes.

Q. Because you told them on April 11th that, in fact, there were already 60 ballots that you had segregated as disqualified; correct?

A. Yes.

Q. And then the county commissioners actually asked you after that for the number of ballots that were at that point going to be disqualified; right?

A. Yes.

Q. So on or about April 18th you, in fact, responded to an inquiry that at that time there were already 170 ballots that your office had segregated, had identified as having a disqualifying error and, therefore, likely would not count; correct?

A. Yes.

Q. And, in fact, when you got to either the pre-canvass or the canvass --

MR. WALCZAK: Your Honor, are those two

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clear? The difference between the pre-canvass?

THE COURT: To me, yes.

MR. WALCZAK: And I'm sure they're clear to Ms. Ostrander.

THE COURT: Even more clear.

BY MR. WALCZAK:

Q. And at neither the pre-canvass, well, let's start with the pre-canvass. Pre-canvass, they don't even look at those ballots that you have segregated in a container at the time it comes in. Pre-canvass didn't even look at those segregated ballots; correct?

A. They are available to be reviewed.

Q. Right. But in 2024 they did not review those ballots; correct?

A. They did not review the ones that we had previously segregated, but they did find additional in their review that needed to be segregated.

Q. Right. So I believe you said it went from 250 ballots that you had identified with a disqualifying error. Now it went up to 259 because the pre-canvass board identified additional ones. Is that a fair statement?

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A. I don't believe those numbers are correct. The final number is correct, but prior to pre-canvass I can't recall what the number was.

Q. But they didn't subtract from the ballots you had segregated, they simply added?

A. Yes.

Q. We don't know the numbers. And at the canvass, the board disqualified every single one of those ballots; correct?

A. Yes.

Q. So that was 259 ballots?

A. Yes.

Q. And when those ballots come in, you or your staff have to make some, let's say, judgment calls about whether to segregate a ballot. Let me give you some examples here. For instance, a ballot comes in and there is no signature on there. That's easy; right? No signature?

A. Yes.

Q. So that automatically gets segregated; correct?

A. Yes.

Q. But you have a ballot that was disqualified

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this year because, apparently, it had the signature,
but in the wrong place?

A. And it was also not dated.

Q. What does it mean by in the wrong place?

A. The voter signed in the witness area,
because there is an area on the return envelope that
if the voter for some type of disability is not able
to completely sign their name, they can make a mark,
and then they have to have a witness sign, print
their name and address as well, and the voter had
signed in the witness area, but it was also not
dated.

MR. BERARDINELLI: Judge, I know you were
going to give us some latitude, but this woman sat
for a deposition for nearly eight hours. This was
all covered.

THE COURT: Yeah. We are covering a lot
that's already in the deposition.

MR. WALCZAK: Your Honor, I just want to
cover one additional point just to finish up the
point I was making now about the judgments they have
to make, and it relates to the dates.

BY MR. WALCZAK:

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Q. So no date, again, is easy. Look at that, it takes only seconds to see that there's no date on the envelope. But you also have incorrect date; is that right?

A. Yes.

Q. And the way that your office handles that, which I think is consistent with the Department of State guidance, is that the date has to be between when the ballot was mailed and election day; correct?

A. Yes.

Q. And you, of course, know the date that the ballot is mailed; correct?

A. Yes.

Q. Now, you testified that you accept ballots that have a European dating convention; correct?

A. Yes.

Q. So the difference is that for, in this country, it's month, date, year. Whereas in Europe it's date, month, year; correct?

A. Yes.

Q. So if somebody wrote in European format October 9, 2024, that would be 9/10/24; is that right?

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A. Yes.

Q. So if you look at that under American dating, that would seem like it's September 10, 2024; right?

A. Yes.

Q. And that would be almost most certainly before the ballot was mailed out, September 10th?

A. Yes.

Q. And so how do you know whether the voter wrote the wrong date or they used the European dating system?

A. That would be for the Canvass Board to review and decide.

Q. Is there any guidance on how you make that decision?

A. There is not.

Q. But if a voter knew, they could say, oh, you know what, I've lived in Germany for the last ten years on a military base and I just got used to that. That's really October 9th; correct?

A. If you were referring to the European style, that is what that date would say, yes.

Q. Last category, you also had something called

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incomplete dates; is that right?

A. Yes.

Q. Many of those were because the return envelope had preprinted on there block for month, block for date, and then had 20, two zero, and then a blank to fill in the year; correct? So you had to put in 2024?

A. Yes.

Q. Now, a number of ballots were disqualified by your folks because they only put the month and the date, and then forgot to add the 24; is that correct?

MR. BERARDINELLI: I'm going to object on the disqualified by "her folks." The language in the question.

MR. WALCZAK: I'm sorry. Thank you, Counsel.

BY MR. WALCZAK:

Q. Were segregated in a container because they had a disqualifying error. So if they forgot the 2024, that would be counted as an incomplete date; correct?

A. Yes.

Q. And at the canvass none of those ballots

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were counted; correct?

A. Correct.

Q. The judge asked you some questions about the canvass. So I want to understand, sort of, the notice that Washington County voters have of the canvass. So as I understand it, the first day of the canvass meeting is advertised in the Mon Valley Independent and the Observer Reporter; is that right?

A. Correct.

Q. Do you know if that shows up online anywhere?

A. It is does show up on their online editions, yes.

Q. Okay. And where would you look for that?

A. On the Observer Reporters website or the Mon Valley Independent's website, and they're under legal notices.

Q. Is that, like, the old classified ads section that they used to have in the newspaper? You may be too young to remember that.

A. Yes. They are in the legal notices section, which is somewhere in the classified section of the newspaper.

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Q. So for instance, it's not in the top news section?

A. No.

Q. And you do not put the time and date of the canvass meeting on your website?

A. Not the canvass. We are required by law to post the pre-canvass 48 hours before.

Q. And the pre-canvass is the one that starts at 7 a.m. on election day?

A. Correct.

Q. The canvass starts on the Friday after election day; correct?

A. Correct.

Q. And that's really the important one where decisions are made about whether the ballot is going to be counted or not; correct?

A. Correct.

Q. Now, as I understand it, there is no notice about subsequent Canvass Board meeting days; is that correct?

A. The notice says that we'll continue to meet until the work is done.

THE COURT: And all this was covered in the

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deposition.

MR. WALCZAK: That's it, Your Honor, and
thank you for the latitude.

MR. BERARDINELLI: I think I will be very
brief, Judge.

CROSS-EXAMINATION

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BY MR. BERARDINELLI:

Q. Ms. Ostrander, did an issue where on the
ballots for the 2024 primary, it was two zero, and
then a blank. Do you remember being questioned about
that?

A. Yes.

Q. Will it be like that in November?

A. No.

Q. And that's because the Department of State
has issued a directive to you; right?

A. Yes.

Q. And the directive means you have to do it?

A. Correct.

Q. And that's different than a guidance?

A. Correct.

Q. And the directive was the ballots should

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3 have two zero and two four?

4 A. Correct.

5 Q. So that's a nonissue moving forward?

6 A. Correct.

7 Q. The judge asked you some questions about how
8 mail-in ballots were handled in 2023 versus 2024;
9 right?

10 A. Yes.

11 Q. Were they handled differently because the
12 Board instituted a new policy?

13 A. Yes.

14 Q. Any other reason other than the Board voting
15 on and instituting a new policy that they were
16 handled differently?

17 A. No.

18 Q. Will the Board vote again before the
19 November general election about what policy to apply
20 to mail-in ballots when it comes to notice and
21 curing?

22 A. Yes.

23 Q. When do you anticipate that will happen?

24 A. Early to mid September.

25 Q. You were asked some questions about the

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European dating convention.

A. Yes.

Q. Is it fair to say that your office erred on the side of the voter in accepting European dating conventions?

A. Yes.

Q. Do you have the exhibit in front of you?

A. Yes.

Q. Could you turn to that same drop-down screen both on page 3 and page 4, but let's use page 3 because my eyes aren't good enough to use the ones on page 4. Ms. Ostrander, when your office selected one of these 23 options in 2024, did you have any discretion on what to select?

A. No.

Q. Why not?

A. It was the Board of Elections decided what drop down our office would use.

Q. So you didn't have the ability to make any judgments to use a different code?

A. No.

Q. You were also asked about whether you had -- or exercised some judgment in the quick review your

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office does of a mail-in ballot. Do you remember that?

A. Yes.

Q. I want to, sort of, unpack that a bit, and I want to use two different terms in doing that. I want to make sure we're all on the same page. I want to say an objective reason, and to me that is something that can be seen on the face of the ballot that is 100 percent obvious. Somebody didn't sign it. It's not dated, for example. Signed in the wrong place, that's objective; right? Subjective might be something like it's no longer the law in Pennsylvania, but does this signature on this ballot match the signature on the voter's registration application? And if I'm comparing those two, person A might say they're close, person B might say they're not. That's subjective to me. Okay?

A. Okay.

Q. Was your office using any subjective judgment in deciding --

A. No.

Q. Let me finish.

A. Sorry.

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Q. In deciding what ballots to segregate in the 2024 primary?

A. No.

MR. BERARDINELLI: That's all I have. Thank you.

MS. GALLAGHER: I'm going to try and beat him and be even shorter.

CROSS-EXAMINATION

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BY MS. GALLAGHER:

Q. Ms. Ostrander, I believe that Mr. Walczak asked you, or there was testimony about that the number of ballots, I think, it was segregated, increased during the course of pre-canvass?

A. Yes.

Q. Okay. I want to focus on that portion for a minute. Who conducts the pre-canvass?

A. The Board of Elections.

Q. And who are the individuals in that room reviewing those ballots?

A. They are -- I consider them volunteers, but they are paid a small fee, but they are appointed by the Board of Elections.

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Q. They're appointed. Did they have to do anything or take any type of oath?

A. Yes.

Q. Okay. Could you tell us what that oath is, please?

A. Prior to the pre-canvass beginning, it's either a judge of the Washington County Common Pleas Court or our chief clerk administers an oath for election workers that they -- I can't recite it verbatim, but the summary of it is that they will, to the best of their ability, work to prevent fraud and deceit in the election process. That's a summary of the oath.

Q. Fair enough. And when is that oath given?

A. Prior to any pre-canvass beginning. Any envelope opened or reviewed, the workers are instructed in the oath.

Q. On the day of the election?

A. Yes.

Q. So prior to 7 a.m. the individuals who will conduct the pre-canvass then are sworn?

A. Yes. We actually start -- that is the first thing we do at 7.

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Q. That's okay. Fair enough. Well, you're not supposed to start until before 7, are you?

A. Right.

Q. So let's get to that point as well, a little bit about what you're supposed to do and not supposed to do in the pre-canvass, if we can. But first, I want to talk about the individuals under your direction who work in the Board of Elections office who will be scanning the -- who scan the ballots or select from the drop-down menu. Do they take any oaths?

A. We take an oath on election day, but not prior.

Q. No. What I'm talking about is prior to election day, when those ballots are coming in and they're being logged in, would you agree with me that as the director of elections you have to have some type of working knowledge of the election code?

A. Yes.

Q. So on that basis, what is it that election code requires a Board of Elections to do when it receives a mail-in ballot?

A. To record the voter's record that a ballot

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has been received.

Q. Ballot received, and then that ballot received, just on that basis, forget about SURE, anything else, any instructions. Ballot received. That is then what is indicated in the voter records initially; correct? Ballot received?

A. Yes.

Q. And that is the district register that we hear about an election code; right? That is what can be reviewed?

A. Yes.

Q. Okay. And once that comes in and it is in someone's hands, forget what they're looking at, but it's there, they scan it, it matches, received; right? That's what goes off to the polls for the purposes of a provisional vote; correct?

A. Yes.

Q. Okay. Now, let's go back to the differences between the pre-canvass because would you agree with me that what we just discussed comes in stamped, received is all that the election code talks about prior to the pre-canvass?

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Q. In fact, do you know of any provision of the election code which allows you, specifically allows the Board of Elections, to do anything with that ballot other than mark it received and stamp it?

A. No. Other than lock it in.

Q. Received because it has to be marked received before election day, doesn't it?

A. Yes.

Q. Because otherwise someone could go to the poll, would you agree with me, and if it's not marked received, what would happen? They could vote twice; correct?

A. They could vote in person and once they have done that, there's no way to retrieve that in-person vote.

Q. Correct. So it is the receipt of the ballot, would you agree with me, that is crucial for election day at the polls?

A. Yes.

Q. Okay. So when is the first time, if you know, that a ballot can be inspected?

A. By the pre-canvass board, which would be 7 a.m. on election day.

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Q. And at any time prior to 7 a.m. and those oaths being taken, do you know of any authority in the election code, regardless of what the secretary of the Commonwealth may have said, that allows, specifically empowers, the Board of Elections to inspect a mail-in ballot?

A. No.

Q. And would you agree with me, then, that to the extent you've testified earlier that during the course of the canvass in 2024, additional ballots were segregated, ballots were segregated, in addition to what had already occurred prior to the pre-canvass?

A. Yes.

Q. Would you agree with me, then, Ms. Ostrander, that decisions were being made prior to the pre-canvass at 7 a.m. on primary election day 2024 that were being made by non-sworn individuals prior to the pre-canvass?

A. You mean by my staff segregating?

Q. Yes.

A. Yes.

Q. Do you know of any provision in the election

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code, as you sit here today, that allows you to do that -- that allows the Board of Elections to do that? Do you know of any provision that allows that to occur?

A. No.

MS. GALLAGHER: No further questions.

THE COURT: I just have a couple questions, and then you guys can ask some questions.

On election day you receive the mail-in ballots; is that correct?

MS. OSTRANDER: Yes.

THE COURT: Either they come in and turn them in to your office or you receive them in the mail that day?

MS. OSTRANDER: Yes.

THE COURT: Do you, and you might not know the answer to this, but is it a significant amount or is it a small amount of votes that come in on election day that are mail-in ballots?

MS. OSTRANDER: We probably, just guesstimating, the bulk of them have already been received, but we would receive possibly another thousand on election day for the presidential, this

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type of election coming up. It varies with each type of election.

THE COURT: And so if you receive a mail-in ballot on election day -- because it's busy on election day; right?

MS. OSTRANDER: Yes.

THE COURT: What's the process to get that mail-in ballot properly stamped? Is it the same process as prior to election day?

MS. OSTRANDER: Yes.

THE COURT: Is it delayed in any way or do you have a staff member that's just appointed to election day and mail-in ballots coming in?

MS. OSTRANDER: As soon as the mail is received from the post office we have someone begin to hand stamp, and then, once that is completed, scan the barcode. The ones that come across the counter in person, we take those and we have a secure ballot box that we drop them into, and we guesstimate that if something would make it to the stopping point of phone calls and such, they open and take those. So maybe they sit there for 20, 30 minutes.

THE COURT: Do you know, if you can give me

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a percentage or number, estimated number, as to how many mail-in ballots get dropped off in your office on election day, not by the post office, but get actually, physically dropped off?

MS. OSTRANDER: Let me see, we receive -- from what we mailed out our average is somewhere between 82 and 85 percent received back from what we've sent overall. We usually have almost 80 percent. So of the amount maybe 5, 10 percent come in on election day and are turned in physically.

THE COURT: Physically turned in.

MS. OSTRANDER: Physically turned in. I would say maybe 5 percent of what we receive back.

THE COURT: And the judge of elections that's at the poll, when do they set up their equipment?

MS. OSTRANDER: They either set up Monday evening if the facility is secure, if they can set up without having anyone other than the poll workers entering the facility after. If not, then they are to set up 6 a.m. election morning.

THE COURT: When is the last time they meet with you prior to 7 a.m. on election day?

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MS. OSTRANDER: We hold training classes approximately two weeks prior to the election. That would be the last time that they physically meet with us. If there's anything that we need to tell them additionally after the training, we have a judge of elections folder that we will put notes in that they are to make sure they open if there is anything that was discovered after that we need to inform them of.

THE COURT: Understood. And what type of oath do they take?

MS. OSTRANDER: There is an oath that is similar to the oath for the other pre-canvass workers. It's a similar oath that they sign on election day.

THE COURT: On election day, but do you know what time?

MS. OSTRANDER: It's before the polls.

THE COURT: So they're there before 7 a.m. and they just sign it? Nobody administers it?

MS. OSTRANDER: The judge of election administers the oath to the other poll workers. The minority inspector administers the oath to the judge of elections.

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THE COURT: Understood. I don't think I have any other questions.

Any other questions? We are limited on the scope as to what they asked and what I asked.

MR. WALCZAK: Got it, Your Honor. I will keep it narrow. I'm going to go in reverse order here.

RECROSS-EXAMINATION

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BY MR. WALCZAK:

Q. There was a question about how many ballots you received on or around election day total; correct?

A. Yes.

Q. And you weren't sure how many would come in that were disqualified; is that right?

A. No. Judge Neuman was asking me about in person who came to turn in, not disqualifying errors with that.

Q. Is it fair that between April 18th and election day, which was on April 24th, it went from 170 disqualified ballots on the 18th up to somewhere in the 250 range; is that right?

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A. Yes.

Q. So that is about a third of the total that came in in the last week before the election; correct?

A. Yes.

MR. BERARDINELLI: I'd object to the math on that.

THE COURT: The math is not sold.

MR. WALCZAK: Guilty.

BY MR. WALCZAK:

Q. Now, your staff are public employees; correct?

A. Yes.

Q. They work for Washington County; correct?

A. Yes.

Q. And they take an oath to work for Washington County; correct?

A. I don't recall when I was hired that I did or not.

Q. But you are subject to the Crimes Code, you and your staff are subject to the Pennsylvania Crimes Code; correct?

A. I believe so, yes.

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Q. Pretty sure that you are.

THE COURT: You cannot give legal advice to the witness.

Q. And you are certainly subject to the election code; correct?

A. Yes.

Q. And you follow that; correct?

A. Yes.

Q. And if you or one of your staff engaged in some kind of misconduct, did something inappropriate or incorrect with the ballots, you could be prosecuted for that; correct?

A. Correct.

Q. Ms. Gallagher asked you whether you were aware of anything that allowed your staff to, let's call it, prescreen the ballots that come into the office. Do you recall that?

A. Yes.

Q. And you said you were not aware of anything that allowed you to do that; is that correct? In the election code?

A. Correct.

Q. You are not aware of anything in the

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election code that prohibits your staff from doing that; correct?

A. No.

Q. In fact, prior to 2024 your office did that; correct? They actually scanned it and alerted voters who had a disqualifying error of the problem; correct?

A. Yes, because the Board of Elections instructed us to do that.

Q. Your practice in the elections office was to give notice to voters who submitted a ballot in an envelope with a disqualifying error; correct?

A. Prior to 2024 by vote of the Board of Elections, yes.

Q. And that included by putting in one of the cancel codes, which generated an --

THE COURT: We're not going to get into that. I think even today their office prescreens and segregates even though they're not --

MS. GALLAGHER: Right. That was my point.

MR. WALCZAK: I have nothing further, Your Honor.

MR. BERARDINELLI: Nothing, Judge. Thank

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you.

THE COURT: Anything else?

MS. GALLAGHER: I do because of your question, Judge.

THE COURT: No, that's fine.

BY MS. GALLAGHER:

Q. I believe that what I asked you was do you know of any provision in the election code that allows the inspection to begin prior to the pre-canvass?

A. No.

Q. When the judge asked you earlier about ballots that come in later, and I want to focus on that if we can for a moment. So with respect to those ballots where during the course of the pre-canvass defects were found that would cause those, can those people be given the opportunity or a notice to come in and fix that when it is found in the pre-canvass?

A. You're meaning if the Board of Elections has decided to cure?

Q. No. A ballot is found during the course of the pre-canvass. It is in that room. It has already

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been locked up and secured. Those sworn folks who took that oath are going through it and they say no signature. There is no signature. Can anybody leave that room and go out and tell anyone?

A. No. The results of the pre-canvass are not to be disclosed until the close of polls, which is 8:00 on election day.

Q. And the pre-canvass, as far as you know, that inspection can only occur in that pre-canvass and the results of that pre-canvass cannot be given out, under your understanding of the code?

A. Yes.

Q. Do you know anything in the code that says you don't have to pay attention to this?

A. No.

Q. One more question. A voter can drop a ballot off 5 to 8; right?

A. Yes.

Q. Two minutes to 8; right?

A. Yes.

Q. The received-by deadline is 8:00 and you allow every voter to drop a ballot off up until that received-by deadline; correct?

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A. Yes.

Q. If that ballot comes into -- and would you agree with me that the person who walks in, that voter who rushes home from work, gets it filled out because they didn't have the opportunity to do it, and rushes down to the Board of Elections and hands it in at 7:59, their ballot is validly and timely received; correct?

A. Yes.

Q. Is there any way to give that voter who is in all that rush, that poor individual who might have worked three shifts that wanted to get that ballot, does that human being get a right to cure that ballot or get any notice?

A. Not according to the election code.

Q. Too late for that person, isn't it?

A. Yes.

Q. And Ms. Ostrander, do you know of any mechanism under our election code as it's written today that would allow your board or Greene County Board or any board in this Commonwealth to craft a notice-and-cure procedure that would make sure that every voter who casts a ballot turned it in, had the

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opportunity to obtain a notice and cure?

MR. WALCZAK: Objection, asks for a legal conclusion.

MS. GALLAGHER: No. I don't think so. I'm asking her if she knows any way to craft it.

THE COURT: You can answer it.

A. No, not with the way the election code is currently written.

Q. Someone is always going to be allegedly disenfranchised; correct?

A. Yes. I wouldn't use disenfranchised.

MR. WALCZAK: Just one final question.

THE COURT: I'm going to go first. In 2023 if the pre-canvass board segregated a ballot that your initial inspection -- I shouldn't use the word inspection, but your initial review did not catch, we'll say. How is that treated?

MS. OSTRANDER: During the pre-canvass?

THE COURT: Yes.

MS. OSTRANDER: During the pre-canvass if they segregated a ballot in 2023 it was placed in the segregated bin. We did not update the record.

THE COURT: Okay. Because what they are

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3 doing is not made public until 8 p.m. on election
4 night; correct?

5 MS. OSTRANDER: Correct.

6 THE COURT: That was -- and who made that
7 determination?

8 MS. OSTRANDER: For -- the election code.

9 THE COURT: Okay. So the Board of Elections
10 didn't give you a directive to say once that door is
11 closed, any segregated ballot we cannot give them an
12 attempt to cure; correct?

13 MS. OSTRANDER: Oh, no, they didn't.

14 THE COURT: They didn't get thorough?

15 MS. OSTRANDER: No, no.

16 THE COURT: Okay. So you were just
17 following what you understand to be the elections
18 code as it relates to pre-canvass and what is in
19 their room for them to review?

20 MS. OSTRANDER: Correct.

21 RE CROSS-EXAMINATION

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23 BY MR. WALCZAK:

24 Q. In 2023 if you take Ms. Gallagher's
25 hypothetical voter working three jobs, rushes in at

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7:58, 7:59, and handed in a ballot and the person looked at the ballot and saw that there was no signature and date on the envelope, would your staff had advised them, you need to sign and date this?

A. If they inquired prior to handing it to us.

Q. In 2023?

A. In 2023, no. We would have said, you need to sign or date this.

Q. Okay. In 2024 you would not have done that for the poor person working three jobs; right?

A. No. They would have had to, prior to relinquishing their ballot, handing it to us, they would have had to asked.

Q. And if they asked, you would have told them?

A. Yes. Until we took control of it, yes.

Q. Got it. Thank you.

THE COURT: Anything else? Let me thank you. Any of the questions, I think the attorneys would agree with this, any questions directed to you, we understand your position and your title. No one in any way is trying to say that -- is doing anything to you personally or you as the director of elections. This is purely the way that the legal

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process works for this case, but I want to make you understand, we do appreciate everything you do.

MS. OSTRANDER: Oh, thank you.

THE COURT: You can step down.

So we are going to take a ten-minute recess. You can gather your thoughts, and then we'll come back. We have summary judgment arguments and arguments in general, and then I will ask you more questions after that.

MS. GALLAGHER: May we have 15?

THE COURT: Sure. I never deny a request for more time.

(At this juncture, a brief recess was taken.)

THE COURT: Okay. We are back on the record. We are going to have argument, I will give some leeway on your argument rebuttal, and then any type of surrebuttals just so that we can get everything on the record. So if there's any objection as we go through it, just announce your objection and we will handle it at that time. But just to let you know I'm going to give you some leeway, but, you know, there is a lot of documents

MR. WALCZAK: Thank you, Your Honor, and let
me give a thanks to the Court and to the staff for
making this rapid schedule. I think all of us
are looking forward to having a weekend at some
time in the near future.

I'm going to be blunt. What Washington County is doing here is deliberately and needlessly disenfranchising some of its eligible voters who have

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cast timely ballots. Now, I do not use those terms lightly. I say deliberately because this is a choice. This decision not to give notice is not required by state law, and it is not prohibited by state law. In fact, Washington County did it before most counties in Pennsylvania support their voters by giving them notice that there's a disqualifying defect, and it's not on the ballots, to be clear, it is just on the outer envelope. I say needlessly because they've given notice before. It is easy through the SURE system and there is no good reason to have changed from '23 to '24. I'll go over that a little bit more in a minute. And besides deliberately and needlessly I say disenfranchise because in this last election, which is a relatively low turnout election, 259 Washington County eligible voters who cast timely ballots did not have their votes counted, and the commissioners knew that. They asked for updates from Ms. Ostrander, heard her testify that she told them, gave them a running total of how many ballots would be disqualified, and Washington County does not need to be a guarantor that every voter who makes a mistake is going to be

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able to fix that ballot, but under the Constitution they are not allowed to obstruct and interfere with the voter's right to have that ballot cast and counted. Now, while this is a political decision, it has constitutional consequences. The issue before the Court is whether or not this is somehow unconstitutional, and the narrow argument is whether or not it violates constitutional due process. Now, I'm going to get to the main legal arguments in just a minute. I mean that Defendants don't really engage with the due process analysis. They don't really engage with the Mathew's balancing because they can't, because they know they are going to lose. Because what we have here are individualized decisions initially made by the elections staff and Ms. Ostrander's staff. They deprive the voters of a fundamental right, their vote. They make a decision that that vote is not going to be counted. They do not, under this new policy and directive, give any pre-deprivation notice, and not only do they not give notice, they actively conceal information about the status of that ballot. If the voter calls the office, they won't tell them the status of the ballot

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even if it's disqualified, and by not entering it into SURE, multiple avenues for that information getting to the voter are shut down. The notice that we're asking for, that they should give, that they gave in the past is very simple because the infrastructure is already in place to use the term that the Washington Court used. The infrastructure is already in place for them to give that notice through the SURE system, and most Pennsylvania counties, including neighboring counties, Fayette, Greene, Beaver, and Allegheny, all give notice. Now, is there any benefit? Is there any benefit to the office, to Washington County by this policy change? I mean, it does not promote efficient or conserve resources. What we're talking about here, Your Honor, is one keystroke on the computer. We looked at that drop-down menu. It's not even additional work. It's simply the fact that they need to, instead of hitting received ballot recorded, they need to hit one of the other codes in there. That's it. The rest of the process is exactly the same. So there is no saving in resources. There is no savings in money. This doesn't in any way promote election

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resources. I want to clarify something that, I think, Ms. Ostrander said that is actually not correct that there is no danger of double voting regardless of which code is put in there. Once the ballot is received whatever code is put in that goes into SURE, and then if a voter shows up at the polls, they're going to have to vote a provisional ballot.

THE COURT: And just to clarify, I don't think Ms. Ostrander alluded that there was -- there was questions asked about double voting and concern for it, but I don't think that there was testimony that I took as alluding that double voting is occurring or that this would in some way allow for double voting.

MR. WALCZAK: I'm sorry. I certainly didn't mean to insinuate that. I just want it to be clear that whatever code is entered, I mean, there was no danger of double voting here. The only question is which code are the elections staff going to enter? And then how is the elections staff going to respond to inquiries from voters who want to know, hey, did I screw up my, to use a legal term, sorry, to mess up my mail ballot? There is no question here; it's

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stipulated that what we're talking about are voters who are eligible under Pennsylvania law whose ballots were received timely. So the only reason for this policy, the only reason is to actually disenfranchise Washington County voters. There is no other good reason to do this. Now, we have largely undisputed facts, I think, with the supplemental testimony today. I don't want to go over the facts in detail here. Suffice it to say that the one change from '23 to '24 was a directive by the Board of Elections to actively conceal information about ballot status from voters who have cast a ballot in an envelope containing a disqualifying error, and the only change functionally is you put in -- I'm going to say it's a misleading code. I will admit that it is accurate. The ballot was received, but the point here is that with the exact same amount of effort, the county could put in an accurate code that generates notice through the various ways that we have discussed. So that is a choice that they are making. Unless the Court has concerns, lack of clarity about the facts, I'm going to skip, sort of, going over the facts. I think we largely have a stipulated record, and what I

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want to do is get to what I call the sand arguments because there are a number of -- most of the arguments made by Defendant, Board of Elections, and republican interveners are procedural, jurisdictional, essentially threshold arguments to prevent the Court from actually looking at the constitutional due process argument that we have made here, and, you know, when you take each of these grains of sand individually and examine them closely, they disintegrate. Let me go through -- there's a lot. I don't want to go through all -- well, I mean, I am happy to go through all of them. I'm going to go through the main ones. If I miss one, certainly happy to explore that.

But let's start with Pennsylvania democratic case decided and controls this entire issue. That suffuses, pervades both arguments, both parties' arguments. So that is not true both for legal and factual reasons. So the PA Dems cases, I think we're calling it for short. Legally, there was no due process argument raised or considered, and if you look carefully at the court's language, there is one quote at 238 A.3d 345 petitioner cited no

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constitutional or statutory basis that would count in supposing the procedure petitioner seeks to require. And there is no due process challenge raised. So the court did not and could not rule on it. It was the only -- the only constitutional claim raised there was under Article One, Section Five, which is the free and equal elections clause. Now, you know, as the Court knows, can't just say, oh, no constitutional challenges were resolved. Every clause of the Constitution carries with it its own analysis. So, legally, that issue was not raised. Certainly was not decided by PA Dems. The other important distinction is that factually we have a very different landscape than we did in 2020. Now 2020 -- so Act 77, which opened up mail voting to everybody, right? It used to just be absentee as we were talking about. In November of 2019, the law changed to allow anybody without any excuse to vote by mail, and that dramatically expanded the number of people who took advantage of that option, especially during Covid in 2020. Department of State was still trying to work its way through how are we going to deal with all this? And what we see in PA Dems and

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what the Court saw in the petitioner's request was that the Dems were asking the court to invoke, quote, its broad authority to craft meaningful remedies; right? But what they were really asking the court to do was to, kind of, create what this notice-and-cure process would look like at a whole cloth, and the court declined to do that and what they said again at page 374 is because there was real uncertainty over the precise contours of the procedure that would be used and what the concomitant burdens would be on the county elections offices like Washington County, and just take a moment to acknowledge that these county boards of elections do fantastic work on a shoestring and have incredible, dedicated employees like we saw with Ms. Ostrander in court today.

The second thing that the court said, and I guess Justice Wecht said that there was lack of any proposal regarding a practicable manner of relieving the problem alleged. So what the court is saying is hey, you're asking us to figure something out and you're not giving us any kind of road map for how to do that and it's unclear. I mean, this is just all very vague. Now, four years later the, quote,

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contours of the procedure and, quote, the concomitant burdens are clear. We have the SURE system. The only -- I mean, what we're asking the Court to do here is one simple thing, is to order Washington County to enter a code that will advise the voter that they have a disqualifying error. And you heard Ms. Ostrander testify that anybody can come vote a provisional ballot, but to do that they have to know that there is a reason for that, and I'll come back to that in just a minute. It's the exact same process that they're using now, except direct them to enter a different code. One that actually advises the voter that their ballot, their vote, is about to be taken away from them. It is about to be canceled based on a mistake that is imminently fixable on the envelope transmitting their ballot. So for both legal and factual reasons, PA Dems is distinguishable. It does not control this case. Your Honor, I don't know if you want me to go through all of these or if you have questions.

THE COURT: I will wait until the end.

MR. WALCZAK: All right. Great. Thank you.
So second argument they make is that it is

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illegal to vote a provisional ballot when a mail-in ballot has been returned. The problem with that is that no court has so held that it's illegal to vote a provisional ballot when a mail ballot has already been returned, whether it is valid that it's going to be counted or it's deemed to have a disqualifying error. Implicit in the PA Dems case when they say we're not going to craft a remedy here, we're going to leave that to the legislature, they said nothing about it being illegal to give notice and cure. More importantly, Ms. Gallagher and her clients in 2022 filed a lawsuit making that very argument. That voting provisionally that -- that any kind of notice and cure is illegal under Pennsylvania law and the Commonwealth Court and Republican National Committee vs. Chapman said that it wasn't and said that notice and cure is not required but it's not prohibited and that was affirmed by an equally divided court Justice -- Chief Justice Baer having just passed the month before. So there is no court in Pennsylvania that has held that it is illegal to vote a provisional ballot if a mail ballot has been returned.

Secondly, and this really supports, I think,

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Ms. Ostrander's testimony when she said a couple of times today and throughout her deposition is that there is or should be no question that a voter has a right to vote that provisional ballot, maybe some question about whether it gets counted, but certainly there is a right to vote that provisional ballot, and that's both under federal law, crystal clear under HAVA 25 USCA, Section 21082 uses mandatory terms. Such individuals shall be permitted to cast a provisional ballot and lists circumstance, and under the election code, similarly, 25 P.S. 3050, which was adopted in the wake of HAVA. They needed to do that. Again, uses mandatory language that you have to be able to cast a provisional ballot. So there is an issue. We will admit there is an issue over whether that provisional ballot in those circumstances must count. We think, frankly, it's clear the Delaware County Court, of Common Pleas, obviously not binding on this Court in the Keohane case in 2023 ruled that yes, those ballots must be counted so long as there is not an in-person ballot, and this issue is pending before President Judge Yeager in Butler County right now. We are waiting on a decision, hoping for a

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decision.

THE COURT: Just a side note, when was that argued and what is the expectation?

MS. GALLAGHER: June 28th. The hearing was before that.

MR. BERARDINELLI: It's not really the same issue.

THE COURT: No, I'm not getting into --

MR. BERARDINELLI: Because Butler lets people cure.

THE COURT: What's that?

MR. BERARDINELLI: Butler is a curing --

THE COURT: No, I'm not getting into the issues of it. It was more of a curiosity.

MS. GALLAGHER: The hearing was May 7th or May 8th, I believe, and then there was a big gap between the time of the hearing and the time of the briefing, and then briefing was submitted at the end of June.

THE COURT: Okay. So we're just waiting on a decision at this point. There's no outstanding issues.

MR. WALCZAK: Right, but the bottom line

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there is that the issue of whether or not that provisional ballot must count is almost certainly going to be decided by an appellate court before voting, hopefully before voting starts in the fall, and, Your Honor, I can tell you, having brought the Genser case as well, that if we don't have a decision in the next -- within the next few weeks, we're likely to go straight to the Pennsylvania Supreme Court and ask them to take that up, but I do expect Judge Yeager to rule any day on that issue. But in any event, it doesn't matter to Plaintiff's argument whether or not that provisional ballot will ultimately count because, first of all, there is independent salutatory purposes for giving voters notice. One is so they can come in and vote that provisional ballot. Second is if they never find out, they are more likely to make that error again, and as things stand right now, voters do not find out either before election day, they do not find out at the canvass, and even as of today Washington County has done nothing to alert those voters that their ballot has not counted. And perhaps most importantly, and we rely a lot on the Supreme Court's

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Washington decision from Washington v. DOC from December of 2023, and that case makes very clear that the right to due process, this right to notice and a meaningful opportunity is an independent claim. As the Court wrote there, the right to procedural due process protects the path, not the destination. So, you know, as in the Washington County case which dealt with the garnishment of prisoners' financial accounts there, the court said, it doesn't matter at the end of the day whether they're actually going to have more or less or no money taken out of the account. What's important is the fact that they get the process. That they know it's going on and they have some opportunity to address it. So this, again, this argument that you don't get to the procedural due process argument because at the end of the day the voter may or may not be able to get their vote is irrelevant to the procedural due process claim.

Standing, so we got two distinct types of -- sorry, I said at the outset we were petitioner, but I forgot which court we're in and they're actually Plaintiffs here. So let's start with the voters and then move to the organizations. The law of standing

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is that a person has to be aggrieved by the matter they seek to challenge, and this is from *Fumo v. City of Philadelphia* 2009 Supreme Court case. So aggrieved means that they have a substantial, direct, and immediate interest in the outcome of the litigation, and what the court has said, as defined substantial as surpasses that of all citizens who are procuring obedience to the law. What that means is that this doesn't just apply to everybody in Washington County or Pennsylvania. It is a subset of individuals and the subset we're talking about here is not even all mail voters. It is the mail-ballot voters who have made a disqualifying error and they have lost their vote. They have filed a lawsuit. There is no question that they have a substantial, direct, and immediate interest in the outcome of the litigation. I mean, if they win this case, in the future they and other voters will be given notice and we'll see what the remedies are after that. Is it direct? Yes. And that is whether there is a causal connection between the asserted violation and the harm complained of, and what we are talking about here is this directive policy or directive from the

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board to Ms. Ostrander and her staff not to give notice and so that they do not have to allow voters to cure, and if you don't know, then there's nothing to cure. And is this immediate, defined as not remote or speculative? Absolutely. We have a full record that we have developed for the Court about exactly how this works and how it doesn't work and who is injured. There is no uncertainty around how this policy works and its consequences, but even if the Court were to find that voter Plaintiffs don't have individual standing, this is clearly the situation that fits within the exception known as capable of repetition yet evading review. So it's defined as too short to be fully litigated prior to cessation or expiration, and there is reasonable expectation that the injury will reoccur. So here you've not only got a very short period of time between when a voter drops off the ballot and their ability to challenge that, but you've got Defendants who are deliberately concealing that information to prevent the voter from even being able to find out. So if this Court were to say that voters in this circumstance, voters who have actually had their

As for the organizations, I think it's a little bit ironic or a lot ironic that you got the Republican Party here arguing that Center for Coalfield Justice and NAACP Washington branch don't have standing because, one, they have intervened in this Court, without our objection, but standing as a matter that the Court can take up sua sponte at any time to make sure that the parties have standing, but except for the fact that they have candidates who are impacted, the allegations of having to divert resources, compromising their ability to engage in core activities is exactly the same as that of the Republican Party. And if the Court looks at Ball v. Chapman from the Supreme Court's decision in February of 2023, they go through all of these factors, and it's very clear that both of our organizations have standing and, most importantly, perhaps, I direct the Court's attention to the very recent Allegheny County Reproductive Health Center v. The Department of Human

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Services case decided in December by the Pennsylvania Supreme Court. This is about the Abortion Control Act where the court said there's cognizable injury for organizations when they alter its operations and reroute its resources in response to allegedly unlawful conduct in a way it otherwise would not have. I think standing for both voters and organizational Plaintiffs, again, is clear.

Legislative Act Doctrine. The argument is that because this was a decision of the Board of Commissioners sitting as the Board of Elections, that they -- whatever decision they make is legislative and if that's true is shielded from procedural due process scrutiny. But it's also clear that not everything that even a legislative body does is considered legislative. Here we will say there is no legislation. There's nothing in writing. They can't point to anything in writing from the board. What we have here is a directive to Ms. Ostrander on how she is to process individual mail ballots that are submitted to the office. So what we are really challenging here are the individual adjudications of the elections office and then subsequently the board,

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3 canvass board, pre-canvass, canvass board. So it is
4 the process, and when that ballot comes in the
5 elections office has to make an individualized
6 determination on every ballot, and about 2 percent of
7 those has been stipulated had what we're calling a
8 disqualifying error on there. Whether it is a
9 missing signature, date, incorrect, incomplete date,
10 all of which under state law at the moment cannot
11 count, but they are making that individualized
12 determination that that ballot will not count and
13 those determinations have been affirmed 100 percent
14 down the road. So those initial determinations are
15 very important, but just like in the Washington v.
16 DOC case, which I will submit is directly controlling
17 here, what you had there was a legislative decision
18 saying that the garnishment of prisoners' wages has
19 to be at least 25 percent, and they did that because
20 it was unclear what the amount was. It could vary,
21 but they said at least 25 percent and that was
22 challenged and the Court ruled on it and the Court
23 rejected the legislative act doctrine there because
24 it's the DOC who is applying that standard, applying
25 that statute, applying that directive and making

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individualized determinations about whether or not each individual is subject to garnishment. How much? Is it appropriate? Is it too much? Those are all individualized decisions just like the elections office is doing in this case based on this directive, which simply says don't give anybody notice of their potentially disqualifying ballot.

Secondly, under Washington, what they call the controlling inquiry is that the infrastructure for giving notice for the due process was already in place. It was being done post deprivation in the DOC. That is not as big a deal when you're dealing with money. If they get it wrong, they can fix it after the fact. That's not true with the ballot, with the vote. If you don't give that pre-deprivation notice, that vote is gone. But, again, here the key is just like in Washington, the infrastructure to give due process is in place in the form of the SURE system. All they have to do is hit a different code on that drop-down box when they scan in the ballot. So for those reasons legislative doctrine, again, is another red herring that does not apply here.

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A few more grains of sand. They argue that they concede that voting is a fundamental right, but they say it is not a state-created liberty interest that triggers procedural due process. So they would rely on a fifth circuit case, Richardson v. Texas, for that proposition. Now, Richardson is obviously not binding in Pennsylvania. It has been described by courts that have examined it as an outlier and questioned, I will note that the fifth circuit is also fairly notorious for issuing decisions that no other court follows including the U.S. Supreme Court, including, I'll note, United States versus Rahimi, which is the case where they said that a domestic violence -- a person convicted of domestic violence has a Second Amendment right to own a firearm and that was reversed eight to one by the Supreme Court in July. More importantly, Your Honor, Defendants ignore Pennsylvania law. So what Richardson says is that statutes that may be policy can define and create a liberty interest, but the Constitution doesn't. Now, first of all, that is just bizarre and perverse on its face, but Pennsylvania law has expressly recognized that the Constitution, as the

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Court said, our highest state law, provides the basis for this Court to record it has a fundamental interest which cannot be abridged without compliance with constitutional standards of due process. Pennsylvania Supreme Court, that is R. v. Department of Public Welfare. The Pennsylvania Supreme Court has specifically said yes. The Constitution can create a protected liberty interest and there should be no question that the right to vote is a protected interest in Pennsylvania, Article One, Section Five, Article Seven, Section 1, especially the latter, crystal clear that if you meet the eligibility requirements, you're 18. You are a citizen. I think you've lived in the territory for 30 days and I'm probably forgetting one in there, but you meet those, you are eligible to vote and you have a fundamental right. So under Pennsylvania law it is clear that the Constitution can and does create liberty interest that trigger due process protections. Moreover, the balance of federal courts that have looked at this, none of which, of course, are binding, maybe persuasive like Richardson, but the balance of federal courts have looked at it and said, of course,

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the constitutional right to vote triggers -- is considered a protected liberty interest that triggers procedural due process and you have to get into the Mathew's balancing. So, again, this argument that voting is not a fundamental -- is not a state-created liberty interest, a protected liberty interest, is nonsense.

Next argument, next grain of sand. Moot because Dos (phonetic) has made changes to the SURE system. So Mr. Marks's deposition reveals that the only thing that may change is the language that attends the record received code. The various codes, I think they have 30-something that come in that drop-down box, they're still going to be there. Counties are still going to have the option to make a decision which of those they're going to enter. The only thing that changes is the e-mail that is going to be generated by that. Washington County has the power to decide which of those codes they're going to enter. What those e-mails say in no way affects the procedural due process analysis. The case is not ripe. So as I stand here today before Your Honor, Washington County has a policy. We just spent the

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last however many weeks examining very carefully exactly how that policy works. If the board takes no action between now and November, that policy will still be in place. Ripeness determination for declaratory injunctive relief comes for a case called *Banfield v. Cortes*. Whether the issues are adequately developed for judicial review, including whether the claim involves uncertified and contingent events that may not occur as anticipated or at all, there's going to be an election. There is going to be mail voting, and Washington County is going to have to process those ballots and the question is are they going to do what they did in April of 2024? Which if nothing changes right now, they're not going to give people notice. We have here an adequately developed record for sure. We probably have too much information, and certainly the litigation strategy we've seen. I mean, all we're asking is for them to input the right code and answer voters' inquiries honestly. That's all we're asking for. If they're willing to do that, we could just sign a settlement agreement today and this case is over. They haven't done that. The fact that they are fighting us tooth

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and nail is an indication this policy is not going to change. The other part of that test is what hardship the parties will suffer if review is delayed? The hardship is that this issue won't be decided before November. You heard Ms. Ostrander, I believe, testify that the board will meet sometime in September. If we adjourn now, I'm sure that the parties have felt the pressure the last few weeks. I'm sure Your Honor is going to be feeling the pressure to get something decided so there's maybe no pressure. You know, I think it's in everybody's interest and everybody's desire that this issue be decided one way or another by the time voting starts in September, and I think I can speak for both sides that we're committed, both sides are committed, one way or the other to try and get this up and decide it expeditiously on appeal. It is going up on appeal. If the Court doesn't decide this now and waits until September to see what the board does and the board could tell us now. They don't have to keep us in suspense. The fact that we're expending all this time and effort tells you exactly where they are on this. We need to decide it now. Moreover, this is

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less an issue of ripeness than an issue of voluntarily cessation. So what would have to happen, that policy as we stand here today is in place. It is the policy of Washington County. If they change it, I mean, there is a whole body of law, both federal and state law, that talks about if in the midst of litigation a party, the Defendant suspends the illegal conduct that doesn't moot the case. If they sign an agreement that is court enforceable, then the case is moot, but there is plenty of law that says, you know, that even if they made the change, there is no guarantee that they're not going to meet in October and say, now we are not going to do what we said we're going to do, but here as we sit, there is zero indication that there is going to be a change. This question is unquestionably ripe.

All right, that's the sand that I'm going to go through. I think I've hit all the points. If I missed any, will be happy to review those. The merits of the argument are actually really straightforward. Can do that very, very quickly. So threshold inquiry is is there a protected liberty or property interest that's at stake here? And the

The second factor is the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards. Now, the risk of erroneous deprivation is very, very high. In fact, as we've seen, it's really 100 percent of the voters who submitted ballots with disqualifying factors on the return envelope. None of those ballots were counted. All 259 of those individuals

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were deprived of their vote in April. The value of safeguards is high. It is not perfect, but it's high and even if it provides some measure of relief, that's better than none. And what we've seen, it's on the Department of State website that in counties that do provide notice and some opportunity for voters to fix those imminently fixable errors on the outer return envelope, about 60 percent of voters do. So the government can't ensure that everybody who submits a ballot in a faulty return envelope is going to be able to correct that and have their vote counted, but what we're seeing here is that Washington County is deliberately interfering with any opportunity to do that. Whether it's 60 percent or 40 percent or 10 percent, that is better than zero that we have under this policy. So that's the second factor. The value. The risk of erroneous deprivation and the value of additional procedural safeguards.

The last factor is the state's interest including the burdens the additional or substitute procedural requirements would impose on the state. As we've been talking, the state's interest, the

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county's interest in changing the code, directing that the Board of Elections enter a certain code that does not notify voters of the error, imposes no burden. They still have to click the drop-down menu. They still have to enter a code. They just have to scroll to a different entry. There is zero practical or functional benefit to the change that the board made in April of 2024. The burden is literally zero on the county. Under those circumstances, there is no question there's a procedural due process violation in this change, and at a minimum Washington County needs to be ordered to enter a code that notifies voters of the mistake that they've made and then gives them some opportunity to take corrective action. As the Pennsylvania Courts have said, notice is the most basic requirement of due process, and it has to be reasonably calculated to inform interested parties of the pending action. Now, the fallback argument that Defendants and interveners make is that don't analyze this under Mathews v. Eldridge. What the federal courts have been doing more recently in many cases, although all the district court cases that we've cited have adopted Eldridge, Mathews v.

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Eldridge, is that the Court should apply the
Anderson-Burdick test, which comes from two Supreme
Court cases. Now, we don't think that
Anderson-Burdick applies. Pennsylvania Supreme Court
nor the Commonwealth Court ever directed that
Anderson-Burdick should apply to procedural due
process claims in Pennsylvania. There is no reason
to believe that the Pennsylvania Supreme Court would
carve out a special test for voting. In fact, while
the federal Constitution, much to many people's
surprise, does not contain a specific provision
protecting the right to vote, as you can't
discriminate against various groups, can't have a
poll tax, there is no specific protection for the
right to vote, and Pennsylvania has two provisions,
as we mentioned earlier, which do give citizens the
right to vote here. And regardless of what the
Pennsylvania Supreme Court may do down the road, this
Court is bound by current precedent and under current
precedent, Washington, as far as we know being the
most recent, Mathews v. Eldridge applies. But even
if the Court were to apply Anderson-Burdick it yields
the same result. So under that standard, the Court,

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the county, has to demonstrate that the practice is narrowly drawn to advance a state interest of compelling importance. There is no interest here except disenfranchising people, which is not a legitimate interest. There is certainly not a compelling reason for the change that they've made here, but even if the Court applied the most minimal standard under legitimate Anderson-Burdick where the state's important regulatory interests must justify the restriction important regulatory interests, there ain't any. There is not a single good reason for misleading the voters and concealing from them that they've committed an error. So regardless of which of those tests is applied under Anderson-Burdick it's the same result, but this Court should apply Mathews v. Eldridge balancing because that's the current state of the law.

With that, Your Honor, I will rest and I'm happy to answer questions.

THE COURT: I'll ask questions at the end from both of you.

MR. BERARDINELLI: Judge, might I indulge you for a five-minute break? Counsel drank too much

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coffee.

THE COURT: Yes, that's no problem.

(At this juncture, a brief recess was taken.)

THE COURT: We are back on the record. You may proceed.

MR. BERARDINELLI: Thank you, Judge.

I want to start with the assertion about disenfranchisement. The third circuit recently wrote this: The voter who fails to abide by state rules prescribing how to make a vote effective is not denied the right to vote when his ballot is not counted. The legislative body of Pennsylvania made rules. The Supreme Court has enforced those rules repeatedly. First in PA Dems and then in Chapman. The only thing that has disenfranchised anybody here are those rules. I want to briefly do an overview of the law because I think it's important to help us frame some of the issues that are before you, Your Honor. Plaintiffs want to say PA Dems doesn't matter. It's obvious why they want to say that because when you're asking, and it's not clear what they are asking for; right? When you blow away the

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fluff and the hyperbole they want notice so that they can cure, plain and simple. What does the Supreme Court of Pennsylvania say? There is no constitutional or statutory basis that would count as having the boards contact those individuals whose ballots the boards have reviewed and identified as including minor or facial defects and that afford those individuals the opportunity to cure defects. I understand that wasn't in the context of procedural due process, but their argument that it doesn't matter totally misreads what we are arguing because procedural due process is not a standalone right. It's a pathway that one is entitled to to enforce a different recognized property not at issue, liberty. That's the question; right? A property or a liberty interest. There is no property interest here, and we'll get to that when we talk about Washington and why it's not controlling at all, but PA Dems is important here because it defines, Judge, that there is no underlying liberty right to notice and cure. And by the way, if we want to say that due process wasn't before the Supreme Court, you need look no further than Justice Wecht's concurrence to say

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that's really not the case because he, in no uncertain terms, deals with procedural due process in his concurrence. You know what he says is enough for a voter pre-deprivation, pre their vote not counting? The exact same words that are on the ballot instructions that go to every voter in Washington County. That's pre-deprivation notice. That's telling you here are the rules. Here are the rules you have to follow to make sure that your vote gets counted, and if you don't follow them, your vote will not get counted. Justice Wecht's concurrence in PA Dems. So PA Dems sets, sort of, the foundation here, Judge. What they're asking for, not whether you get even to the process point, like, are you entitled to notice? Let's balance these factors. Before you get there, you need to bring before the Court an enforceable liberty interest and when the Supreme Court says a voter has no right to notice or ability to cure a defective mail-in ballot, you don't have that foundational liberty interest to launch you into a due process analysis, and I'll walk the Court through that in a little more detail in a minute, but let's talk about the second Supreme Court ruling that

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matters. Ball, two opinions in Ball declaring that the declaration envelope and errors on it are mandatory, right? This isn't something that the legislature meant to just willy-nilly put in there. You have to abide by these rules. The rules are mandatory. So you got Ball saying rules are mandatory, PA Dems saying you don't have a right to notice and cure, and then you get the Commonwealth Court opinion in Chapman, which Mr. Walczak referenced, which was then affirmed by divided Supreme Court, and he likes that for saying that they didn't say you can't cure and he did mention, I think, incorrectly, provisional ballots. That case doesn't discuss provisional ballots one bit. What it does say is that each county can choose what to do. People might not like that choice. Each county can choose what to do. The people you elected to set policy for your county can chose what to do, whether to provide full notice and curing, limited notice and curing, or no notice and curing. The Washington County Board of Elections has that discretion. That is the setup of the law that we're dealing with when we jump into four key points.

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One is this legislative vs. adjudicative issue because if they are challenging a legislative policy, they're in the wrong place and using the wrong vehicle. Substantive due process might work, might apply, equal protection might apply, but guess what, Judge? The courts have already told them those don't work. So now they're trying a new vehicle, procedural due process, but you can't get to procedural due process to attack a legislative decision. So that's the first thing that I want to talk about in more detail. And this concept that this is some, like, you know, behind-the-door instruction to Ms. Ostrander and her office is just crazy. It was discussed at three public meetings and voted on. It's in the minutes what the policy is. The minutes that are in the record. Actively concealing, those are strong words. Words are not evidence, Judge. What did the WBOE, as I call it for short because it is too long to say it every time, do wrong? What did they do wrong under the law? And the simple answer is nothing. You need look no further than the testimony of Deputy Secretary Jonathan Marks. The man who is in charge

of the SURE system. Marks tells us, and we've got two pages of quotes from him, Judge, in our opposition brief. He tells us things like if a county doesn't want, referring to the e-mail associated with the cancel codes sent to the voter, one option they have is to leave that in the ballot return sets, and based on the Supreme Court's ruling on notice and cure, that is an option that is available to the county. That is exactly what Washington County's elected officials decided to do, and this really, I'll get back to the legislative point, this to me crystalizes what this is about because this is not started out, you read the complaint, oh, my goodness, these people got this misleading e-mail; right? We now know that comes from Harrisburg, not from Beau Street. We now know -- Harrisburg realizes it made a mistake and is not going to send that e-mail anymore. So it really boils down to whether Your Honor ought to order the WBOE to change its legislative decision. Because if you're ordering them to push the cancel button or the cancel code, which is all they're now asking you; right? That's what crystalizes what's at issue here

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They want you to say you need to push this button, not the button that the policy says. That shows you that the WBOE did nothing wrong in the first place. They played within the realm of the discretion they have and the rules that have been established. There's a way to change those rules, but it is not for Your Honor to do from the bench. It is for somebody to do in Harrisburg. Or if the voters of Washington County don't like the policy that has been adopted, they can deal with it at the next election.

And the last thing I will talk about, I'll get into all these in a little more detail, is the illusory nature of the remedy they want your court to do, and I'll walk you through the law, if you'll allow me, Judge, the actual election code about provisional ballots, and what you'll see is in plain black and white that if someone in the circumstances we have here timely submits their mail-in ballot, then goes on election day and votes a provisional, the election code tells you you cannot count that. They say that doesn't matter? When they jump their lawsuit by saying we mislead people? What could be more misleading? I guarantee you if we went around

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to the people in this room and asked them if you get an e-mail or an order that says you can go vote provisionally, do you think your provisional ballot is going to count? I guarantee you 100 percent of them would say yes, but that's wrong. And to give them that illusory relief involves you, Judge, unfortunately and unintentionally in misleading people, and that ought to be something when you are sitting in equity as you are that you most surely should consider.

Let's talk about legislative versus adjudicatory because if this is indeed a legislative act, then you cannot challenge it under procedural due process. Plaintiffs don't disagree with that law. They try and claim it is not legislative, it's adjudicative because somebody in the election office has to ministerially handle a ballot, but that's not what this case is about. This case is about the policy. Their complaint is about the policy. Despite my able adversary trying to say this is adjudicatory, his entire argument is about the policy. What is the standard? Legislative versus adjudicated. This comes out of the Supreme Court in

Agency actions that are legislative in character result in the rules of prospective effect and by or at least a broad class of citizens. Which of those two are we dealing with here? We are dealing with a policy that applies to all mail-in ballots, and we're dealing with how or what's going to happen prospectively in November. Understand that definition, in no way, shape, or form are we dealing with adjudicative acts. We are dealing with a legislatively adopted policy of a public body comprised of elected officials, and you don't get to challenge such a legislatively adopted policy on procedural due process. If you think it violates your right to vote, you file a substantive due process claim, or you file an equal protection claim both of which the courts have already rejected.

How else do we know it's legislative and not adjudicative? We heard it today from Ms. Ostrander on the stand. They don't have any discretion. If

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you didn't sign it, you could segregate it. They are not comparing signatures or some subjective analysis as to whether this ballot does or does not have a disqualifying effect. Quick review, set it aside, Canvass Board will deal with it, but that quick review and the set aside comes from only one place. It's not Mr. Smith at the front desk deciding oh, well, you know, maybe I should not count this one because it doesn't have a date. It comes from the policy that was adopted, and if it comes from the policy, and we all know it does, and they're attacking a policy, and all you need to do is read their complaint to figure that out, then they're attacking a legislative act and that, as a matter of law, cannot give rise to a procedural due process claim. So what does Washington tell us? This case that Plaintiffs cite to you? First of all, there's no doubt that money is a property interest. So Mr. Washington got by the first step of the analysis and jumps into the second step. Here we don't even get by the first step because of PA Dems, and I'll do a little more on that in a minute, but more importantly, and Mr. Walczak did this at, like, a

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10,000-foot level. I would like to do it at maybe, like, 1,000-foot level. So the legislature passed a law that said the commissary accounts of 25 percent for fines and restitution and whatnot. Department of Corrections then issued a bunch of regulations that created all kinds of exceptions, all kinds of different rules, and then the prisons and the poor people that had to do this in the prison, you know, accounting office are looking at a situation and seeing if one of the exceptions applies. There is some discretion in those exceptions as the case tells us. So they are making subjective decisions, not objective decisions, and it's those subjective decisions that Washington says make the facts before it adjudicative, not legislative, and mind you, Washington also discusses a long line of prisoner rights cases where the decisions are indeed legislative because it didn't involve this subjective decision-making that the change to the code did under Washington. So Washington doesn't actually hurt my client, Judge, it helps it because it screams loud and clear that this is a legislative action, not an adjudicatory action. One other minor point, Judge,

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we've got to remember where we are procedurally. We are at summary judgment; right? So if there's some sort of issue about factually whether this is adjudicatory versus legislative, in other words, it's looking at the ballot and putting it aside one or the other, that has got to be decided in the board's favor at this stage, but you don't even need to get that because the record is undisputed. They are doing nothing but objective review, no subjective review. Washington is not controlling. It's a legislative act, game over. People might not like that it's game over, Judge. People might think this policy is unfair to some, but the rules are the rules and there's a reason why you can't challenge legislative actions by procedural due process. It's because, Judge, you are not supposed to write legislature from that seat you're standing at, and that's exactly what they're asking you to do. They're asking you to write a different policy for the Washington County Bureau of Elections. Procedural due process is not the street that gets you there. That's why we have the legislative versus adjudicatory distinction in the first place.

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I touched on it a bit, but I'll do it again. What did my client do wrong? Now, that I understand, after hearing oral argument a little more, is that we didn't push the right code; right? Even though Mr. Marks tells us we have discretion to pick whatever code we want. Even though a curing versus a noncuring county picks a code dictates whether it's right or not. There is no wrong code, Judge, and the code we picked is 100 percent factually accurate. We received a ballot and we recorded it. They want us to pick a different code. On what basis? And he'll tell you, I'm sure, on rebuttal, because we need notice; right? But the Supreme Court tells you you're not entitled to notice because we need notice, but that is skipping the first part, the first step of the procedural due process inquiry. So they picked the wrong vehicle, Judge, for what they're upset about. Procedural due process is not it, and my client was well within the bounds of what the Supreme Court, the legislature, and the Commonwealth Court have all told them that they can do, which is decide to be a curing or noncuring county. They were one in 2023, new people came in, they adopted a new

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policy, people elected these three commissioners, they voted on a policy, that's the policy, and you don't get to rewrite it. Where does the right come from? From where? Leads me back to PA Dems and remember, procedural due process is not a standalone right. It's a mechanism to enforce other protected liberty interests. We have PA Dems in general saying no right to notice and cure. I think that ought to be the end of the day, not because it wasn't a procedural due process case, but because it defines that there's no protective interest here that they're suing about. And you do have Justice Wecht in his concurrence saying, if you think about procedural due process, as long as we give them notice on the ballot of what to do, you're good, and we do that.

We have also cited to you in our opposition, Judge, some law that says when you're evaluating a procedural due process claim, you need to do it in a very narrow and focused way. So it's not the right to vote that we're talking about. It's the right to receive notice that you made an error on your ballot. That's a very specific right, a very specific

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3 interest, and there is nothing in the election code
4 that says that's an interest that would give rise to
5 procedural due process protection. There is nothing
6 in the decisional law in Pennsylvania that says that.
7 In fact, PA Dems can be read to be just the opposite.
8 In other right-to-vote cases, NAACP, for example,
9 their recent third circuit case they say ballot
10 errors are not denial of the right to vote. And even
11 the secretary of the Commonwealth in PA Dems, and
12 it's cited in the decision, talks about look, all you
13 need to do is fill out your ballot right and you're
14 not denied your right to vote. So this narrow
15 interest they claim merits procedural due process
16 protection is not the right to vote in some global
17 way. The Court ought to look at it as the right or
18 an interest in receiving notice and an ability to
19 cure and I don't know how you can gel that with PA
20 Dems. And even if it is the broader right, the Court
21 is going to need to engage in some sort of
22 legislative act, essentially, that will ultimately be
23 unfair to somebody. And this came out in
24 Ms. Ostrander's testimony. What happens to the
25 person that gets their ballot in at 7:59? They don't

So even if we are dealing with the broader right to vote, and by the way, no case they cite that uses those words, fundamental, most important, whatnot, none of them are procedural due process, not a single one. Not a single one from Pennsylvania. So when we're looking at the hierarchy of precedent that we all learn about in law school; right? PA Dems obviously is as high as we're going to get and it reads on this issue. It's not a peer procedural due process case, but it reads on this other underlying right. Their cases talk about voting being fundamental come up in different context, not procedural due process context and not mail-in voting. So I would say, Judge, you got to go to PA Dems first. And even if you say, well, that means there's no Pennsylvania case, they've got these fundamental right-to-vote cases in different context, you've got PA Dems, which isn't a peer procedural due process case. So where do we go? And none of it is binding on you, but we all know that when we look to

federal cases, we go to the U.S. Supreme Court, circuit courts of appeals, district courts, and then we typically go to district courts within the state of jurisdiction. So let's do that. Two federal circuit courts have addressed this issue whether the, quote, unquote, fundamental right to vote is a liberty interest for procedural due process purposes. The fifth circuit in Richardson and the sixth circuit in a case called League of Woman Voters v. Brunner, I believe. It makes me think of the Steelers' old tight end. They're the only two federal circuit courts to have addressed the issue. They both say the, quote, unquote, fundamental right to vote is not a foundational piece for bringing a procedural due process claim. The federal district court cases that Plaintiffs cite, with one exception, deal not with mail-in ballot errors of the kind we're talking about here, but with signature-matching requirements. Like, comparing John Smith to John Smith. By the way, --(inaudible)-- had that ruled unconstitutional not at issue here. So that's a little different to me, Judge. So not only are they not dealing with the same issue, but they are dealing with it in a way

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where there is subjectivity as opposed to objectivity involved, but what they don't cite is the one Pennsylvania District Court case that has addressed this issue, and that is the French case, Judge, 2023 Westlaw 8374738, and in full disclosure, it is not a mail-in voting case, but it's a lot more offensive than what we have here, in my humble opinion. The county there ran out of ballots, Judge. They didn't order enough ballots. So people were in lines hours at a time and couldn't vote because there were no paper ballots, and, rightfully so, a bunch of voters sued that county for a host of constitutional violations including procedural due process. They were found to violate substantive due process. They were found to violate equal protection, not procedural due process. French court says voting is not a liberty interest on which you can base procedural due process. So if we're going to look at federal precedent, the only Pennsylvania court to have done it says it's not. The two federal circuits that have addressed it say it's not. That's powerful persuasion to me, Judge.

Anderson-Burdick, I'll be brief. No

in voting cases. So where
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Mathews test, I think, is done a little bit more differently than Plaintiff wants it done. Plaintiff basically says fundamental right to vote.

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Game over. But that is exactly why Anderson-Burdick applies because it is not that simple, but even if you apply Mathews, we're dealing with the right to notice and cure and in that context, when you get to the third factor, which is the state's interest or, here, the county's interest, governmental interest, it's their interest in adopting a policy that they think their voters put them in office to adopt. That's a powerful interest, Judge, one that really tips the scales, and this is all, sort of, full circle; right? Because that gets into the fact that it's a legislative decision, but all of them hearken that this claim should be denied.

One more and I'll finish up, and that is to what end do we want them to push this button? We want them to push the cancel button, which, by the way, if you look at joint Exhibit I, Judge, on the third page of it talks about the cancel code. It says, further, if the ballot issuance record is canceled by the County Board of Elections, example, voided to reissue a replacement ballot, in the SURE system. Washington County is not canceling these ballots. So even the secretary of state's guidance

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about what cancel means shows it doesn't apply, but even if it did, Judge, so I'm going to click cancel, John Smith is going to get an e-mail that says, you made an error. Let's make one up. You didn't sign your mail-in ballot. Go ahead and go vote a provisional. A provisional that the law tells us can't be counted. Plaintiffs refer to provisional voting as a, quote, unquote, fail-safe. It's not. It's not a do-over. I think of golf, Judge. I don't know if you're a golfer, Your Honor. As I often do, I hook a tee shot into the woods. I might not be able to find it. I get to hit a provisional, smash it right down the fairway, but when I go into the woods and I'm standing behind a tree, I've got to play that ball. I don't get to play the provisional. I got to play that one. Here their defective mail-in ballot is the ball I hit into the woods, and they don't get to go cast a provisional and have it counted because the election code tells you just the opposite. I see you leafing, Judge. I got printouts that might make both our lives slightly more easy. May I, Judge?

THE COURT: Yes.

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MR. BERARDINELLI: So, Your Honor, what I have given you are a printout of first, 25 Pennsylvania statute 3150.16, and then, secondly, 25 Pennsylvania Statute 3050, and I have given you two for these reasons. Plaintiffs want to jump right into the middle of 3050 without realizing what it's talking about. So 3150.6 tells us when a mail-in voter has the eligibility, that's the word the statute uses, to submit a provisional ballot, and subsection 2 is the only section that deals with it, B2, an elector who requests a mail-in ballot and who has not shown on district register as having voted by provisional ballot -- may vote by provisional ballot, and then it refers to what is 3050, Judge, and Ms. Ostrander told you about the registers, the poll books; right? So the poll books have to show that a voter was issued a ballot and the ballot was received. Issued and received. That's what the district register shows. Received, clearly, is an analog for voted here, Judge. So this is the only provision of the election code, the only one, that allows a mail-in voter to vote provisionally. Now, look, the practice at the polls might be if I come in

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and I'm raising a ruckus, you let me vote provisionally. Sure. That doesn't mean that the election code authorizes it, and it certainly doesn't mean that that provisional is going to count. So if we go to 3050 then, Judge, and by the way, Plaintiffs have entered a stipulation with us, which is at, I think, paragraph 47, that says the voter submits their mail-in ballot at Washington County, then goes and votes provisionally. The provisional is not going to be counted, paragraph 47. So 3150.16 points us to 12108.41. If you look at the little footnotes, that really means 3050 P.S.A .41. So when I get to there it's talking about the ability of any voter to file a provisional when your name doesn't appear on the registry and your registration can't be determined. So we're now in when you can file a provisional. So you can do it if you're an in-person voter under that situation, and 3150.16 gives us another situation for a mail-in voter that is similar when you're not on the registry. All of these voters are on the registry, Judge. All of them are on the registry. So that's the starting point for the part of the statute the Plaintiffs argue, which is

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8.45(i). Judge, it's incredibly confusing, but the language is clear, and 5(i) says, first of all it says, except as provided in subclause 2. So before we even get to subclause 1, which is what Plaintiffs rely on, we're going to go look at subclause 2 because that's what the statute tells us to do, and subclause 2(f) tells us a provisional ballot shall not be counted if (f) the elector's absentee ballot or mail-in ballot is timely received by a county board of elections. Ms. Ostrander told us what received means. Nothing else in the record puts a different definition on it, and, Judge, it's also, frankly, just real common sense. I got a mail-in ballot, I mailed it in, and they got it. I got a mail-in ballot. I dropped it off. I handed it to the guy. That's received, and if that ballot has been received, the provisional that that voter may have been able to file because someone was just cutting them a break at the polls or maybe because the mail hadn't gotten there yet, but either way, the provisional doesn't count. The one that is timely received is the one that matters, and what they're asking you to do is sell people false hope, and as a

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Court sitting in equity, you most certainly should not do that, Judge. They rely on both Delaware County case Keohane, I think, is the correct pronounciation, but I've probably been saying it wrong for a while. We distinguish it in our brief, and I won't spend too much time other than to focus the Court on both that and the case in Butler County, Genser, are in curing counties. That's a whole different ball game when the legislative bodies in those counties have said you can cure while the legislative body here has not, and what we think is the better precedent, Judge, and, again, we go to the hierarchy of precedent here. Both these are unpublished, both your brother judge in Delaware, but a three-judge panel of the Commonwealth Court in In re: Allegheny County provisional ballots back in the 2000 election look at these same provisions and, just like I did with you, Judge, said this is crystal clear. If the mail-in ballot is received, the provisional doesn't count. Back to our hierarchy of precedent, Judge, even though both are unpublished, a three-judge panel of the Commonwealth Court ought hold more weight from a persuasiveness standpoint

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than a brother Common Pleas court judge, mind you, in a curing county.

I'll finish where I started, Judge. Someone is not denied the right to vote because they made a mistake. That is what the law says. The law also says Washington County was fully within its discretion to change its policy to the current one, and they're going to exercise that same discretion again in September, which gets into all the ripeness reasons, but I'd rather stay on the merits. They exercise that discretion in a legislative act that can't be challenged in this claim. It just can't be. And it is not a protective liberty interest to require somebody to push button A versus button B and give you notice and ability to cure your ballot, and even if it were, what they want to do, vote by provisional, misleads a voter into thinking they have a remedy when they don't, and a court sitting in equity should not do that. So we went at least three or four different ways, Judge. We win under PA Dems. We win under the Legislative Acts Doctrine. We win because we didn't do anything wrong, and we win because a provisional ballot is not a proper method

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to cure, Mr. Walczak used the term, we argue it's illegal. I don't think we ever argued that. All we argued is that the code says what the code says, and the code says you can't count it. So we ought not to be telling people to go do it if their vote is not going to count via that provisional ballot.

Thank you, Judge.

THE COURT: Thank you.

MS. GALLAGHER: I'm third.

THE COURT: You are.

MS. GALLAGHER: Otherwise known as Brian Piccolo.

THE COURT: That's the way interveners go.

MS. GALLAGHER: That's right. Fine with me, Your Honor.

When I was a much younger lawyer I always bemoaned it when the old folks got up and, well, let me tell you what it was like back then, but to place that before the Court in this context, I have been involved with Act 77 since prior to its inception and the representation of the speaker of the house during that time period. I have also been involved in every major piece of litigation since. I don't say that

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bragging, but there is continuum which has happened with this, the act, the grand bipartisan compromise, if anything, probably legislation in the last 20 years, and the Commonwealth Court spent some time there. This was hard fought. This was probably the legislative process at its best. Everybody got a little bit, nobody walked away completely happy like the best compromise, but since the date it was enacted, there has been a continuing, and it continues today, attempt to dismantle that great compromise. Within a year of enactment, prior to the time the Pennsylvania Democratic Party came in said, under PA Dem, no secrecy ballots, let's cure no signature matching and extend it with a received-by date extension. Now, granted the case was enacted, the statute ruled out during the course of Covid, but in the decision to extend the received-by deadline, there is also great destruction. After we got through PA Dems' no notice and cure, RNC versus Schmidt was -- I'm going to disagree with both of my colleagues a little bit because that was my case and I know what that Court said and what Judge Ceisler said was, initially, she denied a preliminary

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injunction. She denied a request for preliminary
injunction, which, surprising to a lot of people, the
Supreme Court split in its affirmance and it was
right after Justice Baer's untimely death. The next
part of Schmidt was the denial on which something
that my colleague Mr. Walczak has said preventing,
that we have tried to prevent the Court to get to the
merits of this case, because Judge Ceisler then
dismissed the case on the basis of standing. And the
standing on which she dismissed that case was the
fact that we had named the secretary of the
Commonwealth on the basis of a guidance suggesting
that perhaps the boards could engage in conduct which
was curing and Judge Ceisler said, no, they're not
enforceable. They're not binding on anyone. Case
dismissed, and then dismissed all 67 boards. At that
time, after that, so no one and no court, as we stand
here today, has looked at any notice in cure
procedure and said it's legal or illegal. There is
default and we're in a mess. Article 1, Section 6,
rules for voting in this Commonwealth are supposed to
be equal and uniformed throughout. They are anything
but. So at some point the Supreme Court is going to

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have to take on, and maybe it's, in this case, maybe it's another one, if it cannot be ordered, how do you impart that and how do you set those procedures up? But that's not all with respect to Act 77. It wasn't over yet because then there was Ball where my client filed a lawsuit to uphold the date requirement, which the Pennsylvania Supreme Court upheld. Within one week of the PA Supreme Court doing so, NAACP and Eakin were filed challenged on the materiality provision, and when Judge Baxter granted summary judgment on those cases and an appeal was immediately taken to the third circuit and the third circuit sent it back and said not a violation of the materiality provision. Are we done yet? No. We are not done. We are going to find another way to challenge it. So we are back in front of Judge Baxter on equal protection, but that is not all. We are also in the Commonwealth Court in a case that was just argued last week on another state court challenge to the date requirement. And under this context of counties can cure, but they don't have to count. Just give them the right to provisional vote. Just call Butler County who gave people the right to vote and actually

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out of all of it, because it is our position firmly,
all notice in curing and that's what -- I have only
been here six minutes. All notice and curing is
illegal. I say that in a sense that that grand
compromise didn't take it into consideration except
for one time, and they were so explicit in what they
did because the greatest concern in enacting Act 77
was the integrity of the process because there are
paper ballots. There is human error, much more
decidable human error that can come into play in
counting paper ballots, and then let alone which
paper ballots count. My ballot goes into the
machine. If that machine is properly calibrated,
there's some accountability. That's what Act 77 was
about when they decided to do this, but it will
continue to be litigated. Butler gave a split cure.
They said that there could be a cure for ballots that
were readily observable on what I call the
declaration envelope for secrecy envelopes because
they try to draw the distinction with what I was
questioning Director Ostrander today about what's
inside of that envelope. We can't open it up until
the pre-canvass. They can't do any of this under

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pre-canvass. Any of what is being done here cannot be done prior to 7:00 on election day under the code. They did not allow a secrecy ballot to cure ballots that -- secrecy envelopes, secretary sends off the e-mail, gets picked up, voters in mind, and then it comes -- and now Butler County is defending that and here we are in Washington County.

THE COURT: Welcome.

MS. GALLAGHER: It's a tour. But it is a process to dismantle this act and underlying it all is that mail-in voting is an accommodation. The right to cast a ballot and to vote a ballot, this is an accommodation to make it easier, and it was quite timely, wasn't it? Given what we experienced in 2020. It's not the only way to vote, Judge, and I don't say that harshly. My mom recently turned 90 and one of the things when they check her medicine is what day is it? What is your name? Can you write your name? It is common as to the ability to engage in voting to be able to answer these very simple questions. Neutral ballot casting rules as the Supreme Court has ruled on them and as the U.S. Supreme Court has ruled on them. There are alternate

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ways to do it. If a voter needs help, the Act addresses that, and what can be done to give that voter help filling it out, but there's always the ability to vote at the polls and what is most confusing, somewhat, is that for folks who it is difficult to get to the polls, difficult to fill out the declaration, the cure for that is to go to the polls. It is somewhat counterintuitive and nonsensical, but what I would like to take the Court through is very quickly, every provision, Judge, Mr. Berardinelli has argued and Mr. Walczak. I'm going to take you back through PA Dems other than one very short portion.

Justice Wecht just didn't say there is no procedural due process challenge. I would ask the Court, may we brief that in a little more detail? Because what he did in his full concurrence was he looked at and distinguished between those issues which are subjective as in signature matching and those issues, which are readily the same, and said as to those, if there is the appropriate warning to the voter, there is no pre-deprivation notice necessary. So to the extent there was a pre-deprivation due

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process, notice because that's what it is. It's not just due process it is a pre-deprivation due process because they want to know before the, quote, unquote, rights lost, do they have the right to fix it? And that's where it becomes very different. There are warnings. Justice said Wecht said that's enough. Just have the warning.

Judge, I just wanted to, in case this Court did not agree that PA Dems prohibits, prohibits, the ability of the Court to rewrite the legislation, rather than argue, I would ask the Court to review two things. I would ask you to look at Justice Wecht's dissent in the In Re: Canvass. And in that case he goes through in detail of when the Court -- when the legislature says shall. In fact, I have a copy of this case that I was going to hand up. He goes through great detail about when shall means shall, and in one of the greatest rhymes he says, and as their history is, there was not always the greatest relationship between this current Court and the general assembly as it now exists. They battle. As it is, talk about checks and balances, they exercise that pejorative well, but when Justice Wecht

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says shall means shall and a mandate without a consequence is not a mandate and within that purview, I'm going to very quickly take you through the provisions of the election code, which this Court would have to rewrite or disregard in order to give Plaintiff what they seek, which is a mandatory cure. The first one is 3146.8(a) and Ms. Ostrander testified to that as to what can the Board of Elections do when they receive that ballot back? All they are, under the law allowed to do, not specifically prohibited, but it all has to be registered. Mark it and record it. And then what? Lock it up. I then asked her, when is the first time that you can inspect the ballot? At the pre-canvass and the pre-canvass 3146(a)(g)1.1, very specific; right? The inspection of the ballot, the opening of the ballot, and no dissemination of what happens within that. So what has happened is this, sort of, all the other kids are doing it, we're going to be lemmings, and the consecutive secretary of the Commonwealth either catching up or advancing his own preferred curing mechanism, which is through the SURE system, neither the secretary nor the boards can act

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inconsistent with the law, and that's the part that has not been placed before you, Judge. The elections code is very clear; Judge Ceisler was clear. Well, in the absence of this, I would just definitive agreement so the boards have started to cure. Nobody said it's okay; nobody has proved what's going on. We know the secretary has been wrong on multiple occasions. First, the secretary said secrecy ballots weren't necessary. Then the secretary said we can count undated ballots, and both times the Supreme Court said no. So none of this has been approved. To do what they're asking you, you got to find your basis in something and it's not the other guys doing it, so I can jump on this bandwagon because if the right to vote is as important to Plaintiffs as they pretend and the legislative authority is as important as it is in the Constitution, as interpreted by the Pennsylvania Supreme Court, it's not enough to say what other folks are doing. It has to be based on the law, and nothing you've heard here has been based in law as to this notice and cure procedure. So we have 3146.8(a). We have 3146.(a)(g)(1.1), then we have all of 3050, and that's when it gets into

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Justice Wecht's shall means shall because -- or, excuse me, 3150 -- 3050 eligibility because it's just not when you can do it, it's shall, and I would like to read this to the Court. Any elector who receives and votes a mail-in ballot shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as in eligible to vote at the polling place and district elections. Officers shall not permit electors who voted a mail-in ballot to vote at the polling place. Now, who can? An elector who requests a mail-in ballot, and this is the key as to the issue of received, and I heard the Court's questions earlier, and who is not shown on the district register as having voted may vote by provisional ballot. So the distinction then comes we're going to dance on the head of the pin as, with all respectfully, Judge Wayland is, but he is doing it under the wrong provision of the election code. It's about receipt and it's exactly what Justice Alito says. It's the receipt of the ballot that indicates that it's cast, and that's what the

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election code looks to and the Court does not have the ability as to insert its intent into the election codes. It then goes into one more provision notwithstanding paragraph 2 an elector who requests a mail-in ballot and who was not shown on the district register as having the -- may vote at the polling place if the elector remits the ballot and spoils it, and from that all the other provisions. But it's clear, Judge, under the code you don't get, it's shall. You shall not have the right to cast a provisional ballot. Those are just a few of the points and a few of the election code provisions to adopt what the Plaintiffs have requested you would have to ignore, and then there's the whole issue of ignoring, what we believe is clearly Judge Keohane's inappropriate argument, and I would just ask that the Court look at language under which that case was decided of 3050. It doesn't even deal with provisional ballots. It deals with signatures and whether a signature is matched for a voter who casts a provisional ballot. There is no case that says -- the only case that takes into context whether a provisional ballot can be counted in the context of a

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cure is in, which we also cite in our brief, which is a three-panel decision of the Commonwealth Court with now Supreme Court Justice --(inaudible)-- as its author, and in that case the Court went through the entire analysis part of which I just very articulately tried to this Court through as to why a provisional ballot cannot be counted as a cure and why -- and the Court recognized the perception it would cause. But it is what the law is under Act 77. It is sometimes easy, I sometimes -- I don't want to say anything, my colleagues who get to just stand back and shout disenfranchisement or get to shout misleading. Everything Washington County did, I don't want to say everything because I don't believe that hitting those, and I don't believe the law actually allows them to choose anything other than record ballot received, and if you note we attached our brief the secretary of the Commonwealth prior to RNC v. Schmidt all that was allowed to be said was ballot returned reported because that's all they're allowed to do. We would ask that the Court just again look at PA Dems. If you find that there is a due process deprivation, that deprivation arises out

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of Act 77. It doesn't arise out of what Washington County did, and if you find Act 77 -- we've argued nonseverability, but I don't think it even goes there for purposes of now. The Court sees that. That's where the Court has to stop, Judge. If you find that the lack of notice is, under Act 77, because that's all you would be able to use to mandate it, does not give that notice and that is deprivation, due process analysis, your finding begins there. The Court does not have the authority to rewrite the legislation. Thank you.

THE COURT: Short rebuttal?

MR. WALCZAK: Do you want to take a break, Your Honor, by chance?

THE COURT: I don't, but if you do, I will take a break.

MR. WALCZAK: I think ten minutes would be great.

THE COURT: Okay. We are back on the record. A brief rebuttal.

MR. WALCZAK: All right. I will truly try to keep this brief.

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So Ms. Gallagher mentioned that she has been involved in many, if not most, of these cases. I will say that I and the ACLU have also been involved in many of these cases on the other side. So this is not new.

The difference is that in all of these cases you got the Republican Party working to undermine voters' ability to vote and to have that ballot counted, Whereas we simply want to make sure that eligible voters who cast timely ballots are able to have those votes counted.

The other thing is that, you know, we are not talking about golf here. We are talking about fundamental rights. It's a very, very big difference.

So just a couple of -- I got about six points I want to make very quickly here. What we've heard repeatedly is that it is not illegal under current law for Washington County to make the choice that they made to not give notice or provide any opportunity to cure. And I think under the existing decisions now, that is fair.

What we are saying is that as a matter of

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procedural due process, they are required to do more. This is a case of first impression. That's why we can't point to any other decision out there. That is what case of first impression means.

And what we are saying is that under these circumstances where there is a simple, straightforward solution where Washington County, which is the only entity that knows that the voter is going to lose their constitutional right to vote, their ballot is not going to count, As a matter of fundamental fairness must advise the voter of that in advance. That is what procedural due process stands for.

And this notion that there is no independent procedural due process right in the Constitution is, I don't know, breathtaking to me. We have the due process clause. There are two elements of the due process clause. Substantive due process. Procedural due process.

It is substantive due process that is regularly questioned as, you know, where does that come from? Where do you get parental rights or the right to choose bodily autonomy?

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Procedural due process has never been questioned. There is a long line of cases. Procedural due process is an independent, standalone right, and the Court need do nothing more than look at Washington where they talk about there is independent vitality in the process.

Not what you get at the end of the day, but that right to the process. To notice and to meaningful opportunity to contest, that is an independent right.

You have heard both parties argue what I will just call a fundamental misunderstanding of how procedural due process works. And what they do is first they say -- you know, they argue there is no -- there is no protected interest in voting because, under Richardson, the Constitution doesn't create a liberty interest by, as we know in Pennsylvania, constitutions can and do create liberty interests.

But then they make this subtle switch and say, look at PA Dems says there is no right to notice and cure. But if you think about it, the first -- the threshold question in procedural due process is is there a deprivation of life, liberty, or property?

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Well, we don't have life here. We don't have property. So it's liberty. Right? The liberty is not the liberty to cure -- to notice and cure of a ballot. The liberty interest at issue is voting. Whether or not there is from that a right to the notice and a meaningful opportunity to contest that flows out of the Mathews balancing.

So that is just, you know, in my view, is a fundamental misrepresentation of how procedural due process works.

Third, we repeatedly hear that the Court is engaging in a legislative act. It is not. We are asking this Court to do what courts have done since *Marbury v. Madison*, which is to rule whether or not -- whether it's a statute, whether it's a policy, whether it's an action -- it is consistent with higher law. Whether it's statute or, ultimately, with the Constitution.

I brought the lawsuit that got rid of voter ID in Pennsylvania. That was passed by the legislature, and the Court said, no, this is unconstitutional. That's how it works.

So we have got this policy and practice here

If it is, it is appropriate and necessary for this Court to strike it down. If it is not, so be it.

Mr. Berardinelli says that the legislative doctrine applies because we are challenging the policy. But, Your Honor, if you actually look in the complaint that we filed under the relief, declare that the Washington County Board of Elections' policy and practice of concealing information and misleading voters about their mail-in ballot status is unconstitutional and invalid because it violates procedural due process.

Yes, there is a policy here that does not and cannot insulate the entire practice that the elections board is engaged in. So it is, yes, the policy dictates the practice. It is that practice that's being challenged. That is not legislative. On provisional ballots -- so, one, I'll just note that the parties are essentially asking this Court to

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decide what's before Judge Yeager in Butler on Genser.

I will say that we do have the Keohane decision, which they have criticized. We will note that the Department of State has agreed with the rationale there. Ultimately, we will find out, I think, when Genser gets decided and goes up on appeal.

If as the parties argue that voting a provisional ballot and having it canceled is illegal, then you have got an awful lot of counties in Pennsylvania who are engaged in illegal activity. Including Butler. Because in Butler it's only about whether you cure for a secrecy ballot. But I don't see lawsuits being filed by the party who is usually opposing voters arguing that --

MS. GALLAGHER: Oh, come on.

THE COURT: Yeah. Let's just get to the legal arguments.

MR. WALCZAK: All right. Justice Wecht -- I know Justice Wecht. I admire Justice Wecht. He's a single justice. What he writes in a single concurrence is certainly not binding on this Court.

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So I will just close and say that procedural due process, as the Washington Court said, is really about ensuring fundamental fairness. And here we have got a situation where the county is the only one who knows that a ballot is going to be disqualified. Under procedural due process, they have an obligation to advise voters, because the infrastructure is in place to do that very easily, that they have an obligation to do that.

Happy to answer questions.

THE COURT: Not yet.

MR. BERARDINELLI: Judge, I will be even more brief than my able colleague.

The voter ID law case is a substantive due process case. That's the difference here. That's the difference.

They didn't bring a substantive due process claim, and that is why a legislative act can be attacked under substantive due process. It cannot under procedural due process. That is the core distinction.

On that same core distinction, the policy and practice in their complaint, anything the

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election office does, as Ms. Ostrander testified today, is based on the policy the board adopted.

So that's semantics. Right? They are challenging the policy. And the policy is a legislative act.

And maybe one thing I forgot to do when I was up here earlier, but I think it's a good place to close, is a question that Your Honor asked about how absentee ballots have historically been dealt with. Right?

No one ever gave some guy in the Army in 2015 notice that he forgot to sign or date his ballot, and it didn't get counted. Right.

So history tells us that the relief they want is not appropriate. Right? They are trying to create a new right. And due process is not an avenue for creating a new right. It's an avenue for enforcing an exhibiting right or liberty interest. And that just simply doesn't exist here.

And that's what I mean when I say it's not a standalone right. You have got to have an underlying life, liberty, or property interest, which you are advancing up the Mathews ladder. And they just don't

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have that here. And it's certainly not some broad right to vote when all they really want you to do, Judge, is order them to push a different button.

MS. GALLAGHER: I would say that there is something upon which Mr. Walczak and I agree as of this moment that if you find that there is a due process issue, you have to declare it unconstitutional.

The issue of what's being declared unconstitutional because they -- but that's not all you are being asked to do. You are being asked to provide the remedy. You are being asked to provide a remedial measure.

And the remedial measure is if there is a due process deprivation, pre-notice deprivation, then provide the remedy and make them push a different button. And therein lies the rub.

On that, I think, PA Dems is also instructive, not on notice and cure, but on the hoops, for lack of a better word, that the PA Supreme Court went through to extend the three-day received-by deadline. And there is great discussion on there on those limitations.

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In Genser, the issue is whether a provisional ballot can be cast or whether it should be counted. And, again, there were two different cure procedures. Cure procedures for the outside defects where the individual could go in and fix it in the presence of an election officer.

THE COURT: Understood.

MR. WALCZAK: Your Honor, I just want to apologize to Ms. Gallagher for that unnecessary slight. My apologies.

THE COURT: Understood.

MS. GALLAGHER: No need.

THE COURT: Okay. I am going to start with the language of the legislation as it is always a good place to start.

If you look, and it was cited many times throughout the elections code and specific to provisional and specific to mail-ins, throughout the Election Code it actually says received and voted. Multiple times together with the conjunction.

When you look at the mail-in side, it says you can cast a provisional vote if it is determined you have not voted. And I am paraphrasing. And in

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the provisional ballot side, it says that your vote will not count if your mail-in -- your provisional will not count if your mail-in was received.

I think we can all agree that received and voted are two different words. So tell me why they mean the same thing when in the language of the actual code they use them together as meaning something separate -- received and voted -- but then they separate them and they are two different words?

So tell me why they mean the same thing as you indicated in your argument. And you, kind of, glanced over it, but I think it's a big deal because you want me to read the language of the legislature. I am reading it, and it has two different words and they clearly use them to mean two different things.

MR. BERARDINELLI: Let me address it at the bottom first. Right? Because what my argument is is the Court shouldn't grant relief. That would be illusory. And the part of the code that makes it illusory is what should be counted and something that -- it's not voted in that section. It's not voted and received. It's timely received. And there is no ambiguity about what timely received means.

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THE COURT: I agree with you, but who settles when there is discrepancies between the law.

MR. BERARDINELLI: But I don't think there is a discrepancy, Judge.

THE COURT: If they say that you can vote by a provisional -- you can vote provisional if you have not voted versus your vote will not -- your provisional will not count if it's received, those are two different things.

MR. BERARDINELLI: Well, I think one deals with the exact issue, which is when the vote is going to count.

I disagree that 3150.16, when talking about voted, is something different than having filled out your ballot. It is different than received because it --

THE COURT: But the other part just says received.

MR. BERARDINELLI: It does, Judge, because one is dealing -- when you look at 3150(a), it's dealing with the process for actually filling out the ballot.

THE COURT: So when do they vote?

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MR. BERARDINELLI: They voted when they relinquished control of that ballot.

THE COURT: So when was it received?

MR. BERARDINELLI: It was received when Washington County got it.

THE COURT: Okay. So the same thing. You are saying the same thing.

MR. BERARDINELLI: Well, one -- if I'm at the window down on Beau Street, they are the same thing.

If I am putting it in the US Postal System, not. Because as we all know, the US Postal System doesn't work right. So that guy voted his ballot when he put it in the mailbox, but it was never received.

THE COURT: So they voted before it was received?

MR. BERARDINELLI: There they voted before it was received.

THE COURT: So when you said in your argument -- you, kind of, glanced over it, so I didn't take too much meaning into it -- that voted and received are the same thing, did you not mean

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that, or you did mean that?

MR. BERARDINELLI: I think you need context, Judge. And I apologize if I didn't provide the appropriate context. I think for purposes of determining whether the provisional ballot gets counted they, on some level, are synonymous. Voting requires other acts like filling out the ballot and putting it in the mail, but ultimately, once a voter does that, he or she has voted when she relinquishes it. And then once it is received, a provisional cannot be counted.

THE COURT: Okay. So you also used the word common sense when it came to the word received. You said that is common sense.

Common sense for me says that I voted. My vote counted. I voted. Isn't that common sense?

MR. BERARDINELLI: But, Judge, I might go and I might vote on a machine and forget to vote for a race. I still voted, but I don't get to go back and do that again.

THE COURT: But your vote still counted. It's just -- it's called an under vote. You voted. You chose not to vote for anyone.

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MR. BERARDINELLI: Judge, there are rules. Right? There are different rules for in-person than there are for mail.

THE COURT: We know that, and you guys argue against there should be the same rules for everybody.

MR. BERARDINELLI: No, Judge. I don't argue against that. We have the same rules for mail-in ballots.

THE COURT: So why, when people go into vote, they get notified that there is a defect?

MR. BERARDINELLI: What do you mean by that?

THE COURT: I asked Ms. Ostrander today, if they go into vote and their ID is wrong or their address is wrong, they get notified by the judge of elections that there is a defect and they get to vote provisionally. And if they call the office -- they are actually instructed to call the office and get instructions on what to do.

MR. BERARDINELLI: That is dealing with mail-in voting because the person is not -- I think it also gets down to the --

THE COURT: I am saying you want to be treated the same; right?

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MR. BERARDINELLI: No. I am not saying --

THE COURT: All right. You don't want to be treated the same.

MR. BERARDINELLI: But, Judge, I think it matters on context. And I'm not trying to be dismissive of your question or argue with you.

There are sets of rules that apply to mail-in voters that don't apply to in-person voters, and there are sets of rules that apply to in-person voters that don't apply to mail-in voters.

THE COURT: Point to the rule where it tells me that they can -- that they are supposed to be instructed to call the county -- and this wasn't a policy decision because I asked. If a person votes in person, where is the rule that says that they should be instructed to call the county and figuring out what to do next?

MR. BERARDINELLI: I don't know the cite off the top of my head, Judge, but I know there is a provisional election code that gives a voter who has been unable to produce the identification a week-long time to do it.

THE COURT: Understood.

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MR. BERARDINELLI: So inviting them to call is merely an aid in force of that rule.

THE COURT: So if you did not vote, an aid to enforce that rule would be to give someone notice to vote provisionally?

MR. BERARDINELLI: I guess we are just going to differ, Judge, on the term vote.

THE COURT: You agree with me that the elections code is very clear that they use the word received and vote together many times?

MR. BERARDINELLI: Not in the mail-in ballot context, Judge.

THE COURT: I know. They only say voted.

MR. BERARDINELLI: They do. And then they decide what voted is in paragraph A of 3150.16, which is filling out all your stuff, signing it, and putting it in the mail. And then we get into the provisional section, which says --

THE COURT: So you're saying it defines what voted means?

MR. BERARDINELLI: No. I am saying the general rule in 3150.16(a) is telling you all the steps that someone needs to do.

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THE COURT: To cast a ballot.

MR. BERARDINELLI: Judge, I would -- reading that -- then going on to (b).

THE COURT: Do you think cast a ballot and voted is the same thing?

MR. BERARDINELLI: I think it would depend on context, but I think a person who fills out their mail-in ballot even correctly and puts it in the mail or delivers it to the election office has cast a ballot, yes.

THE COURT: They voted.

MR. BERARDINELLI: Yes. It's just not going to be counted.

THE COURT: Okay. So -- and you don't have to come up to the podium. And nobody has to come up to the podium. You actually don't have to stand, because I am going to have some more questions. You wanted to answer a lot of those questions.

MS. GALLAGHER: I have a somewhat different approach to your existing questions.

THE COURT: Were you finished, by the way?

MR. BERARDINELLI: I am, Judge. I think, ultimately, it comes down to received, and there is

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no disagreement on what received is.

THE COURT: Let me ask you this, and you are going to want to have an answer for this too. If there is a discrepancy that voted and received means something different -- I understand that -- for those two laws. I understand that you disagree with the context of this.

Who settles the discrepancy? In law, who would -- take it out of that specific context. Who would settle a discrepancy when the legislature put language in there that is contradictory to each other?

MR. BERARDINELLI: I think the Court, looking at the legislative history, would have the ability to correct or fix. I don't think there is such a thing here, but I --

THE COURT: No, no.

MR. BERARDINELLI: I think the law is clear on that, Judge, that if there is ambiguity and the law is clear -- if there is ambiguity in an election contest, you do it in favor of the voter.

THE COURT: If you read these in a box separately and act like the others don't exist, it's

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clear what each of them mean.

And if voted and received to your argument is the same thing, then it's 100 percent clear. If voted and received mean two different things, then there may be some ambiguity.

MR. BERARDINELLI: I think received is the final act of a mail-in vote. Right? Because if it --

THE COURT: It's stamped. Like, the stamp --

MR. BERARDINELLI: Yes. Like, if it gets lost in the mail, then that person did not vote.

But once it's received, the received is the tail end of the voting process.

THE COURT: I don't want to hold you if it gets lost in the mail, that person didn't vote, because I don't know --

MR. BERARDINELLI: Well, if it gets lost in the mail, that person can do two things. They can certainly vote a provisional, no doubt.

THE COURT: Yes. Because they haven't received that.

MR. BERARDINELLI: Right.

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was going to address. But I think that's where the distinction sometimes with Plaintiffs comes in.

But if you look at 3050 under eligibility, (b), and by pure timing, all right, as to when these rules become in place, it's prior to the canvass. It's prior to the time votes are counted.

So it would, on its face, then, an elector who requests -- an elector who receives and votes, to your point, a mail-in ballot shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, blah, blah, blah.

Because that is on election day, prior to the time the vote is counted, the prohibition of casting a provisional ballot is not dependent upon whether that ballot actually counts. It's to the contrary. It's whether it is in there. The voter votes it, it's received, however it is, it's what is in there before ballots are counted.

THE COURT: So can you point me to where there is the definition of voted or a person to vote?

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3 MS. GALLAGHER: No.

4 THE COURT: And is there a definition of
5 when someone casts a ballot?

6 MS. GALLAGHER: No.

7 THE COURT: Or are we just using common
8 sense terms?

9 MS. GALLAGHER: Well, I'm not even sure --
10 right.

11 THE COURT: Cast a ballot.

12 So -- and I'm going to have to research it
13 in terms of case law, but when is it that somebody
14 votes?

15 I understand your argument. I am not
16 disagreeing with your argument. I'm just -- I don't
17 know the case law.

18 MS. GALLAGHER: Right. And it's not my
19 argument, Judge. I am just saying within the context
20 of these provisions and the timing at which they
21 would become applicable, which is before the actual
22 canvass begins. Right? This is what's happening.
23 Eligibility to cast provisional arises on election
24 day. All right?

25 And each one of these -- and if the polls

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are still open, ballots can't be counted. Right?
Well, at least they are not supposed to be.

So the received-in vote has to mean within
that time frame, and it's not dependent upon --

THE COURT: Mail-in ballots are counted
before the close of polls.

MS. GALLAGHER: No, sir.

THE COURT: They report them as soon as
8:00. How could they not be counted?

MS. GALLAGHER: Well, we may want to ask
Ms. Ostrander because --

THE COURT: I am not saying Washington
County specifically, but they have a whole day where
they scan in those ballots, and as soon as 8:00 hits,
there is an upload of the mail-ins.

MS. GALLAGHER: Judge, I understand that,
but it's -- you're talking uploading the mail-in or
what's on the machines?

THE COURT: No, the machines -- I understand
that. I am saying votes are actually counted prior
to 8:00 p.m. They are just not uploaded to the
system.

MS. GALLAGHER: Because under the canvass

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rules those results cannot be disseminated, which --

THE COURT: No, no. I am not disagreeing with you, but there are votes that are actually counted prior to 8:00 p.m.

MS. GALLAGHER: Yeah, I would struggle with that, but that's all right. I understand the segregation as to the ones that have been set aside. But the board is not there -- the canvassing board is not in that pre-canvass to make those decisions.

THE COURT: I am not disagreeing with anything you just said.

MS. GALLAGHER: So, I mean, if it's being done, it's not being done legally.

THE COURT: But my question is more of an information question because I wasn't sure. I thought -- because this isn't part of the record, I thought that votes were counted before. At least mail-in votes were counted but not published.

MS. GALLAGHER: They can't be. They cannot be counted. I'm only saying within this snapshot of provisional, but the Court will take it the way they want. But what the legislature, obviously, was indicating, in my mind, that it is what that district

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register is showing that day. And it is not whether or not a successful ballot is counted, I believe. And I do not have it. I would be glad to supplement it.

THE COURT: Yeah, that would be great.

MS. GALLAGHER: The authority from the U.S. Supreme Court that having the vote count is not disenfranchisement.

And when we think about the word disenfranchisement, we have two different terms of franchises here. We have mail-in voting, and we have at-the-polls voting.

You also don't get to correct your ballot for a lot of reasons. I mean, you can make mistakes on your ballot in the machines. They're different rules.

THE COURT: I understand that.

Any brief comments on that question?

MR. BERARDINELLI: Judge, might I have one more on that?

THE COURT: Let me hear from him first.

MR. BERARDINELLI: That's fine, Judge.

MR. WALCZAK: So just noting that the

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disqualification is not based on the ballot. It is based on the outer envelope. They never open those ballots, so, you know, how the ballot can be either received or voted, I don't understand.

Second point is that you cited law that if there is an ambiguity and the statutes are inconsistent, then under the Free and Equal Elections Clause, essentially, time goes to the voter. So you can err in favor of trying to --

THE COURT: Yeah, I saw that one in your brief.

Go ahead.

MR. BERARDINELLI: Judge, I would note that -- I know you are looking at the statute, but --

THE COURT: Tell me which statute.

MR. BERARDINELLI: No. I'm looking at PA Dems --

THE COURT: Yes.

MR. BERARDINELLI: -- for the distinction between what you are calling voting and casting; right? I think we are using those synonymously.

PA Dems talks about the election code provides procedure for casting and counting a vote by

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mail. It draws a distinction between those two acts. So I know your common sense, Judge -- and I am not saying -- it wouldn't make common sense to a lot of people in here that voting means my vote counted. The Supreme Court is drawing a distinction there.

THE COURT: Let's go to the Supreme Court decision. So every time they talk about notice and opportunity to cure, or however they phrase it, it is always in quotes. So you can't separate it.

I think we would agree with that; right? You can't separate that phrase. As we learned in law school, that phrase is together. There is no separating it; correct? Does everybody agree with that?

MR. BERARDINELLI: Secretary Marks testified differently.

THE COURT: Well, he's not the PA Supreme Court.

The PA Supreme Court says notice and opportunity to cure in all -- most, if not all, times, it is in quotes.

So would we agree that it can't be separated?

MR. WALCZAK: Ask the question again, Your

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Honor.

THE COURT: PA Supreme Court, every time -- most, if not every time, when they talk about notice and opportunity to cure, notice and cure, it's in quotes. So that phrase cannot be separated. That's what they are ruling on, is notice and opportunity to cure.

MR. WALCZAK: Okay.

THE COURT: That ruling is over. You said okay. That wasn't an agreement with me. You're just saying okay.

So let me ask you collectively as a group, and I'll have you go first. If what I just said is correct, that that can't be separated, and I think it was -- I mean, you have to think the Supreme Court does everything on purpose, that it is in parentheses, they actually have not made any ruling on notice alone.

Would you agree with that.

MR. WALCZAK: I can't answer yes or no. What I'm going to say is that notice and cure is not language that is associated with a procedural due process claim. Notice is. Right?

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THE COURT: Yeah.

MR. WALCZAK: But, then, I think it's a meaningful opportunity to, you know, contest, dispute, to have input on that. Right.

So what we have been arguing here is that there is a right to notice, and there are cases that focus just on notice or on cases that focus just on the cure.

We have focused on notice because we think that if you engage the notice in the infrastructure that exists, to use the Washington language, that will provide -- you know, that triggers a whole host of alerts. And then, you know, we think that you have a right to vote provisionally. We think Washington County should allow people to cure in the elections office, as they did in the past, but that's not specifically what we're asking for here.

THE COURT: So -- I'll start with you this time.

Would you agree with me, and maybe you don't, that notice for this type of -- for a defect -- notice for a defect, ignore opportunity to cure. Just notice, that that specifically has not

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been ruled on in PA Dems v. Boockvar?

MS. GALLAGHER: I would agree.

THE COURT: Would you agree with that?

MR. BERARDINELLI: The notice and opportunity to cure comes from the petitioner's brief in that case.

THE COURT: That's right. I mean, that's what they were ruling on, is notice and opportunity to cure.

MR. BERARDINELLI: But they're -- they use them together, but they are separate concepts.

THE COURT: They are separate concepts, but --

MR. BERARDINELLI: So I would agree with you, Judge, that the Supreme Court has never addressed notice specifically in this context, but I think in treating them together, it has addressed notice.

THE COURT: Notice. Okay.

MS. GALLAGHER: And then if I could?

THE COURT: Yeah, sure.

MS. GALLAGHER: But because in the context of PA Dems, it's to notice and to cure; right?

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THE COURT: Sure.

MS. GALLAGHER: And the opportunity to cure,
and what is one without the other?

THE COURT: Yes.

MS. GALLAGHER: But if Mr. Walczak is --
what he's now saying is no pre-deprivation notice,
then that's what Justice Wecht, while it was not the
full body of the court, majority of the court, he's
certainly instrumental in many of these opinions.

And pre-deprivation notice is different
because what -- you have to have this on here or your
ballot is not going to count.
So what is the second notice? We really mean it?
You didn't do it? Pre-deprivation notice is exactly
that.

So I don't understand how, then, we would
get to the notice and cure. What did the voter know
about what they had to do in order to make sure that
their ballot counted? And that's what Justice Wecht,
I believe, agrees, is pre-deprivation notice.

THE COURT: So let me ask you this: If you
have -- I assume that you agree that a voter has an
opportunity to challenge that grievance?

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MS. GALLAGHER: The no count of the ballot?

THE COURT: No count. About how they can go to the canvass board.

MS. GALLAGHER: Right.

THE COURT: How should they get notice of that?

MS. GALLAGHER: It's advertised.

THE COURT: Okay. How should that voter get notice of it? That they were the ones they were notified of the hearing date?

MS. GALLAGHER: Well, Your Honor, we could take that with respect to many things with notice. Let's talk about in the context of a zoning appeal. I understand it's not the same, right, but how would joining property owners be notified, all right, of appeal.

Talk about a sheriff's sale. The notification provisions there are buy advertisement.

THE COURT: Aren't they published on the property too? Isn't the advertisement included on the parcel?

MS. GALLAGHER: On the property. But as to third parties -- as to third parties.

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THE COURT: But doesn't it include the parcel in the notice? So why wouldn't the notice that you have to go to the canvass board include the person's name that has the defect.

I mean, there is identifying markers in all other notices to put you on notice that you have a potential grievance to answer to -- or a grievance to file.

MS. GALLAGHER: Well, Your Honor, how many lay people know how to exercise any right other than calling and asking?

THE COURT: Doesn't mean they don't have -- well, what if they call and ask, then?

MS. GALLAGHER: Obviously, these folks, did they know who to call? Or did someone call them.

I mean, I think you can really get far afield here as to what the obligation is. And there is a -- the law is the law. What is the obligation to instruct people on? There was an opportunity to do it.

THE COURT: But your suggestion is to have 180,000 qualified voters show up at the canvass board and say, hey, did my vote count?

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MS. GALLAGHER: Yes.

THE COURT: That is what you would want to happen?

MS. GALLAGHER: Because that 185,000 voters, if those votes didn't count, would have the right to challenge them.

MR. BERARDINELLI: Judge, let me try to jump in, if you don't mind.

THE COURT: Do they have a right to challenge them, though?

MS. GALLAGHER: Sure they do.

THE COURT: Okay.

MR. BERARDINELLI: I think anybody has a right. If you disqualify my ballot because my date wasn't on there. You may lose that challenge, but --

THE COURT: Yeah, yeah. I'm not saying they are going to win the challenge.

MR. BERARDINELLI: And I do think we need to keep in mind that now we're talking about prospective relief for an election three months from now.

THE COURT: That's right.

MR. BERARDINELLI: So I'm pretty sure that everybody in this room, in the organization in this

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room, knows they now can go to the canvass and get the list.

Now, look, if Your Honor is thinking about something like, well, maybe the notice ought to be publish a list of the mail-in votes that weren't counted, and then those people can take their 3157 rights, if they wanted to exercise them. That's willfully different than --

THE COURT: No, no. I'm not suggesting that.

MR. BERARDINELLI: Maybe I am, Judge.

THE COURT: Because there was a question about a sheriff's sale and the notice gives some sort of identification of what is at issue.

The notice that -- the general notice -- I'm not saying it's wrong. The general notice for the canvass board. I'm not saying it's wrong at all. But that doesn't give any identifying marker as to who --

MR. BERARDINELLI: All I'm saying, Judge, is if that type of notice is something the Court is contemplating or thinking about, right, the solution to that is arguably to -- because you can still have

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3 your 3157 rights if you don't attend the canvass, but
4 you just have to know --

5 THE COURT: You have to know.

6 MR. BERARDINELLI: Right. So a list
7 published post canvass would do that. That's very,
8 very different --

9 THE COURT: No, I'm not disagreeing -- I am
10 not disagreeing with you, but who has to give that
11 notice?

12 MR. BERARDINELLI: I don't know if it has to
13 be given, but the mechanism for giving it, if it has
14 to be given, is certainly not sending out this e-mail
15 in the SURE system that says your ballot might have a
16 problem before it's been counted.

17 THE COURT: Understood.

18 MR. WALCZAK: So let me just redirect us a
19 little bit --

20 THE COURT: Not much.

21 MR. WALCZAK: -- that all of the remedies
22 that we're talking about here are completely
23 ineffectual. So if you find out after election day,
24 after 8:00 on election night, there is no opportunity
25 to rescue your ballot. Under current law --

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THE COURT: Yeah, I'm not disagreeing with that.

MR. WALCZAK: These are all disqualifying errors. Which is why you have that pre-deprivation notice. So that notice has to be before election day in Washington. The Supreme Court says that is the default. And it's the county.

Because in this case it's the Office of Elections is the only one who knows that that vote is not going to count, and it's fundamentally unfair for them to conceal that fact.

MR. BERARDINELLI: But, Judge, then that's ordering the notice of hearing that PA Dems says you can't order.

THE COURT: Yeah. We'll get to that.

MS. GALLAGHER: It's more than that. It's disclosing the results of the pre-canvass prior to the pre-canvass, and those results cannot be disclosed.

MR. BERARDINELLI: But when we are talking about procedural due process, and Mr. Walczak raised this sort of language earlier, procedural due process is not about ultimately whether you win. Okay.

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So the election code provides people a mechanism to challenge a disqualified ballot. That is 3157. That gives them a full hearing, maybe right in this courtroom, if you have the unfortunate nature of getting declared the elections judge.

THE COURT: We do it by shifts. So it all depends on timing.

MR. BERARDINELLI: But there is a full opportunity for a hearing. They might lose. And they probably are going to lose because of the disqualifying defect. But that's not -- there is process there.

THE COURT: I am not disagreeing with you with that argument.

Next question. So you look at the context of PA Dems' curing. They talk about the facially defective outer envelope that is mailed in. There is, from my reading of it, no indication that a provisional ballot is the cure. Why is a provisional ballot a cure? Cure, to me, is to fix what is on the outer envelope, and the county, obviously, doesn't have to do that. But why is a -- offering a provisional ballot considered a cure when

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PA Dems does not -- it talks about the facially defective things that weren't filled out. It never talks about a provisional ballot being a cure. So why do we think -- and anybody can start -- why do we think a provisional ballot is a cure?

MS. GALLAGHER: Well, because if there's missing a secrecy envelope -- you know, because now part of it is there is holes in the declaration envelopes to where they measure them, right?

THE COURT: Yeah, weigh them and that kind of stuff.

MS. GALLAGHER: But the only way to fix that would be by a provisional ballot.

THE COURT: A fix isn't -- even in that instance, a provisional ballot, why would it be a cure?

MS. GALLAGHER: Because it cures the defective ballot -- now I'm arguing your side. Why don't you take over.

THE COURT: Go ahead.

MR. BERARDINELLI: Let me jump in, Judge. I think it depends on your definition of cure. And to me --

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THE COURT: And there is not one to point to; right?

MR. BERARDINELLI: I think I can agree with you, Judge.

THE COURT: But -- and I'll let you finish. I'm sorry. But the context of PA Dems in -- they were trying to cure defects. Cure a defect.

The defect was on the outer envelope or didn't submit a secrecy ballot. A cure is to a defect. A provisional ballot is not -- why would it be considered a cure?

MR. BERARDINELLI: Because it's fixing the deficient ballot. It's curing the deficient ballot.

THE COURT: Is it, though?

MR. BERARDINELLI: Sure, it is. This one is not going to get counted, so we're going to fix it with this one. That's curing, to me. I mean, I know Your Honor might have a difference of opinion on that, but I also would go back to the plain language of the provisional ballot statute that doesn't let that provisional be counted.

MS. GALLAGHER: Well, there's a little history to that, though.

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THE COURT: If received and voted means the same thing.

MR. BERARDINELLI: No. Received is received.

THE COURT: Yeah, I know. But if it's in contradiction with voted, then the law is in contradiction with itself.

MR. BERARDINELLI: But that section doesn't use voting.

THE COURT: I know. The other section does. That's why the law would be in contradiction with itself. One section of the law says voted; one section of the law says received.

MR. BERARDINELLI: I don't read those in contradiction, but I understand your point, and we went through that earlier.

THE COURT: Yeah, we already went through that. I am not saying that you agree with me, and I am not saying I disagree with you. I am just building a record for the higher courts.

MR. WALCZAK: So we made this argument in our opening brief. I don't believe we made it in the response brief. But provisional voting is a

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20-year-old fail-safe to defend -- to preserve the right to vote, so, yeah, I mean, we agree.

THE COURT: Let me ask you this: There is testimony in a deposition and today anybody can file a provisional ballot that goes to a poll. Now, if it's going to be counted, that's a totally different issue.

If you go to a polling place and it is -- says that their mail-in ballot has been received, they're being turned away from issuing a provisional ballot, or they're issuing provisional ballots?

MR. BERARDINELLI: Judge, my understanding of the practice, if you ask to issue a provisional ballot --

THE COURT: They're going to give it to you.

MR. BERARDINELLI: Right. Even though that might be contrary to the plain language of the county.

MR. WALCZAK: And then -- I'm sorry. Then the canvass board will figure out which one gets counted, if either.

THE COURT: Okay. So do you, in the terms of notice -- let me argue for a second that there is

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two types of notice.

There is notice that you have a defect, and you can go to the canvass board and say you should count my vote. Okay?

And then there is notice that says there is a defect. You can go cure it, your vote. Or there is notice and you can go file a provisional ballot.

Do you see that notice in three different ways, or do you see it -- when you argue notice, are you just arguing notice in general, or is your notice for a specific purpose.

MR. WALCZAK: So our -- so we've taken the position that voting a provisional ballot is a right. It's not a form of cure. Right?

But, ultimately, that question will be, hopefully, decided in the Genser litigation. Our argument to notice is to use the existing infrastructure of the SURE system, and by putting in a code that identifies the defect, that triggers a whole series of --

THE COURT: But if you are a non-curing county, why would you have to specify the defect? Why couldn't you just say it's not being -- you

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3 have -- you received it, but your vote is not going
4 to count?

5 MR. WALCZAK: Because they still can vote --
6 they can vote provisionally.

7 THE COURT: Yeah. But no matter what the
8 defect is they can potentially --

9 MR. WALCZAK: Right. But if they don't
10 know --

11 THE COURT: No, no. I am not asking about
12 notice to get a provisional ballot. I'm saying why
13 do they need to know the specific defect?

14 MR. WALCZAK: Well, they need to know --
15 they don't necessarily need to know the specific
16 defect. They need to know that there is a defect.
17 Because otherwise they don't know that, oh, boy, if I
18 don't go vote a provisional ballot, then my vote is
19 not going to count. Right?

20 So that is why the notice is important and
21 why that notice has to be given pre-election day,
22 which is the point at which it's deprived.

23 THE COURT: So when I -- I was reading
24 through your argument today. I think you would agree
25 with me that notice of them being -- going to the

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3 canvass board and challenging it is not really at
4 issue today?

5 MR. BERARDINELLI: I think that provides a
6 process by which they have constitutionally
7 sufficient due process notice and a path from a
8 procedural standpoint to challenge a rejection of
9 their ballot. Now, at the end of the day, they may
10 lose --

11 THE COURT: They may lose. But when I say
12 it's not an issue today, you would agree that notice
13 to go to the canvass board, whatever that notice
14 looks like, if it's just the advertisement or if it's
15 something else, people deserve to have notice to go
16 to the canvass board and file a grievance or say that
17 my vote should count? Even if they are going to
18 lose.

19 MR. BERARDINELLI: Yeah. Anybody can go to
20 the canvass board and do that. Sure.

21 THE COURT: But they -- I'm not putting you
22 in a corner on defining notice, but notice, however
23 it's defined, they should be notified somehow. If
24 it's just the advertisement or if it's a third party,
25 they should be notified in some way?

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MR. BERARDINELLI: I think the avenues exist there to provide people notice --

THE COURT: To current, yes.

MR. BERARDINELLI: Yes.

THE COURT: Okay. And do you agree with that, Ms. Gallagher?

MS. GALLAGHER: Yeah. There can be notice given.

THE COURT: Okay. So do you believe, for that very narrow issue, is there a right to be notified -- I'm not asking you to define notified, but there is a right to be notified that if you have -- if you think there is an issue with your ballot, you come to the canvass board?

MS. GALLAGHER: I'm not sure, Judge. I mean, honestly, I'm not sure. Because it's like any other public -- I mean, I don't know. I don't know the answer, but I mean, I believe that the county takes the steps to do it.

THE COURT: So do you think -- I'm looking at you, specifically. Do you think that voters -- and I'm jumping around a little bit. Do you think voters who vote in person should be treated

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differently than voters who vote by mail?

MS. GALLAGHER: I think they are two different franchises with two different sets of attendant rules. And neither -- you know, they are not mutually exclusive.

So I don't -- there are requirements that a voter must make to vote in person that they don't have to do an absentee ballot -- or a mail-in ballot. I don't -- I'm not sure I'm clear about why they are not treated the same.

THE COURT: Are you asking me?

MS. GALLAGHER: Yeah. What the basis of --

THE COURT: So I guess the difference that I see for the context of today is if I -- and that's why I asked the question today. If I go in to vote in person, I didn't submit anything by mail, and there is some sort of, I'll call it a, defect that won't allow you to cast -- and I'll call it a traditional ballot -- that won't allow you to cast a traditional ballot, they notify you that, one, you can't vote traditionally. They don't let you vote traditionally and then set it aside and say, we'll take care of that later. They actually -- because

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that is not the process. They say, you cannot vote traditionally. You have to submit a provisional ballot, and if you have any questions, you call the Washington County Board of Elections to get those questions answered.

So why should someone who votes in person be afforded that opportunity versus someone who -- somebody who votes by mail does not?

MS. GALLAGHER: Because, I think you're, respectfully, confusing two different things. All right?

One is, if I hear you correctly, where that step would come in between was when the person applied for a mail ballot, which is the same as showing up at the polls, And being told you can't vote this way. All right?

And if there was some issue with respect to a reason that the ballot could not be -- they didn't qualify, right, and I'm not sure, I apologize, I don't know what happens then.

That's a different thing, right, than the person who gets -- who is able to exercise the franchise. Such as the voter who goes in to vote on

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the machine. Exercise it. HAVA only addresses over votes. It does not address under votes because -- you know, and it's clear because of the intention. So I think it's two different things. You can still make a mistake on that ballot, right, which would be the same as when you are filling it out.

THE COURT: But we are not talking about a mistake on a ballot.

MS. GALLAGHER: Right.

THE COURT: We are talking about a mistake that doesn't allow you the --

MS. GALLAGHER: You're talking, like, access to the franchise; right?

THE COURT: I'm wondering why the Board of Elections would give information to someone who votes in person but not give information to someone who votes by mail.

MS. GALLAGHER: As to what, though, Your Honor? That's what I don't --

THE COURT: A provisional ballot. Then you don't call the Board of Elections telling them that they can show up at the canvass board, make sure that their ballot is counted. Those types of things.

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MR. BERARDINELLI: Well, Judge, I think when they're told to call the elections, the testimony was to bring the ID in.

THE COURT: No, no. That was not it. ID is very separate. The issues are going to be addressed on a phone call. And Ms. Ostrander testified that the issues can sometimes be addressed by phone. Sometimes we'll tell them that you got to bring an ID in. Sometimes your address is defective, and I got to give you information about that. It wasn't specific to the ID.

MR. BERARDINELLI: Judge, I think the key distinction here, for me anyways, is in the mail-in voting context there's a ballot filled out and received. It may be defective; right?

THE COURT: When you say -- let me just clarify something.

When you say "ballot," do you mean what's in the secrecy, or do you mean the actual mail-in?

MR. BERARDINELLI: I mean the whole package.

THE COURT: The whole package. So what is mailed.

MR. BERARDINELLI: Right.

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THE COURT: Okay.

MR. BERARDINELLI: So I voted. I filled out the inner envelope. Put it in the mail or dropped it off. Right.

So there is a ballot in the elections office. And now I'm going and asking to file a second provisional ballot.

When the woman shows up and she doesn't have her ID or she is not on the rules, she doesn't get that first chance to go vote in person. She only votes one ballot. Albeit a provisional one.

THE COURT: I mean, she does get that chance. She can apply for a mail-in ballot.

MR. BERARDINELLI: I thought one of your questions to Ms. Ostrander dealt with people that showed up to vote in person.

THE COURT: I did.

MR. BERARDINELLI: Okay. That's what I'm trying to say.

So in that scenario, right, that person doesn't go to the machine and vote in person and fill out a provisional ballot. They get one bite at the apple. It's the provisional.

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THE COURT: Well, because you can't vote on a machine.

MR. BERARDINELLI: Right.

THE COURT: Because once you vote on a machine, they are going to submit it and it's going to be pre-canvass because it's entered on a machine and you don't know whose vote this is. It gets counted, and then it goes to the elections office to collect all the --

MR. BERARDINELLI: Judge, I guess the point I'm trying to make -- I'm probably not being very articulate, and I apologize for that, is one is a one-bite-at-the-apple scenario. That is what Ms. Ostrander talked about. When you can bring an ID or you can fix your address or the code allows you for a one-year period to go back to your old polling place, that's a one-bite-at-the-apple scenario.

What we are talking about here with mail-in voting is a two bite at the apple scenario.

THE COURT: Well, I mean, if there is a defect, they're getting -- the person who mails in their ballot and there is a defect, they're not getting an opportunity at even one bite at the apple,

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let alone two.

MR. BERARDINELLI: They had an opportunity, Judge. They got a ballot that had really clear instructions on it on what to do.

THE COURT: And there is very clear instructions that you don't have -- that you have to bring your ID first time you vote. And they go, their first bite at the apple is to say I'm here to vote. You don't have an ID.

Second bite at the apple is you don't have your ID; here is your provisional ballot.

MS. GALLAGHER: I don't think so.

THE COURT: Why?

MS. GALLAGHER: Because you're talking -- again, you're talking about access to the franchise. There are rules to -- and I don't mean to be disrespectful in any way -- there are rules to get to that machine.

THE COURT: Yes.

MS. GALLAGHER: There are rules to get the mail-in ballot. One of the rules to vote, you know, for either would be you have to be --

THE COURT: You've got to meet the basic

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requirements.

MS. GALLAGHER: -- registered. You have to be registered. Let's just stay with that. Right.

If a mail-in voter applies and they're not registered, someone addresses that. You show up at the polls --

THE COURT: But that's by law.

MS. GALLAGHER: But you show up at the polls, Your Honor. The difference is you are there on election day. Right? You are there on election day.

THE COURT: But why does that make a difference? They're both counted at the same time.

MS. GALLAGHER: But, Judge, it's not about counting. It's about when can you get the access to the franchise? Right.

You have to get the mail ballot sent out to you; right? Or you have to have that ballot. Then everyone is equal.

So it would be this way: You apply for the mail ballot. You're not registered. There's a notification that goes out to you to tell you that.

THE COURT: By law.

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MS. GALLAGHER: You get to fix that.

THE COURT: Yes.

MS. GALLAGHER: You go into the polls on election day. All right? You show up as not registered. All you have is that day. So you are given a provisional ballot or otherwise, right, in order to not disenfranchise the person on the basis of something that may be able to be corrected later such as identification. Right? They work differently, Judge.

THE COURT: But there is nothing in the law that says, oh, we are also going to instruct you -- like, Washington County is going to -- after you submit your provisional ballot, here is the phone number to the Board of Elections. Call them and see how to fix your defect.

MS. GALLAGHER: But the defect is not in the ballot. The defect is in the access to the franchise.

THE COURT: The ballot -- when you say "the ballot," do you mean the outer envelope?

MS. GALLAGHER: Machine. No. I mean the ability to vote.

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MR. BERARDINELLI: Judge, let me try.

THE COURT: Because I equate the outer envelope to you being required to show an ID the first time you vote.

MR. BERARDINELLI: See, Judge, I think that's --

THE COURT: Makes you qualify to vote.

MR. BERARDINELLI: The outer envelope is -- the equation -- or the analogue, to me, is applying for the mail-in ballot.

MS. GALLAGHER: Right.

MR. BERARDINELLI: So I applied for the mail-in ballot. I've got to give them a bunch of information. They match it against the registry. If I'm not registered -- that person gets a chance to fix that. They send -- she testified about it. They send a notice out to them, say, look, you got the wrong address.

THE COURT: That's by law, though.

MR. BERARDINELLI: It is by law, Judge.

THE COURT: Yes. It's statutory.

MR. BERARDINELLI: So is the right to show your ID or whatever.

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THE COURT: Yes. The first time you vote.
That's fine.

MR. BERARDINELLI: So that person gets to
fix -- I think Ms. Gallagher has been using access to
the franchise. I'm going to say qualifications to be
registered.

They get a chance to fix that by fixing it
and then getting a new mail-in ballot. Right?
When I'm there to vote on election day, I don't get a
chance to fix that. I don't have an opportunity to
fix it. Because --

THE COURT: Sometimes you can. They will
tell you to go to another polling place.

MR. BERARDINELLI: They might.

THE COURT: So is that --

MR. BERARDINELLI: But then I didn't cast a
provisional.

THE COURT: That's right. But that's
instructions. They don't say, hey, just cast this
provisional.

MR. BERARDINELLI: But you could cast the
provisional, and then what they are telling you to do
is go fix -- not to go file another vote in that

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election, but go make sure your address is right. We are going to do your provisional this time, but go fix it so you don't have to file a provisional again.

So the analogue, to me, is applying for the mail-in vote and showing up at the wrong --

THE COURT: So you're saying requirements. The requirements to be qualified.

MR. BERARDINELLI: To get in the booth, for lack of a better term.

THE COURT: Okay.

MS. GALLAGHER: Depending upon the franchise; right? So the one's cleared up before.

THE COURT: Understood.

Yes?

MR. WALCZAK: I think when you go to a polling place, and say you're at the wrong polling place or sometimes it happens that the registration -- the name doesn't show up in the poll book. They tell you to vote a provisional ballot. And then, you know, you got -- there's all sorts of things you got to fill out on the envelope of the provisional ballot.

THE COURT: Yeah, that's to protect the

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integrity --

MR. WALCZAK: And they're there and say, hey, you haven't signed that, right, and they will give you instructions and say, hey, you know, you forgot that. You got to do that.

That's exactly the same thing that we are asking for here is, you know, not fix the ballot as if you made a mistake in the act of trying to cast that ballot that they simply help you, and, you know, we have shown that there is absolutely no burden for them to do that.

MS. GALLAGHER: And, Your Honor, if someone needs help with their ballot being done, there are provisions if they are incapable of filling it out on their own to get assistance.

THE COURT: Let me ask you just a couple more. Notice and opportunity to cure in another county that adopted it, whatever parameters they have -- strike that.

MR. BERARDINELLI: Judge, you don't have to strike your own questions. You're in charge.

THE COURT: I'm used to it.

So I'm going to ask you a couple questions.

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You heard my line of questioning about the difference between the word vote, voted, and received.

If you read these two sections of the law and you assume that voted and received in the context are essentially the same thing, then their provisional ballot may not be counted.

Do you agree with that, or would not be counted.

MR. WALCZAK: Well, but that doesn't -- you're assuming that voted and received mean the same thing.

THE COURT: That's right. I just said that.

MR. WALCZAK: Right. And they are two different words, so...

THE COURT: I know they're two different words. I'm saying if they are -- if there are -- and I don't have any authority to say what voted means and what received means. But if they are considered the same thing, then -- and you take them together, it says their provisional ballot is not going to be counted; right?

MR. WALCZAK: If I may, I want to defer to Ms. Schneider, who is cocounsel and former deputy

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secretary of the state who knows the code far better than I do.

THE COURT: Can you just state your name for the record?

MS. SCHNEIDER: Sure. It's Marian Schneider.

THE COURT: And who are you representing today?

MS. SCHNEIDER: I represent the Plaintiffs.

THE COURT: Okay. Yes, if you can give me some understanding if you read those two sections together, because one refers to the other one. If they mean the same thing, there's no contradiction. If they mean two different things, there's a contradiction. Right?

MS. SCHNEIDER: Well, we can get into a lot of discussion of statutory construction, but if you look at the two -- there are two provisions that contrary to what our colleague over there said, they do refer to absentee voting and mail voting. It's how the district registers are generated. And it says voted and received in those provisions. And that is what is -- goes to the poll workers, and that

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is how they determine who gets to vote a provisional ballot or not.

THE COURT: Yes. Well, which traditional ballot would be counted.

MS. SCHNEIDER: Right. Whether it would be counted.

THE COURT: Yes.

MS. SCHNEIDER: Subsection F, which only has received, was added later and must be harmonized with the original section on provisional ballots. You have to harmonize them in a way that makes sense.

So we have argued -- we argued in the Genser case that received in this context and the whole context of provisional ballot means capable of being canvassed. And if it doesn't -- if it has a disqualifying defect on the envelope, then it is incapable of being canvassed.

THE COURT: Are you going to want to brief that?

MR. WALCZAK: Excuse me?

THE COURT: I'm going to go over what you may and may not want to brief to me.

MS. SCHNEIDER: This is exactly what we

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briefed in the Genser case.

THE COURT: And I haven't, you know, read anything -- I do actually have, just so you know, I have the order from -- order and opinion from the Delaware County case, but I don't know -- I don't have any of the stuff from -- not that I should, but I don't have any -- this was alluded to. That's the only reason I printed it out.

MR. BERARDINELLI: Judge, just on the capable-of-being-canvassed point, I think, in Ms. Ostrander's deposition, the defective ballots are canvassed. They end up not being counted, but they are canvassed. They are part of the canvass. They don't get thrown in the trash can or something. I mean, they get canvassed.

MS. GALLAGHER: And, Judge, I think that is part of the issue. I understand what Ms. Schneider is saying, but canvass is a defined term in a couple places.

THE COURT: It is, yes.

MS. GALLAGHER: So there is the pre-canvass that says when that can happen, when that can happen. Right?

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THE COURT: Yes.

MS. GALLAGHER: Then there's the canvass -- then there's the computation board. Then there's certification. So where -- of course it can be canvassed because if you are a strict -- let's say a strict constructionist, for lack of a better word, ballot comes in received -- you know, stamped, marked received, locked up until 7:00 a.m. on election day at which time it is canvassed -- or pre-canvassed. Right.

My client's position is how do we get from there to capable of being counted, which, I think --

THE COURT: I know that you disagree with this, but I don't know if there is any case law.

Is there any case law saying that the Board of Elections cannot resort based on an error? So you know how they make the initial determination, no signature. I know you don't think that it should be touched. It should just be stamped and --

MS. GALLAGHER: No, it's not that I don't think so. And that's what I want to clear up. It's not a matter of my personal preference or what I think --

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THE COURT: No, no. When I say "you," I --

MS. GALLAGHER: But it is I don't see the statutory authorization for it. Right? And that's what I think is lacking. I see two steps of what can be done.

THE COURT: My question is is there any case law or authority to support that what -- because it seems like in PA Dems, if they're going to allow notice and cure, then that would also mean that they're also allowed to make a predetermination if there is a facial defect.

MS. GALLAGHER: There was -- after 2020 -- after Ball, there was a guidance that went out that talked about this administrative review process of whether or not -- it's not in the law.

Again, I believe all of these issues, they've got to be decided this election because there is no instruction.

THE COURT: Okay.

MS. SCHNEIDER: Your Honor, I'm sorry.

THE COURT: Yes.

MS. SCHNEIDER: I think we said both canvass and counted as far as what received means in 3050.

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But I also, in the Keohane decision, which you have there before you, Your Honor, the issue that the judge zeroed in on was what was the purpose of Subsection F, and the purpose was to avoid double counting.

THE COURT: Yes. He went into the protections of a provisional ballot.

MS. SCHNEIDER: Correct. And that's how that court harmonized the two provisions.

And I'll note that the Commonwealth Court in the non-precedential -- that non-published, non-precedential opinion had no discussion of this at all.

THE COURT: Okay.

MR. BERARDINELLI: Judge, I don't want to disagree too strenuously, but the Commonwealth Court has a very detailed analysis of the statutory sections in that case.

One issue, although the code does not define, quote, vote or voting, I would note that the provision that we have been dealing with, 3150.16, is titled voting by mail-in electors.

So one could contend that Section A of that, which

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tells you what someone needs to do, is defining what it means to vote.

THE COURT: But it also in Subsection 1 says, any elector who receives and votes.

MR. BERARDINELLI: Receives is getting that -- applying for and getting the ballot.

THE COURT: And then -- let's see if it says it -- so they receive it and they vote.

MR. BERARDINELLI: Right. I can receive it and not do anything with it. Then I don't vote in that election. I can receive it, turn it in, and vote at the polls.

THE COURT: Okay. Do you-all have any questions for me?

MR. BERARDINELLI: Lots of them, but I don't know if they're appropriate, Judge.

MS. GALLAGHER: Aren't you glad you got this straw, huh?

THE COURT: You know, my role in this is ultimately going to be limited, but I do appreciate the attorneys' arguments and ability to handle questions.

Are there any specific issues you are

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3 requesting to brief on a short timeline?

4 If you want to submit what you have already --

5 MS. GALLAGHER: I mean, we could do that.

6 MR. WALCZAK: I have no objection to that.

7 I just think it's unnecessary because I don't think
8 the Court needs to decide that here.

9 THE COURT: Decide what?

10 MR. WALCZAK: Decide the issue of whether a
11 provisional ballot has to count under those
12 circumstances. Given that --

13 THE COURT: So you want me to decide if they
14 can cast a provisional ballot and not a vote -- not
15 count?

16 MR. WALCZAK: That the county leave that to
17 Genser.

18 THE COURT: I don't leave anything to any
19 other county. I have jurisdiction to where I have
20 jurisdiction. They have jurisdiction over where they
21 have jurisdiction over.

22 MR. WALCZAK: I think what Your Honor, sort
23 of, separated before the notice and the cure. So
24 there's no disagreement that you have the right to
25 vote provisionally under these circumstances. We say

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the notice is important because that's the only way the voter is going to know to even use that. Whether or not that counts, I think, can and probably should be left to Butler County. And hopefully, that will be decided.

But there is, as we have talked about, it's a right to the process.

THE COURT: All my question was do you want to brief?

MR. BERARDINELLI: Judge, my question is can -- and I'm not in that case, right? But I'm sure that Ms. Gallagher has done a fine job for her client.

If the Court is looking for further potential legal elucidation on this ability-to-count issue, it's already been briefed, albeit for different clients, by the people sitting right in front of you except me.

THE COURT: Well, I mean, and you made it an issue of why would I have somebody vote provisionally if it's not going to count?

MR. BERARDINELLI: I think it's a vital and important issue to consider.

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MS. GALLAGHER: I think it's misleading.

THE COURT: If you vote provisionally and it's not going to count?

MS. GALLAGHER: To be told you can vote provisionally.

THE COURT: Well, you can vote -- anybody can vote --

MS. GALLAGHER: Well, I'm not -- you might have heard that out of their mouths. Not mine.

MR. BERARDINELLI: So, Judge, that briefing exists. I mean, if people want to write different briefs or co-op that --

THE COURT: I am not suggesting you give me any brief. I am just asking.

MR. WALCZAK: If Your Honor wants it, we have it electronically.

THE COURT: I don't.

MR. WALCZAK: I can e-mail it to Krista.

THE COURT: I mean, send me what you want to send me, but I want to give an equal opportunity to respond, and you guys have an agreement on it.

MR. WALCZAK: We don't feel the need to brief anything else. I mean, we feel like we

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comprehensively addressed all of their arguments in the brief that we filed on Friday.

THE COURT: Okay. What kind of questions do you have for me in general? Anything?

MR. BERARDINELLI: We'll send you that supplemental -- I don't want to call it a brief, but supplemental information. We can do it tomorrow.

THE COURT: Okay. That's fine. The only exhibit I have is Exhibit 1, which was the joint stipulation Exhibit D. I do have the case law which you submitted. Other than that, I have everything else that has been submitted previously.

I assume the exhibits -- let me ask, procedurally, all the information that's provided in depositions, obviously, some of it may or may not be admissible by the rules of evidence. How do you want me to handle any type of objections that you took and information to be used during this expedited review?

MR. BERARDINELLI: Do you want to give us a minute collectively?

THE COURT: Sure.

MR. WALCZAK: There is a number of objections in there, but, you know, I think, they are

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So the depositions, word for word, can be taken for this Court as testimony and admissible for the purposes of these summary judgments.

MS. GALLAGHER: We can't say that for Marks, though.

MR. BERARDINELLI: The Commonwealth doesn't really have a place to object.

MS. GALLAGHER: I'm sure she had plenty of objections.

MR. BERARDINELLI: I get that, but she is not going to be here if we try the case.

THE COURT: Are they a party to the case?

MS. GALLAGHER: No. I'm just saying I don't speak for the Commonwealth.

THE COURT: But, at least, the director of our Board of Elections you have no issue with me --

MR. BERARDINELLI: And I have no issue with Mr. Marks from my client's perspective. I'm sure I lodged some objections in that deposition, but having read it, it's fine.

MR. WALCZAK: I mean, we don't agree with, obviously, everything Mr. Marks said, but I don't think he misrepresented the Commonwealth's position.

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THE COURT: Okay. If there is anything that is questionable, we will reach out to you on Marks. If there is something that I'm going to use, which I don't know how much of that -- some of it, it seems to be procedural and I might use some of it. But if there's anything that was objectionable to, then I will reach out to you and see if you have -- want to make a formal objection and me make a ruling on it.

MR. WALCZAK: I mean, the one thing -- and I can't think of a specific, is if he's speaking more of his opinion and there's not much of a foundation for what he's saying, then that might be objectionable.

THE COURT: No. He did that a number of times, but, you know, I will take it for what it's worth.

MR. WALCZAK: If he's talking about what the Department of State's policy or process or directives are or how the SURE system works, that, I think, we can agree on. That is certainly within the scope of his knowledge.

THE COURT: Yeah. His opinions don't necessarily matter to me.

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Okay. Any other questions?

MR. WALCZAK: Thank you for your time today.

THE COURT: Like I said, we want to build a great record, no matter, you know, one side is going to appeal most likely, and at the end of the day, we want to make sure that we have as much accurate and good information to provide the appellate courts here from Washington County.

MR. BERARDINELLI: Thanks, Judge. Thanks for all your time today.

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CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me of the hearing of the above-cause, and that this is a correct transcript of the same.

/s/ Amanda Rader, Court Reporter

Amanda Rader, Court Reporter

The foregoing record of the hearing of the above-cause is hereby directed to be filed.

/s/ Brandon Neuman, J.

BRANDON NEUMAN, JUDGE

EXHIBIT D

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Faith Genser and Frank Matis,	:	CASES CONSOLIDATED
Appellants	:	
	:	
v.	:	
	:	
Butler County Board of Elections,	:	
Republican National Committee,	:	Trial Ct. No. MSD-2024-40116
Republican Party of Pennsylvania, and	:	
The Pennsylvania Democratic Party	:	No. 1074 C.D. 2024
	:	
Faith Genser and Frank Matis,	:	
	:	
v.	:	
	:	
Butler County Board of Elections,	:	
Republican National Committee,	:	
Republican Party of Pennsylvania, and	:	
The Pennsylvania Democratic Party	:	
	:	
Appeal of: The Pennsylvania	:	No. 1085 C.D. 2024
Democratic Party	:	Submitted: August 28, 2024

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF

FILED: September 5, 2024

The Pennsylvania Election Code allows mail-in and absentee voters to vote provisionally under some circumstances. In this case, two Pennsylvania voters—Faith Genser and Frank Matis (Electors)—tried to vote by mail in the 2024

Primary Election. Their mail-in ballots were fatally defective and were not counted. Electors also went to their polling places on Primary Election Day, April 23, 2024, and submitted provisional ballots. Those ballots also were not counted. Thus, neither Elector has had any vote counted in the 2024 Primary Election.

The question in this appeal is whether the Election Code prohibits counting Electors' provisional ballots because their fatally flawed mail-in ballots were timely received by Election Day. Importantly, that is a question about provisional voting and counting provisional ballots, which is distinct from the question whether an elector can cure a defect in a mail-in ballot. The Court of Common Pleas of Butler County (Trial Court) held, in an August 16, 2024 decision, that the provisional ballots cannot be counted pursuant to the Pennsylvania Election Code (Election Code or Code),¹ in part because that would amount to ballot curing. We reject that view. We hold that the Election Code, properly construed, does not prohibit counting Electors' provisional ballots. Accordingly, we reverse the Trial Court's order and direct the Butler County Board of Elections (Board) to count them.

I. BACKGROUND

The facts are not in dispute. Electors are registered voters residing in Butler County, Pennsylvania (County). They sought to vote in the 2024 Primary Election by mail-in vote. Both Electors received their mail-in ballot materials from the Board, marked their mail-in ballots with their candidates of choice, deposited the ballots directly into the declaration envelopes, and mailed the declaration envelopes to the Board. The Board received Electors' declaration envelopes well in advance

¹ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591. To promote clarity, and because the Trial Court and the parties in this case refer to the various provisions of the Election Code by their unofficial Purdon's citations, so do we.

of the Election Code’s statutory deadline,² and upon receipt placed them into a machine called the Agilis Falcon. The Agilis Falcon detected that Electors failed to place their mail-in ballots in secrecy envelopes before depositing them in the declaration envelopes, as required by 25 P.S. § 3150.16(a).³ As a result, the Board updated the status of Electors’ mail-in ballots in the Statewide Uniform Registry of Electors (SURE) System, and they received an automatic email notice advising as follows:

After your ballot was received by BUTLER County, it received a new status.

Your ballot will not be counted because it was not returned in a secrecy envelope. If you do not have time to request a new ballot before April 16, 2024, or if the deadline has passed, **you can go to your polling place on election day and cast a provisional ballot.**

Petition for Review in the Nature of a Statutory Appeal, Ex. 1 (Declaration of Faith Genser, Ex. B); Ex. 2 (Declaration of Frank Matis ¶ 9) (emphasis added).

Electors appeared at their respective polling places on April 23, 2024—the day of the 2024 Primary Election—and cast provisional ballots. They were subsequently informed that their provisional ballots were rejected.

Electors filed a Petition for Review in the Nature of a Statutory Appeal (Petition) with the Trial Court. Therein, Electors argued they were disenfranchised when the “Board rejected [Electors’] mail-in ballots due to lack of an inner secrecy envelope, but then refused to count the provisional ballots [Electors] cast on Election

² The Code requires that mail-in ballots must be received “on or before eight o’clock P.M. the day of the primary or election.” 25 P.S. § 3150.16(a).

³ Absentee ballots are also required to be placed in a secrecy envelope. *See* 25 P.S. § 3146.6(a), added by Section 11 of the Act of March 6, 1951, P.L. 3. Absentee and mail-in ballots that are returned without a secrecy envelope are often referred to as “naked ballots.”

Day.” Pet. ¶ 2.⁴ Specifically, they argued that the Board’s decision to reject their provisional ballots violates the Election Code, is based on a misinterpretation of Pennsylvania Supreme Court precedent,⁵ and violates Electors’ right to vote guaranteed by the free and equal elections clause of the Pennsylvania Constitution, PA. CONST. art. I, § 5. The Trial Court granted intervention to the Republican National Committee and the Republican Party of Pennsylvania (collectively, Republican Party, and with the Board, Appellees) and the Pennsylvania Democratic Party (Democratic Party, and with Electors, Appellants). On May 7, 2024, the Trial Court held a hearing on Electors’ Petition.

Chantell McCurdy, Director of Elections for the Board (Director McCurdy), and Electors testified. Director McCurdy testified at length about the tracking of mail-in votes through the SURE System, the Board’s procedures in canvassing mail-in and provisional ballots, and the Board’s notice and cure policy.

In regard to electors who wish to vote by mail, Director McCurdy explained that the SURE System begins tracking a mail-in ballot at the moment a qualified elector requests one. Hearing Transcript, May 7, 2024 (Hr’g Tr.) at 39. Once the mail-in ballot materials have been sent to the elector, the status in the SURE System is changed to “ballot sent.” *Id.* Those materials include (1) the ballot for that elector’s precinct, (2) a secrecy envelope, (3) the declaration envelope, and (4) instructions. *Id.* at 38. Each declaration envelope has a label affixed to it containing a barcode that identifies the voter by his or her voter identification number. *Id.* at

⁴ Notably, Electors do not challenge the Board’s decision to reject their mail-in ballots for lack of a secrecy envelope. They challenge solely the Board’s decision not to count their provisional ballots.

⁵ Specifically, Electors argued the Board misinterpreted *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020) (*Boockvar*), to conclude that electors who return naked mail-in ballots are forbidden to cure the error.

32-33. Pending the Board's receipt of a returned declaration envelope, the SURE System status indicates the ballot is "pending not yet returned." *Id.* at 33.

Director McCurdy testified that the Department of State communicates internally with county boards of elections to advise how to record mail-in ballots into the SURE System once those ballots are received. Hr'g Tr. at 45. She explained that

[w]hen we receive a ballot back in the office, we are to as quickly as possible in order to timely release the information to the Department of State record those ballots in. What I mean by record is I had mentioned earlier on the declaration envelope there is a label. That label contains a barcode that is uniquely identifiable to an individual voter and their assigned voter ID number once they are registered as a registered voter in Butler County. We scan those in, and the way we scan them in determines how it's relayed to the Department of State. So the standard response for a ballot before it's returned is pending not yet returned. When we record it in as received, it is, record ballot returned.

Id. at 32-33. However, not all declaration envelopes received by the County are entered into the SURE System as "record ballot returned." Director McCurdy explained that other statuses may be entered manually into the SURE System if a defect on the declaration envelope is detected:

[County's Counsel]: Now, how does—how does that happen? What is sort of the magic of how that information is collated? We discussed earlier that these ballots haven't been opened. []

[Director McCurdy]: Correct.

[County's Counsel]: How is any of the information disseminated?

[Director McCurdy]: So I guess first it relates to how the

ballots are recorded in.

[County's Counsel]: Okay.

[Director McCurdy]: In which case the Butler County Office has a machine called—it's an Agilis Falcon, and all of the ballots that come in through the mail are placed in this machine. It sorts them. It also evaluates the dimensions of the envelope, specifically the length, height, to make sure that this is in fact an official election envelope with the required materials inside. As long as it does, it goes through, sorts by precinct. That information is exported onto a USB that I then import myself on my computer into the SURE [S]ystem as record ballot returned.

If there are any ballots that it finds any sort of an issue with in that process, meaning it isn't thick enough, it's too thick, one of those two, or we've gotten envelopes for other counties; theirs are slightly longer or taller, it also ends up in the first bin. That bin then has to be evaluated by our office to record in individually.

When we record them in individually, we record them in to the best of our ability as to what we think is possibly wrong with the issue. If it's another county's ballot, we do our best to get that ballot to the county. If it is our ballot, we record it in given the best possible response from the Department of State options. When we scan in the barcode, there is a list of options that it gives us that we're able to chose from, and we chose the most likely based on the scenario.

[County's Counsel]: But you're guessing? Is that a fair—

[Director McCurdy]: Yes.

[County's Counsel]: —way to summarize what you're doing is you're guessing what's wrong with it?

[Director McCurdy]: Correct.

[County's Counsel]: And, you know, you could open up

the envelope on the day of the canvass and realize that somebody has put something that has nothing to do with the election in the envelope?

[Director McCurdy]: Yes. And that did happen.

[County's Counsel]: And can you explain to the Court, you know, that circumstance, just by way of illustration?

[Director McCurdy]: Yes. So the machine evaluated an envelope as correct. It recorded it in as ballot returned. On Election Day, during the—in the morning when we're starting to open our envelopes, we have envelope openers that do it. They open the outside envelope, separate the inner secrecy envelope, all to preserve voter secrecy. That's very paramount for us.

Then they open the internal envelopes. The internal secrecy envelopes for this individual, the one envelope we opened, and it contained a copy of medical records for a person. But the way that it was folded in such, it matched the width dimensions of what the machine thought would be a ballot.

[County's Counsel]: So you can't know then with any degree of certainty whether or not somebody has included the secrecy envelope or included their medical records or their kid's report card until your Computation Board has assembled to open those envelopes? Is that a fair summary?

[Director McCurdy]: That's correct. . . .

Hr'g Tr. 33-35. Because the Election Code forbids mail-in ballots to be opened before seven o'clock A.M. on Election Day,⁶ unless the defect is obvious from the face of the declaration envelope, the status listed in the SURE System is nothing more than a guess. *Id.*

⁶ 25 P.S. § 3146.8(a), (g)(1.1).

For defects that are readily detectable on the face of a declaration envelope, Director McCurdy testified that the County has instituted a notice and cure policy (Curing Policy or Policy).⁷ She explained that the Curing Policy permits electors to cure deficiencies on the declaration envelope by signing an attestation at the Board's office, "or by voting via provisional ballot acting as the attestation at the polling place." Hr'g Tr. at 50. Therefore, if an elector, for example, fails to sign the declaration envelope, he or she has two ways to fix that problem and have the vote count. *Id.* at 60-61. Director McCurdy testified that while defects to the declaration envelope are curable pursuant to the Policy, the County did not adopt any curing procedures for naked ballots. When questioned about the automated email advising Electors that they could vote by provisional ballot because their mail-in votes would not count, Director McCurdy agreed that the SURE System's automated email provided Electors with false directions:

[County's Counsel]: Okay. So Butler County was not offering [Electors] the opportunity to come in and cast a provisional ballot in the event they didn't have—their secrecy envelope was missing. But, as I understand what you're saying now, the [Department] of State website automatically advised these folks that they could vote by provisional ballot?

[Director McCurdy]: That's correct.

Id. at 48-49. Director McCurdy was also questioned about how the Board would treat a timely received declaration envelope that contained a secrecy envelope but omitted the actual mail-in ballot. *Id.* at 63-64.

[Electors' Counsel]: Okay. I want to ask some questions also about—going back to mail-in balloting, when you opened the envelopes on the Friday after the election for

⁷ The Curing Policy can be found in the Original Record, Item No. 25, Ex. 1.

mail-in ballots, what would happen if you received one that had a secrecy envelope inside, but not the actual ballot inside?

[Director McCurdy]: I'm not sure I understand. So during the Computation Board?

[Electors' Counsel]: Correct. Computation Board, they open the envelopes they find—they open the outer envelope; inside there's a secrecy envelope. They open the secrecy envelope; it's empty.

[Director McCurdy]: Okay.

[Electors' Counsel]: What would happen in that situation? Would there be a mail-in vote—there would not be a mail-in vote counted for that voter? Right?

[Director McCurdy]: Correct, because there is no eligible ballot.

[Electors' Counsel]: Right. What if that voter had also completed a provisional ballot at the polling place on Election Day? Would the Computation Board count that provisional ballot?

[Director McCurdy]: No.

[Electors' Counsel]: And why not?

[Director McCurdy]: Because they've already turned in a ballot.

[Electors' Counsel]: What ballot did they already turn in?

[Director McCurdy]: The one that was marked in the SURE [S]ystem, record ballot returned.

[Electors' Counsel]: Okay. So, in other words, even if the voter didn't send in a ballot because they sent in the outer envelope and the secrecy envelope, [the County] still marks that as a ballot returned in the SURE [S]ystem?

[Director McCurdy]: Yes.

Id.

Finally, Director McCurdy testified about electors who intend to vote by mail but are concerned that their ballots may not be timely received and therefore also appear on Election Day and complete a provisional ballot. Hr’g Tr. at 64. She explained that where the Board has an elector’s provisional ballot and also receives that elector’s mail-in ballot past the statutory deadline, it will count the elector’s provisional ballot. *Id.* at 64-65. The elector’s tardy mail-in ballot is deemed ineligible because it was received after the statutory deadline. *Id.* at 65.

Electors also testified. Mr. Matis testified that after he received the email from the Department of State that his mail-in vote would not be counted, he called the Bureau of Elections and was advised that he “had to do a provisional ballot” and “could not come in and fix [his] ballot.” Hr’g Tr. at 88. Ms. Genser also testified that she called the Bureau of Elections after receiving the email from the Department of State that her mail-in vote would not be counted. *Id.* at 144-45. Ms. Genser explained that she was upset by the response to her questions about her mail-in ballot, and ultimately believed that her provisional ballot would not count. *Id.* at 146, 150; Pet., Ex. 1 ¶¶ 15-17. She chose to cast a provisional ballot anyway. *Id.* at 169.

On August 16, 2024, the Trial Court issued a memorandum opinion and order (Trial Court Opinion) dismissing Electors’ Petition and affirming the Board’s decision not to count Electors’ provisional ballots. The Trial Court found the Board did not commit an error of law or abuse its discretion when it rejected Electors’ provisional ballots, as its actions were in accord with 25 P.S. § 3050(a.4)(5)(i) and (ii)(F), which it read to foreclose the counting of provisional ballots cast by electors who had timely submitted mail-in ballots, even if those electors’ timely submitted

mail-in ballots were previously rejected. The Trial Court also found Electors' constitutional challenges without merit. Appellants appealed the Trial Court's order to this Court.^{8, 9}

II. STATUTORY FRAMEWORK

As it is critical to our analysis, we first discuss the relevant provisions of the Election Code. Voting by qualified mail-in electors is addressed in Article XIII-D of the Election Code, 25 P.S. §§ 3150.11-3150.17.¹⁰

25 P.S. § 3150.16, titled "Voting by mail-in electors," provides:

(a) General rule.--At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

....

(b) Eligibility.--

⁸ By Order dated August 22, 2024, this Court consolidated Appellants' appeals.

⁹ This appeal requires this Court to interpret provisions of the Election Code, which, as a question of law, is subject to a de novo standard of review and a plenary scope of review. *Banfield v. Cortes*, 110 A.3d 155, 166 (Pa. 2015).

¹⁰ Article XIII-D of the Code was added by the legislation commonly called Act 77, Act of October 31, 2019, P.L. 552, No. 77 (Act 77).

(1) Any elector who receives and votes a mail-in ballot under [25 P.S. § 3150.11] shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.

(2) An elector who requests a mail-in ballot and who is not shown on the district register as **having voted** may vote by provisional ballot under [25 P.S. § 3050(a.4)(1)].

....

(c) Deadline.-- Except as provided under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot), a completed mail-in ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

25 P.S. § 3150.16 (emphasis added). Pursuant to subsection(b)(2), an elector who requests a mail-in ballot and who is “not shown on the district register as having voted may vote by provisional ballot” under 25 P.S. § 3050(a.4)(1). This subsection will be hereinafter referred to as the “Having Voted Clause.”

As cross-referenced in the Having Voted Clause, 25 P.S. § 3050 discusses voting by provisional ballot. Relevant here are subsections (a.4)(5)(i), which we refer to as the “Casting Clause,” and (a.4)(5)(ii)(F), which we refer to as the “Timely Received Clause.” Together, the Casting Clause and the Timely Received Clause direct when provisional ballots shall and shall not be counted. They provide:

(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.

(ii) A provisional ballot shall not be counted if:

....

(F) 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)(i), (ii)(F). The parties' arguments advance competing interpretations of the Having Voted, Casting, and Timely Received Clauses, and at various times, rely on other Election Code provisions to support their arguments. Other Election Code provisions, where necessary, will be discussed and set forth *infra*.

III. ARGUMENTS

A. Parties' Arguments

1. Appellants

Appellants¹¹ argue that the plain language of the Election Code, properly construed, requires the Board to count the provisional ballots. To support their proffered construction, they review the history and purpose of provisional voting, which they stress is intended to prevent disenfranchisement. They explain that the 2002 Help America Vote Act (HAVA), in part, required states to implement provisional-voting regimes for federal elections. 52 U.S.C. § 21082 (*formerly* 42 U.S.C. § 15482). The General Assembly added 25 P.S. § 3050(a.4) to the Code to

¹¹ We present Appellants' arguments together because they are substantially aligned. We note differences between their arguments where appropriate. We take the same approach with Appellees' arguments in Part III.A.2, *infra*.

fulfill HAVA's mandate. The purpose of provisional voting is to act as a fail-safe to ensure that voters can vote exactly once—not zero times and not twice. Determinations about whether a provisional ballot can be counted are routinely and necessarily made after canvassing has begun, and the Board considers whether the voter has already cast a valid ballot to prevent double voting. Appellants point out that the Election Code specifically authorizes provisional voting by electors who request mail-in or absentee ballots but do not vote those ballots. 25 P.S. §§ 3150.16(b)(2), 3146.6(b)(2).

Appellants focus on two phrases in 25 P.S. § 3050(a.4)(5), which directs the Board to count, or not count, certain provisional ballots that have been cast. They argue these two clauses are ambiguous when read together because they could simultaneously require and prohibit counting of a given provisional ballot. First, the Board must count a provisional ballot if the voter “did not cast any other ballot.” *Id.* § 3050(a.4)(5)(i). Second, the Board must *not* count the provisional ballot if “the absentee or mail-in ballot is timely received.” *Id.* § 3050(a.4)(5)(ii)(F). In support they cite *Keohane v. Delaware County Board of Elections* (Del. Cnty. Ct. Com. Pl., No. CV-2023-4458, filed Sept. 21, 2023), where the Delaware County Court of Common Pleas held that a provisional ballot must be counted if an earlier mail-in ballot is rejected as defective, even if it was also received—the opposite of the statutory interpretation the Trial Court reached here.

Regarding the Casting Clause, Appellants essentially argue that *cast* is a term of art, implying a formal submission of a ballot that will be processed and counted in order to register the elector's choice. They argue that, as the trial court held in *Keohane*, voters who have *tried to* cast mail-in ballots, but did not successfully do so because those ballots were later cancelled as defective, cannot be

said to have *cast* a ballot under the Casting Clause. Thus, they claim the Casting Clause requires the Board to count the provisional ballots because the earlier mail-in ballots were never actually cast. They point to the affidavit voters must sign to vote provisionally under 25 P.S. § 3050(a.4)(2), stating that the provisional ballot is the “only ballot [the voter] cast in this election.”

Further, Appellants argue the Timely Received Clause does not prohibit counting the provisional ballots. The “ballot” that triggers that clause once timely received must also be a *valid* ballot—one that is not later cancelled, rejected, or otherwise not given effect. If it is not a valid ballot, it is not “a . . . ballot,” so there is no ballot that was “timely received.” Thus, timeliness is only one aspect of the Timely Received Clause, and timely receipt comes into play only if there is a valid ballot submitted. Appellants disagree with the construction Appellees propound and the Trial Court adopted: that the Code requires “the Board [to] treat a received *Declaration Envelopes* [sic] as that voter’s return of their ballot, *even if that Declaration Envelope is empty.*” Trial Court Op. at 21 (emphasis added). This, they argue, conflates “ballot”—the word the statute actually uses—with “envelope.” It cannot be, they argue, that timely receipt of *any* declaration envelope purporting to contain a ballot—even a naked ballot, a blank ballot, or no “ballot” at all—can mean that a “*ballot* [was] timely received,” as the Timely Received Clause requires. They point out that the empty-envelope hypothetical was precisely Director McCurdy’s testimony and that the Trial Court acknowledged the abstract absurdity of that construction. *See* Trial Court Op. at 21.

Appellants ask us to resolve the ambiguity in the clauses to require Electors’ provisional ballots to be counted. They argue that under their proposed interpretation, the Casting and Timely Received Clauses can be harmonized—and

critically, can be construed consistently with the Code's other provisional voting sections. For the Casting Clause, they propose that *cast* refers to ballots that are or will be counted. It does not include those that have been submitted and which might later be found to contain—or have already been found to contain— fatal defects and not be counted. For the Timely Received Clause, they argue that a *ballot* is not received unless it is a validly cast ballot, regardless of whether the envelope purporting to contain the ballot is physically received by the Board. Appellants argue resolving the ambiguity in this way favors enfranchisement, effectuates the purpose of provisional voting to ensure that each elector can vote exactly once (not zero times), and is more consistent with a commonsense reading of the Code's provisions as a whole.

Appellants argue that caselaw on which Appellees rely is either distinguishable or not persuasive. In *Boockvar*, the Supreme Court held that counties are not required under the Code to allow curing of defective mail-in ballots. 238 A.3d at 374. Electors specifically distinguish *Boockvar* because it addressed only ballot curing, not the distinct issue raised here—whether a board of elections must count a provisional ballot. Second, Appellants would reject our decision in *In re Allegheny County Provisional Ballots in the 2020 General Election* (Pa. Cmwlth., No. 1161 C.D. 2020, filed November 20, 2020) (*Allegheny County*), *appeal denied*, 242 A.3d 307 (Pa. 2020),¹² as nonbinding and unpersuasive. In *Allegheny County*, this Court held that the Timely Received Clause in 25 P.S. § 3050(a.4)(5)(ii)(F) is unambiguous and prohibits counting provisional ballots if an earlier mail-in or absentee ballot is timely received. *Allegheny County*, slip op. at 8. Appellants point

¹² Unreported decisions of this Court issued after January 15, 2008, are not binding precedent. Section 414(a) of the Commonwealth Court's Internal Operating Procedures, 210 Pa. Code § 69.414(a).

out, however, that *Allegheny County* did not consider the ambiguity that arises when that clause is read together with, instead of in isolation from, the Casting Clause in 25 P.S. § 3050(a.4)(5)(i), and it made no attempt to reconcile those provisions. Nor did the *Allegheny County* Court consider the argument presented here: that only *valid* ballots that will *count* can trigger the Timely Received Clause. Appellants also argue *Allegheny County* was wrongly decided because it failed to give due weight to the presumption in favor of constructions that expand the franchise.

Appellants distinguish the issue of counting their provisional ballots from *curing* their defective mail-in ballots. They claim the Trial Court erred in conflating those issues. *See, e.g.*, Trial Court Op. at 22-23 (citing *Boockvar*, 238 A.3d at 361, for the proposition that the Election Code does not require a curing process for defective mail-in ballots); *id.* at 27 (“[A]ny chance to correct a deficient ballot . . . , including by casting a provisional vote, constitutes a ‘cure.’”). Although the Election Code is silent on ballot curing, leaving that choice up to each county, Appellants argue the Election Code requires that their provisional ballots be counted, regardless of any notification about or curing of defects in their mail-in ballots.

Finally, Appellants argue that adopting the Board’s construction would cause the Election Code to violate the free and equal elections clause of the Pennsylvania Constitution. First, rejecting the provisional ballots, when the earlier mail-in ballots were also cancelled, amounts to a restriction on voting that must be tied to a compelling reason, which the Board has failed to articulate. Second, the Board’s construction would be an unreasonable restriction on the franchise, and the Constitution requires that *any* restriction on voting—whether a ballot casting rule or a ballot counting rule—must be reasonable and nondiscriminatory. Appellants

invite us to avoid these constitutional problems by construing the Code as they propose.

2. *Appellees*

Appellees argue the Election Code—specifically the Timely Received Clause found in 25 P.S. § 3050(a.4)(5)(ii)(F)—prohibits the Board from counting Electors’ provisional ballots. They claim that the Timely Received Clause is not in conflict with the Casting Clause in 25 P.S. § 3050(a.4)(5)(i) because the latter expressly says it applies “except as provided in subclause (ii).” Thus, they argue because the exception—the Timely Received Clause—is triggered, the general rule does not apply and there is nothing left for the Court to interpret. Appellees argue all that is necessary for a ballot to count as “timely received” for purposes of 25 P.S. § 3050(a.4)(5)(ii)(F) is for the elector to mail a declaration envelope to the Board and for the Board to receive the envelope timely. This is true, they argue, independent of what the declaration envelope contains, whether a ballot or anything else. Appellants argue this Court reached precisely that holding in *Allegheny County*.

Appellees claim that Appellants’ proffered construction misunderstands the word “received” in the Timely Received Clause. In their view, receipt means actual receipt, and they argue that the voting equipment’s designation of a mail-in ballot as “pending” or “cancelled” is legally irrelevant to whether the Timely Received Clause prohibits counting a provisional ballot. Similarly, they argue, receipt cannot depend on opening the declaration envelope to verify that the ballot was properly and validly cast, since that does not occur until votes are being canvassed. Similarly, Appellees argue that “casting” is distinct from “receiving”—the former is done by an elector, while the latter is done by the Board. Both of those

acts occur before the ballot is canvassed, so neither can depend on whether the vote is valid (which, in the case of non-facial defects, is not known with certainty until the ballot is canvassed).

In response to Appellants' insistence on the connection between mail-in voting and the need for provisional ballots, Appellees stress that provisional ballots have nothing to do with mail-in voting. Relatedly, they dismiss the SURE System notification provided to Electors, which invited them to cast provisional ballots because their mail-in ballots were invalid, as "legally unfounded," nonauthoritative guidance from the Secretary of the Commonwealth (Secretary). Republican Party's Br. at 29. In support, they cite *Boockvar* for the proposition that the Secretary cannot compel counties to allow cure of defective mail-in ballots, arguing that this, in turn, implies the Secretary cannot tell voters when they are permitted to cast provisional ballots.

Throughout their arguments, Appellees contend that the Board's counting the provisional ballots would have effectively been a "cure" of Electors' defective mail-in ballots via provisional voting. The Board specifically argues that Appellants' proffered construction is an attempt at declaratory or injunctive relief requiring counties to implement notice and cure policies via provisional voting. This, it argues, would violate the Election Code which, as construed in *Boockvar*, does not require counties to implement notice and cure procedures for mail-in or absentee ballots.

Finally, the Republican Party responds to Appellants' constitutional arguments emphasizing the equality of opportunity afforded to Electors, on the basis that they *could have cast* valid mail-in ballots just as every other voter could have done. It argues this settles the constitutional issue because the free and equal

elections clause limits only voter-qualification rules and rules amounting to a denial of the franchise, not ballot casting rules like those Electors failed to follow here.

B. Arguments of *Amici Curiae*

The Department of State and the Secretary have filed a joint brief as *amici curiae*.¹³ The Secretary begins by clarifying that, in his view, the Trial Court and Appellees have wrongly conflated ballot curing with provisional voting. This case, he argues, is not about ballot curing at all. The only question is whether Electors' provisional ballots must be counted under the Election Code, which provides separately for provisional voting. Unlike for ballot curing, which is discretionary, all county boards of elections must follow the Code's provisional voting sections.

The Secretary argues that the two Code clauses that control provisional ballot counting are ambiguous, but the ambiguity should be resolved to require the Board to count the provisional ballots. As a preface to that argument, the Secretary emphasizes that HAVA created provisional voting to ensure that "a ballot would be submitted on election day but counted if and only if the person was later determined to have been entitled to vote." *Sandusky Cnty. Dem. Party v. Blackwell*, 387 F.3d 565, 569 (6th Cir. 2004). The Secretary describes the process of voting provisionally and points out that the Timely Received Clause is just one among many bases on which a provisional ballot might not be counted, even if the voter is eligible to vote. Other reasons include failure to comply with rules for submitting the provisional ballot. *See* 25 P.S. § 3050(a.4)(5)(ii)(A)-(F).

Given that context, the Secretary argues that the Election Code, when considering all its provisional voting sections, is ambiguous regarding how

¹³ We refer to these arguments as the Secretary's because the Secretary is the head of the Department of State.

provisional ballots should be treated. He first cites the instructions given to voters on mail-in and absentee ballots themselves: that they may cast a provisional ballot if their “**voted** ballot is not timely received.” 25 P.S. § 3146.3(e)¹⁴ (for absentee ballots); *accord id.* § 3150.13(e) (for mail-in ballots) (emphasis added). Critically, he explains, the General Assembly added the word *voted* to those instructions by amendment in 2020; they had previously only referred to a “ballot” or “mail ballot” without the concept of a “**voted** ballot.” *See* Secretary’s Br. at 12 (citing Section 9 and 12.1 of the Act of Mar. 27, 2020, P.L. 41, No. 12). And in Act 77 of 2019, the word *voted* was also added when authorizing mail-in voters to vote by provisional ballot. By statute, the district register lists only voters whose earlier ballot has been “received **and voted**” as having voted. 25 P.S. § 3150.16(b)(1) (for mail-in ballots); *see also id.* § 3146.6(b)(1) (same, for absentee ballots). Also by statute, if an absentee or mail-in voter’s name is not listed on the district register as having “**voted** the [mail-in or absentee] ballot,” then that voter “may vote by provisional ballot.” *Id.* § 3146.6(b)(2); *accord id.* § 3150.16(b)(3). The Secretary explains that the Trial Court construed the Timely Received Clause in isolation, and its reading cannot be consistent with these other amendments to the Code. These provisions clearly require that one’s right to vote by provisional ballot is not contingent on the Board’s bare receipt of a ballot, but on having already **voted**. *See* Secretary’s Br. at 25-26.

The Secretary insists that we must resolve these ambiguities to avoid unreasonable results by construing *in pari materia* the terms *timely received* and *voted* to refer only to an earlier ballot that will be counted because it was successfully voted and is valid. In other words, a ballot that is invalid, cancelled, or not properly cast cannot trigger the Timely Received Clause. The Secretary urges us to resolve

¹⁴ Added by Section 11 of the Act of March 6, 1951, P.L. 3.

the ambiguity in favor of counting ballots and expanding the franchise, rather than disenfranchising Electors.

IV. DISCUSSION

We begin with the principles of statutory construction set forth by our Supreme Court:

When presented with matters of statutory construction, [we are] guided by Pennsylvania’s Statutory Construction Act [of 1972], 1 Pa.C.S. § 1501-1991. Under this Act, “the object of all statutory construction is to ascertain and effectuate the General Assembly’s intention.” *Sternlicht v. Sternlicht*, [] 876 A.2d 904, 909 ([Pa.] 2005) (citing 1 Pa.C.S. § 1921(a) (“The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly[.]”)). When the words of a statute are clear and unambiguous, “the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b). However, when the words of a statute are not explicit, the General Assembly’s intent is to be ascertained by consulting a comprehensive list of specific factors set forth in 1 Pa.C.S. § 1921(c). *See also* [Pa.] *Associated Builders & Contractors, Inc. v. Dep’t of Gen. Servs.*, [] 932 A.2d 1271, 1278 ([Pa.] 2007) (recognizing that when the “words of the statute are not explicit, the General Assembly’s intent is to be ascertained by considering matters other than statutory language, like the occasion and necessity for the statute; the circumstances of its enactment; the object it seeks to attain; the mischief to be remedied; former laws; consequences of a particular interpretation; contemporaneous legislative history; and legislative and administrative interpretations”).

....

[The Supreme] Court has previously observed that the purpose and objective of the Election Code . . . is “[t]o obtain freedom of choice, a fair election and an honest election return[.]” *Perles v. Hoffman*, [] 213 A.2d 781, 783

([Pa.] 1965). To that end, the Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice. *Id.* at 784.

Boockvar, 238 A.3d at 355-56 (some citations omitted).

Because Appellants and the Secretary urge us to find the Election Code ambiguous, the following principles are especially important. We find ambiguity when multiple interpretations of a statute are reasonable, including competing interpretations proffered by the parties. *Id.* at 360. Divergent judicial interpretations of a statute can also signal that multiple interpretations are reasonable, and thus that the statute is not clear. *See Bold v. Dep’t of Transp., Bureau of Driver Licensing*, ___ A.3d ___, 2024 WL 3869082, (Pa., No. 36 MAP 2023, filed Aug. 20, 2024), slip op. at 11-12. Ambiguity can be textual, but it can also be contextual, arising from multiple parts of a statute considered and construed together when they must be. *See id.* at 390 (Wecht, J., concurring); *King v. Burwell*, 576 U.S. 473, 474-75 (2015) (“[O]ftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words ‘in their context and with a view to their place in the overall statutory scheme.’”) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). When searching for clear meaning, as at every other time, this Court “must always read the words of a statute in context, not in isolation.” *Gavin v. Loeffelbein*, 205 A.3d 1209, 1221 (Pa. 2019).

A. The Casting Clause and Timely Received Clause Are Ambiguous When Considered Together With the Having Voted Clause

The parties dispute whether the Casting Clause and Timely Received Clause are ambiguous. In *Allegheny County*, we considered the Timely Received Clause in isolation and opined that it is unambiguous. Slip op. at 8. But we did not

consider the Casting Clause because we were not asked to. And we did not consider the Having Voted Clause. We agree with the Secretary that these three clauses must be construed together in the Code’s statutory scheme, and not in isolation. *Gavin*, 205 A.3d at 1221.

The Having Voted Clause specifically authorizes a mail-in voter to “*vote* by provisional ballot” so long as he “is not shown on the district register as having *voted*.” 25 P.S. § 3150.16(b)(2) (emphasis added). The Timely Received Clause uses a different term: the Board must not count the ballot if “the elector’s absentee ballot or mail-in ballot is timely *received*.” *Id.* § 3050(a.4)(5)(ii)(F) (emphasis added). Finally, and only if the Timely Received Clause is not triggered,¹⁵ the Casting Clause comes into play. It requires that, absent any other ground to not count the ballot under subsection (a.4)(5)(ii), the Board must count the provisional ballot “if . . . the individual did not *cast* any other ballot, including an absentee ballot, in the election.” *Id.* § 3050(a.4)(5)(i). Among other important issues, we are required to consider the meaning of *vote*, *voted*, *timely received*, *cast*, and *ballot*.¹⁶ The Election Code does not define these words for purposes of the provisions at issue here.¹⁷ Nor does the Statutory Construction Act supply default definitions. *See* 1 Pa.C.S. § 1991.

¹⁵ We agree with Appellees that the Casting Clause becomes controlling if, and only if, no part of subsection (a.4)(5)(ii)—including the Timely Received Clause—is triggered. This is obvious: the paragraph containing the Casting Clause applies by its terms “[e]xcept as provided in subclause (ii).” 25 P.S. § 3050(a.4)(5)(i).

¹⁶ There is no congruence across the language of these clauses. They use different verbs (sometimes used adjectivally as past participles). *Vote* or having *voted* is not *received* is not *cast*. All three sections refer to the noun *ballot* but none defines it. This lack of congruence is apparent here where Electors’ ballots were timely received, but they had not voted.

¹⁷ *Ballot* is the only one of these words defined anywhere in the Election Code. It is defined in 25 P.S. § 3031.1 as follows:

(Footnote continued on next page...)

In order to faithfully effectuate the language of the legislature, we look to the way these terms are used in the Code for context. A voter can *cast* a ballot merely by filling it out without ever submitting it. *See* 25 P.S. § 3050(a.4)(3) (“After the provisional ballot has been *cast*, the individual shall place it in a secrecy envelope.”). Other uses of *cast* obviously refer to delivery to a location, not filling out. *See id.* § 3050(a.4)(5)(i) (describing a voter “registered and entitled to vote at the election district where the ballot was *cast*”). Still other uses refer to a *vote*, rather than a ballot, being *cast*. *See id.* § 3050(a.4)(4)(vii) (“[T]he votes *cast* upon the challenged official provisional ballots shall be added to the other votes *cast* within the county.”). Thus, even in parts of the Code not at issue here, the word *cast* is used in different senses.

Perhaps the most important tension is between *voting* and the other terms. The Secretary convincingly argues that the Code’s provisional voting sections have been recently amended—in 2019 and 2020—to tether the statutory right to vote by provisional ballot to not just the receipt of a mail-in or absentee ballot, but also to whether that ballot was *voted*. *See* 25 P.S. §§ 3146.6(b)(1)-(2) (absentee ballots); 3150.16(b)(1)-(2) (mail-in ballots).¹⁸ Both of those provisions use *voted* not just with respect to a ballot, but also more generally—a person is not

“Ballot” means ballot cards or paper ballots upon which a voter registers or records his vote or the apparatus by which the voter registers his vote electronically and shall include any ballot envelope, paper or other material on which a vote is recorded for persons whose names do not appear on the ballot labels.

But that definition is not controlling because, by its terms, it applies only “as used in [that] article [, i.e., Article XI-A of the Code, 25 P.S. §§ 3031.1-3031.22],” which we are not construing here.

¹⁸ Although only mail-in ballots are at issue here, we, like the Secretary, believe that the parallel absentee ballot provisions are also useful in construing terms like *voted*, because they closely mirror the language of the mail-in ballot provisions and were amended at nearly the same time.

entitled to cast a provisional ballot at their polling place on Election Day if the district register shows they have already *voted*. That language is in tension with Appellees’ proffered construction of the Timely Received Clause. They claim all that is relevant is receipt of a ballot by the Board, regardless whether that ballot has been *voted* or whether the elector has already *voted*. And they go further, claiming that *ballot* in the Timely Received Clause refers not to a ballot but to the **declaration envelope** which, once received, prevents counting a provisional ballot, even if the received envelope is found to be empty. As the Secretary points out, there is an alternative plausible meaning—considering the Code as a whole, the Timely Received Clause is triggered once a ballot is received timely, but only if that ballot is and remains *valid* and *will be counted*, such that that elector has already *voted*. If the ballot is cancelled or invalid, it should not be considered to trigger the Timely Received Clause, because the elector has not already voted. Thus, when viewing the terms *voted*, *received*, and *cast* in the Code’s broader scheme, they are contextually ambiguous.

We can resort to dictionaries for plain meaning, but they give no clarity in this case. A *ballot* was historically “a small colored ball *placed in a container to register* a secret vote,” and since refers “by extension [to] a ticket, paper, etc., *so used*.”¹⁹ This sense, which bakes in the concept of *use* or *placing in*, differs from the way *ballot* is defined for Article XI-A of the Code (which is, again, not controlling here) which refers to paper on which a voter “records” or “registers” his vote, without reference to use. The ambiguity is highlighted by what *is* clear in the

¹⁹ *Ballot*, OXFORD ENGLISH DICTIONARY (OED), https://www.oed.com/dictionary/ballot_n1?tab=meaning_and_use#28858985 (last visited Aug. 31, 2024); *accord Ballot*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“An instrument, such as a paper or ball, *used for casting a vote*.” (emphasis added)).

Code’s language: regardless of what *ballot* means, it certainly does not mean an empty declaration envelope, as the Trial Court concluded and as Appellees argue. Though an envelope is not enough, it is not clear what is enough to be a mail-in or absentee *ballot*—must it be completed, or voted, or valid, or is a blank ballot sufficient? Dictionaries do not tell us.

The words *cast* and *voted* may be roughly synonymous. *Cast* means “[t]o deposit (a voting paper or ticket); to give (a vote).”²⁰ *Voted* as an adjective or participle means “[e]stablished or assigned by vote.”²¹ But the verb *vote* means “[t]o give or register a vote; to exercise the right of suffrage; to express a choice or preference by ballot or other approved means.”²² But which of these meanings applies in the Code is not clear. For a ballot to be *cast* may mean merely that it was “deposited,” but it may also entail “giv[ing] a vote,” which implies that the vote itself—not just the paper that records it—is validly cast. And for a ballot to be *voted* may entail not just completion or transmission, but that the elector has actually “exercise[d] the right of suffrage” through voting the ballot. Finally, *received* obviously means “to take into . . . possession (something offered or given by another)” or “to take delivery of (something) from another.”²³ But though that word

²⁰ *Cast*, OED (transitive verb sense I.1.f), https://www.oed.com/dictionary/cast_v?tab=meaning_and_use&tl=true#10038401 (last visited Aug. 31, 2024); see also *Cast*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“To formally deposit (a ballot) or signal one’s choice (in a vote).”).

²¹ *Voted*, OED (adjective sense 2), https://www.oed.com/dictionary/voted_adj?tab=meaning_and_use#15491584, (last visited Aug. 31, 2024).

²² *Vote*, OED (intransitive verb sense II.3.a) (emphasis added), https://www.oed.com/dictionary/vote_v?tab=meaning_and_use#15490698 (last visited Aug. 31, 2024); see also *Vote*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defining the noun *vote* as “the expression of one’s preference . . . in . . . an election”).

²³ *Receive*, OED (transitive verb sense III.9.a), https://www.oed.com/dictionary/receive_v?tab=meaning_and_use#26542154 (last visited Aug. 31, 2024).

is clear, the meaning of the thing that is to be received—the *ballot*—is not, so the Timely Received Clause remains murky.

The Timely Received Clause, considered with its companion clauses, uses nonuniform and undefined terminology, the meaning of which is not plain in context. This—together with the competing interpretations offered by the parties and divergent decisions accompanied by opinion from at least three courts of common pleas²⁴—leads us to conclude that “the words of the [Code] are not explicit.” 1 Pa.C.S. § 1921(c).

B. Resolving the Election Code’s Ambiguity

Having determined the words of the Having Voted, Casting, and Timely Received Clauses are ambiguous, we are now tasked with resolving such ambiguity. In so doing, we are guided by the following principles.

Once ambiguity is found, we look beyond the words of the statute so that it can have a meaning, and thus have effect, as the General Assembly intended.²⁵ We faithfully resolve the ambiguity in favor of the legislature’s object, using the interpretive tools set forth in Section 1921(c) of the Statutory Construction Act. 1 Pa.C.S. § 1921(c). Section 1921(c) permits the court to ascertain the intention of the General Assembly by considering, *inter alia*, the object to be attained, and the consequences of a particular interpretation. *Id.* § 1921(c)(4), (6). Notably, when

²⁴ Compare Trial Court Opinion, with *Ctr. for Coalfield Justice v. Wash. Cnty. Bd. of Elections* (Wash. Cnty. Ct. Com. Pl. No. 2024-3953, filed Aug. 23, 2024), slip op. at 25-27 (holding that the Timely Received Clause is ambiguous and construing it in favor of counting provisional ballots); *Keohane*, slip op. at 5 (ordering provisional ballots under these same circumstances to be counted).

²⁵ Notably, we engage in this analysis only and precisely because we have concluded that the Code is ambiguous. Cf. *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1082 (Pa. 2020) (Wecht, J., concurring and dissenting) (observing that we have “only one juridical presumption *when faced with unambiguous language*: that the legislature meant what it said” (emphasis added)).

resolving ambiguity in election cases, we must also consider the imperative to protect the elective franchise. *See Boockvar*, 238 A.3d at 360-61. Thus, we resolve any ambiguity in favor of protecting the franchise and to avoid discarding an elector's vote. *Boockvar*, 238 A.3d at 361; *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972). In that enterprise, “[w]ords and phrases which may be necessary to the proper interpretation of a statute and which do not conflict with its obvious purpose and intent, nor in any way affect its scope and operation, may be added in the construction thereof.” 1 Pa.C.S. § 1923; *id.* § 1928 (requiring statutes to be “liberally construed to effect their objects and to promote justice”).

Applying these tools, we first look to the object to be attained by the Election Code, which includes Act 77's addition of the Having Voted Clause, and amendments to the Casting and Timely Received Clauses. As observed by our Supreme Court in *Boockvar*, “the purpose and objective of the Election Code, which contains Act 77, is ‘to obtain freedom of choice, a fair election and an honest election return.’” *Boockvar*, 238 A.3d at 356 (quoting *Perles*, 213 A.2d at 783). This objective is advanced by ensuring that each qualified elector has the opportunity to vote **exactly once** in each primary or election. Not zero times, which would deprive an elector of the freedom of choice, and not twice, which would prevent an honest election return.

In 2019, the General Assembly amended the Code by passing Act 77, which established universal mail-in voting in the Commonwealth, the object of which is to make voting more convenient for qualified electors. In enacting 25 P.S. § 3150.16, the General Assembly included the Having Voted Clause. Despite its use of ambiguous terms as described above, the General Assembly clearly included the Having Voted Clause to give mail-in electors the opportunity to vote

provisionally so long as they are “not shown on the district register as having voted” by mail. Indeed, a mail-in elector can *only* vote provisionally if the district register so shows.²⁶ Appellees’ proffered construction of the Clauses at issue fails to make voting more convenient for qualified mail-in electors, the object of Act 77, and in actuality, renders it impossible for them to have voted. In other words, by adopting Appellees’ proffered construction, Electors wind up with exactly zero votes in the 2024 Primary. This falls short of the object the General Assembly sought to attain by enacting Act 77 and the Election Code as a whole. This construction disenfranchises Electors. Appellants’ and the Secretary’s proffered construction, however, comports with the objects of the Election Code, including Act 77, by permitting Electors to vote exactly once in the 2024 Primary Election. Their reading resolves the noted ambiguities reasonably in favor of protecting the franchise and avoids depriving Electors of their vote. *Boockvar*, 238 A.3d at 361.

When considering the consequences of the parties’ competing interpretations, 1 Pa.C.S. § 1921(c)(6), it becomes even more clear that Appellants’ reading achieves the General Assembly’s intention while Appellees’ reading does not. *See Boockvar*, 238 A.3d at 380 (citing 1 Pa.C.S. § 1922(1)) (“[W]e must in all instances assume the General Assembly does not intend a statute to be interpreted in a way that leads to an absurd or unreasonable result.”). Here, Electors were notified that their vote “would not count” in advance of the 2024 Primary. They appeared at their respective polling places on the day of the 2024 Primary and were permitted to cast a provisional ballot. Under Appellees’ construction, Electors’ provisional voting was an exercise in futility, as Electors’ provisional vote, under no

²⁶ While there is no testimony here regarding whether Electors were “shown on the district register as having voted,” we presume the County followed the Code and only permitted Electors to vote provisionally because the district register did not reflect that they had “voted.”

circumstances, would be counted. Appellees assert Electors are foreclosed from voting entirely because the Board timely received their declaration envelope. Under Appellees' construction, they had "already voted"—despite that their mail-in ballots will not be counted.

Other concerns about consequences were conceded by the Trial Court and borne out by Director McCurdy's testimony. *See supra* pp. 8-10.²⁷ Under Appellees' proffered construction, an elector could omit his mail-in ballot altogether but return the secrecy and declaration envelopes to the Board, and still be unable to vote provisionally. A commonsense reading of the Code, of course, would permit this mail-in elector to cast a provisional ballot because no "voted" ballot was timely received by the Board, and thus the voter cannot be marked as having "voted" on the district register. 25 P.S. §§ 3146.6(b)(1), 3150.16(b)(1). However, Appellees' position would result in the Board denying that elector's provisional ballot even though he never submitted a mail-in ballot. This would render the Having Voted Clause, which authorizes voting by provisional ballot, without any effect. What can be the effect of casting a provisional ballot that, as a matter of certain statutory operation, could never be counted?

That construction of the Code would not just create surplusage. It would also be unfair and misleading to the electorate because it would invite electors to cast dummy ballots that were nullities before they were ever cast. By Appellees' construction, the provisional ballot's status as not countable is locked in amber at the moment the Board receives a mail-in elector's declaration envelope, without regard to whether the enclosed ballot is later determined to be invalid, or not to be a ballot at all. Appellees' construction would reduce the statutory right to cast a

²⁷ Director McCurdy could not reconcile what constitutes a "ballot" in the above hypothetical. Hr'g Tr. at 63-64. This underscores the ambiguities in the Code.

provisional ballot as a failsafe for exercising the right to vote, just in case, to a meaningless exercise in paperwork. Such a provisional ballot would be “provisional” only euphemistically. In Appellees’ view, it really never had a chance.²⁸

Thankfully, we need not construe the Election Code to yield that result. Because its language is ambiguous on this point, we can and must construe the Code to give effect to the legislature’s intent. The General Assembly obviously *did* intend that mail-in and absentee voters can vote by provisional ballot if they have not already voted an earlier ballot, as 25 P.S. §§ 3146.6(b)(2) and 3150.16(b)(2) provide. This entails the proposition that the provisional ballots so authorized could be counted under some circumstances. The General Assembly *did not* intend for those authorized provisional ballots to be rendered meaningless, essentially void *ab initio*, whenever the elector has made an earlier but unsuccessful *attempt* to cast or vote a ballot. 1 Pa.C.S. § 1922(2) (the Court presumes the General Assembly intended the statute to be effective and certain).

We reject Appellees’ argument that reaching this result would effectively write a mandatory ballot-curing procedure into the Code—a proposition our Supreme Court considered and rejected in *Boockvar* when it held that “[b]oards

²⁸ Appellees position also rewards less-diligent mail-in electors while simultaneously punishing more-diligent ones. Electors in this case mailed their declaration envelopes to the Board well in advance of the 2024 Primary. Accepting Appellees’ construction would require us to hold that Electors forfeited their right to vote in the 2024 Primary as of the Board’s receipt of their declaration envelopes—no vote could ever be counted. Now consider a mail-in elector who mails his declaration envelope to the Board on the eve of the 2024 Primary Election. Realizing that the mail system may not deliver his ballot to the Board in time, that mail-in voter also appears at his polling place on the day of the 2024 Primary and casts a provisional ballot. If the mail-in elector’s ballot was indeed tardy, the Board would count his provisional ballot. The lackadaisical mail-in elector winds up with one vote; the diligent elector winds up with none.

are not required to implement a ‘notice and opportunity to cure’ procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly.” 238 A.3d at 374. The County has a ballot curing policy, but the Code independently authorizes electors to vote by provisional ballot, and, when properly construed, it requires the County to count the provisional ballots here. That does not depend on any ballot curing process, whether optional or mandatory. The provisional ballot is a separate ballot, not a cured initial ballot. The *Boockvar* Court only tangentially discussed provisional voting—the phrase appears only in a single sentence of that opinion. *See Boockvar*, 238 A.3d at 375 n.28 & accompanying text. To conclude, as the Trial Court did, that “any chance to . . . cast[] a provisional vote[] constitutes a ‘cure’” is to both overread *Boockvar* and to read the provisional voting sections out of the Code. Trial Court Op. at 27. This was legal error.

Finally, we agree with Appellants and the Secretary that *Allegheny County* does not compel a different result. That unreported panel decision was reached in a different matter and is thus not binding. More importantly, the Court there was not presented with developed arguments on the issue now before us. The Court did not cite or discuss the Casting Clause in 25 P.S. § 3050(a.4)(5)(i) or attempt to reconcile it with the Timely Received Clause in 25 P.S. § 3050(a.4)(5)(ii)(F) that the Court found unambiguous. Perhaps because the parties in that case did not argue that the Code’s provisions are ambiguous when taken together, the Court did not analyze that question, and we reach a conclusion here with the benefit of those arguments.²⁹

²⁹ Given our construction of the Code, we do not consider Appellants’ constitutional arguments.

V. CONCLUSION

For the foregoing reasons, we conclude that (1) Electors did not cast any other ballot within the meaning of 25 P.S. § 3050(a.4)(5)(i), and (2) 25 P.S. § 3050(a.4)(5)(ii)(F) does not prohibit the Board from counting Electors' provisional ballots. Accordingly, because the record does not indicate any other basis under subsection (a.4)(5)(ii) on which the Board could have declined to count the provisional ballots, we reverse the Trial Court's decision and order the Board to count Electors' provisional ballots.

/s/ Matthew S. Wolf

MATTHEW S. WOLF, Judge

Judge Dumas dissents.

Faith Genser and Frank Matis,	:	CASES CONSOLIDATED
Appellants	:	
	:	
v.	:	
	:	
Butler County Board of Elections,	:	
Republican National Committee,	:	Trial Ct. No. MSD-2024-40116
Republican Party of Pennsylvania, and	:	
The Pennsylvania Democratic Party	:	No. 1074 C.D. 2024
	:	
Faith Genser and Frank Matis,	:	
	:	
v.	:	
	:	
Butler County Board of Elections,	:	
Republican National Committee,	:	
Republican Party of Pennsylvania, and	:	
The Pennsylvania Democratic Party	:	
	:	
Appeal of: The Pennsylvania	:	
Democratic Party	:	No. 1085 C.D. 2024

of Elections,
Committee,
Pennsylvania, and
Democratic Party

sylvania

No. 1085 C.D.

ORDER

/s/ Matthew S. Wolf

Order Exit
09/05/2024

EXHIBIT E

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Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

WASHINGTON

County

For Prothonotary Use Only:

Docket No:

2024-3953

JUL 01 2024

LAURA H. HOUGH
PROTHONOTARY

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:
Center for Coalfield Justice

Lead Defendant's Name:
Washington County Board of Elections

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Witold J. Walczak

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

- ☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☐ Zoning Board

☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☒ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
Restraining Order
☐ Quo Warranto
☐ Replevin
☒ Other:
Constitutional challenge for
declaratory & injunctive relief

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

NOTICE

Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:

Rule 205.5. Cover Sheet

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA

<p>CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP, BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON, ERIKA WOROBEK, SANDRA MACIOCE, KENNETH ELLIOTT, AND DAVID DEAN,</p> <p>Plaintiffs,</p> <p>v.</p> <p>WASHINGTON COUNTY BOARD OF ELECTIONS,</p> <p>Defendant.</p>	<p>CIVIL DIVISION</p> <p>24 No. 3953</p> <p>Judge _____</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p> <p>Filed on behalf of Plaintiffs, CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP, BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON, ERIKA WOROBEK, SANDRA MACIOCE, KENNETH ELLIOTT, AND DAVID DEAN</p> <p>Counsel of Record for these Parties:</p>
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**IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA**

<p>CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP, BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON, ERIKA WOROBEK, SANDRA MACIOCE, KENNETH ELLIOTT, AND DAVID DEAN,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>WASHINGTON COUNTY BOARD OF ELECTIONS,</p> <p style="text-align: right;">Defendant.</p>	<p>CIVIL DIVISION</p> <p style="text-align: center;">_____ No. _____</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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NOTICE TO DEFEND

YOU HAVE BEEN SUED in court. IF YOU WISH TO DEFEND against the claims set forth in the following pages, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are WARNED that IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. YOU MAY LOSE MONEY OR PROPERTY or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.

If you do not know a lawyer, contact:

Lawyer Referral Service
119 South College Street
Washington, PA 15301
724.225.6710

If you cannot afford a lawyer, contact:

Southwestern Pennsylvania Legal Aid Society
10 West Cherry Avenue
Washington, PA 15301
724.225.6170

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, the Center for Coalfield Justice, the Washington Branch NAACP, and Washington County voters Bruce Jacobs, Jeffrey Marks, June DeVaughn Hython, Erika Worobec, Sandra Macioce, Kenneth Elliott, and David Dean, by and through undersigned counsel, bring this Complaint for Declaratory and Injunctive Relief against Defendant, the Washington County Board of Elections, and in support thereof aver as follows:

INTRODUCTION

1. This case is about fundamentally unfair and egregious conduct by the Washington County Board of Elections that rises to the level of a procedural due process violation of the Pennsylvania Constitution.

2. In April 2024, the Washington County Board of Elections (“the Board”) voted 2-1 to adopt a mail-in voting policy that deliberately concealed information about which voters had made disqualifying errors on their mail-in ballot envelopes. The Board’s decision was a complete reversal of its prior policy of notifying voters of ballot envelope mistakes — such as missing signatures or incomplete dates — and providing them with an opportunity to correct those errors.

3. Instead, in the weeks leading up to the April 2024 election, the Board determined which mail-in ballots would not be counted, and then implemented a systematic process to keep that information from voters and the public, in many cases affirmatively misleading voters into thinking that their mail-in ballots would be counted.

4. First, the Board deliberately entered information into Pennsylvania’s Statewide Uniform Registry of Electors (“SURE”) system that made it appear as if the Board had accepted

the defective mail ballots, when in fact the Board had already set them aside and was planning to not count them.

5. Second, the Board instructed its election office staff not to provide any information to voters who inquired about the status of their mail-in ballot, including whether they had made errors that would prevent their vote from being counted.

6. As a result of the Board's systematic and deliberate efforts to conceal this information, voters had no way of knowing that their mail-in ballot would not be counted, and in fact many voters were affirmatively misled into thinking that their mail-in ballot would be counted. Consequently, voters could not exercise their right to vote by casting a provisional ballot on Election Day. Ultimately, the Board's actions disenfranchised 259 qualified, eligible Washington County voters in the low-turnout April 2024 primary.

7. The Board's intentional manipulation of mail-in ballot processing procedures to conceal the existence of disqualifying voter errors and affirmatively mislead many voters, and its refusal to disclose voters' ballot status, violates the Pennsylvania Constitution's due process guarantee.

8. Procedural due process is necessary to "minimize substantively unfair or mistaken deprivations of life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests." *Washington v. Pa. Dep't. of Corr.* 306 A.3d 263, 285 (Pa. 2023) (citation omitted). "[D]emocracy implies respect for the elementary rights of men . . . a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights." *Id.* (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring)).

9. The Board's decision to deliberately conceal information about voters' mail-in ballot status, even though the Board knew it would lead to hundreds of individuals losing their fundamental right to vote, jettisons the "central demands" of due process, which are "notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018) (internal citation and quotations omitted).¹ The Board also committed a clear procedural due process violation by affirmatively misleading many voters into believing that their mail-in ballot would be counted, thereby depriving them of any ability to exercise their fundamental right to vote.²

10. Due process is not a choice: the Pennsylvania Constitution demands it. Plaintiffs, seven Washington County residents whose mail-in ballots were disqualified without their knowledge, and two organizations whose operations were disrupted by the Board's new policy, seek declaratory relief, special relief, and injunctive relief from this Court to ensure that Washington County voters are not deprived of their due process rights again in November.

¹ Courts applying the same procedural due process standard endorsed by the Pennsylvania Supreme Court have recognized that due process entitles voters to pre-deprivation notice when their vote is invalidated for a deficiency in their ballot envelope. *See, e.g., Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 476 F. Supp. 3d 158, 228 (M.D.N.C. 2020) (holding that when a mail-in ballot is rejected "for a reason that is curable" and the voter "is not given notice or an opportunity to be heard on this deficiency," that lack of process "facially effects a deprivation of the right to vote."); *Frederick v. Lawson*, 481 F. Supp. 3d 774, 794 (S.D. Ind. 2020) (when a government entity rejects a mail-in ballot based on "a curable deficiency" without providing voters "notice or an opportunity to respond at any point either before or after their ballots rejected, this all but ends the [due process] inquiry"); *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1053 (D.N.D. 2020) ("Attempting to contact voters and allowing an opportunity to verify ballots ensures compliance with the bare-minimum requirements of procedural due process."). Each of these federal courts relied on the same due process standard that applies under the Pennsylvania Constitution. *See Washington v. PA Dep't of Corr.*, 306 A.3d 263, 284-85 (Pa. 2023) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)).

² *See Turk v. Dept. of Transp., Bur. of Driver Licensing*, 983 A.2d 805, 818 (Pa. Commw. Ct. 2009); *Dunn v. Dept. of Transp., Bur. Of Driver Licensing*, 819 A.2d 189, 192-93 (Pa. Commw. Ct. 2003); *In the Interest of R.M.*, 790 A.2d 300, 306-07 (Pa. 2002).

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Complaint pursuant to 42 Pa.C.S. § 931(a), which provides that, with limited exceptions, “the courts of common pleas shall have unlimited jurisdiction of all actions and proceedings.” 42 Pa.C.S. § 931(a).

12. Venue exists in this Court pursuant to Pennsylvania Rule of Civil Procedure 2103 because this action arose in Washington County and this is a suit against a political subdivision within Washington County. Pa.R.Civ.P. 2103.

PARTIES

13. Plaintiff Center for Coalfield Justice (“CCJ”) is a 501(c)(3) Pennsylvania nonprofit organization headquartered in Washington County. CCJ uses public education, organizing, and advocacy to advance policies that address the health and environmental impacts of the coal, oil, and gas industries on Washington and Greene Counties; to strengthen the area’s local economies; and to ensure that area residents have a voice in electing officials that will be accountable on the issues that matter most to their community. CCJ has 300 individual members, many of whom are registered voters and regularly vote in Washington County, including by mail-in ballot.

14. Plaintiff Washington Branch NAACP is a non-profit, non-partisan organization operating in Washington County, Pennsylvania, and is affiliated with the NAACP Pennsylvania State Conference and the national NAACP. Washington Branch NAACP’s mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination in Washington County. Washington Branch NAACP has nearly 200 individual members, many of whom are registered voters and regularly vote in Washington County, including by mail-in ballot.

15. Plaintiff Bruce Jacobs is a 65-year-old, longtime registered voter who lives in Venetia, Pennsylvania, located in Washington County. *See* Declaration of Bruce Jacobs (“BJ Decl.”) ¶¶ 2, 3.³ Mr. Jacobs voted by mail-in ballot in the April 2024 primary election and intends to vote again by mail in the November 2024 general election. *Id.* ¶¶ 8, 17. The Washington County Board of Elections rejected Mr. Jacobs’ ballot this past April because he failed to sign and date the declaration envelope. *Id.* ¶ 12. Mr. Jacobs did not learn that his mail-in ballot was rejected until after the April 2024 primary election, and his vote was not counted. *Id.*

16. Plaintiff Jeffrey Marks is a 72-year-old, longtime registered voter who lives in Washington, Pennsylvania, located in Washington County. *See* Declaration of Jeffrey Marks (“JM Decl.”) ¶¶ 2, 3.⁴ Mr. Marks voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 6, 15. The Washington County Board of Elections rejected Mr. Marks’ ballot in the April 2024 election because he wrote an “incomplete date” on the declaration envelope. *Id.* ¶ 11. Mr. Marks did not learn that his mail-in ballot was rejected until after the April 2024 primary election, and his vote was not counted. *Id.* ¶¶ 10-11.

17. Plaintiff June DeVaughn Hython is an 85-year-old, longtime registered voter who lives in Canonsburg, Pennsylvania, located in Washington County. *See* Declaration of June DeVaughn Hython (“JDH Decl.”) ¶¶ 2, 3.⁵ Ms. DeVaughn Hython voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 8, 13. The Washington County Board of Elections rejected Ms. DeVaughn Hython’s ballot in the April 2024 election because she signed the declaration envelope in the wrong area and

³ A true and correct copy of the Declaration of Bruce Jacobs is attached hereto as Exhibit 1.

⁴ A true and correct copy of the Declaration of Jeffrey Marks is attached hereto as Exhibit 2.

⁵ A true and correct copy of the Declaration of June DeVaughn Hython is attached hereto as Exhibit 3.

failed to fill in the date. *Id.* ¶ 10. Ms. DeVaughn Hython did not learn that her mail-in ballot was rejected until after the April 2024 primary election, and her vote was not counted. *Id.*

18. Plaintiff Erika Worobec is a 45-year-old, longtime registered voter who lives in Cecil, Pennsylvania, located in Washington County. *See* Declaration of Erika Worobec (“EW Decl.”) ¶¶ 2, 3.⁶ Ms. Worobec voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 8, 14. The Washington County Board of Elections rejected Ms. Worobec’s ballot in the April 2024 election because she wrote an “incomplete date” on the declaration envelope. *Id.* ¶ 9. Ms. Worobec did not learn that her mail-in ballot was rejected until after the April 2024 primary election, and her vote was not counted. *Id.* ¶¶ 9, 10.

19. Plaintiff Sandra Macioce is a 64-year-old, longtime registered voter who lives in Canonsburg, Pennsylvania, located in Washington County. *See* Declaration of Sandra Macioce (“SM Decl.”) ¶¶ 2, 3.⁷ Ms. Macioce voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 6, 10. The Washington County Board of Elections rejected Ms. Macioce’s ballot in the April 2024 election because she wrote an “incomplete date” on the outer declaration envelope. *Id.* ¶ 8. Ms. Macioce did not learn that her mail-in ballot was rejected until after the April 2024 primary election, and her vote was not counted. *Id.*

20. Plaintiff Kenneth Elliott is a 48-year-old, longtime registered voter who lives in Amity, Pennsylvania, located in Washington County. *See* Declaration of Kenneth Elliott (“KE Decl.”) ¶¶ 2, 3.⁸ Mr. Elliott voted by mail-in ballot in the April 2024 primary election. *Id.* ¶ 8.

⁶ A true and correct copy of the Declaration of Erika Worobec is attached hereto as Exhibit 4.

⁷ A true and correct copy of the Declaration of Sandra Macioce is attached hereto as Exhibit 5.

⁸ A true and correct copy of the Declaration of Kenneth Elliott is attached hereto as Exhibit 6.

The Washington County Board of Elections rejected Mr. Elliott's ballot this past April because he wrote an "incomplete date" on the declaration envelope. *Id.* ¶ 10. Mr. Elliott did not learn that his mail-in ballot was rejected until after the April 2024 primary election, and his vote was not counted. *Id.* ¶ 11.

21. Plaintiff David Dean is a 54-year-old, longtime registered voter who lives in Canonsburg, Pennsylvania, located in Washington County. *See* Declaration of David Dean ("DD Decl.") ¶¶ 2, 3.⁹ Mr. Dean voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 9, 14. The Washington County Board of Elections rejected Mr. Dean's ballot in the April 2024 election because he wrote an "incomplete date" on the declaration envelope. *Id.* ¶ 10. Mr. Dean did not learn that his mail-in ballot was rejected until after the April 2024 primary election, and his vote was not counted. *Id.* ¶ 12.

22. Defendant Washington County Board of Elections is a local government agency that is responsible for overseeing the conduct of all elections in Washington County, 25 P.S. § 2641, and obligated to do so in accordance with the Pennsylvania Constitution. The Washington County Board of Elections is also charged with ensuring that elections are "honestly, efficiently, and uniformly conducted." 25 P.S. § 2642(g).

FACTUAL ALLEGATIONS

23. The Washington County Board of Elections deprived Voter-Plaintiffs and more than 250 other Washington County individuals of their vote in the April 2024 primary election. The Board directly caused this widespread disenfranchisement by choosing, in April 2024, to implement a new mail-in voting policy that deliberately concealed information from voters that

⁹ A true and correct copy of the Declaration of David Dean is attached hereto as Exhibit 7.

they had made disqualifying errors on their mail-in ballot envelopes, and in many cases affirmatively misled voters. Because of the Board's actions, voters had no way of learning that their ballot would not be counted, and were deprived of the opportunity to protect their right to vote by taking advantage of an existing statutory process: voting by provisional ballot.

A. Voting by Mail in Pennsylvania

24. Pennsylvania has long provided the option to vote absentee-ballot, but until 2020, that process was available only to voters who had a reason they could not vote in person, either because of current military service, a disability that prevents attendance at a polling place, or absence from the municipality on Election Day. *See* 25 P.S. §§ 3146.1–3146.9.

25. In late 2019, the Pennsylvania Legislature adopted no-excuse mail-in voting, and implementation commenced in May 2020. Act of Oct. 31, 2019, P.L. 552, No. 77, § 8. Under the new system, all registered, eligible electors who apply by the deadline are permitted to vote by mail and are no longer required to provide a reason for voting by mail instead of in person. *See* 25 P.S. § 3150.11.

26. Under Pennsylvania law, identical procedures govern how voters apply for, complete, and return both absentee and mail-in ballots.¹⁰

27. A voter seeking to vote by mail must complete and submit an application to the county board of elections, which includes their name, address of registration, and proof of identification. *Id.* §§ 3146.2, 3150.12. Proof of identification must be a Pennsylvania driver's license number if the voter has a PennDOT issued driver's license or PennDOT non-driver ID card. If the voter does not have a Pennsylvania driver's license or non-driver ID, the voter must provide the last four digits of the voter's Social Security number. *Id.* § 2602(z.5)(3).

¹⁰ For ease of reference, the term "mail-in ballots" is used herein to encompass both absentee and mail-in ballots.

28. County boards begin processing mail-in ballot applications 50 days before each election. *Id.* § 3150.12a(a). Upon receipt of an application, the board verifies the voter's identity and eligibility and then sends the voter a mail-ballot package that contains: (1) the ballot; (2) a "secrecy envelope" marked with the words "Official Election Ballot"; and (3) a pre-addressed outer return envelope, which contains the voter declaration and spaces to sign and handwrite the date (the "declaration envelope"). *Id.* §§ 3146.6(a), 3150.16(a). The packet also contains instructions to the voter for marking and submitting the ballot.

29. The voter must complete several steps to successfully return a mail-in ballot. At any time after receipt, the mail-in voter must mark the ballot, place it in the secrecy envelope, and then place the secrecy envelope in the outer declaration envelope. *Id.* §§ 3146.6(a), 3150.16(a). Next, the voter must "fill out, date and sign" the printed declaration on the outer return envelope. *Id.* §§ 3146.6(a), 3150.16(a). Finally, the voter returns the entire ballot package by mail or in person to their respective county board of elections or at a designated drop-off location. To be considered timely, a county board of elections must receive the completed mail-in ballot by 8:00 p.m. on Election Day. *Id.* §§ 3146.6(c), 3150.16(c).

B. In Every Recent Election, Thousands of Eligible Voters Have Been Disqualified for Making Mistakes on their Mail-in Ballot Packet.

30. It is not uncommon for voters to make inadvertent errors when completing their mail-in ballot packet.

31. Current Pennsylvania law disqualifies mail-in ballots if the voter makes any of three mistakes when completing their envelope packet: failing to sign or date the declaration envelope; writing a date that is deemed "incorrect;" or failing to include the secrecy envelope.

See Ball v. Chapman, 289 A.3d 1 (Pa. 2023); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020).

32. Pennsylvania's Department of State ("DOS") has reported that in every election cycle since the implementation of no-excuse mail-in voting in 2020, thousands of mail-in ballots have been segregated and not counted due to "unintended technical errors" voters made when completing and submitting their mail ballot packets. *See* Press Release, Pa. Dep't of State, "Shapiro Administration Introduces Redesigned Mail Ballot Materials To Give Voters Clearer Instructions, Decrease Number Of Rejected Ballots, And Ensure Every Legal Vote Is Counted" (Nov. 29, 2023), <https://www.media.pa.gov/pages/state-details.aspx?newsid=584> (hereinafter DOS Press Release, "Redesigned Mail Ballot Materials").

33. For instance, in the November 2022 general election, more than 16,000 mail-in ballots in Pennsylvania were set aside because they lacked a proper signature or date on the declaration envelope, or because the voter forgot to include a secrecy envelope. *See* Mark Scolforo, *Majority of 16k Canceled Pa. Mail-In Ballots Were from Dems*, ASSOCIATED PRESS (Jan. 6, 2023), <https://apnews.com/article/2022-midterm-elections-pennsylvania-united-states-government-a1c75c9cfc2f1bfca21ac4a4cbfe60f0>.

34. These mistakes are unrelated to whether an individual is qualified or eligible to vote in the election; such determinations are made during the mail-ballot application process. Instead, the mistakes are related only to the declaration envelope or the secrecy envelope. The ballot itself is unaffected.

35. Ahead of the April 23, 2024, primary election, the Department of State redesigned the declaration envelope and instructions provided to mail-in ballot voters to "reduce voter errors and confusion." *See* DOS Press Release, "Redesigned Mail Ballot Materials," *supra* ¶ 32. The

changes included highlighting the fields the voter must complete on the declaration envelope and pre-filling “20” for the year to help ensure voters write the current date instead of their birthdate, a common disqualifying error. *Id.* DOS also gave counties the option to include a hole punch on the outer envelope, which would allow election officials to readily see when mail-ballot voters had forgotten to include the inner yellow secrecy envelope. *Id.*

36. Despite the redesigned ballot packet, more than 8,000 mail-in ballots were rejected statewide during the April 2024 primary because of issues related to the declaration envelope or a missing secrecy envelope. *See* Declaration of Ariel Shapell (“AS Decl.”) ¶ 14(a).¹¹

C. Prompt and Accurate Recording of Mail-in Ballot Status in the SURE System is Essential to the Effective Administration of Elections.

37. Upon receipt of a voter’s mail-in ballot, counties process that ballot using the SURE system, “a single, uniform integrated computer system” developed and established by DOS pursuant to its obligations under the federal Help America Vote Act (“HAVA”), 52 U.S.C. § 21083(a)(10)(A), and the Pennsylvania Election Code, 25 Pa.C.S § 1222. Indeed, all counties are required to work in and through the SURE system. *See id.* § 1222(c) (“All [county election] commissions shall be connected electronically to the SURE system and shall maintain their registration records in the system.”); *see also id.* § 1222(e) (“each commission shall be required to use the SURE system as its general register.”).

38. Pennsylvania law also requires counties to enter data into the SURE system, including data identifying “registered electors who have been issued absentee ballots,” *id.* § 1222(c)(19), and data identifying “registered electors who vote in an election and the method by which their ballots were cast.” *Id.* § 1222(c)(20). *See also* 4 Pa. Code §183.4(b)(2) (“A commission shall enter. . . voting history for registrants.”).

¹¹ A true and correct copy of the Declaration of Ariel Shapell is attached hereto as Exhibit 8.

39. County boards of election must promptly and accurately enter this data into SURE not only to comply with their statutory obligation to “clearly identify” voters who have received and voted mail-in ballots, 25 P.S. § 3150.16(b)(1), but also to “[p]ermit the timely printing and transmission” of “district registers,” more commonly known as poll books, “and all other information contained in the system as may be necessary for the operation of the polling places on election days.” 25 Pa.C.S. § 1222(c)(13).

40. Timely and accurate entry of voters’ mail-in ballot status into SURE is necessary to generate accurate poll books for Election Day that identify voters who requested a mail-in ballot that voted it and those who did not. For example, if the poll book shows that the voter was sent a mail-in ballot but has not voted it, the voter may vote by provisional ballot. 25 P.S. § 3150.16(b)(2) (mail-in ballots); *id.* § 3146.6(b)(2) (absentee ballots).

41. Accordingly, DOS guidance provides county boards with clear instructions to “promote consistency across the 67 counties” for the processing of mail-in ballots. *See* Pa. Dep’t of State, Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes (Updated: April 3, 2023) (hereinafter “DOS Guidance”).¹² First, boards are expected to “stamp the date of receipt” on the ballot-return envelope and record the date the ballot is received into the SURE system. *Id.* at 2. Next, DOS instructs county boards to “examine the Voter’s Declaration on the outer envelope” to determine whether the voter has made a disqualifying error. *Id.* at 3. If a county board of elections “determines that a ballot should not be counted, the final ballot disposition should be noted in [the] SURE [system].” *Id.* at 3.

42. DOS guidance emphasizes that when a county board of elections receives a mail-in ballot with a disqualifying error, “[i]t is important that the ballot return status is *promptly and*

¹² A true and correct copy of Pa. Dep’t of State, Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes (Updated: April 3, 2023) is attached hereto as Exhibit 9.

accurately recorded in SURE using the specific response type as to the disposition for each ballot received.” *Id.* at 3 (emphasis added).

43. The SURE system provides a number of codes that election offices can use when they receive a mail-in ballot with a disqualifying error. *See* Pa. Dep’t of State, SURE Project, County Release Notes (Mar. 11, 2024) (hereinafter SURE County Release Notes).¹³ *See also* Ex. 9, DOS Guidance at 3 (“The ballot return status . . . should be noted using the appropriate drop-down selection”).

44. Boards of elections can mark a ballot returned with an error as “cancelled” in the SURE system using one of the following codes:

- a. CANC – NO DATE
- b. CANC – INCORRECT DATE
- c. CANC – NO SECRECY ENVELOPE
- d. CANC – NO SIGNATURE

45. The “cancelled” codes are intended to be used when the voter returns the ballot packet with an error and the county “has made a final decision as to the ballot, or it does not offer the opportunity to cure.” Ex. 10, SURE County Release Notes at 8-9. Entering the “cancelled” codes into the SURE system will trigger an email notification to the voter about their options to “request a new ballot” or “go to [their] polling place on election day and cast a provisional ballot.” *Id.* For instance:¹⁴

¹³ A true and correct copy of the Pa. Dep’t of State, SURE Project, County Release Notes (Mar. 11, 2024) is attached hereto as Exhibit 10. The SURE County Release Notes are an explanation of the software changes into the SURE system deployed by DOS. The document explains the changes and provides instructions to the counties for properly using the updated SURE system.

¹⁴ *See* Right-To-Know Law Response from Pa. Dep’t. of State on SURE System Email Notifications (Apr. 18, 2024), a true and correct copy of which is attached hereto as Exhibit 11.

CANC – NO SECRECY ENVELOPE (Deployed 3/26/21)	Your ballot will not be counted because it was not returned in a secrecy envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO SIGNATURE (Updated 6/3/21) (Updated language to remove no date reference 1/27/23)	Your ballot will not be counted because you did not sign the declaration on your ballot return envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

46. Pursuant to the March 11, 2024 SURE system release notes, the Department of State now also provides “6 OPTIONAL ‘Pending’ Status Reasons . . . [which] may be used if a county offers ballot curing.” Ex. 11, DOS SURE Codes, *supra* ¶45. These “Pending” codes include:

- a. PEND – INCORRECT DATE
- b. PEND – NO DATE
- c. PEND – NO SIGNATURE
- d. PEND – NO SECRECY ENVELOPE

47. The SURE system has the option to mark ballots as “Pending” when election officials “ha[ve] noticed” that the voter has made an error in the completion of the ballot packet and the county “offers the opportunity for voters to replace or correct [the] submission error.” *Id* at 7. If the election office selects one of the “PEND” codes, the SURE system will automatically send the voter a corresponding email notification, such as:

PEND – INCORRECT DATE	<p>The county has noticed that the date written on your ballot return envelope is incorrect. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.</p>
PEND – NO DATE	<p>The county has noticed that you did not date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.</p>

48. Timely and accurate entry of voters’ mail ballot status also allows each voter to “track” the status of their mail-in ballot at a DOS website:

<https://www.pavoterservices.pa.gov/pages/ballottracking.aspx>

49. Consequently, when the county election office selects the appropriate “cancelled” or “pending” code into the SURE system, both the automatic SURE-system email and DOS’s mail-ballot tracker inform the elector that their vote will not be counted unless they take additional steps. This data is also made publicly available to requestors, enabling political parties and voting rights organizations to reach out to affected voters and notify them of their ballot status. *See* 25 P.S. §§ 3146.9, 3150.17.

50. However, if the county does not enter the correct, corresponding error code and instead records the ballot as received via the “RECORD – BALLOT RETURNED” code, the SURE system does not show that the ballot has been disqualified. *See* Ex. 10, SURE County

Release Notes at 10. Significantly, entry of this code generates an automated email to the voter suggesting their ballot will be counted:

RECORD – BALLOT RETURNED	Records the voter's ballot as returned prior to the deadline.	Your ballot has been received by [County Name] County as of [DateRecorded]. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot and you are no longer permitted to vote at your polling place location.
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D. Prompt and Accurate Recording of Mail-in Ballot Status in the SURE System is Essential to Ensuring That Every Qualified and Eligible Voter Can Have Their Vote Counted.

51. A mail-in voter whose ballot has been rejected due to a technical error, such as a missing date, signature, or secrecy envelope, is entitled to cast a provisional ballot at their local polling place on Election Day and have it counted. *See e.g.*, Sept. 21, 2023 Order at 3, *Keohane v. Delaware County Board of Elections*, CV-2023-004458 (Del. Cnty. Ct. Common Pleas)¹⁵ (ordering the Delaware County Board of Elections to count provisional ballots cast by voters who were notified of their mail-in ballot rejection). *See also* 25 P.S. § 3050(a.4)(5); *see also* Pa. Dep't. of State, Pennsylvania Provisional Voting Guidance (Mar. 11, 2024),¹⁶ at 4 (Providing that if a voter's mail-in ballot "was rejected for a reason unrelated to the voter's qualifications and the voter submitted a provisional ballot . . . , the provisional ballot shall be counted"). HAVA also clearly and unambiguously requires states to develop a provisional-ballot system to safeguard voters' ability to vote. *See* 52 U.S.C. § 21082; *see also* P.S. 25 § 3050(a.4) (implementing HAVA); *see, e.g.*, *Common Cause Ga. v. Kemp*, 347 F. Supp. 3d 1270, 1292–93

¹⁵ A true and correct copy of *Keohane v. Delaware County Board of Elections*, CV-2023-004458 (Del. Cnty. Ct. Common Pleas Sept. 21, 2023) is attached hereto as Exhibit 12.

¹⁶ A true and correct copy of Pa. Dep't. of State, Pennsylvania Provisional Voting Guidance (Mar. 11, 2024) is attached hereto as Exhibit 13.

(N.D. Ga. 2018) (citing *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1078 (N.D. Fla. 2004)).

52. Recognizing this fact, the majority of counties update the “ballot return status”—including information about a voter’s disqualifying error—“promptly and accurately” in the SURE system after receiving the ballot packet at the election office. *See* Ex. 8, AS Decl. ¶ 13(a) (showing the number of counties that utilized “CANC” or “PEND” codes prior to April 23, 2024 Election Day). This gives voters the opportunity to take the necessary steps to cast a valid vote.

53. Many county boards also take other simple steps to reduce the number of mail-in voters that are disenfranchised due to minor errors, including nearly all of Washington County’s neighboring counties:

- a. Fayette County has two notification methods: Election officials make phone calls to inform voters when they have made an error on their ballot envelope and also sends the voter a letter with instructions to “correct the error, so that your vote may be counted!”¹⁷
- b. Greene County has adopted a “Ballot Curing Policy” in which election officials provide a list of voters with ballot “deficienc[ies]” to Party Committees who are responsible for alerting voters to the problem and the steps “[t]o effect a cure” at the Election Bureau.¹⁸

¹⁷ A true and correct copy of the (excerpted) May 1, 2024 Right-to-Know Law Response from Marybeth Kuznik, Dir. of Elections and Voter Registration, Fayette Cnty. to ACLU-PA regarding Fayette County Notice and Cure Procedures is attached hereto as Exhibit 14.

¹⁸ A true and correct copy of the “Greene County Ballot Curing Procedures” is attached hereto as Exhibit 15.

- c. Beaver County election officials post a list of ballots with “observable defects” to the county’s website and to the “leadership of both major parties.”¹⁹ Voters are also permitted to contact the Bureau of Elections “at any time to inquire” if their ballot envelope has a defect that requires “curing.”

54. These steps are effective in both preserving voters’ right to have their vote counted and promoting the counties’ interest in fair and orderly election administration. A recent investigation found that the mail-in-ballot rejection rate “goes down significantly” when a county notifies the voter and provides an opportunity to fix the error. *See* Carter Walker, *ACLU signals effort to target disparate ‘notice and cure’ policies for flawed mail ballots*, VOTEBEAT PA. (May 16, 2024), <https://www.votebeat.org/pennsylvania/2024/05/16/aclu-lawsuit-challenges-butler-county-mail-ballot-notice-cure-policy-act-77/>. For instance, 62% of defective ballots in Allegheny County and 66% in Chester County were “cured” in the April 2024 primary election. *Id.*

E. In April 2024, the Washington County Board of Elections Changed its Mail-in Voting Policy and Practice.

55. In the lead-up to both the 2023 primary and general elections, Washington County was one of the counties that promptly and accurately recorded defective mail-in ballots in the SURE system as “CANC – NO DATE” and “CANC – NO SIGNATURE.” *See* Ex. 8, AS Decl. ¶ 11(a).

56. The County permitted voters to “cure” mail-in ballots that lacked a signature by going to the election office to add the signature. *See* Washington County Board of Elections

¹⁹ A true and correct copy of the May 8, 2024 Right-to-Know Law Response from Stacey L. Householder, Open Rec. Officer, Beaver Cnty. to ACLU-PA regarding Beaver County Elections Office Procedure is attached hereto as Exhibit 16.

Meeting Minutes for Apr. 26, 2023 and Sept. 19, 2023.²⁰ Voters who forgot the date or wrote an “incorrect date” could request a replacement mail-in ballot or vote a provisional ballot at their local polling place on Election Day. *See* Mike Jones, *Washington County Elections Officials Considering Options for Ballot ‘Curing’*, OBSERVER-REPORTER (Mar. 13, 2024), <https://www.observer-reporter.com/news/local-news/2024/mar/13/washington-county-elections-officials-considering-options-for-ballot-curing/>.

57. On March 12, 2024, following the distribution of DOS’s release notes adding new “PEND” codes to the SURE system, the Washington County Board of Elections met to reconsider their ballot “curing” process. *Id.*

58. At that meeting, Election Director Melanie Ostrander reportedly explained that counties had “multiple options” to handle “curing” in light of the DOS SURE-system update. *Id.* Board members could continue directing the election office to mark erroneous ballots “cancelled” so the voter received an email alerting them to the problem, or they could implement a “notice and cure” procedure in which election staff contact voters about the problem and allow them to fix it in the office. *Id.*

59. On April 11, 2024, the Washington County Board of Elections met again to discuss whether to change the existing “notice and cure” process for the April 2024 election. *See* Washington County Board of Elections Meeting Minutes from April 11, 2024.²¹

60. By this date, mail voting for the April primary was well underway. According to the SURE system information, Washington County had already sent out the majority of its mail-

²⁰ A true and correct copy of the April 26, 2024 Right-to-Know Law Response from Cynthia B. Griffin, Washington Cnty. Chief Rec. Officer to ACLU-PA producing Washington County Board of Elections Meeting Minutes from April 26, 2023 and Sept. 19, 2023 is attached hereto as Exhibit 17.

²¹ A true and correct copy of the May 14, 2024 Right-to-Know Law Response from Sarah A. Scott, Counsel for Washington Cnty. to ACLU-PA producing Washington County Board of Elections Meeting Minutes from April 11, 2024 is attached hereto as Exhibit 18.

in ballots nearly two weeks before, on April 1, 2024. *See* Ex. 8, AS Decl. ¶ 13(c). Director Ostrander advised the Board that their office had already identified “62 defective ballots,” about half of which were missing the final two digits in the year, following the DOS redesign of the outer envelope, which added “20__” to the date. Mike Jones, *Washington County Won’t Allow Voters to ‘Cure’ Defective Mail-in Ballots*, OBSERVER-REPORTER (Apr. 12, 2024), <https://www.observer-reporter.com/news/local-news/2024/apr/12/washington-county-wont-allow-voters-to-cure-defective-mail-in-ballots/>.

61. Election Director Ostrander again explained the “menu of options” for how counties can handle ballots with errors. She told the Board that (1) counties can contact the voter to let them know about the error and provide an opportunity to fix it at the election office; (2) the election office can mark the ballot “cancelled” so the voter will be notified by email that they need to request a new ballot or vote provisionally at their polling place; or (3) the election office can take no action and the voter will not learn about the error or have any opportunity to correct it. *Id.*

62. Following the discussion, the Washington County Board of Elections voted 2-1 to not allow any “curing” in the upcoming primary election, and instructed the county election office to enter defective mail-in ballots into the SURE system as “received,” despite the fact that those ballots could not be counted. *Id.*

63. On April 16, 2024, attorneys from the American Civil Liberties Union of Pennsylvania (ACLU-PA) and the Public Interest Law Center (PILC) sent a letter to the Washington County Board of Elections urging the Board to change its decision and allow “curing” or at a minimum, to enter the segregated ballots into the SURE system as “cancelled”

so that voters would be notified and have the option to cast a provisional ballot on Election Day.²² The Board never responded to the letter.

64. At the Board's April 18, 2024 meeting, community members, including representatives from Washington Branch NAACP, provided public comment criticizing the Board's decision not to notify voters who made mistakes on their declaration envelopes. One resident noted that by refusing to allow ballot curing, the Board was "essentially creating a scenario where individuals may unknowingly have their voices silenced." *See* Mike Jones, *Washington Co. Commissioners Refuse to Reverse Course on Ballot-Curing Decision*, HERALD-STANDARD (Apr. 20, 2024), <https://www.heraldstandard.com/local-news/2024/apr/20/washington-co-commissioners-refuse-to-reverse-course-on-ballot-curing-decision/>. At the meeting, 28 individuals provided public comment in support of "curing" mail-in ballots and only 7 spoke in favor of the Board's decision. *Id.*

65. Following more than an hour of public comment, Commissioner Maggi asked his colleagues to reconsider their decision not to allow "curing." *Id.* His motion to "reconvene to reconsider this issue" did not receive a second from either Commissioner Sherman or Commissioner Janis. *Id.* Commissioner Sherman stated, "My vote would not change." *Id.*

66. As of the April 18th meeting, 170 ballots with "curable" defects had already been identified and segregated. *Id.*

²² A true and correct copy of the Letter from ACLU-PA and PILC to Gary Sweat, Washington Cnty. Solicitor (Apr. 16, 2024) is attached hereto as Exhibit 19.

F. The Board's New Policy and Practice Concealed Vital Ballot Status Information from Voters and the Public, Causing Needless Disenfranchisement.

67. Pursuant to the Board's new policy, throughout the April 2024 election cycle the Washington County election office marked mail-in ballots that contained disqualifying errors as "received" instead of "cancelled." *See* Ex. 8, AS Decl. ¶ 14(b).

68. As a result, voters with defective declaration envelopes and missing secrecy envelopes were sent an automatic SURE-system email telling them only that their ballot "has been received" and that they "may receive another notification" if Washington County "identifies an issue" preventing the ballot from being counted. "Otherwise, you will not receive any further updates on the status of your ballot . . . and you are no longer permitted to vote at your polling place location." *See, e.g.*, Ex. 2, JM Decl. at Ex. B. Voters checking the DOS online tracker to determine the status of their mail-in ballot received a similar message, misleading voters to believe that their mail-in ballot would be counted.

69. Moreover, Washington County instituted additional practices that prevented voters from learning that their mail-in ballot was defective and would not be counted.

70. Although the Board initially stated that voters could call to find out if their ballot had been set aside, Commissioner Maggi subsequently told news reporters that the Board's policy was to refuse to provide that information to voters: "If [voters] call our elections office, all they're going to tell [them] is they received it. They're not going to say that it wasn't signed or the date wasn't correct." Bob Mayo, *Voter Rights Advocates Urge Washington County: Let Mail Ballot Voters Correct Envelope Mistakes*, PITTSBURGH WTAE ACTION NEWS 4 (Apr. 16, 2024), <https://www.wtae.com/article/washington-county-ballot-curing-aclu-public-interest/60516485>.

71. Upon information and belief, no other county in Pennsylvania actively conceals the insufficiency of a voter's mail-in ballot submission, especially when a voter calls their county elections' office to inquire whether their mail-in ballot meets the requirements and will be counted.

72. Washington County also refused to provide a publicly available list of voters with deficient mail-in ballots, as required by the Election Code, which designates "[a]ll official mail-in ballots, files, applications for ballots and envelopes on which the executed declarations appear and all information and lists" as public records. 25 P.S. § 3150.17(a) (mail-in ballots); *id.* § 3146.9(a) (absentee ballots). The Election Code requires counties to compile these lists and make them publicly available "upon request within 48 hours of the request." *id.* § 3150.17(c) (mail-in ballots); *id.* § 3146.9(c) (absentee ballots).

73. Because Washington County entered data into the SURE system showing that voters whose mail ballot packets contained errors were "received," it also created inaccurate records and poll books for use at the polls on Election Day. *See supra* ¶¶ 39-40.

74. Washington County Board of Elections' actions ultimately prevented voters from exercising their right to vote by provisional ballot.

75. As of the date of this Complaint, Washington County still has not informed mail-in voters whose mail ballots contained declaration envelope errors or were missing secrecy envelopes in the April 2024 election that their ballots were cancelled and not counted. Nor did Washington County enter accurate codes into the SURE system regarding those ballots.

76. According to the County's post-election response to a Right-to-Know-Law request,²³ Washington County did not count the following timely-received ballots from otherwise qualified and eligible voters:

- a. 126 ballot envelopes were signed, but had an "incomplete date";
- b. 41 ballot envelopes were signed, but had an "incorrect date";
- c. 18 ballot envelopes were signed, but undated;
- d. 3 ballot envelopes were undated and had a signature in the "wrong area";
- e. 1 ballot envelope was not signed and had an incomplete date;
- f. 6 ballot envelopes were dated, but not signed;
- g. 52 ballot envelopes were neither signed nor dated; and
- h. 12 ballot packets were lacking a secrecy envelope.

77. In total, Washington County deprived 259 eligible mail-in voters who timely returned ballot packages with defects, which represents 2% of all timely-received mail-in ballots.²⁴ These voters are both Democrats and Republicans. Three quarters of the voters whose mail-in ballots were rejected by Washington County were over age 65, and 30% were over the age of 80.²⁵

²³ A true and correct copy of the May 17, 2024 Right-to-Know Response from Cynthia B. Griffin, Chief Clerk and Agency Open Rec. Officer for Washington Cnty. to ACLU-PA producing the names of mail-in ballot voters who submitted timely ballots but were set aside for minor errors is attached hereto as Exhibit 20.

²⁴ According to the "Summary Results Report for the 2024 General Primary," there were a total of 11,185 "ballots cast" in the April 2024 primary election. The 259 segregated ballots therefore represent more than 2% of all timely-received mail-in ballots that were received by the Washington County election office. *Summary Results Report 2024 General Primary*, WASHINGTON CNTY (May 6, 2024), https://cms.washingtoncopa.gov/uploads/2024_Primary_Election_Summary_Official_Results_0521195ffc.pdf.

²⁵ These figures were determined based on an analysis of the ages and political affiliations of the voters identified in Washington County's May 17, 2024, Right-to-Know Response Letter, *supra* n. 23.

78. These voters' ballots were marked as received in the SURE System despite the fact that they were disqualified. Many of these voters still do not know that the County did not count their vote in April 2024.

G. Absent Relief, Washington County Will Once Again Disenfranchise Hundreds of Qualified, Eligible Voters in the Upcoming General Election.

79. Counties will begin processing applications for mail-in ballots for the November 5, 2024 general election on September 16, 2024. *See* 25 P.S. § 3150.12a(a).

80. Voters must return their mail-in ballots to the county boards of elections by 8:00 p.m. on Election Day in order for their vote to be counted in the election. 25 P.S. §§ 3146.6(c), 3150.16(c).

81. The Washington County Board of Elections has given every indication that it intends to continue its policy and practice of concealing information and misleading voters about their mail-in ballot status by entering inaccurate codes into the SURE system, thus depriving voters of any opportunity to vote by provisional ballot in the upcoming November 5, 2024 general election. *See* Mike Jones, *Washington Co. Commissioners Refuse to Reverse Course on Ballot-Curing Decision*, HERALD-STANDARD (Apr. 20, 2024), <https://www.heraldstandard.com/local-news/2024/apr/20/washington-co-commissioners-refuse-to-reverse-course-on-ballot-curing-decision/>; *see also* Mamie Bah, *ACLU Speaking Out After Vote by Washington County Commissioners*, CBS PITTSBURGH (Apr. 16, 2024), <https://www.cbsnews.com/pittsburgh/news/american-civil-liberties-union-of-pennsylvania-washington-county-curing-ballots/>.

82. As a result, Plaintiffs will once again be subject to the Board's unlawful policy and practice in the November general election, and hundreds of voters will once again be disenfranchised.

H. Plaintiffs Have Been and Will Continue to Be Injured by Washington County's Policy and Practice of Concealing Information about Rejected Mail-in Ballots and Misleading Voters about Their Ballot Status.

Plaintiff Bruce Jacobs

83. Bruce Jacobs is a qualified, eligible Washington County voter who was disenfranchised in the April 2024 primary due to the Board of Elections' decision to conceal information about voters who made mistakes when completing their mail-in ballot.

84. Mr. Jacobs is a 65-year-old resident of Venetia, Pennsylvania who has voted in Washington County for decades. *See* Ex. 1, BJ Decl. ¶¶ 3, 6.

85. Ahead of the April 2024 primary election, Mr. Jacobs applied for and received a mail-in ballot. *Id.* ¶ 8. He marked the ballot, inserted it into the secrecy envelope and outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶ 10.

86. Mr. Jacobs' ballot was timely received by the Washington County election office. But because he forgot to sign and date the declaration envelope, the election office set aside Mr. Jacob's ballot and did not count it in the vote totals. *Id.* ¶ 12.

87. The Washington County Board of Elections never notified Mr. Jacobs that he made a disqualifying mistake when completing his mail-in ballot packet. *Id.* ¶ 12. Mr. Jacobs only learned that his vote was not counted when he received a phone call from a non-profit organization nearly two months after the election. *Id.* ¶ 12.

88. Had Mr. Jacobs known that his mail-in ballot would not be counted, he would have done whatever was necessary to ensure his vote was counted, including casting a provisional ballot at his polling place on Election Day. *Id.* ¶ 14.

89. Mr. Jacobs will vote by mail in the November 2024 general election. *Id.* ¶ 17.

Plaintiff Jeffrey Marks

90. Jeffrey Marks is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board of Elections' decision to conceal information about voters who made mistakes when completing their mail-in ballot.

91. Mr. Marks is a 72-year-old resident of Washington, Pennsylvania. *See* Ex. 2, JM Decl. ¶¶ 2-3. He has been a registered voter in Washington County for decades. *Id.* ¶ 3.

92. Ahead of the April 2024 primary election, Mr. Marks applied for and received a mail-in ballot. *Id.* ¶ 6. He marked the ballot, inserted it into the secrecy envelope and outer return envelope, and signed and dated the outer return envelope. *Id.* ¶¶ 6-8.

93. On April 22, 2024, Mr. Marks received an email from Washington County stating that the county had received his ballot. *Id.* ¶ 9. Consequently, Mr. Marks believed his vote would be counted. *Id.* ¶ 10.

94. To the contrary, the election office set aside Mr. Marks' ballot and did not count it in the vote totals because Mr. Marks inadvertently failed to complete the date on his declaration envelope. *Id.* ¶ 11.

95. The Board never notified Mr. Marks that he had made a disqualifying mistake when completing his mail-in ballot packet. Mr. Marks only learned that his vote was not counted when he received a phone call from a non-profit organization nearly two months after the election. *Id.* ¶¶ 11-12.

96. Had Mr. Marks known that his mail-in ballot would not be counted, he would have cast a provisional ballot at his polling place on Election Day. *Id.* ¶ 13.

97. Mr. Marks will vote by mail in the November 2024 general election. *Id.* ¶ 15.

Plaintiff June DeVaughn Hython

98. June DeVaughn Hython is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board's decision to conceal information about voters who made mistakes when completing their mail-in ballot.

99. Ms. DeVaughn Hython is an 85-year-old resident of Canonsburg, Pennsylvania and has voted in Washington County for over half a century. *See* Ex. 3, JDH Decl. ¶¶ 2-3. She previously served as a poll worker in Washington County. *Id.* ¶ 5.

100. Ahead of the April 2024 primary election, Ms. DeVaughn Hython applied and received a mail-in ballot. She marked her ballot, inserted it into the secrecy envelope and outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶ 8.

101. Ms. DeVaughn Hython's ballot was timely received by the Washington County election office, but because she signed in the incorrect area and failed to date the declaration envelope, the election office set aside her ballot and did not count it in the vote totals. *Id.* ¶ 10.

102. The Washington County Board of Elections never notified Ms. DeVaughn Hython that she had made a disqualifying mistake when completing her mail-in ballot packet during the April 2024 primary election, and Ms. DeVaughn Hython believed her vote had been counted. *Id.* ¶ 10. She only learned that her ballot had been disqualified when she received a phone call from a non-profit organization nearly two months after the election. *Id.*

103. Had Ms. DeVaughn Hython known that her mail-in ballot would not be counted, she would have done whatever was necessary to make sure her vote was counted, including casting a provisional ballot at her polling place on Election Day. *Id.* ¶ 12.

104. Ms. DeVaughn Hython intends to vote by mail in the November 2024 general election. *Id.* ¶ 13.

Plaintiff Erika Worobec

105. Erika Worobec is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board's decision to conceal information about voters who made mistakes when completing their mail-in ballot.

106. Ms. Worobec is a 45-year-old resident of Cecil, Pennsylvania who recently moved to Washington County. *See* Ex. 4, EW Decl. ¶¶ 2-3.

107. Ahead of the April 2024 primary election, Ms. Worobec applied for and received a mail-in ballot. *Id.* ¶ 8. She marked the ballot, inserted it into the secrecy envelope and outer return envelope, signed and dated the outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶ 8.

108. Ms. Worobec's ballot was timely received by the Washington County election office, but because she inadvertently did not complete the date, the election office set aside Ms. Worobec's ballot and did not count it in the vote totals. *Id.* ¶ 9.

109. The Washington County Board of Elections never notified Ms. Worobec that she made a disqualifying mistake when completing her mail-in ballot packet. *Id.* ¶¶ 10, 13. She only learned that her vote was not counted when she received a phone call from a non-profit organization nearly two months after the election. *Id.* ¶ 9.

110. Had Ms. Worobec known that her mail-in ballot would not be counted, she would have done whatever was necessary to make sure her vote was counted, including casting a provisional ballot at her polling place on Election Day. *Id.* ¶ 11.

111. Ms. Worobec will vote by mail in the November 2024 general election. *Id.* ¶ 14.

Plaintiff Sandra Macioce

112. Ms. Macioce is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board's decision to conceal information about voters who made mistakes when completing their mail-in ballot.

113. Ms. Macioce is a 64-year-old resident of Canonsburg, Pennsylvania and has lived in Washington County since 2019. *See* Ex. 5, SM Decl. ¶¶ 2-3.

114. Ahead of the April 2024 primary election, Ms. Macioce applied for and received a mail-in ballot. She marked the ballot, inserted it into the secrecy envelope and outer return envelope, signed and dated the outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶¶ 6-7.

115. On April 15, 2024, Ms. Macioce received an email from Washington County stating that the county received her ballot. *Id.* ¶ 7. Consequently, she believed her vote would be counted. *Id.*

116. Ms. Macioce's ballot was timely received by the election office but because she inadvertently did not complete the date, the election office set aside her ballot and did not count it in the vote totals. *Id.* ¶ 8. Ms. Macioce only learned that her vote was not counted when she received a phone call from a non-profit organization nearly two months after the election. *Id.* ¶ 8.

117. Had Ms. Macioce known that her mail-in ballot would not be counted, she would have done whatever was necessary to make sure her vote was counted, including casting a provisional ballot at her polling place on Election Day. *Id.* ¶ 9.

118. Ms. Macioce will vote by mail in the November 2024 general election. *Id.* ¶ 10.

Plaintiff Kenneth Elliott

119. Kenneth Elliott is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board of Elections' decision to conceal information about voters who made mistakes when completing their mail-in ballot.

120. Mr. Elliott is a 48-year-old resident of Amity, Pennsylvania. *See* Ex. 6, KE Decl. ¶ 2. He has been a registered voter in Washington County for his entire adult life. *Id.* ¶ 3.

121. Ahead of the April 2024 primary election, Mr. Elliott applied for and received a mail-in ballot. *Id.* ¶ 8. He marked the ballot, inserted it into the secrecy envelope and outer return envelope, and signed and dated the outer return envelope. *Id.*

122. On April 22, 2024, Mr. Elliott received an email from Washington County stating that the county had received his ballot. *Id.* ¶ 9. Consequently, Mr. Elliott assumed that his vote would be counted in the election. *Id.*

123. To the contrary, the election office set aside Mr. Elliott's ballot and did not count it in the vote totals because Mr. Elliott wrote an "incomplete date" on the outer declaration envelope. *Id.* ¶ 10.

124. The Board never notified Mr. Elliott that he had made a disqualifying mistake when completing his mail-in ballot packet. Mr. Elliott only learned that his vote was not counted when he received a phone call from Washington County NAACP President David Gatling more than two months after the election. *Id.*

125. Had Mr. Elliott known that his mail-in ballot would not be counted, he would have cast a provisional ballot at his polling place on Election Day. *Id.* ¶ 11.

Plaintiff David Dean

126. David Dean is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board's decision to conceal information about voters who made mistakes when completing their mail-in ballot. *See* Ex. 7, DD Decl. ¶ 10.

127. Mr. Dean is a 54-year-old resident of Canonsburg, Pennsylvania and member of the Washington Branch NAACP. *Id.* ¶¶ 2-3. On Election Day, Mr. Dean works as a poll worker in Washington County. *Id.* ¶ 6.

128. Ahead of the April 2024 primary election, Mr. Dean applied for and received a mail-in ballot. He marked his ballot, inserted it into the secrecy envelope and outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶ 9.

129. Mr. Dean's ballot was timely received by the Washington County election office, but because he wrote an "incomplete date" on the declaration envelope, the election office set aside his ballot and did not count it in the vote totals. *Id.* ¶ 10.

130. The Washington County Board of Elections never notified Mr. Dean that he had made a mistake when completing his mail-in ballot packet during the April 2024 primary election. *Id.* ¶¶ 10-11. He only learned that his ballot had been disqualified several months after the election when he received a phone call from Washington Branch NAACP President David Gatling, who explained that his vote had not been counted in the election. *Id.*

131. Had Mr. Dean known that his mail-in ballot would not be counted, he would have done whatever was necessary to make sure his vote was counted, including casting a provisional ballot at his polling place on Election Day. *Id.* ¶ 12.

132. Mr. Dean will vote by mail in the November 2024 general election. *Id.* ¶ 14.

Plaintiff Center for Coalfield Justice

133. For 30 years, CCJ has helped Washington County residents impacted by coal mining and fossil fuel extraction protect their rights to a healthy environment and a thriving economy. CCJ provides community members with information about proposed extraction projects and their potential environmental impacts, organizes members to advocate for better oversight of the fossil fuel industry, and helps residents address the effects of that industry on their local economies.

134. Voter participation is critical to achieving each of CCJ's objectives. Accordingly, in 2020 CCJ launched the Defending Democracy Program to increase civic engagement of community members who live with the daily impacts of fossil fuel extraction and use. Through this program, CCJ educates Washington County residents about political candidates' positions on important environmental, public health, and economic issues. CCJ also raises awareness about the influence that corporate interests can have on shaping policy and regulation, and the importance of turning out to vote to ensure that those elected to office will advance the health, prosperity, and safety of local community members. CCJ also engages in non-partisan voter education efforts to ensure that all residents of Washington County have the information they need to participate in the democratic process.

135. The Washington County Board of Elections' decision to conceal the status of mail-in ballots and affirmatively mislead voters, thus depriving mail-in voters of the opportunity to have their vote counted, has directly impaired CCJ's ability to fulfill its mission and forced CCJ to divert time and resources away from its core work to address the disenfranchisement of the County's voters.

136. Upon learning that Washington County was segregating defective mail-in ballots and concealing those voters' ballot status, CCJ quickly redirected staff and resources to investigate and analyze the new policy and to conduct outreach to potentially affected voters before Election Day and educate them about their options to have their ballot counted in the 2024 primary election.

137. Based on information initially provided to CCJ by the Washington County election office, CCJ developed an outreach plan to inform members via text message and social media that they should contact the Washington County election office to inquire whether their mail-in ballot would be counted. CCJ also created public education and social media materials to inform the larger community about the County's change in policy and its potential impact on voters.

138. CCJ planned to inform individuals who were told they had made an error about the option of casting a provisional ballot on Election Day to ensure their vote would be counted. However, several days into this outreach campaign, CCJ learned that when Washington County residents called to inquire about the status of their mail-in ballot, the election staff refused to provide any information.

139. CCJ then made several attempts to obtain the list of voters whose ballots had been disqualified, including by requesting the list in person at the election office before Election Day, but was unable to access the information.

140. As a result of Washington County's actions, CCJ has been forced to delay important initiatives, including a public education campaign to raise awareness about fracking in coalfields and statewide advocacy work around climate equity. CCJ also had to forego an

opportunity to apply for grant funding that would have supported the organization's efforts to address the impact of the opioid crisis in their communities.

141. If the Board's policy remains in place for the November general election, CCJ will need to continue putting projects on hold in order to address its impact on CCJ members, many of whom will be disenfranchised as a result of the policy, and CCJ's ability to pursue its core mission will continue to be impeded. For example, CCJ had planned to advance its Money in Politics campaign, which raises awareness about the impact of money from wealthy corporations on the policies and actions of elected officials. Instead, CCJ will need to conduct an extensive outreach campaign to alert community members that they will not be able to access accurate information about the status of their mail-in ballot, and work to educate voters to minimize the significant disenfranchisement of their members in November's election.

Plaintiff Washington Branch NAACP

142. The Washington Branch NAACP works to improve the political, educational, social, and economic status of Black Americans by fighting discrimination and addressing the impacts of historic disinvestment, disenfranchisement, and institutionalized racism in Washington County. Over the past several years, their work has included a wide range of efforts to remedy civil rights violations suffered by members and campaigns to improve political equality and educational equity. The Washington Branch NAACP has nearly 200 members, many of whom are registered voters who regularly vote in Washington County, including by mail-in ballot.

143. Civic engagement is crucial to the Washington Branch NAACP's efforts to empower historically disadvantaged communities and increase their representation in government. Accordingly, the Washington Branch NAACP works to expand voter participation

among its members through voter registration and turnout efforts, organizes candidate fora to help voters make informed decisions at the polls, and provides public education to improve trust in the political process.

144. The Washington County Board of Elections' decision in April of 2024 to conceal the status of mail-in ballots and affirmatively mislead voters has disrupted the Washington Branch NAACP's ability to pursue its mission by disenfranchising its members, damaging perceptions of the integrity of the electoral system, and threatening to decrease voter turnout in future elections.

145. Since Washington County changed its mail-voter-notification policy in April 2024, the Washington Branch NAACP has had to shift its resources away from previously planned initiatives. These include planning a campaign to promote mental health among Black residents and mobilizing to oppose educational redlining. Instead, the NAACP has redirected resources to address the county board's actions, advocating against the new policy and investigating concerns about voter disenfranchisement in the community.

146. If Washington County's policy is permitted to stay in place for the November general election, the Washington Branch NAACP will be forced to continue diverting staff time and funding to develop and implement tools and strategies to prevent eligible, qualified voters from having their ballots disqualified, and its many of its members will be disenfranchised.

147. The Voter-Plaintiffs' deprivation of due process and the opportunity to exercise right to vote, and the Organizational Plaintiffs' diversion of resources and disenfranchisement of its members, are irreparable injuries that are capable of repetition yet evading review, and for which there is no adequate remedy at law.

COUNT I
Violation of the Pennsylvania Constitution's
Procedural Due Process Guarantee, Art. I, § 1

148. Plaintiffs hereby incorporate the foregoing paragraphs as if they were fully set forth herein.

149. Article I, Section 1 of the Pennsylvania Constitution provides: “All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” PA. CONST. Art. I, § 1.

150. The Pennsylvania Supreme Court has long recognized that the “guarantee of due process of law, in Pennsylvania jurisprudence, emanates from a number of provisions of the Declaration of Rights,” including Article I, Section 1. *Khan v. State Bd. of Auctioneer Exam'rs*, 842 A.2d 936, 945 (Pa. 2004).

151. “The central demands of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018) (internal citation and quotations omitted). These rules are intended to “minimize substantively unfair or mistaken deprivations of life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests.” *Washington v. Pa. Dep't of Corr.*, 306 A.3d 263, 285 (Pa. 2023) (quoting *Carey v. Piphus*, 435 U.S. 247, 259 (1978)).

152. To ascertain what process is due, Pennsylvania courts rely on the three-part test first developed in *Mathews v. Eldridge*, balancing (1) the private interest affected by the official action; (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards; and (3) the government's interest, including the fiscal and

administrative burden that the additional procedures would entail. *Id.* at 299-300 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

153. Balancing these interests, Washington County Board of Elections' actions concealing voters' mail-in ballot status and affirmatively misleading many voters violates Plaintiffs' procedural due process rights.

154. *First*, the private interest affected by the Board's actions is the complete loss of the fundamental right to vote. *See Applewhite v. Commonwealth*, 54 A.3d 1, 3 (Pa. 2012) ("the right to vote in Pennsylvania, as vested in eligible, qualified voters, is a fundamental one"); *see also In re Nader*, 858 A.2d 1167, 1181 (Pa. 2004) ("the right to vote" is "fundamental").

155. In the April 2024 primary election, the Washington County Board of Elections' new policy to actively conceal from voters that they had made a disqualifying error on their mail-in ballot, and in many cases to affirmatively mislead voters into believing that their mail-in ballot would count, violates the notice requirements of due process and deprived more than 250 Washington County mail-ballot voters, including the Voter-Plaintiffs, of their right to vote. Washington County's policy left Voter-Plaintiffs and other similarly situated voters "no recourse . . . and no way to remedy the loss of that vote in the election." *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *7 (N.D. Ill. Mar. 13, 2006). If the Board's policy is allowed to continue for November's general election, where much higher turnout is expected, significantly more than 250 voters, of all political persuasions, will be disenfranchised.

156. *Second*, the risk of erroneous deprivation coupled with the probable value of additional safeguards also weighs in Plaintiffs' favor. Washington County's policy not only gives election workers authority to cancel voters' mail-in ballots without notice, it effectively denies voters any means of learning about their ballot status before Election Day, thus depriving

them of any opportunity, much less a meaningful one, to address the County's determination to cancel their vote. Moreover, Washington County's deliberate concealment of disqualifying defects on mail-in ballot submissions, and affirmative misleading of many voters, deprives voters from preserving their right to vote through the existing statutory provisional ballot process, a process intended to operate as a backstop to prevent the loss of the right to vote. *See* Ex. 12, *Keohane*, CV-2023-004458 at 3; *see also* § 3050(a.4)(5).

157. The risk of erroneous deprivation created by this policy is unreasonable in light of the fact that additional safeguards would greatly reduce this risk. *See Jaeger*, 464 F. Supp. 3d 1039, 1053 (D.N.D. 2020) (the "value of additional procedures to safeguard against erroneous ballot rejections" becomes "apparent" where "[t]he result is the outright disenfranchisement of otherwise qualified electors"); *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 158 (Pa. 1964) ("the disenfranchisement of even one person validly exercising his right to vote is an extremely serious matter").

158. *Third*, additional procedures would not impair the County's interests. Promptly and accurately entering the status of mail-in ballots in the SURE system would pose no administrative burden on the County. Indeed, prior to April 2024, Washington County both gave notice and provided an opportunity to correct defective mail-in ballots. And the widespread use of effective notification procedures by counties across the state, including neighboring ones, is further testament to the *de minimis* burden.

159. For instance, upon receiving a voter's mail-in ballot election workers must already enter a code into the SURE system. They would simply need to enter the correct code to make accurate mail-in ballot status information available to voters and the public. Moreover, the ability to vote a provisional ballot to correct a defective mail-in ballot already exists, and other

counties' varied means of allowing voters to rescue defective ballots evidences the minimal administrative cost. Such steps would ultimately *promote* the County's interests in ensuring the fair and orderly administration of elections. *See Frederick*, 481 F. Supp.3d at 796 (state has important interest in "maintaining election integrity" and "providing mail-in absentee voters notice and the opportunity to cure . . . by confirming their identity in fact promotes these important governmental interests"); *Jaeger*, 464 F. Supp. 3d at 1053–54 ("allowing voters to verify the validity of their ballots demonstrably advances—rather than hinders—these goals.")

160. In short, Article I, Section 1 entitles qualified, eligible voters to know when their mail-in ballot is disqualified in time to rescue their right to vote by casting a provisional ballot. Washington County's actions have deprived and will continue to deprive Plaintiffs of the Pennsylvania Constitution's due process guarantee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Honorable Court enter judgment in their favor and against the Washington County Board of Elections, and:

- a. Declare that the Washington County Board of Elections' policy and practice of concealing information and misleading voters about their mail-in ballot status is unconstitutional and invalid because it violates the rights of Plaintiffs and all voters under the Pennsylvania Constitution's Due Process Guarantee, Article I, Section 1;
- b. Enjoin the Washington County Board of Elections from concealing information and misleading voters about their mail-in ballot status;
- c. Direct the Washington County Board of Elections to provide accurate, timely information to voters about mail-in ballots containing disqualifying errors,

including by promptly and accurately entering voters' ballot status into the SURE system, so that at a minimum, voters have an opportunity to cast a provisional ballot on Election Day; and

- d. Provide such other and further relief as this Honorable Court deems just and appropriate.

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Jeffrey S. Edwards (No. 73978)
Luke M. Reilly (No. 324792)
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cdpalma@pubintl.org

VERIFICATION

I, Sarah Martik, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Sarah Martik

Dated: June 27, 2024

Name: Sarah Martik

Title: Executive Director


Center for Coalfield Justice

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VERIFICATION

I, David Gatling Sr., hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Dated: June 28, 2024


David Gatling, Sr.
President, Washington Branch NAACP

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VERIFICATION

I, Bruce Michael Jacobs, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Handwritten signature of Bruce Michael Jacobs.

Dated: June 27, 2024

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VERIFICATION

I, JEFFREY R. MARKS, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Handwritten signature of Jeffrey R. Marks.

Dated: June 27, 2024

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VERIFICATION

June B. DeVaughn Hylton
I, _____, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

June B. DeVaughn Hylton

Dated: June 28, 2024

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VERIFICATION

I, ERIK WROBEC, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: June 27, 2024

RETRIEVED FROM DEMOCRACYDOCKET.COM

VERIFICATION

I, Sandra Macioce, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Sandra Macioce

Dated: June 26, 2024

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VERIFICATION

I, Kenneth Elliott, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Kenneth Elliott

Dated: June 29, 2024

RETRIEVEDFROMDEMOCRACYDOCKET.COM

VERIFICATION

1. David L Dean, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

David L Dean

Dated: June 30, 2024

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Samsung Quad Camera
Shot with my Galaxy A12

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: July 1, 2024



Witold J. Walczak
Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Complaint for Declaratory and Injunctive Relief has been served upon all other parties at the address(es) listed in the manner of service specified below, this 1st day of July, 2024.

Washington County Board of Commissioners
95 West Beau Street, Suite 605
Washington, PA 15301
By personal service pursuant to Pa.R.Civ.P. 402(a)(2)(iii)

Gary Sweat, Esq.
Washington County Solicitor
95 West Beau Street, Suite 605
Washington, PA 15301
Courtesy copy via electronic mail: gsweat@sweatlaw.com



Witold J. Walczak
Counsel for Plaintiffs

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EXHIBIT

1

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DECLARATION OF BRUCE JACOBS

I, Bruce Jacobs, 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 65 years old and am otherwise competent to testify.

3. I am a resident of Venetia, Pennsylvania, located in Washington County. I have lived in Washington County for around 30 years.

4. I was a practicing occupational therapist for over 30 years, specializing in orthopedic hand and upper extremity care. I worked in both hospital and outpatient settings with a broad variety of patients who needed rehabilitative care. I helped people recover from and manage traumatic life experiences such as strokes, amputations, and spinal cord injuries. I was passionate about my job and working with people.

5. Since retiring in 2021, I have had more time to devote to my artistic passions. I am currently training to be a docent at the Carnegie Museum of Art in Pittsburgh. I am also a self-taught musician/archivist with a focus on traditional Appalachian and Irish fiddle tunes.

6. Voting and our rights as Americans have always been incredibly important to me. Both my wife and I worked long hours as therapists, she as a speech therapist in a school setting. We raised three daughters and even

with this busy schedule we were sure to vote in every presidential election. Now that I am retired, I make it a priority to vote in every primary and general election, including local elections for county officials.

7. I started voting by mail during the COVID pandemic in 2021 to protect the health of myself and my family. I have continued voting by mail in the years since because I found this to be a convenient way to vote.

8. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail-in ballot from Washington County.

9. Normally, my wife and I complete our mail-ballot packet on the same day, and we often double check each other's ballot envelopes. For this election, my wife ended up submitting her mail-in ballot a few days before I did. She then reminded me to do mine.

10. I marked my ballot, inserted it into the secrecy envelope and the outer return envelope, and mailed my ballot packet back to Washington County before Election Day. I thought I had done everything correctly.

11. I mailed my ballot packet back to Washington County right before Election Day. I did not receive any further communication from the county regarding the status of my mail-in ballot.

12. I first learned that my ballot was not counted when I received a phone call from a non-profit organization on June 12th, 2024. I was both

surprised and confused by this information; I did not know who the caller was or why I had not been contacted directly by Washington County election officials. According to the information that the caller received, I had forgotten to sign and date the outer envelope.

13. I began reading news articles about the decision of the Washington County Commissioners not to notify voters who made mistakes on their mail-in ballots ahead of the election. I feel angry that the county took away my right to vote and the voting rights of hundreds of others.

14. I only wish that I had been respected as an American and been notified that there was an error with the envelope delivering my ballot that prevented it from being counted. If they told me about the error, I would have immediately done whatever was necessary to make sure that my vote was counted in the primary election. I would have fixed the mistake at the county election office if that was an option, or I would have gone on Election Day to cast a provisional ballot at my local polling place.

15. Since Washington County made sure that I would not learn that my mail-in ballot was rejected, there was nothing I could do to correct their claim of an error.

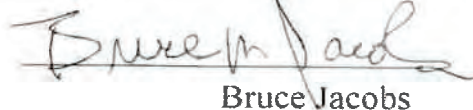
16. I was then, and am now, frustrated with the state of political affairs. I live in a county and a state where elections are close and every vote truly

counts. No voter should be rejected based on simple mistakes on their ballot envelope that are easily corrected—and certainly hundreds of voters in Washington County in the most recent election should not be disenfranchised for that reason. I am upset to see people's rights and dignity eroding before our eyes.

17. I intend to vote by mail in the November 2024 general election, and want to know if the County decides to disqualify my mail-in ballot so that I can do whatever I need to do to make sure my vote is counted this time.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 24 of June, 2024 in Venetia, Pennsylvania.


Bruce Jacobs

EXHIBIT

2

RETRIEVEDFROMDEMOCRACYDOCKET.COM

DECLARATION OF JEFFREY MARKS

I, Jeffrey Marks, 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 72 years old and am otherwise competent to testify.
3. I was born in Pittsburgh, but have lived in Washington, Pennsylvania, for decades. I have been a registered voter in Washington County for more than 20 years.
4. For most of my career, I worked as a radiological engineer at the Bettis Atomic Power Laboratory in West Mifflin, Pennsylvania. We worked on decommissioning and health physics, which involves studying the effects of radiation exposure on the human body.
5. I started voting by mail during the COVID pandemic because it was the safest way to vote. Prior to 2020, I generally voted in person at my polling place.
6. I voted by mail this year. Ahead of the 2024 primary election, I applied for a mail-in ballot from Washington County. On April 16, 2024, I received an email notification stating that my ballot application had been processed and approved. A true and correct copy of the April 16, 2024 email is attached as Exhibit A.
7. When I received my mail-in ballot, I immediately marked the ballot,

inserted it in into the secrecy envelope and put it in the outer return envelope. I brought the ballot directly to the mail box so it would be picked up and arrive on time to the election office.

8. I was absolutely positive that I signed and dated the outer return envelope correctly. I used to work in a verbatim compliance environment in the nuclear energy industry for over 16 years, so I am very careful about following instructions, and was very conscientious to make sure the date was legible. In fact, before dropping it off at the mail box, I decided to take a photo of the outer envelope, because I wanted to have a record that I had filled everything out correctly in case someone tried to disqualify my ballot. I had heard in the news that there were all these problems with mail-in ballots not being counted over ticky-tacky requirements, and I wanted to have proof that I had done it correctly. I had also heard in the news that Washington County wasn't going to notify people if they made a mistake on their ballot, which I thought was ridiculous.

9. On April 22, 2024, I received an email stating that my ballot had been "received by" Washington County. A true and correct copy of the email dated April 22, 2024 is attached as Exhibit B. The email stated:

If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

10. After I received that email, I thought it was a done deal and assumed that my vote was going to be counted and deleted the photo so that it wouldn't take up space on my phone. When you receive an email like that, you think, "my vote is in and it's gonna count."

11. A few weeks after Election Day, I received a call from someone at the Center for Coalfield Justice. They told me that my mail-in ballot had not been counted because I had written an "incomplete date" on the outer envelope.

12. At first, I didn't believe it when I heard this, because I am certain that I filled out the ballot packet correctly. I understand that they don't want people voting who are not supposed to be. But I have so much identification, between my driver's license, mail, the name on my property. Washington County knows exactly who I am and where I live.

13. If I had been notified that I made a mistake, I would have gone to my polling place on Election Day and submitted a provisional ballot instead.

14. It's supposed to be that the only time your vote doesn't count is if you don't go out and vote. I made every effort to exercise my right to vote in this election, and I am angry to hear that my vote wasn't counted because of a supposed mistake. I understand the importance of being compliant, but not to the sublime. I want to see proof from Washington County that the date wasn't legible.

15. As of right now, I am planning to vote by mail in November, but I want to be certain that it's a fair process.

16. I feel like my right to vote has been stripped away because of Washington County's lack of communication. I want to stand up for what's right. The process should be fairer for people who make an honest mistake. I don't believe the process should be so cumbersome that people who have a right to vote, don't get the chance to vote.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 24th of June, 2024 in Washington, Pennsylvania.

A handwritten signature in cursive script, appearing to read "Jeffrey Marks", written over a horizontal line.

Jeffrey Marks

Exhibit A to Marks Declaration

RETRIEVEDFROMDEMOCRACYDOCKET.COM

FW: Your Ballot Application Has Been Processed

skram1092 <skram1092@aol.com>

Mon, Jun 17, 2024 at 5:20 PM

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

All emails from State 4

Sent from my T-Mobile 5G Device

----- Original message -----

From: STSVCOMP001@pa.gov

Date: 4/16/24 9:10 AM (GMT-05:00)

To: SKRAM1092@AOL.COM

Subject: Your Ballot Application Has Been Processed

Dear JEFFREY R MARKS,

The WASHINGTON County Election Office has processed your ballot application on 04/15/2024.

Your application status is: Approved.

If your application was approved, you will receive an email when your ballot is being prepared for mailing. You can always check your ballot status at the following Department of State link: <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>

If you have questions about your ballot application, please contact WASHINGTON County at (724) 228-6750.

Thank you

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit B to Marks Declaration

RETRIEVEDFROMDEMOCRACYDOCKET.COM

FW: Your Ballot Has Been Received

skram1092 <skram1092@aol.com>

Mon, Jun 17, 2024 at 4:45 PM

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

See attached

Jeff

Sent from my T-Mobile 5G Device

----- Original message -----

From: RA-voterregstatcert@state.pa.us

Date: 4/22/24 10:26 AM (GMT-05:00)

To: SKRAM1092@AOL.COM

Subject: Your Ballot Has Been Received

Dear JEFFREY R MARKS,

Your ballot has been received by WASHINGTON County as of April 22, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.
要閱讀此資訊的中文版, 請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

Thank you.

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

EXHIBIT

3

RETRIEVEDFROMDEMOCRACYDOCKET.COM

DECLARATION OF JUNE DEVAUGHN HYTHON

I, June DeVaughn Hython, 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 85 years old and am otherwise competent to testify.

3. I have lived in Washington County for 50 years and I have been a registered voter here that entire time.

4. I am a person who has always been involved in a lot of things. I used to raise horses and run a woman's clothing store. When I retired, I started working at a senior citizens community center. I still play darts there every Friday.

5. I have been voting since I was old enough to vote, and I was a poll worker in Washington County for many years. Those were long days, but I did it with three friends and really enjoyed helping people vote.

6. I have always loved the community experience of voting in person, but about three years ago I had to stop driving, so I started voting by mail.

7. I'm glad voting by mail is an option. A lot of people can't take time off work to get to the polls on Election Day. I remember when I was a poll worker, we would get a ton of people lining up right before the polls closed because they hadn't had time to drive over earlier.

8. I voted by mail this year. When I received my mail ballot, I filled it

out right away, put it in the secrecy envelope, filled out the outer envelope and sent it back more than a week before Election Day.

9. I thought I did everything right when I filled out the ballot envelope. I have voted by mail several times now and never had an issue except once after I got re-married and had to correct my new name. That time, I remember getting a call from a lady at the elections office and they sent me a paper to fill out so my vote would be counted.

10. This time, I didn't hear anything from the elections office, so I thought everything was fine. But a few weeks after Election Day, I received a call from someone at a non-profit organization who told me that my ballot had been rejected because I didn't sign the ballot envelope in the right place and I forgot to date it.

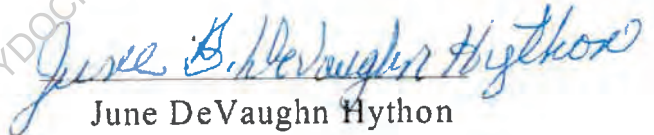
11. If I did sign my name in the wrong place or miss the date, I don't even know why that should matter. People make these kinds of silly mistakes all the time – it's like writing a check. Sometimes you miss the date.

12. I certainly would have corrected the problems if someone had just told me. I could have gotten a ride to the elections office to fix things if that was an option. And even if I had had to go to the polls on Election Day to vote provisionally, I would have asked a friend to drive me. There are people who will drive you to the polls, especially if you're a senior.

13. I plan to vote by mail again in November, and if I don't fill out the ballot envelope the way they want me to, I want them to tell me instead of just throwing out my vote. My vote should count as much as anyone else's.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 28 of June, 2024 in Canonsburg, Pennsylvania.


June DeVaughn Hython

RETRIEVEDFROMDEMOCRACYDOCKET.COM

EXHIBIT

4

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DECLARATION OF ERIKA WOROBEK

I, Erika Worobec, 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 45 years old and am otherwise competent to testify.

3. I moved with my family to Washington County about two years ago to begin operating a horse farm.

4. I grew up between Lancaster, Williamsport, and Pittsburgh, Pennsylvania. As an adult, I have also lived in New York and Colorado.

5. Voting is incredibly important to me. My great-grandparents came to the United States as refugees during the Russian revolution. They worked hard because they wanted future generations to have the right to question the government and elect leaders who will be best for our family. I take every opportunity to vote in honor of their legacy.

6. Part of my job as a mom is to protect my family, and voting is an important part of how I do that. I vote because I care deeply about protecting the environment, animal rights and human rights.

7. I started voting by mail during the COVID pandemic to protect the health and safety of myself and my family. I continued voting by mail in the years since then because I found it to be a convenient way to participate in the election.

8. Ahead of the 2024 primary election, I applied for and received a mail-in ballot. I was very excited when the ballot arrived because I'm really a nerd about the whole thing. I immediately took the mail-in ballot to the table, marked it and placed it in the secrecy envelope and the outer envelope. I thought I had filled everything out correctly, and put it right in my car to take to the mailbox the next morning.

9. Several weeks after the election, I received a phone call from the Center for Coalfield Justice informing me that my ballot had not been counted. Apparently, the county had received the ballot on time, but I had written an "incomplete date" on the outer envelope. I honestly thought it was a crank call. I kept asking them questions because it seemed so absurd that my vote had not been counted over such a trivial mistake.

10. I feel frustrated and disenfranchised that Washington County did not tell me before the election that they decided not to count my ballot. After the election, I found an email from them, but it only said that they received my ballot and nothing about it not being counted. How can our democracy be "by the people and for the people" if the government is making these sweeping decisions about which ballots shouldn't be counted without even telling people?

11. If the Washington County Board of Elections had notified me that my ballot wouldn't be counted, I immediately would have taken any steps that were

required to fix the issue. I would have gone to the election office to correct the ballot envelope, or I would have cast a provisional ballot at my polling place on Election Day.

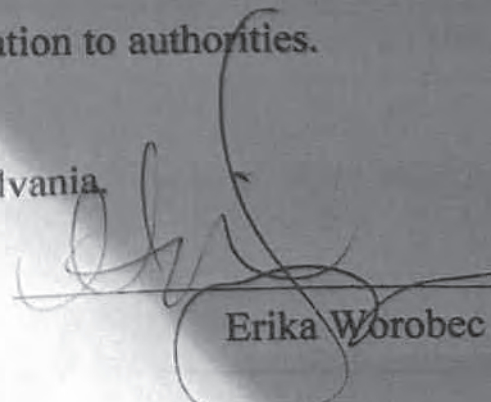
12. I live only a few miles from Allegheny County. I don't understand why voters in neighboring counties receive an opportunity to fix their mail-in ballots and have them counted, but in Washington County we apparently have no rights as voters.

13. The fact that I found out after the election that my ballot wasn't counted makes me feel sick. I feel like I let my great-grandparents down, and all those who are being targeted for their beliefs and identities.

14. I plan to vote by mail again on November. I believe that Washington County should inform me if they are going to reject my ballot for any reason and should give me an opportunity to fix the situation prior to Election Day.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 27 of June, 2024 in Cecil, Pennsylvania.


Erika Worobec

EXHIBIT

5

RETRIEVEDFROMDEMOCRACYDOCKET.COM

DECLARATION OF SANDRA MACIOCE

I, Sandra Macioce, 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 64 years old and am otherwise competent to testify.

3. I have lived in Washington County since 2019 and regularly vote in elections.

4. I was the office manager of a cancer center until I retired, and now I work part-time in a consignment store.

5. I started voting by mail during the COVID pandemic. After that, my husband and I realized that given our schedules, it was easier to vote by mail than in person, so I've voted by mail a few times since then.

6. I have never had an issue voting by mail before. This year, when I received my mail ballot, I marked it, put it in the secrecy envelope, and filled out the ballot return envelope, like usual.

7. On April 15, 2024, I received an email stating that my ballot had been received by Washington County. A true and correct copy of the April 15, 2024 email is attached as Exhibit A. I understood from the email that unless I received another email notifying me about an issue with my ballot envelope, I should assume my mail ballot would be counted and that I could not vote in person on

Election Day.

8. I didn't receive any more notifications from Washington County, but a few weeks after Election Day, I received a call from someone at a non-profit organization informing me that Washington County had disqualified my ballot because it had an "incomplete date."

9. It is hard to imagine how I messed that up, and I would really like to see the ballot to see what they mean by "incomplete" date. And I definitely would have liked to have fixed any errors. If I had known, I could have just gone to the elections office to fill in the rest of the date, or voted in person by provisional ballot.

10. I want to vote by mail in November, and if the elections office thinks I've made a small error on the return envelope, I want them to notify me so that I can correct it and make sure my vote is counted.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 26 of June, 2024 in Canonsburg, Pennsylvania.



Sandra Macioce

Exhibit A to Macioce Declaration

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Fwd: Your Ballot Has Been Received

Gary Macioce <legacy1052019@gmail.com>
To: ksteiker-ginzberg@aclupa.org
Cc: cdepalma@pubintl.org

Wed, Jun 26, 2024 at 2:32 PM

----- Forwarded message -----

From: <RA-voterregstatcert@state.pa.us>
Date: Mon, Apr 15, 2024 at 12:03 PM
Subject: Your Ballot Has Been Received
To: <legacy1052019@gmail.com>

Dear SANDRA L MACIOCE,

Your ballot has been received by WASHINGTON County as of April 15, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

Thank you.

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

--
Gary and Sandy Macioce
105 Legacy Drive
Canonsburg, PA 15317
legacy1052019@gmail.com

EXHIBIT

6

RETRIEVEDFROMDEMOCRACYDOCKET.COM

DECLARATION OF KENNETH ELLIOTT

I, Kenneth Elliott, 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 48 years old and am otherwise competent to testify.
3. I was born and raised in Washington County. I have been a Washington County voter for my entire adult life.
4. I work in public relations and charitable giving for a non-profit organization.
5. Voting is an important right. It is our ability to determine who will be the best representative of our values. Before I cast my vote, I do research about all the candidates, regardless of their political party, before making my decision.
6. I started voting by mail when it became available during the COVID pandemic. I continued voting by mail in the years since. I am part of the LGBTQIA community and I prefer the privacy of voting from my home.
7. I always notice the emails about the mail ballot process. I got the email that said my mail-in ballot application had been received by Washington County, and another saying the application was approved. I also remember seeing an email that said, "Your ballot is on the way."
8. When I received my mail-in ballot for the April 2024 primary, I marked

the ballot, put it in the secrecy envelope, and filled out the ballot return envelope. I thought I had done everything correctly, because I never had an issue with mail-in voting before.

9. On April 22, 2024, I received an email saying that the county had received my mail-in ballot. The email said that if there was any irregularity, the county may contact me again. A true and correct copy of the email dated April 22, 2024 is attached hereto as Exhibit A. When I saw the email, I assumed that my ballot had been accepted and that everything was fine.

10. Two months after the election, I received a call from Washington Branch NAACP President, David Gatling. Mr. Gatling told me that my vote wasn't counted, along with more than 200 Washington County voters, because I had made mistake on my mail-in ballot. I learned later that I had written an "incomplete date" on the outer return envelope.

11. I am angry that my vote wasn't counted and that no one from Washington County contacted me about the issue with my mail-in ballot. If I had been notified, I would have easily gone to my polling place on Election Day to cast a provisional ballot.

12. I was planning to vote by mail-in ballot in November. At the moment, I am considering voting in person at my polling place because I don't have confidence in the mail-in process. I want to know that it is a fair process

and ensure that my vote will be counted.

I understand that false statements herein are subject to the penalties of
18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 29th of June, 2024 in Amity, Pennsylvania.

Kenneth Elliott
Kenneth Elliott

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Exhibit A to Elliott Declaration

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Fwd: Your Ballot Has Been Received

1 message

Ken Elliott <kenelliott76@gmail.com>
To: Ksteiker-ginzberg@aclupa.org

Fri, Jun 28, 2024 at 7:00 PM

Sent from my iPhone

Begin forwarded message:

From: RA-voterregstatcert@state.pa.us
Date: 22 April 2024 at 11:06:53 GMT-4
To: kenelliott76@gmail.com
Subject: Your Ballot Has Been Received

Dear KENNETH B ELLIOTT,

Your ballot has been received by WASHINGTON County as of April 22, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

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要閱讀此資訊的中文版, 請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

Thank you.

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

EXHIBIT

7

RETRIEVEDFROMDEMOCRACYDOCKET.COM

DECLARATION OF DAVID DEAN

I, David Dean, 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 54 years old and am otherwise competent to testify.
3. I was born in Washington County and have lived here for decades.
4. I am currently retired. I previously worked as a sales representative for a telecommunications company.
5. I am a member of the Washington Branch NAACP. I have been a member on and off since my early 20s.
6. Every Election Day, I work at the polling place as the minority inspector. It is one of the most enjoyable things I get to do twice a year. I love spending time with the people I grew up with, especially the senior citizens, who are excited to come vote.
7. I believe that voting is our birthright. My grandfather always said, "They denied us the right to vote, so when you have that privilege, you have to go out and support your democracy."
8. I've been voting by mail since the pandemic. It's also more convenient because I'm working at the polling place on Election Day.

9. I have never had an issue voting by mail before. This year, when I received my mail ballot, I marked it, put it in the secrecy envelope, and filled out the ballot return envelope. I thought I had done everything correctly. I returned the ballot in early April, right after I received it.

10. I never heard anything from Washington County that there was a problem with my ballot. Several months after the election, I received a call from Washington Branch NAACP President David Gatling, who told me that my vote had been disqualified because I had written an "incomplete date" on the mail-in ballot envelope. I didn't believe it. I've always been a stickler about the date, especially because I was concerned about circumstances like this, so I'm very particular about how I fill out the ballot.

11. After I received the call from President Gatling, I was pissed off. All the years I've been voting in Washington County and working at the polls, I just don't understand how you can be so technical with my vote.

12. If I had been notified before the election that I had made a mistake on the ballot envelope, I would have easily gone to the election office to fix the problem if that was an option. Just hand me a pen and I would have fixed it. And even though I work the polls on Election Day, I also could have found time to go cast a provisional ballot instead.

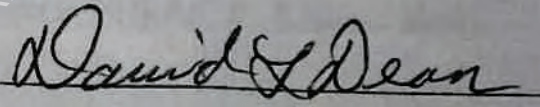
13. It makes me angry that I had no voice in the election. I feel that they

denied my right of free speech and my right to vote.

14. I plan to vote by mail again in the November 2024 election, and I would like Washington County to notify me if there is a problem with my ballot and if it won't be counted for any reason.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 30 of June, 2024 in Canonsburg, Pennsylvania.


David Dean



Samsung Quad Camera
Shot with my Galaxy A12

EXHIBIT

8

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**DECLARATION OF ARIEL SHAPELL
IN SUPPORT OF PLAINTIFFS' ACTION FOR DECLARATORY
JUDGMENT**

1. I, Ariel Shapell, am an attorney at the American Civil Liberties Union of Pennsylvania ("ACLU-PA") and have a background in data analytics.

2. I received a B.S.B.A. with majors in mathematics and finance from Washington University in St. Louis in 2011 and a J.D. from the University of Pennsylvania Carey Law School in 2021.

3. In 2014 and 2015, I served as the Director of Business Intelligence at Beatport LLC, a digital music and entertainment company, where I was responsible for organizing, analyzing, and reporting the company's business data. In my role, I performed data analyses and visualizations and developed systems to extract, transform, and load data. I also supervised a team of three data scientists and analysts.

4. From 2015 until 2018, I served as a product manager at Postlight LLC, a technology consultancy. At Postlight LLC, I oversaw data analytics and digital product development projects for large entertainment, finance, and cultural institutions.

5. From 2019 through the present, I have worked as a volunteer, intern, and now legal fellow at the ACLU-PA. During my time with the ACLU-PA, I have conducted numerous analyses of large data sets for both litigation and advocacy.

6. I have been asked by the ACLU-PA, Dechert LLP, and the Public Interest Law Center (collectively, “Plaintiffs’ Counsel” or “Counsel”) to apply my training to assess the number of Pennsylvania mail-ballots that were coded as canceled or pending in the November 2023 municipal election and the April 2024 primary election because (1) the voter neglected to write the date on the outer mail ballot envelope (“Declaration Envelope”) or wrote a date on the Declaration Envelope that was deemed “incorrect”; (2) the voter neglected to sign the Declaration Envelope; (3) the voter neglected to include the inner secrecy envelope when completing their mail-in ballot packet, or (4) for some other, unspecified reason.

7. I have been informed and understand that on August 21, 2023, ACLU-PA attorney Kate Steiker-Ginzberg received access from the Pennsylvania Department of State to the “Pennsylvania Statewide Mail-Ballot File,” which contains point-in-time public information about each mail-ballot application and mail ballots recorded in Pennsylvania’s Statewide Uniform Registry of Electors (“SURE”) system.

8. I reviewed three different data files that I received from Attorney Steiker-Ginzberg, which were generated at different points in time as follows: (1) a file generated on November 6, 2023 containing mail and absentee ballot data from the Department of State exported from the SURE system and reporting data

relating to mail ballots submitted in the November 2023 municipal election (pre-Election Day), under the filename VR_SWMailBallot_External 20231106.TXT; (2) a file generated on April 22, 2024 containing mail and absentee ballot data from the Department of State exported from the SURE system and reporting data relating to mail ballots submitted in the April 2024 primary election (pre-Election Day), under the file name VR_SWMailBallot_External 20240422_5PM.TXT; and (3) a file generated on May 14, 2024 containing mail and absentee data from the Department of State data exported from the SURE system and reporting data relating to mail-ballots received in the April 2024 Pennsylvania presidential primary election (post-Election Day), under the filename VR_SWMailBallot_External 20240514.TXT.

9. I have been informed and understand that:

- a. When counties enter data about mail ballots, they enter codes into the SURE system to record the status of mail-ballots received by the county. In the data sets I reviewed, the codes represent the status of the ballots at the time the file was generated.
- b. For purposes of entering the final disposition of mail-ballots, counties can choose from a list of codes, but those relevant to my analysis include the following:

CANC – NO DATE

CANC – INCORRECT DATE

CANC – NO SECRECY ENVELOPE

CANC – NO SIGNATURE

CANC – OTHER

- c. The abbreviation “CANC” means “canceled.” “CANC” codes indicate that the voter made an error when submitting their mail-ballot package and the county set the ballot aside and did not count it.

- d. Ahead of the 2024 primary election, DOS added optional codes for counties who had implemented a program to alert voters that their mail-ballot package contained a disqualifying error. Those relevant to my analysis include the following:

PEND – INCORRECT DATE

PEND – NO DATE

PEND – NO SIGNATURE

PEND – NO SECRECY ENVELOPE

PEND – OTHER

10. For the November 6, 2023 SURE file, I identified mail ballots in Washington County that were coded as “canceled” for one of the following reasons:

- a. Mail ballots in which the voter neglected to write the date on the Declaration Envelope, by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE.”
- b. Mail ballots in which the voter wrote an “incorrect” date on the Declaration Envelope, by selecting the rows in the files where the “Ballot status reason” field was set to “CANC – INCORRECT DATE.”
- c. Mail ballots in which the voter neglected to sign the Declaration Envelope, by selecting rows in the files where the “Ballot status reason” field was set to “CANC – NO SIGNATURE.”
- d. Mail ballots in which the voter neglected to include the secrecy envelope, by selecting rows in the files where the “Ballot status reason” field was set to “CANC – NO SECRECY ENVELOPE.”

11. Based on the methodology described above, I determined that as of November 6, 2023 (the day prior to Election Day):

- a. Washington County used the “CANC- NO DATE” code for 75 ballots and the “CANC – NO SIGNATURE” code for 1 ballot.

12. For the April 22, 2024 and May 14, 2024 SURE files, I identified mail ballots that counties other than Washington County coded as “canceled” or “pending” for one of the following reasons:

- a. Mail ballots in which the voter neglected to write the date on the Declaration Envelope, by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE” or “PEND – NO DATE.”
- b. Mail ballots in which the voter wrote an “incorrect” date on the Declaration Envelope, by selecting the rows in the files where the “Ballot status reason” field was set to “CANC – INCORRECT DATE” or “PEND – INCORRECT DATE.”
- c. Mail ballots in which the voter neglected to sign the Declaration Envelope, by selecting rows in the files where the “Ballot status reason” field was set to “CANC – NO SIGNATURE” or “PEND – NO SIGNATURE.”
- d. Mail ballots in which the voter neglected to include the secrecy envelope, by selecting rows in the files where the “Ballot status

reason” field was set to “CANC – NO SECRECY ENVELOPE” or “PEND – NO SECRECY ENVELOPE.”

- e. Mail ballots that were canceled or pending for another reason, by selecting rows in the files where the “Ballot status reason” field was set to “CANC – OTHER” or “PEND – OTHER”

13. Based on the methodology described above, I determined that as of April 22, 2024 (the day prior to Election Day):

- a. 40 counties were utilizing the “canceled” or “pending” codes in the SURE system for mail-in voters who made one of the aforementioned mistakes when completing the Declaration Envelope.
- b. 6,062 mail-in ballots submitted in the April 2024 primary election had been coded in the SURE file as “canceled” or “pending” because the voter neglected to write the date on the Declaration Envelope (791 ballots), wrote a date was deemed “incorrect” (2,146 ballots), neglected to sign the Declaration Envelope (1,715 ballots), neglected to include the inner secrecy envelope (622 ballots), or used the “other” code (788 ballots).
- c. The majority of Washington County's mail-in ballots were sent out on April 1, 2024.

- d. In the April 2024 primary election, Washington County did not use the “canceled” or “pending” codes in the SURE system for voters who made one of the aforementioned mistakes when completing their mail-in ballot packet.

14. Based on the methodology described above, I determined that as of May 14, 2024 (three weeks after Election Day):

- a. 8,660 mail-in ballots submitted in the April 2024 primary election had been coded in the SURE file as “canceled” or “pending” because the voter neglected to write the date on the Declaration Envelope (1,216 ballots), wrote a date was deemed “incorrect” (3,205 ballots), neglected to sign the Declaration Envelope (2,598 ballots), neglected to include the inner secrecy envelope (1,577 ballots), or used the “other” code (64 ballots).
- b. Washington County had still not entered the “canceled” or “pending” codes in the SURE system for voters who made one of the aforementioned mistakes when completing their mail-in ballot packet.

15. My conclusions, and the bases for my conclusion, are presented in this declaration. My work on these matters is ongoing, and I may make necessary revisions or additions to the conclusions in this declaration should new information

become available or to respond to any opinions and analyses proffered by Defendants. I am prepared to testify on the conclusions in this declaration, as well as to provide any additional relevant background. I reserve the right to prepare additional exhibits to support any testimony.

The statements made in this Declaration 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. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Ariel Shapell", written in dark ink.

Ariel Shapell
June 29, 2024

EXHIBIT

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GUIDANCE CONCERNING EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES

Updated: April 3, 2023

Version: 4.0

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EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES

1 BACKGROUND:

The Pennsylvania Election Code describes processes that a qualified voter follows to apply for, receive, complete, and timely return an absentee or mail-in ballot to their county board of election. These processes include multiple secure methods used by the voter's county board of election to verify that the qualified voter's absentee or mail-in application is complete and that the statutory requirements are satisfied. These methods include voter identification verification confirmed by either a valid driver's license number, the last four digits of the voter's Social Security number or other valid photo identification, and unique information on the application, including the voter's residence and date of birth. Before sending the ballot to the applicant, the county board of elections confirms the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained in the voter record. If the county is satisfied that the applicant is qualified, the application must be approved. This approval shall be final and binding, except that challenges may be made only on the grounds that the applicant was not a qualified voter, and those challenges must be made to the county prior to five o'clock p.m. on the Friday prior to the election.

Once the qualified voter's absentee or mail-in ballot application is approved, the voter is mailed a ballot with instructions and two envelopes. The outer envelope includes both a unique correspondence ID barcode that links the envelope to the qualified voter's application and a pre-printed Voter's Declaration that the voter must sign and date representing that the voter is qualified to vote the enclosed ballot and has not already voted. This Guidance addresses the examination of the Voter's Declaration on the outer ballot return envelope. This Guidance assumes that the voter has satisfactorily completed the steps described above as to application for, receipt of and return of an absentee or mail-in ballot.

2 RECORDING THE RETURN DATE, RETURN METHOD AND BALLOT STATUS FOR RETURNED MAIL BALLOTS:

County boards of elections should have processes in place to record the return date, return method, and ballot status for all voted mail ballots received. County boards of elections must store and maintain returned mail ballots in a secure location until the ballots are to be pre-canvassed or canvassed.

County boards of elections should stamp the date of receipt on the ballot-return envelope. County boards of elections should record the receipt of absentee and mail-in ballots daily in the Statewide Uniform Registry of Electors (SURE) system. To record a

ballot as returned, the staff should scan the correspondence ID barcode on the outside of the outer ballot return envelope. The correspondence ID on the envelope is unique to each absentee or mail-in voter and each issuance of a ballot to a voter. Once a correspondence ID has been recorded as returned in the SURE system, it cannot be recorded again. Further, if a ballot issuance record is cancelled by the county board of elections (e.g., voided to reissue a replacement ballot) in the SURE system, the correspondence ID on the cancelled ballot will become invalid. If the same barcode is subsequently scanned, the SURE system will not allow the returned ballot to be marked as being approved for counting.

The county boards of elections should record the date a mail ballot is received (not the date that a returned ballot is processed). In the event a county board of elections is entering a mail ballot on a date other than the date it was received, county personnel should ensure that the SURE record reflects the date of receipt, rather than the date of entry, since by default, SURE will automatically populate both the 'Date Received' and 'Vote Recorded' fields with the current date and time unless users manually correct the date to reflect the date received.

3 EXAMINATION OF DECLARATION ON MAIL BALLOT RETURN ENVELOPES:

The county board of elections is responsible for approving ballots to be counted during pre-canvassing and canvassing.

To promote consistency across the 67 counties, the county boards of elections should follow the following steps when processing returned absentee and mail-in ballots.

After setting aside ballots of electors who died prior to the opening of the polls, the county board of elections shall examine the Voter's Declaration on the outer envelope of each returned ballot and compare the information on the outer envelope, i.e., the voter's name and address, with the information contained on the list of absentee and mail-in voters.

If the Voter's Declaration on the return envelope is not signed or dated, or is dated with a date deemed to be incorrect, that ballot return envelope must be set aside and the ballot not counted. If the board determines that a ballot should not be counted, the final ballot disposition should be noted in SURE. The ballot return status (Resp Type) should be noted using the appropriate drop-down selection. It is important that the ballot return status is promptly and accurately recorded in SURE using the specific response type as to the disposition for each ballot received.

Due to ongoing litigation, ballots that have been administratively determined to be undated or incorrectly dated should be set aside and segregated from other ballots. Counties may prefer to keep segregated undated and incorrectly dated ballots organized by precinct and alphabetically by last name within each precinct. The department strongly recommends that counties also segregate into separate groups undated ballots versus incorrectly dated ballots.

When voters return their ballots in person to election offices, it is recommended that office personnel remind voters to confirm that they signed and correctly dated their ballots,

If the county election board is satisfied that the declaration is sufficient, the mail-in or absentee ballot should be approved for the pre-canvass or canvass unless the application was challenged in accordance with the Pennsylvania Election Code.

The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.

Version	Date	Description
1.0	9.11.2020	Initial document release
2.0	5.24.2022	Updates related to court decisions
3.0	9.26.2022	Updates related to court decisions
4.0	4.3.2023	Updates to conform to administrative changes and litigation

EXHIBIT

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Department of State
Statewide Uniform Registry of Electors (SURE) Project
B 23.9.0_County Release Notes
March 11, 2024

Changes to SURE VR and PA Voter Services as of March 11, 2024

The following information outlines the additions and changes which will be deployed after the close of business on March 11, 2024, as part of the B 23.9.0 release. Please contact the SURE Help Desk for further information or with questions regarding any item(s) on the list provided below.

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Republican Treasurer
Respondent Ex. 2



SURE VR

Ballot Response Type Updates

As part of this release, modifications have been made within the SURE VR system to add 6 OPTIONAL 'Pending' Status Reasons when recording 'Response Types' for absentee and/or mail in ballot labels. These options may be used if a county offers ballot curing. If a county chooses to apply these Status Reasons and the voter's ballot application contains an email address, the system will then send an email to the voter which will provide them with information relating to the status of their ballot with a URL link to the Department of State website. Email details are provided later in this document.

Below are the new 'Pending' Status Reasons:

- PEND – INCORRECT DATE
- PEND – NO DATE
- PEND – NO SIGNATURE
- PEND – NO SECRECY ENVELOPE
- PEND – NO ID
- PEND – OTHER

The new response types are available for selection for each of the following ballot labels:

- Absentee Ballot Label
- Mail-In Ballot Label
- PA – Bedridden Veteran Ballot Label
- PA – Email – Bedridden Veteran Ballot Label
- PA – Email – Military and Civilian Overseas Ballot Label
- PA – Email – Remote/Isolated Bedridden Veteran Ballot Label
- PA – Email – Remote/Isolated Overseas Ballot Label
- PA – Military and Civilian Overseas Ballot Label
- PA – Remote/Isolated Bedridden Veteran Ballot Label
- PA – Remote/Isolated Overseas Ballot Label



The response types are available in the following areas within the SURE VR system:

- **Record Mailings Screen**

Response Date: 02/22/2024 Letter Type: Absentee Ballot Label

Ballot Counted: Resp Type:

Record Response | Response History

☒ Submit for Printing Later ☒ ID-Only

Bar Code (ID): Name: Res: Mail:

Ballot Re

- CANC - EMAIL BALLOT UND BATCH
- CANC - EMAIL BALLOT UNDELIVERABLE
- CANC - INCORRECT DATE
- CANC - LABEL CANCELLED
- CANC - NO DATE
- CANC - NO ID
- CANC - NO SECRECY ENVELOPE
- CANC - NO SIGNATURE
- CANC - OTHER
- CANC - REPLACED
- CANC - RETURNED AFTER DEADLINE
- CANC - UNDELIVERABLE
- CANC - VOTE CHALLENGED
- PEND - INCORRECT DATE
- PEND - NO DATE
- PEND - NO ID
- PEND - NO SECRECY ENVELOPE
- PEND - NO SIGNATURE
- PEND - NOT YET RETURNED
- PEND - OTHER
- RECORD - BALLOT RETURNED

- **Bulk Ballot Response Utility Screen**

Bulk Ballot Response Utilities

File Upload | Affected Voters | Exception Corr | Record Response | Exception Response

Record Response

Election: 2024 GENERAL ELECTION 11/05/2024

Response Type:

Response Date:

Ballot Received:

Total Number of:

Cancel

- CANC - EMAIL BALLOT UND BATCH
- CANC - EMAIL BALLOT UNDELIVERABLE
- CANC - INCORRECT DATE
- CANC - LABEL CANCELLED
- CANC - NO DATE
- CANC - NO ID
- CANC - NO SECRECY ENVELOPE
- CANC - NO SIGNATURE
- CANC - OTHER
- CANC - REPLACED
- CANC - RETURNED AFTER DEADLINE
- CANC - UNDELIVERABLE
- CANC - VOTE CHALLENGED
- PEND - INCORRECT DATE
- PEND - NO DATE
- PEND - NO ID
- PEND - NO SECRECY ENVELOPE
- PEND - NO SIGNATURE
- PEND - NOT YET RETURNED
- PEND - OTHER
- RECORD - BALLOT RETURNED



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- **Ballots** tab on the Absentee/Mail-In Voting screen

Absentee/Mail-In Voting

ADAMS, LISA A

35 012 1

S ABINGTON W-00 P 1-2

Send Application 2024 GENERAL PRIMARY 06 23 v 1 ID 110916475

Applications App Details App Status Ballots Utilities Parameters ID Verification Application Queue

Ballot Received Method	Status Reason	Ballot Delivery	Date Sent	Date
USPS		USPS		
Comments				
C.MZ - EXHA. BALLOT INFO BATCH				
C.MZ - EXHA. BALLOT INFO/RECALL				
C.MZ - INCORRECT DATE				
C.MZ - LABEL CANNOT BE USED				
C.MZ - NO DATE				
C.MZ - NO ID				
C.MZ - NO SEC REC ENVELOPE				
C.MZ - NO SIGNATURE				
C.MZ - OTHER				
C.MZ - REPLACED				
C.MZ - RETURNED AFTER DEADLINE				
C.MZ - UNDELIVERABLE				
C.MZ - VOTE CHALLENGED				
FWAB OVERRIDE-OFFICIAL BALLOT REC				
FEND - INCORRECT DATE				
FEND - NO DATE				
FEND - NO ID				
FEND - NO SEC REC ENVELOPE				
FEND - NO SIGNATURE				
FEND - OTHER				
RECORD - BALLOT RETURNED				
RECORD - FWAB RETURNED				

Record Vote New Ballot Delete Ballot

OK Cancel

Please Note: Although changes were made to include the new response types under the **Ballots** tab of the Absentee/Mail-In Voting screen, the Department of State strongly recommends if a Status Reason update is needed, that the change should be made by utilizing the Record Mailings or Bulk Ballot Response Utility screens.



By current design, changing the Status Reason from the **Absentee/Mail In Voting** screen, *Ballots* tab will not properly update the *Correspondence* tab on the voter record.

If using the **Record Mailings** screen, it will be necessary to access the *Response History* tab of the **Record Mailings** screen to clear the previous response before you can proceed to update the new response type.

Please reference the “Clearing an Absentee Ballot Label Response” in the Absentee Processing User Guide for detailed steps to clear a response.

Additionally, the response type of 'CANC-VOTE CANCELLED' has been removed as a drop-down selection. Any previous ballot applications associated with this status will not be affected for historical purposes.



Ballot Response Email Verbiage Updates

As part of this release, emails that are triggered upon recording a response have been updated to include the new pending Response Types and will provide the applicant with more information regarding their current ballot status. These apply when a change has been made to the ballot or when the ballot has been recorded as received,

The table below lists each of the 'Response Types' as well as the 'Business Reason' for which they apply. The 'Second Paragraph Email Verbiage' describes language that is associated to each Response Type and will appear as dynamic text in the second paragraph of the emails. This information will also appear on the PAVS Election Ballot Status Tracker updates described later below.

Response Type	Business Reason	Second Paragraph Email Verbiage
PEND – OTHER	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed a submission error.	The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – INCORRECT DATE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter used the wrong date.	Your mail ballot may not be counted because you did not correctly date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO DATE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter left	The county has noticed that you did not date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.



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	the ballot return envelope undated.	If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO SIGNATURE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter left the ballot return envelope unsigned.	The county has noticed that you did not sign your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information. If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO SECRECY ENVELOPE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter returned the ballot without a secrecy envelope.	The county has noticed that when you returned your ballot, you placed it in the ballot return envelope without placing it into the secrecy envelope that says "OFFICIAL ELECTION BALLOT." This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelopes, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information. If you cannot fix your ballot envelopes in time, you can go to your polling place on election day and cast a provisional ballot.
CANC – EMAIL BALLOT UND BATCH	This is used by SURE VR when an email ballot correspondence cannot be delivered to the absentee email address. Ballots with this type of response were automatically placed in an UND DEL absentee application batch.	Your ballot will not be counted because your emailed balloting materials have been returned as undeliverable.
CANC – EMAIL BALLOT UNDELIVERABLE	Cancels a ballot label that has been sent via email if the email has been returned as undeliverable.	Your email balloting materials were returned as undeliverable. Your county will send you a new paper ballot to the address on file.



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	Recording a ballot label as CANCEL - Email Ballot Undeliverable will automatically queue a paper ballot label for the voter.	
CANCEL - INCORRECT DATE	This cancels the ballot if it is returned to the county with an incorrect date on the ballot envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your mail ballot may not be counted because you did not correctly date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANCEL - LABEL CANCELLED	Used if a ballot label is misplaced or damaged and is cancelled in order to create another one; also used to generate 2 nd ballot labels.	Your ballot status has been updated to cancelled because your original ballot has been misplaced or damaged. A new ballot is being created and will be provided to you. No email generated.
PENDING - NO ID	To be used by any county that has received a ballot for a voter who did not include the required ID, and who wants to alert the voter to this issue.	Your ballot application did not include valid identifying information, and your ballot was returned without the necessary ID. Your ballot will not be counted unless you bring valid identifying information to your county election official. You can find more information on the necessary ID here: https://www.vote.pa.gov/Voting-in-PA/Documents/DOS_Identification_for_absentee_voting.pdf .
CANCEL - NO DATE	Cancels the ballot if it is returned to the county with no date on the ballot envelope. It should only be used when the county has made a final decision as to	Your mail ballot may not be counted because you did not date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.



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	the ballot, or it does not offer the opportunity to cure.	
CANC – NO ID	Cancels ballot if absentee or mail-in requiring ID is not provided.	Your ballot will not be counted because you did not timely provide proof of identification.
CANC – NO SECRECY ENVELOPE	Cancels ballot if county receives ballot and it is not in the inner secrecy envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your ballot will not be counted because it was not returned in a secrecy envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO SIGNATURE	Cancels the ballot if it is returned to the county with no signature on the ballot envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your ballot will not be counted because you did not sign the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date] or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – REPLACED	Used to cancel a lost ballot if a replacement is sent.	No email generated.
CANC – RETURNED AFTER DEADLINE	After Deadline Cancels the ballot if it is invalid due to being returned after the deadline.	Your ballot will not be counted because it was received after the deadline.
CANC – UNDELIVERABLE	Cancels the ballot if it is returned undeliverable by the Post Office.	Your ballot will not be counted because it was returned as undeliverable by the United States Postal Service (USPS). If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you



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		can go to your polling place on election day and cast a provisional ballot.
CANC – OTHER	The CANC– OTHER status reason should be used <i>only</i> when no other field more aptly applies. This may be for a secrecy envelope with disqualifying markings on it, or other issues that do not fall into another SURE categories. Do not use this code for any other cancellation reason.	The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – VOTE CHALLENGED	Used if a ballot is not counted because of a successful challenge.	Your ballot will not be counted because of a successful challenge.
PEND – NOT YET RETURNED	Status the label is in after the ballot is sent and before it is returned.	No email generated.
RECORD – BALLOT RETURNED	Records the voter's ballot as returned prior to the deadline.	Your ballot has been received by [County Name] County as of [DateRecorded]. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot and you are no longer permitted to vote at your polling place location.
RECORD-FWAB RETURNED	Used to record a Federal Write In Ballot was received prior to the Official Ballot being returned.	Your ballot has been received by [CountyName] County as of [DateRecorded].
FWAB OVERRIDE-OFFICIAL BALLOT RECEIVED	Used to record an Official Ballot as returned and	Your ballot has been received by [CountyName] County as of [DateRecorded].



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	overrides the Federal Write In Absentee Ballot previously recorded.	
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Sample Emails:

The email gives the voter notice that their ballot has been received and has additional language stating that the voter may receive further communication if an error is identified with their ballot.

Subject Line: Your Ballot Has Been Received

Email Body:

Dear [ApplicantName],

Your ballot has been received by [CountyName] County as of [DateRecorded].

Please note, if [CountyName] County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact [CountyName] County at [CountyContact].

Thank you.

To read this information in Spanish, go to [ballot tracker URL] - In Spanish

To read this information in Chinese, go to [ballot tracker URL] - In traditional Chinese

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

FWAB Ballots

Subject Line: Your Ballot Has Been Received

Email Body:

Dear [ApplicantName],

Your ballot has been received by [CountyName] County as of [DateRecorded]. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact [CountyName] County at [CountyContact].

Thank you.

To read this information in Spanish, go to [ballot tracker URL] - In Spanish

To read this information in Chinese, go to [ballot tracker URL] - In traditional Chinese



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

Your Ballot Status Has Changed

The email below is generated when certain cancel codes and pending codes are recorded in SURE VR.
The second paragraph dynamic email language will be the same as shown in the table above.

Subject Line: Your Ballot Status Has Changed – Check for Updates

Email Body:

Dear [ApplicantName],

After your ballot was received by [CountyName] County, it received a new status.

(THE SECOND PARAGRAPH DYNAMIC EMAIL LANGUAGE WILL APPEAR HERE.)

You can get more information on your ballot's new status by going to
<https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions or need more information after checking your ballot's status, please contact
[CountyName] County at [CountyContact].

To read this information in Spanish, go to [ballot tracker URL] – In Spanish

To read this information in Chinese, go to [ballot tracker URL] – In traditional Chinese

Thank you.

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



SURE VR Disconnects

Modifications to the SURE VR system to address county reported issues with the 'Add Last Scan Document' and 'Add Last Scan' buttons, stemming from a discovered issue with system disconnects from the 'Z Drive'. Currently, users must select a map drive button in CITRIX when this issue occurs. This release will include systematic logic to reconnect the drive when the system detects a disconnect has occurred.

- The system will now give an updated error message when an incorrect file format is being used.

Address Not Verified New

Application App Status Correspondence HAVA Checks

Source: ☐ New ☐ Cancel

Last Name: Suffix: First Name: Invalid Scan

House #: 1/2 Dir: Street Name: TIF format file not exists in Z: Windows temp

Address Line 2: Mail Addr Line 1: OK

Birth Date: SSN: Drivers Lic: Zip Code:

Email Address: Insert

App Date: 03/11/2024 Reg Date: Assistance: ☐ ☐ ☐

Old Name: Title: Last Name: Suffix: First Name: Middle Name: Voter Number:

Old House #: Old Street Name: Old Unit: Old Unit #: Old City: Old State: Old Zip Code: Old County:

Approve App Process App Delete App OK Cancel

Records: 0 of 9



PA VOTER SERVICES

Election Ballot Status Tracker

In addition to the updates mentioned above, modifications have also been made to the PAVS Election Ballot Status Tracker for a voter wishing to view their ballot status for a ballot application as follows:

- The 'Ballot Type' column has been updated to display either "Absentee" or "Mail-In".
- The 'Status' column displays the Response Types associated to the ballot.
- Below each ballot line item will be a brief description of the status listed to give additional information to the voter.
- In the event multiple Response Types exist for an active election, then each of the ballot line items will be displayed along with the status of each ballot.

The tracker and all columns have been updated to appear in English, Spanish, and Traditional Chinese based on the selection made by the voter.

Please see the screenshots below:

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You cannot use the tracker to track the status of a ballot voted in person on Election Day.

First Name (as it appeared on your application)

Lee

Last Name (as it appeared on your application)

Johnson

Date of Birth (mm/dd/yyyy)

08-25-1963

County

LACKAWANNA

Submit

Your Ballot Status Result(s)

Ballot Type	Election	Application Received	Application Processed	Ballot Mailed On	Ballot Received	Status
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC - OTHER
The county has identified an error with your ballot envelope(s) and your ballot will not be counted. If you do not have time to request a new ballot before (April 06, 2024) or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.						

The table above provides a summary of your application and ballot status. The columns will update as your county processes your application or ballot. The status column will read as "Vote Recorded" after your county has received your voted ballot.

If you have any questions about the status of your ballot, please contact LACKAWANNA County at (670) 963-6737 or visit www.vote.pa.gov/county for more information.

Column Descriptions

Ballot Type - Absentee or Mail-In

Election - The requested ballot is for this election

Application Received - The date when your county received your application

Application Processed - The date when your county processed your application

Ballot Mailed On - The date when your county mailed your ballot to the address on your application

Ballot Received by County - The date when your county received your voted ballot

Status - The status of your ballot request is the last known state of where your ballot request stands.



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Estado de la boleta electoral

Puede rastrear el estado de su papeleta de voto por correo o en ausencia completando los campos abajo. No puede usar el rastreador para rastrear el estado de la papeleta que completó en persona el día de las elecciones.

Nombre (tal y como aparecía en su solicitud)

Lee

Apellido (tal y como aparecía en su solicitud)

Johnson

Fecha de Nacimiento (MM/DD/YYYY)

08/26/1953

Condado

LACKAWANNA

Enviar

Resultado(s) del estado de su boleta

Tipo de boleta	Elección	Solicitud recibida	Solicitud procesada	Boleta enviada por correo	Boleta recibida	Estado
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC - OTHER

El condado ha identificado un error en el (los) sobre(s) de su papeleta y su papeleta no será contada. Si no tiene tiempo para solicitar una nueva papeleta antes de la April 08, 2024, o si la fecha límite ya pasó, puede ir a su lugar de votación el día de las elecciones y emitir una papeleta provisional.

El cuadro de arriba presenta un resumen de su solicitud y estado de boleta. Las columnas se actualizarán a medida que en su condado se procese su solicitud o boleta. En la columna de estado aparecerá "Vote Recorded" después de que su condado haya recibido su boleta de votación.

Si tiene alguna pregunta sobre el estado de su boleta, por favor comuníquese con el Condado de LACKAWANNA en (570) 963-6737 o visite www.vote.pa.gov/county para más información.

Descripciones de las columnas

Tipo de boleta - Ausente o por correo

Elección - La boleta solicitada es para esta elección

Solicitud recibida - La fecha en la que su condado recibió su solicitud

Solicitud procesada - La fecha en la que su condado procesó su solicitud

Boleta enviada por correo - La fecha en la que su condado le envió su boleta a la dirección que figura en su solicitud.

Boleta recibida por el condado - La fecha en la que su condado recibió su boleta de votación.

Estado - El estado de su solicitud de boleta es el último estado conocido en el que se encuentra su solicitud de boleta



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選票狀態

填寫下列欄位，即可追蹤您的郵寄或缺席選票狀態。若選票是在選舉日當天由本人投入，則您無法使用追蹤器進行追蹤。

名字 (如申請上所示)

Lee

姓氏 (如申請上所示)

Johnson

出生日期 (月/日/年)

08/26/1963

縣

LACKAWANNA

提交

您的選票狀態結果

選票類型	選舉	申請接收日期	申請處理日期	選票截止日期	選票已接收	狀態
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC - OTHER

如果本縣發現您的選票信封有錯誤，您的選票將不予計數。如果您在 April 08 2024 前沒有分開申請一張新選票，或如果截止日期已過，您可在選舉當日前往投票站投下一張臨時選票。

上表提供您申請與選舉狀態的簡便。只要您的縣處理您的申請或選舉，與就會更新。縣收到您的投票選票之後，狀態欄就會變成「投票已記錄」。

若您對您的選舉狀態有任何疑問，請聯絡 LACKAWANNA 縣 ((570) 963-6737)，或造訪 www.vote.pa.gov/county 以獲取更多資訊。

備說明：

選票類型 - 說明選票類型。

選舉 - 申請的選舉用於投票。

申請接收日期 - 您的縣收到您申請的日期。

申請處理日期 - 您的縣處理您申請的日期。

選票截止日期 - 您的縣將您的選票寄到您申請地址的日期。

縣收到選票日期 - 您的縣收到您投票選票的日期。

狀態 - 您選票申請的狀態是您選票申請最近已知狀態。



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DEPARTMENT OF STATE

English

Español

繁體中文

HOME

OTHER LINKS

Election Ballot Status

Your **Mail-In or Absentee Ballot status** can be tracked by completing the fields below.
You cannot use the tracker to track the status of a ballot voted in person on Election Day.

First Name (as it appeared on your application)

Jeff

Last Name (as it appeared on your application)

PennDOT

Date of Birth (mm/dd/yyyy)

10-03/1985

County

LACKAWANNA

Submit

Your Ballot Status Result(s)

Ballot Type	Election	Application Received	Application Processed	Ballot Mailed On	Ballot Received	Status
Mail-In	2024 GENERAL PRIMARY	03/06/2024	03/06/2024			PEND - NOT YET RETURNED
Absentee	2024 GENERAL PRIMARY	02/20/2024	02/20/2024			CANC - OTHER

Your ballot has not yet been returned to LACKAWANNA county. The status of your ballot will be updated once the county receives your ballot.

The county has identified an error with your ballot envelope(s) and your ballot will not be counted. If you do not have time to request a new ballot before April 16, 2024 or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

Note: The above shows multiple Response Types that are associated to the ballot.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

Right-to-Know Law Office
Room 306, North Office Building
401 North Street
Harrisburg, PA 17120-0500
Fax: 717-214-9899

Mailing Date: April 18, 2024

Kate Steiker-Ginzberg
ACLU of Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102

ksteiker-ginzberg@aclupa.org

RE: Right-to-Know Law Request No. 2024-266

Dear Ms. Steiker-Ginzberg:

On April 12, 2024, the Department of State received your request for information pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL), wherein you requested: “(1) a copy of any instructions that have been issued to the county Boards of Elections and/or election offices (from January 2024 to the present) relating to the use of SURE-system codes for mail-in ballots that are received by the election office with errors. (e.g. CANC-No Signature, PEND-No Signature, CANC-No Date, PEND-No Date, etc.); (2) a copy of all standard form emails, email templates and/or email communications that are or will be automatically sent to mail-in voters when the voter’s ballot is scanned into the SURE system as “RECEIVED,” “PENDING” or “CANCELLED” by the county election office; and (3) to the extent not answered by #1 and #2, please provide any other guidance, directives or instructions sent by the Department of State to county Boards of Election and/or election offices that address how the counties should handle (1) mail-in ballots that arrive with defects that prevent them from being counted (e.g. missing signature, date, or secrecy envelope); and (2) any procedures that allow voters to “cure” such defects.”

Your request is granted in part and enclosed is a record that contains information that is responsive to requested items (2) and (3) of your request. Additional guidance responsive to your request may be found on the Department's website here [Election Directives and Guidance \(pa.gov\)](#), more specifically here [2023-04-03-Examination-Absentee-Mail-In-Ballot-Return-Envelopes-4.0.pdf \(pa.gov\)](#). There is no fee due to the Department's policy of not charging if the file is sent electronically.

In regards to requested items (1) and (3), your request is denied in part because it requested information that, if released publicly, would cause a security risk and expose the election infrastructure to potential attacks. The Department withheld records (SURE job aids) that relate to the operation of the SURE system and contain information that if released publicly would cause a security risk or expose the SURE system to a potential cyber-attack. Because the SURE system has been designated as part of the nation's critical infrastructure by the United States Department of Homeland Security, any information that can put the system at risk is not permitted to be disclosed publicly. Here, the information contained in the withheld records is of such a nature that if released would create a reasonable likelihood of endangering the physical security and safety of the SURE system and as such, the records are exempt from disclosure under the RTKL pursuant to Sections 708(b)(2), (b)(3) and (b)(4). *See also, Sheckler v. DOS*, Docket Nos.: AP 2024-0596; 2022-0629; 2022-0492.

You have a right to appeal this response in writing to Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, PA 17126-0333. If you choose to file an appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the agency is wrong in its response.

Also, the OOR has an appeal form available on the OOR website at:
<https://www.openrecords.pa.gov/Appeals/AppealForm.cfm>

Respectfully,

Janelle S. Hawthorne

Janelle S. Hawthorne, J.D.
Agency Open Records Officer
Department of State
Room 306, North Office Building
401 North Street
Harrisburg, PA 17120-0500
717-317-5340

Mail-Ballot Status Codes, Emails, and Online Ballot Tracker

Codes and Text

Status Codes	Email text in Second Paragraph and in Tracker (All PEND and CANC codes will follow the Your Ballot Status Has Changed email in the slideshow provided)
PEND – OTHER	The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – INCORRECT DATE	<p>The county has noticed that the date written on your ballot return envelope is incorrect. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.</p>
PEND – NO DATE	<p>The county has noticed that you did not date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.</p>

PEND – NO SIGNATURE	<p>The county has noticed that you did not sign your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.</p>
PEND – NO SECRECY ENVELOPE	<p>The county has noticed that when you returned your ballot, you placed it in the ballot return envelope without placing it into the secrecy envelope that says “OFFICIAL ELECTION BALLOT.” This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelopes, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot envelopes in time, you can go to your polling place on election day and cast a provisional ballot.</p>
CANC – EMAIL BALLOT UNDELIVERABLE	<p>Your ballot will not be counted because your emailed balloting materials have been returned as undeliverable.</p>
CANC – EMAIL BALLOT UNDELIVERABLE	<p>Your email balloting materials were returned as undeliverable. Your county will send you a new paper ballot to address on file.</p>
CANC – INCORRECT DATE (New reason added 1/27/23)	<p>Your mail ballot may not be counted because you did not correctly date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.</p>
CANC – LABEL CANCELLED	<p>No email generated.</p>
PEND – NO ID	<p>Your ballot application did not include valid identifying information, and your ballot was returned without the necessary ID. Your ballot will not be counted unless you bring valid identifying information to your county election official. You can find more information on the</p>

	necessary ID here: https://www.vote.pa.gov/Voting-in-PA/Documents/DOS_Identification_for_absentee_voting.pdf .
CANC – NO DATE (New reason added 1/27/23)	Your mail ballot may not be counted because you did not date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO ID	Your ballot will not be counted because you did not timely provide proof of identification.
CANC – NO SECRECY ENVELOPE (Deployed 3/26/21)	Your ballot will not be counted because it was not returned in a secrecy envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO SIGNATURE (Updated 6/3/21) (Updated language to remove no date reference 1/27/23)	Your ballot will not be counted because you did not sign the declaration on your ballot return envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – REPLACED	No email generated.
CANC – RETURNED AFTER DEADLINE	Your ballot will not be counted because it was received after the deadline.
CANC – UNDELIVERABLE	Your ballot will not be counted because it was returned as undeliverable by the United States Postal Service (USPS). If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

CANC – OTHER (Updated language 10/27/2020)	<p>The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.</p> <p>(For implementation purposes, this is a new code, and the CANC-VOTE CANCELLED should be removed from drop down.)</p>
CANC – VOTE CHALLENGED	<p>Your ballot will not be counted because of a successful challenge.</p>

EXHIBIT

12

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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION AT LAW

SONJA KEOHANE, RICHARD KEOHANE
and BARBARA WELSH

v.

DELAWARE COUNTY BOARD OF
ELECTIONS

No.: 2023-004458

ORDER

AND NOW, this 21st day of September, 2023, upon consideration of the Motion for Judgment on the Pleadings of Petitioners Sonja Keohane, Richard Keohane, and Barbara Welsh, a Memorandum of Law in support thereof, Respondent Delaware County Board of Elections' response to the Motion in which Respondent does not oppose the relief requested by Petitioners, and Petitioners' reply in support of the Motion, it is ORDERED that the Motion for Judgment on the Pleadings is GRANTED. It is further ORDERED that Respondent is directed to count Petitioners' provisional ballots submitted at their respective polling places on Primary Election Day, May 16, 2023, and amend the official vote count from the May 2023 Primary Election to include the votes indicated on Petitioners' provisional ballots. In support of the foregoing, the Court hereby sets forth the following:

1. The facts of this case are not in dispute as this matter concerns the decision of Respondent Delaware County Board of Elections ("the Board") not to count three provisional ballots submitted by Petitioners, who each voted by mail but whose mail-in ballots were canceled due to disqualifying defects on the outer envelopes;
2. In each instance, the Board contacted Petitioners and provided a "notice and cure letter" explaining the opportunity to cure the defective ballots in person at the Board's

office in Media, Delaware County, Pennsylvania or to request a replacement ballot be issued by mail in advance of primary Election Day, May 16, 2023:

3. The Petitioners did not request replacement ballots nor appear in person in Media, Delaware County, Pennsylvania to avail themselves of the “notice and cure” procedure offered by the Board but rather each Petitioner voted provisionally at their polling place on primary Election Day, May 16, 2023;

4. Subsequently, at the provisional ballot challenge hearing, the Board voted to not count these ballots based on *In Re Allegheny Cnty. Provisional Ballots in the 2020 Gen. Election*, 241 A.3d 695 (Pa.Cmwlth. 2020) which stands for the proposition that voters who have cast another ballot and/or whose ballots have been timely received by the Board may not have subsequent provisional ballots counted;

5. This Court recognizes the Election Code contains two provisions which are at issue and relate to casting a provisional ballot following an unsuccessful attempt to cast a mail-in or absentee ballot. The first subsection states that “[e]xcept as provided in clause (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);

6. The second subsection states that a provisional ballot “shall not be counted” if “the elector’s absentee ballot or mail-in ballot are timely received by a county board of elections.” 25 P.S. § 3050(a.4)(5)(ii)(F);

7. To the extent there is any ambiguity between § 3050(a.4)(5)(i) and § 3050(a.4)(5)(ii)(F), Pennsylvania law demands that statutory provisions be read harmoniously to give effect to both provisions and should be construed in a way that does not nullify or exclude another provision. *See, e.g., In re Borough of Downingtown*, 161 A.3d 844, 871 (Pa. 2017) (noting that when two statutory provisions can be read as harmonious or in conflict, courts should construe them as in harmony with each other).

8. “It is the longstanding and overriding policy in this Commonwealth to protect the elective franchise. The Election Code must be liberally construed so as not to deprive . . . the voters of their right to elect a candidate of their choice. It is therefore a well-settled principle of Pennsylvania election law that every rationalization within the realm of common sense should aim at saving the ballot rather than voiding it.” *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058, 1071 (Pa. 2020).

9. In this instance, these three qualified voters who attempted to submit mail-in ballots to the Board and were later notified by the Board that their respective mail-in ballots were defective, cannot be said to have “cast” a ballot.

10. All parties and this Court are concerned with the risk of double voting; however, the Board has safeguards in place to prevent double voting in this situation.

11. “When the Board receives a mail-in or absentee ballot, Board staff examines the outer envelope for obvious defects such as a missing signature or date. If such a defect is found, the Board provides a notice via e-mail or regular mail to the affected voter and offers them the opportunity to cure their ballot at Government Center in person, or mails a replacement ballot.” (Board’s 7/28/23 Memorandum of Law, p. 6).

12. The defective mail-in ballot is segregated from other mail-in ballots and is not counted or included in the pre-canvass and canvass. (Board's 7/28/23 Memorandum of Law, p. 6). It is treated by the Board's staff as if the ballot was not received at all.

Id. Then, the voter may vote their replacement ballot:

13. The Board also provided this Court with additional protections afforded by the provisional ballot challenge hearing process. These include:

- a. "The Board schedules and holds a provisional ballot challenge hearing within seven days of each primary or election. *See* 25 P.S. § 3050(a.4)(4);
- b. Prior to the hearing, the Board checks all provisional ballots against Election Day poll books and by-mail ballots to determine if each voter who voted provisionally also voted a different way;
- c. The Board also collects the names and addresses of each voter who cast a provisional ballot in Delaware County and makes those available to party leaders and candidates;
- d. The Board further publishes all mail-in and absentee voters on its website. Therefore, ahead of the hearing, representatives and the Board, and any other interested party, can confirm that voters have not cast a provisional ballot and also voted in some other way."

(Board's 7/28/23 Memorandum of Law, p. 7).

14. With these safeguards in place, Respondent shall count Petitioners' provisional ballots submitted at their respective polling places on Primary Election Day, May 16, 2023, and amend the official vote count from the May 2023 Primary Election to include the votes indicated on Petitioners' provisional ballots.

BY THE COURT:



JOHN J. WHELAN, J.

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EXHIBIT

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Pennsylvania Provisional Voting Guidance

Date: March 11, 2024

Version: 2.1

Background

This revised guidance addresses the issuance, voting, and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA).

Generally, under the applicable statutes, if a voter is not eligible to be issued a regular ballot, that voter is entitled to submit a provisional ballot at the polling place. Provisional ballots may be issued at the polling place until the close of polls on Election Day absent a court order extending voting hours.

Using Provisional Ballots

Provisional ballots are utilized when a voter believes that they are eligible to vote, but the poll worker is unable to confirm the voter's eligibility. Provisional ballots permit the voter to submit a ballot, although the ballot is initially segregated from the regular ballots returned by voters whose eligibility was confirmed at the polls on Election Day. After Election Day, the county board of elections must adjudicate the provisional ballot voter's eligibility to vote. If the board determines that the voter is eligible and did not already vote in that election, then the provisional ballot is counted or partially counted, if applicable.

Voters are entitled to a provisional ballot when their eligibility to vote is uncertain. A poll worker must inform voters that they have a right to use a provisional ballot if their eligibility is uncertain. The circumstances which would create a situation where a voter may be issued a provisional ballot include, but are not necessarily limited to:

- Voter's name was not in the poll book or supplemental poll book.
 - For example, the voter reported to the wrong precinct, or
 - The voter did not report a recent change in residence to the county election office.
- Voter is required to show ID but cannot do so.
- Voter eligibility was challenged by an election official.
- Voter was issued an absentee or mail-in ballot but believes that they did not successfully vote the ballot, and the ballot and outer return envelope were not surrendered at the polling place to be spoiled.
- Voter returned a completed absentee or mail-in ballot that will be rejected by the county board of elections, and the voter believes they are eligible to vote.
- A special court order was issued with respect to the voter's status.
- A special court order was issued related to extending the hours of voting.

- Voter claims they are registered in a political party with which they are not affiliated (for primary elections only).

Process for the Voter

Any voter who intends to submit a provisional ballot shall follow these steps:

- 1) Before receiving a provisional ballot, the voter must complete the sections on the provisional ballot envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials.
- 2) Upon completion of the above sections of the provisional ballot envelope, the voter must mark their provisional ballot.
- 3) After the voter marks their provisional ballot, they must seal their ballot in the secrecy envelope and then place the secrecy envelope in the provisional ballot envelope.
- 4) The voter must fill out the Voter Signature Section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector.
- 5) The voter must sign both the Voter Affidavit for Provisional Ballot and the front of the provisional ballot envelope.
- 6) The Judge of Elections and the Minority Inspector will then sign the affidavit after noting the reason for the provisional ballot.

Voters can check the status of their provisional ballot after the election by calling their county board of elections, checking the PA Voter Services website, or calling the PA Department of State.

Note: The online provisional ballot search will return results only for the active election and cannot be used to search provisional ballots from previous elections.

Voters will need to provide their provisional ballot number or their full name and date of birth to check the status of their provisional ballot.

- Voters can find the phone number for their county election office online at vote.pa.gov/county.
- The website for PA Voter Services is vote.pa.gov/provisional.
- The phone number for the PA Department of State is 1-877-VOTESPA (1-877-868-3772), option 6.

Process for Poll Workers

Voters who requested an absentee or mail-in ballot may arrive at their polling place on Election Day seeking to vote. Poll workers should follow the instructions below for these voters.

- 1) For voters who were issued an absentee or mail-in ballot but **did not** successfully return their ballot to the board of elections:
 - a. These voters' names will be found in section 1 of the poll book, and the signature line will say either "Remit Absentee Ballot or Vote Provisionally" or "Remit Mail-in Ballot or Vote Provisionally."
 - i. Option A. If the voter has their unvoted absentee or mail-in ballot and outer envelope with them, the poll worker shall permit the voter to surrender their mail ballot and envelope and sign the Elector's Declaration to Surrender their Mail Ballot form (see **Appendix A**). After the voter does this, the poll worker shall allow the voter to vote by regular ballot the same as any other voter.
 - ii. Option B. If the voter is designated in the poll book as having been issued an absentee or mail-in ballot but the voter does not have their absentee or mail-in ballot and outer envelope with them, the voter may submit only a provisional ballot, and the poll worker shall offer them this option.
- 2) For voters who **did** successfully return their absentee or mail-in ballot:
 - a. If a voter was issued an absentee or mail-in ballot and successfully returned their ballot, their name will be found in section 2 of the poll book, and the signature line will say either "Absentee – Ballot Cast/Not Eligible" or "Mail-in – Ballot Cast/Not Eligible."
 - b. If a voter listed in section 2 of the poll book believes that they have not successfully voted their absentee or mail-in ballot or otherwise contests their ballot status, the poll worker must provide the voter a provisional ballot.

For **everyone** receiving a provisional ballot, poll workers must ensure that, before the provisional ballot is issued, the Voter Information, Voter Affidavit for Provisional Ballot, and Current Address sections on the provisional ballot envelope are completed by the voter. Again, the voter must sign **both** the Voter Affidavit for Provisional Ballot **and** the front of the provisional ballot envelope.

Poll workers must ensure that the voter signs their name in the presence of both the Judge of Elections and the Minority Inspector. Poll workers must also ensure that both the Judge of Elections and Minority Inspector sign the affidavit.

If polling place hours are extended beyond 8:00 p.m. on Election Day by court order, all votes submitted after 8:00 p.m. shall be submitted via provisional ballot only.

Process for County Elections Officials

Within seven days after the election, the county board of elections must review and make a determination for each provisional ballot cast on Election Day.

Counties should notify parties and the public a week in advance of the date that election officials will meet to examine and reconcile provisional ballots during the post-election official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act¹ for public meetings.

Parameters for canvassing provisional ballots

- When determining whether to count a provisional ballot, the county board of elections must reconcile provisional ballots with ballots cast in person on Election Day and with returned absentee and mail-in ballots. If a voter cast an Election Day ballot or successfully voted an absentee or mail-in ballot, the provisional ballot shall not be counted.
- A county board of elections can approve a provisional ballot for counting only if the voter is qualified and eligible to vote in the election.
- When researching provisional ballots during the canvassing period, the county election staff should enter the voter's provisional voting information from the provisional envelope into the SURE system to maintain an accounting of the number of provisional ballots issued for the election.
- If a voter's mail-in or absentee ballot was rejected for a reason unrelated to the voter's qualifications, and the voter submitted a provisional ballot and meets other provisional ballot requirements, the provisional ballot shall be counted if the county determines that the voter is eligible to vote.²
- Counties are prohibited from counting a provisional ballot submitted by a qualified registered voter of another county.
- During the canvass, the county board of elections must determine, for each provisional ballot, whether:
 - The provisional ballot should be counted in full (i.e., all contests on the ballot are counted);
 - The provisional ballot should be partially counted (i.e., some contests but not all contests on the ballot are counted) and the reason(s) for the partial counting;

¹ 65 Pa.C.S. § 701, *et seq.*

² The Department agrees with the analysis of the Delaware County Court of Common Pleas in *Keohane v. Delaware County Board of Elections*, No. 2023-004458 (Sept. 21, 2023); *but see In Re Allegheny Cnty. Provisional Ballots in the 2020 Gen. Election*, 241 A.3d 695 (Pa. Commw. Ct. 2020) (unpublished).

- The provisional ballot is invalid because the voter successfully submitted another ballot; or
- The provisional ballot should be rejected for another reason(s) and the reason(s) for the rejection.

Hearings for provisional ballots challenged during the canvass

If a provisional ballot is challenged during the canvass, the county board of elections must schedule a hearing within seven days of the challenge to consider the challenge and determine the disposition of the ballot. Additionally, notice shall be given where possible to the challenged provisional voter and to the attorney, watcher, or candidate who made the challenge.

- It is recommended that counties notify parties and the public of the hearing a week in advance of the date, noting that election officials will meet to examine and reconcile provisional ballots during the post-election official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act³ for public meetings.
- During the hearing, the county board of elections must decide whether to uphold or dismiss the challenge. The county board is not bound by the Pennsylvania Rules of Evidence. Any testimony presented must be stenographically recorded.

###

Version	Date	Description
1.0	3.5.2020	Initial document release
1.1	10.21.2020	Updated per Act 12 of 2020
2.0	10.12.2023	Updated to reflect judicial guidance
2.1	3.11.2024	Updated to implement clarifying edits and modified affidavit form.

³ 65 Pa.C.S. § 701, *et seq.*

EXHIBIT

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FAYETTE COUNTY ELECTION BUREAU
Marybeth Kuznik, Director
2 West Main Street • Suite 111 • Uniontown, PA 15401
724-430-1289 • 724-430-4948 (fax) • voter@fayettepa.org



May 1, 2024

Kate Steiker-Ginzberg
ACLU
PO Box 60173
Philadelphia, PA 19102

Dear Ms. Steiker-Ginzberg,

The Fayette County Bureau of Elections has received and considered your Right-To-Know request of March 22, 2024.

Public access to election documents is exempt from the Right To Know Law by Section 3031.1, which states "[i]f any provisions of this act regarding access to records conflict with any other federal or state law, the provision of this act shall not apply." 65 P.S. § 67.310.1.

Public access to election records is specifically governed under Section 2648 of the Pennsylvania Election Code, which states in pertinent part,

The records of each county board of elections. . . shall be open to public inspection, except as herein provided, and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees having duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employee of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act. . .

25 P.S. § 2648.

The above notwithstanding, the Fayette County Election Bureau and Fayette County Election Board wish to be transparent. Therefore, **without waiving our right to follow and enforce the above statutory procedures regarding any future requests from any party**, we voluntarily respond to your request as follows (responses interspersed into pertinent section of

your request) and grant available requested records as follows:

1. Records that constitute, reflect, or describe **any policy that has been approved and adopted** by the Board of Elections, which addresses whether voters who make disqualifying mistakes (e.g. missing signature, date or secrecy envelope) when completing their mail-in ballot return envelopes or submitting their mail ballots will be notified and/or permitted to “cure” such deficiencies so that their ballot can be counted.

No written policy has been approved or adopted by the Board of Elections

2. If the Board of Elections does not have a written policy, but does have **procedures or practices** currently in place that provide voters with notice and an opportunity to “cure” mail-in ballots with deficiencies, please provide **records** showing:

a. Any **notice** provided to voters of their mistake prior to Election Day, such as:

i. An example of a letter, postcard, or e-mail sent directly from the county elections office to a voter about a mail-in ballot with a deficiency;

Copy of letter sent to voters is provided, see attached

Copy of Instructions for Calling Voters – see G-2023 document attached

ii. An example of an automatic SURE-system email regarding the cancellation, and whether that email is sent before or after Election Day;

Requester would need to obtain this information from the PA Department of State

iii. An example of a list of voters who returned a mail-ballot with an error, which is made accessible (1) on a public government website; and/or (2) to the party representatives; or (3) upon request;

No lists of voters who return mail-ballots with an error were posted on the internet, made available to party representatives, or otherwise provided publicly

iv. Any other records that constitute or relate to the notice given to voters — such as a phone call from the county election office — that mail-in voters receive if they have made an error;

See attached spreadsheet from P-2024 Primary Election

See attached pdf file from G-2023 General Election

b. The county’s processes, if any, for voters to **cure** their mistake, such as:

i. An attestation or other form that voters complete in-person at the election office to “cure” their mail-ballot mistake;

ii. A replacement ballot request form;

iii. Any other records constituting or relating to the “curing” practices that are implemented by the county election office; and

No forms are required to cure deficient ballots.

c. Whether voters who learn that their mail ballot has been canceled due to a mistake are permitted to cast a **provisional ballot** at their local precinct on Election Day and whether that provisional ballot will be **counted** by the Board of Elections.

Responsive records could include:

i. Lists of provisional ballots cast in an election by voters whose mail-in ballots were previously canceled; or

ii. Board of Elections minutes showing deliberation and/or official action regarding provisional ballots cast by voters whose mail-in ballots were canceled.

See minutes of November 15, 2022 Election Board Meeting, pp. 19-21 attached and available online

3. If you do not have records of a policy or practice responsive to requests 1 or 2, please provide records (from January 2023 to the present) constituting or reflecting any discussion, deliberation, communication, correspondence, memoranda, communications, and/or internal policies, guidelines, rules, practices, or procedure or official action by or among the Board of Elections regarding “notice and cure” practices or procedures, including any decision to not adopt “notice and cure” procedures.

Fayette County does not have any records of this type within the stated timeframe

4. If you do not have records of a policy or practice responsive to requests 1 or 2, please provide records (from January 2023 to the present) constituting or reflecting any memoranda, communications, and/or internal policies, guidelines, rules, practices, or procedures related to **SURE-system protocols** regarding mail-in ballots with errors, including any records from the Pennsylvania Department of State regarding data entry into the SURE system.

After diligent search, Fayette County Election Bureau attaches five emails and directives we have saved from the PA Department of State.

Please contact me if you have any questions or need additional explanations. Thank you for your interest in the Fayette County Bureau of Elections

Sincerely,



Marybeth Kuznik
Director of Elections and Voter Registration

CALLING VOTERS WITH BALLOT ENVELOPE ERRORS

1. Please Call each voter on these lists.
2. IF PHONE IS ANSWERED -- tell voter that there was an error on their ballot envelope that might cause their vote not to be counted and that they need to come into the Election Bureau to correct the problem. (You can tell them what was wrong based on the "issue" column.

NOTE! Tell voters with "No Signature" that their vote WILL not be counted unless they come in and sign it.

3. Voter must come in person and must bring Identification. A Driver's License, PennDOT ID card, U.S. Passport, or Voter Registration Card from Fayette County will work. If they do not have any of these, let MB know. (If necessary, get their name/number and MB will call them back.)
4. IF NO ANSWER WHEN YOU CALL - leave a message and just say that there was an error on their ballot envelope that might cause their vote not to be counted, and to please call the Election Bureau as soon as possible at 724-430-1289.
5. Tell voters that they may also go to their polling place and vote on a provisional ballot.
6. Please make a note of people you reach and their response, or if you left a message.

THANK YOU!

NOTE: BALLOTS MUST BE CORRECTED BY 8 PM ON ELECTION DAY NOV. 7.

MB = Marybeth Kuznik, Director of Elections

FAYETTE COUNTY ELECTION BUREAU
Marybeth Kuznik, Director
2 West Main Street • Suite 111 • Uniontown, PA 15401
724-430-1289 • 724-430-4948 (fax) • voter@fayettepa.org



[VOTER'S ADDRESS]
[VOTER'S ADDRESS]
[VOTER'S ADDRESS]

[DATE]

Dear Mail-In / Absentee Voter,

The Fayette County Election Bureau has received your ballot and we noticed that there is an error with the date or signature on your outer envelope. Your vote may not be counted if this error is not corrected.

If you would like to correct the problem, you will need to come in person to our office at 2 West Main Street, in Uniontown PA 15401. We are open Monday through Friday from 8 A.M to 4:30 P.M. You will need to bring identification with you in one of the forms approved by the Legislature for voters in a polling place. The most common of these is your PennDOT Driver's License or Photo ID card, a U.S. Passport, or your official Voter Registration Card from Fayette County. If you do not have any of these IDs, please give us a call.

No ballots may be taken from the Election Bureau during the correction process.

We hope that you will stop into the Election Bureau soon and correct the error, so that your vote may be counted!

Sincerely,

Emma Santore
Elections and Voter Registration Clerk
Fayette County Election Bureau

EXHIBIT

15

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GREENE COUNTY

BALLOT CURING PROCEDURES

I. Introduction

This ballot curing policy for Greene County is established to allow registered voters the opportunity to cure immaterial deficiencies with their absentee or mail-in ballots.

II. Definitions

As used herein, the following terms shall have the meanings indicated:

Ballot: An absentee or mail-in ballot which a qualified elector may use to cast a vote in an election.

Bureau: The Greene County Bureau of Elections.

County: Greene County.

County Board: Greene County Board of Elections.

Deficiency: A defect regarding the required signature and/or date in the outside of the ballot envelope.

Party Committee: The Greene County Democratic Committee and the Greene County Republican Committee, as designated by their respective state organizations.

Qualified Elector: Any person who shall possess all the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth.

III. Cure Procedure for Deficiency in the Ballot of a Qualified Elector

- A. Upon identifying a Deficiency with a Ballot submitted by a Qualified Elector, the Bureau will segregate said Ballot and place the Qualified Elector's name and phone number (if one is provided) on a list.
- B. During a Primary Election, the list of Qualified Voters who submitted Deficient Ballots shall be made available to the Party Committees once a day at the request of the Party Committee.

- C. The Party Committees may contact the Qualified Elector who submitted a Ballot with a Deficiency to advise that there is a Deficiency with their Ballot and that the Qualified Elector is permitted to appear at the Bureau to remedy such deficiency.
- D. During the general elections, in addition to Party Committees, the list of Qualified Voters who submitted Ballots with Deficiencies will be made available to any duly authorized representative of any recognized political party other than the Party Committees which have a candidate on the Ballot.

It is acknowledged that Qualified Electors registered as Independent will not have a duly authorized party representative. The Bureau will publicize through its regular course that any voter can check the status of their Ballots via Department of State website and that cure procedures are available.

- E. To effect a cure, A Qualified Elector must appear in person at the Bureau before 8:00 P.M. on Election Day and sign an attestation that includes the missing or incorrect signature and/or date, which shall be recorded with their Ballot.
- F. The Bureau shall not perform any remedy on behalf of the Qualified Elector but will only provide the opportunity for the Qualified Elector to remedy the defect.
- G. The Bureau shall not send the Ballot back to the Qualified Elector or issue to the Qualified Elector a new Ballot due to the deficiency.
- H. This Policy shall not modify any procedures regarding Provisional Ballots with the exception of allowing a Provisional Ballot to be counted for a Qualified Elector who cannot come to the Bureau to remedy a deficiency on the Ballot envelope but is able to go to their polling place.

IV. Cure Procedure for Deficiency in the Ballot as a result of Bureau Error

- A. All Ballot Deficiencies caused by Bureau Error shall be dealt with on a case-by-case basis.
- B. In the event that a Ballot Deficiency exists as a result of Bureau Error, the Bureau shall first determine whether the Ballot Deficiency can be remedied within the time limits fixed by statute.
- C. If it is determined that the Ballot Deficiency caused by Bureau Error can be remedied within the time limits fixed by statute, the Bureau shall determine the specific errors causing the Ballot Deficiency and prepare a second Ballot correcting the errors identified.

The initial ballots shall be declared null and void and shall be sequestered and segregated and retained by the Bureau as provided by statute.

The corrected Ballots shall be mailed to the Qualified Electors accompanied by a letter advising the Qualified Electors of the errors in the previous Ballot and requesting the Qualified Electors to execute the second corrected Ballot.

- D. If it is determined that the Ballot Deficiency caused by Bureau Error CANNOT be remedied within the time limits fixed by statute, the Bureau shall determine the specific errors causing the Ballot Deficiency.

The Bureau, on a “case by case” basis, shall determine an appropriate method to mitigate the Ballot Deficiency to the extent possible.

- E. The Bureau shall maintain a complete record of its efforts to remedy the Ballot Deficiencies including but not limited to:

- A. Minutes of meetings addressing the Ballot Deficiencies.
- B. Measures taken by the Bureau to remedy or mitigate the Ballot Deficiencies.

ADOPTED BY THE GREENE COUNTY BOARD OF ELECTIONS ON APRIL 11, 2024

EXHIBIT

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SOLICITOR'S OFFICE 724-770-4444 PHONE 724-773-7268 FAX 724-770-4457 TTY



Board of Commissioners
Daniel C. Camp III, Chairman
Jack Manning
Tony Amadio

County Solicitor
Garen Fedeles

May 8, 2024

ksteiker-ginzberg@aclupa.org
Kate Steiker-Ginzberg
PO Box 60173
Philadelphia, PA 19102

Assistant County Solicitor
Nathan A. Morgan

Assessment Solicitor
Joseph A. Askar

Paralegal
Stacey L. Householder

RE: Right to Know Request

Dear Ms. Steiker-Ginzberg,

Thank you for writing to Beaver County with your request for information pursuant to the Pennsylvania Right to Know Law, 65 P.S. Section 67.101, *et. seq.* On April 1, 2024, you requested records related to policies and procedures for the Bureau of Elections. The County invoked an extension of time of thirty (30) days.

Your request is granted and the requested document is attached.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,


Stacey L. Householder
Open Records Officer

Enclosure

BUREAU OF ELECTIONS



OFFICE PROCEDURE

BALLOTS WITH OBSERVABLE DEFECTS

Each election, voters across Pennsylvania submit ballots to Boards of Elections that have material defects on the outer declaration envelopes (i.e. utilizing an incorrect date, not dating the envelope as required by 25 PS § 3150.16, not signing the envelopes as required by 25 PS § 3150.16). While no practices regarding requirements or restrictions regarding so-called “notice and cure” operations for voters to fix mistakes and avoid having their ballots set aside exist in the Pennsylvania Election Code, the Beaver County Bureau of Elections has developed a consistent practice regarding voters’ abilities to cure ballots with observable defects on the outer declaration envelopes. Since the *Ball v. Chapman* (2022) decision and opinions, litigation has continued on both the question of curing and other questions regarding dating and signature requirements on the declaration envelopes. However, we have operated from this posture since the November 2022 election and will continue to do so until statutory or court-ordered regulations supersede. In either of the scenarios, listed below, and irrespective of the notice structure outlined voters are free to contact the Bureau of Elections at any time and inquire if their ballot envelopes have any defects. Upon inquiry, our staff will review the envelope, and provide details to the voters regarding the status of the envelope related to observable defects only, and provided an opportunity to cure the error.

Board of Commissioners
Daniel C. Camp III,
Chairman
Jack Manning
Tony Amadio

BUREAU OF ELECTIONS
810 Third Street
Beaver, PA 15009

Colin Sisk, Director

724-770-4440 | PHONE
724-728-9318 | FAX

SCENARIO A: Ballots with observable defects are received by the Bureau of Elections prior to the Friday before the Election in question:

- 1) All ballots are date and timestamped upon receipt in the Bureau of Elections.
- 2) Ballots are next reviewed by full-time staff members to ensure compliance with statute.
- 3) Ballots with observable defects (missing a signature, incorrect dates, missing dates) are segregated, with sorting by precinct and based on defect(s) apparent.
- 4) Staff will record ballots with defects with the SURE status code of **RECORD- BALLOT RETURNED**. This is done so as to demonstrate the ballot has been received for those voters who submitted information to receive email notifications. No other codes are to be used, as this could provide notice of potential defects to some voters but not to all, and such could create an imbalanced nature of notice.
- 5) Staff will then add the voters’ name and basic information (street address, precinct of registration, etc.) to a regularly maintained list of voters whose ballot envelopes have an observable defect.
- 6) The list of ballots received in scenario A will be posted to the county’s website on the Friday prior to the election in question. The listing will also be emailed to the leadership of both major parties in the county. That effort is the full extent of notice provided to voters.
- 7) Voters can appear in person in our office to cure any defects on their declaration envelopes.

SCENARIO B: Ballots with observable defects are received by the Bureau of Elections on or after the Friday before the Election in question:

- 1) All ballots are date and timestamped upon receipt in the Bureau of Elections.
- 2) Ballots are next reviewed by full-time staff members to ensure compliance with statute.
- 3) Ballots with observable defects (missing a signature, incorrect dates, missing dates) are segregated, with sorting by precinct and based on defect(s) apparent.
- 4) Staff will record ballots with defects with the SURE status code of **RECORD- BALLOT RETURNED**. This is done so as to demonstrate the ballot has been received for those voters who submitted information to receive email notifications. No other codes are to be used, as this could provide notice of potential defects to some voters but not to all, and such could create an imbalanced nature of notice.
- 5) Voters can appear in person in our office to cure any defects on their declaration envelopes.

EXHIBIT

17

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County of Washington

COMMONWEALTH OF PENNSYLVANIA

Commissioners

NICK SHERMAN
Chairman

ELECTRA S. JANIS
Vice Chair

LARRY MAGGI
Commissioner



DARYL W. PRICE
Chief of Staff

CYNTHIA B. GRIFFIN
Chief Clerk

95 W. BEAU ST., SUITE 605 - WASHINGTON, PA 15301 - 724-228-6724

April 26, 2024

RE: Washington County's Response to your RTK Request

Good afternoon, Ms. Steiker-Ginzberg,

Thank you for writing to Washington County with your request for records pursuant to Pennsylvania's Right-To-Know Law ("RTKL"), 65 P.S. §§ 67.101 et seq. Your request was received on March 22, 2024, and you requested any policy that was approved by the Board of Elections; notice to cure the ballots and if no records, you asked to be provided with the 2023 Election procedures; and lastly, to provide records from January 2023 to the present regarding "notice and cure" procedures.

In response to your first request, the Board of Elections meeting minutes for the April 11, 2024 will not be approved until the Board reconvenes for its next meeting on May 13, 2024. Pursuant to Section 708(b)(21), draft minutes of any meeting of agency are exempt from public disclosure until the next regularly scheduled meeting. Once the meeting minutes have been approved the records will be supplemented.

Regarding notice to cure ballots, Washington County has no records in its possession, custody or control insofar as the Board of Elections voted to not allow residents to cure ballots. Therefore, the County does not contain any information and/or procedures related to Notification of Curing.

Board of Elections' meeting minutes for April 26 and September 19, 2023 are attached. This is where the curing process for the 2023 Elections was discussed.

Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes is also attached.

Please be advised that this is correspondence will serve to close this record with our office as permitted by law.

Regards,

Cynthia B. Griffin
Chief Clerk/Right-to-Know Officer
95 West Beau Street, Suite 605
Washington, PA 15301
Phone (724) 228-6723
Fax: (724) 228-6965
Email: griffinc@co.washington.pa.us
www.washingtoncopa.gov



CBG/dc

Washington County Board of Elections
April 26, 2023

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chair Diana Irey Vaughan, Monica Merrell, and Todd Pappasergi. Also present were Solicitor Jana Grimm, Election Director Melanie Ostrander, Chief of Staff Michael Namie, Washington County Republican Party Treasurer April Betzner, Washington County Republican Party Tina Whited, Washington County Republican Party Vice Chair Jeffrey Elias, candidate for County Commissioner and concerned citizen Ashley Duff, and Observer Reporter journalist Mike Jones.

Mrs. Vaughan called the meeting to order at 10:00 am.

Mrs. Vaughan led the attendees in prayer.

Mrs. Vaughan led the Pledge of Allegiance.

Public Comment

Tina Whited inquired on the set up for election night to allow the public to view the return of results by the poll workers.

Mrs. Vaughan called for a motion to amend the agenda to include approval of the minutes of the April 11, 2023 meeting, which was omitted in error.

Mr. Pappasergi moved to amend the agenda to include approval of the minutes of the April 11, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Mr. Pappasergi moved to approve the minutes of the April 11, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Election Director Comment

Ms. Ostrander reported to the Board her review of how other counties handle the process of public viewing of the election night returns process, and her suggestion for Washington County.

There are seven security cameras in the election night returns areas; one outside, one in the stairwell, two in the hallway, one in the ballot room, one in the ballot storage room, and one in the EMS computer room. The Public Meeting Room has two large flat screen televisions. The live stream from these seven cameras can be displayed on the two televisions. The public can enter the Public Meeting Room from the door on North Franklin Street and be able to view the live stream from these security cameras. Two Sheriff Deputies are needed to provide security for the Room; one at the entrance and one at the entrance to the hallway. The capacity of the room is 100 people.

New Business

Appointment of Pre-Canvass Workers

Mr. Pappasergi moved to appoint the following people to serve as pre-canvass workers for Election Day, May 16, 2023 beginning at 9:00 am:

Charles Mahoney, Miles Glotfelty, Jessica Glotfelty, David Kresh, Catherine Kresh, Betsy West, James Blue, Peggy Wilson, Joseph Trifaro Jr, Mary Lea Dutton, Linda Andrews, and Maureen Jones.

Mrs. Merrell seconded the motion.

Motion approved.

Appointment of Election Night Workers

Mr. Pappasergi moved to appoint the following people to serve as election night workers for Election Day, May 16, 2023 beginning at 7:00 pm:

Penny Folino, Eric Fowler, Matthew Malik, Mitchell Malik, David Gump, Ashley Ostrander, Bridgett Gerba, and KC Lindley.

Mrs. Merrell seconded the motion.

Motion approved.

Appointment of the Canvass Board

Mr. Pappasergi moved to appoint the following people to serve as the Canvass Board.

David Kresh, Catherine Kresh, Charles Watts, Mary Lea Dutton, and Maureen Jones.

Mrs. Merrell is awaiting response from a person to make six appointments. If that person is not available, the Canvass Board will remain at five members.

Mrs. Merrell seconded the motion.

Motion approved.

Mr. Pappasergi moved to allow curing of absentee and mail in ballots if the voter failed to sign the return envelope under the Voter's Declaration, and to not allow curing if the voter signed but did not date the envelope under the Voter's Declaration.

Mrs. Merrell seconded the motion.

Motion approved.

Announcements

The next Board of Elections meeting will occur Thursday, June 1, 2023 at 10:00 am in the Crossroads Center Conference Room, Room G-17, Washington, PA.

There being no further business, Chair Vaughan declared the meeting adjourned at 10:45 am.

Washington County Board of Elections
September 19, 2023

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chair Diana Irey Vaughan, Monica Merrell, and Todd Pappasergi. Also present were Solicitor Jana Grimm and Elections Director Melanie Ostrander.

Mrs. Vaughan called the meeting to order at 10:02 am.

Mrs. Grimm led the attendees in prayer.

Ms. Ostrander led the Pledge of Allegiance.

Mr. Pappasergi moved to approve the minutes of the June 1, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Public Comment

No public comments

Election Director Comments

We received 10 affidavits challenging the residency of 10 registered voters based on the fact their names appeared on the National Change of Address report.

Absentee and Mail in ballots will be mailed beginning on October 10.

As of today, we have approximately 12,500 applications for mail ballots.

New Business

Todd Pappasergi moved for Solicitor Grimm to review the challenge affidavits, the Pennsylvania Election Code, and the National Voter Registration Act and make a recommendation to the Board at the next BOE meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Ms. Ostrander will contact the Pre-Canvass Workers, Election Night Workers, and Canvass Board members from the May 16, 2023 Municipal Primary for availability. The appointments will be voted on at the next BOE meeting.

The process for public viewing on Election Night will remain the same as was decided at the April 26, 2023 BOE meeting, which is there are seven security cameras in the election night returns areas; one outside, one in the stairwell, two in the hallway, one in the ballot room, one in the ballot storage room, and one in the EMS computer room. The Public Meeting Room has two large flat screen televisions. The live stream from these seven cameras can be displayed on the two televisions. The public can enter the Public Meeting Room from the door on North Franklin Street and be able to view the live stream from these security cameras. Two Sheriff Deputies are

needed to provide security for the Room; one at the entrance and one at the entrance to the hallway. The capacity of the room is 100 people.

The process for curing received absentee and mail in ballots will remain the same as was voted on at the April 26, 2023 BOE meeting, which is curing of absentee and mail in ballots if the voter failed to sign the return envelope under the Voter's Declaration, and to not allow curing if the voter signed but did not date the envelope under the Voter's Declaration.

Announcements

The next Board of Elections meeting will occur Tuesday, October 17, 2023 at 10:00 am in the Crossroads Center Conference Room, Room G-17, Washington, PA.

There being no further business, Chair Vaughan declared the meeting adjourned at 10:33 am.

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EXHIBIT

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Sweat Law Offices

Attorneys at Law

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May 14, 2024

VIA ELECTRONIC MAIL ONLY

Kate Steiker-Ginzberg

ACLU of Pennsylvania

P.O. Box 60173

Philadelphia, PA 19102

Ksteiker-ginzberg@aclupa.org

**RE: WASHINGTON COUNTY – RIGHT TO KNOW REQUEST – MARCH 22,
2024 – SUPPLEMENTAL DOCUMENTATION**

Dear Kate:

It was a pleasure meeting with you all on Thursday, May 9, 2024 regarding the Right to Know Request you have submitted to Washington County regarding the April 2023 Primary Election.

Please find enclosed a copy of the Meeting Minutes from the Board of Elections Meeting held on Monday, May 13, 2024. These Minutes were approved by the Board of Elections that day, as well.. Please be advised this is a supplement to the initial documents provided, as we discussed in our Conference Call on Thursday.

Please advise if you need any further information and/or documents. The County will provide a response to your recent request submitted on Friday, May 10, 2024. Please contact my office should you have any further questions.

Very truly yours,

SWEAT LAW OFFICES

By: 

Sarah A. Scott, Esquire

Cc: Cindy Griffin – Right to Know Officer and Chief Clerk for Washington County
Melanie Ostrander – Elections Director

Sweat Law Offices
375 Valley Brook Road, Suite 112
McMurray, PA 15317

Washington County Board of Elections
April 11, 2024

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chairman Nick Sherman, Electra S. Janis, and Larry Maggi. Also present were Solicitor Gary Sweat, Chief of Staff Daryl Price, Elections Director Melanie Ostrander, Executive Assistant Casey Grealish, Executive Assistant Heather Wilhelm, Mike Jones from the Observer Reporter, and Paul Fedore from the Center for Coalfield Justice.

Mr. Sherman called the meeting to order at 11:02 am.

Mr. Sherman led the Pledge of Allegiance.

Ms. Janis moved to approve the minutes of the March 12, 2024 meeting.

Mr. Maggi seconded the motion.

Motion unanimously approved.

Public Comment

Paul Fedore representing the Center for Coalfield Justice spoke on allowing voters to cure errors made on the absentee and mail in ballot declaration envelope.

Election Director Comments

Ms. Ostrander provided an update on the number of absentee and mail in ballots sent and received. Ms. Ostrander provided an example of the e-mail voters received after their absentee or mail in ballot has been received by the Elections Office.

New Business

Ms. Janis moved to increase the rover compensation to \$275.

Mr. Maggi seconded the motion.

Motion unanimously approved.

Ms. Janis moved to approve the following individuals as pre-canvass workers:

- Miles Glotfelty
- Sarah Wilhelm
- Jeffrey S Elias
- Sandra Schiffauer
- Beau Bouchard
- Dean Petrone Jr
- Michelle Fellin
- Beatriz Harrison
- Elizabeth Jackovich
- Meredith Camilletti
- Sandra Carman

- Charles Mahoney
- Linda M Andrews
- Mary Lea Dutton
- Joseph M Trifaro Jr

Mr. Maggi seconded the motion.
Motion unanimously approved.

Ms. Janis moved to approve the following individuals as election night workers.

- Dave Orndoff
- Angela Carrier
- Timothy Lesso
- Rachel Hrutkay
- Cassidy O'Connor
- Gabriella Gardner
- Lauren Lukas
- Sylvia Stoy
- Coryn Stoy

Mr. Maggi seconded the motion.
Motion unanimously approved.

Ms. Janis moved to approve the following individuals as Canvass Board members.

- Jeffrey S Elias
- Antony Gennaccaro
- John Hudock
- Gerilynn Gennaccaro
- Mary Lea Dutton
- Charles Watts

Mr. Maggi seconded the motion.
Motion unanimously approved.

Mr. Sherman moved to not allow curing of absentee and mail in ballots received with errors on the declaration envelope.

Ms. Janis seconded the motion.

Discussion was held between members regarding curing of ballots.

Roll call vote taken:

Mr. Sherman – yes; Ms. Janis – yes; Mr. Maggi – no

Ms. Janis moved to accept the following procedure for allowing viewing of election night returns:

The public has the opportunity to view the results returned from the poll workers on election night via the live feed of security cameras displayed on large televisions in the public meeting

room located on the ground floor of the Crossroads Center, 95 W Beau St, Washington. The public will enter the building via the Franklin Street entrance.

One authorized representative per candidate on the ballot and one authorized representative per political party on the ballot are permitted to view the return of the results via pre-determined and marked areas inside the Elections Office; a letter on candidate letterhead or political party letterhead identifying you as the authorized representative to view election returns must be provided for access.

No food or drink is permitted and no photography.

Mr. Maggi seconded the motion.

Motion unanimously approved.

The next Board of Elections meeting will be May 13, 2024 at a time to be announced at a later date.

There being no further business, Chairman Sherman declared the meeting adjourned at 11:45 am.

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April 16, 2024

Via email to gsweat@sweatlaw.com



Gary Sweat, Esq.
Washington County Solicitor
Crossroads Center
95 West Beau Street, Suite 605
Washington, PA 15301



Action. Access. Progress.

Dear Mr. Sweat,

We have received complaints about the recent decision of the Washington County Board of Elections ("Board") not to notify mail-ballot voters of mistakes they made when completing the declaration form on the outer return envelope, and to disallow them from "curing" such defects. An April 12 news account¹ indicates the Board's decision to change the County's past notice-and-cure practices was prompted by a recent federal appeals court decision that a civil rights statute does not require counting of ballots in undated and misdated mail-ballot-return envelopes.² As lawyers representing good-government organizations, voters, and amici in that U.S. Third Circuit Court of Appeals case, we wish to advise you that the Board is misreading the decision, which in no way prevents the election office from either notifying voters that their return envelopes are deficient or allowing them to cure. The Board's decision to discontinue notice-and-cure practices not only risks needlessly disenfranchising potentially hundreds of eligible Washington County voters, but could ensnare the Board in litigation.

In *Pennsylvania State Conference of NAACP Branches v. Secretary Commonwealth of Pennsylvania*, the U.S. Third Circuit Court of Appeals ruled only that the state-law requirement to handwrite the date on the outer-envelope-declaration form did not violate the Materiality Provision of the Civil Rights Act of 1964. ___ F 4th ___, 2024 WL 1298903 (3d Cir. 2024). The case did not raise notice and cure issues, nor did the court's decision reach them.

Whether a mail-in ballot transmitted in a return envelope that lacks a date or bears the wrong date can be counted is irrelevant to the Board's decision whether to notify voters of facially obvious defects on the return envelopes or allow them to cure such defects. In other words, the ruling did not change current Pennsylvania law: mail ballots with undated or incorrectly dated envelopes will not be counted, but county Boards may still notify affected voters and allow them to "cure" the mistakes before 8:00 p.m. on Election Day. Pennsylvania courts have held that the Election Code does not prohibit such policies, and therefore counties are free to implement a "notice and cure"

¹ Mike Jones, *Washington County won't allow voters to 'cure' defective mail-in ballots*, Washington Observer-Reporter (April 12, 2024), available at <https://www.observer-reporter.com/news/local-news/2024/apr/12/washington-county-wont-allow-voters-to-cure-defective-mail-in-ballots/>.

² *Pennsylvania State Conference of NAACP Branches v. Secretary Commonwealth of Pennsylvania*, ___ F 4th ___, 2024 WL 1298903 (3d Cir. 2024), pet'n for reh'g filed April 10, 2024, and pending.

process without fear of violating the Election Code. See *Republican Nat'l Comm. v. Chapman*, No. 447 M.D. 2022, 2022 WL 16754061 (Pa. Commw. Ct. Sept. 29, 2022) *aff'd by an equally divided court*, 284 A.3d 207 (Pa. 2022). Most Pennsylvania counties have adopted “cure” policies, which have “generally been accepted in order to fulfill the longstanding and overriding policy in this Commonwealth to protect the elective franchise.” *Id.* at 4. Our understanding is that until last week’s decision, the Washington County Board allowed mail-in voters whose envelopes were missing a signature to “cure” at the election office and allowed voters with an incorrect or missing date to apply for a new ballot or vote provisionally on Election Day.³

If the Board’s April 11 decision remains in effect, hundreds of otherwise eligible Washington County voters will be needlessly disenfranchised. Local news reports indicate that even as of last week there were already 62 mail-in ballots in Washington County with fatal deficiencies on the outer envelope, and that Director Ostrander expects this number to increase. We strongly urge the Board to reconsider last week’s misguided decision—and do so quickly—so that at least some mail-ballot voters can learn of fatal deficiencies on their ballot-return packets and have an opportunity to preserve their votes by curing the defect on or before Election Day.

We are in a critical window before Election Day: The Washington County election office has already determined that it will not count certain voters’ ballots due to an error, and the Board has now *chosen* not to notify them while they still have an opportunity to remedy the loss of their right to vote. That determination raises serious constitutional procedural due process concerns. See, e.g., *Mathews v. Eldridge*, 424 U.S. 319 (1976). As Pennsylvania’s Supreme Court wrote recently, “‘a democratic government must . . . practice fairness . . . [which] can rarely be obtained by secret, one-sided determinations of facts decisive of rights.’” *Washington v. Pa. Dep’t of Corr.*, 306 A.3d 263, 266 (Pa. 2023) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170 (1951)). As it currently stands, the County’s elections office knows which voters have made an error that will prevent the ballot from being counted and is choosing to keep that fact a secret from the affected voters until it is too late for the voters to remedy the problem. That is unfair to the voters and to the candidates who have attracted their vote. Government officials should not knowingly disenfranchise any voters—especially when there is a ready solution to avoid the harm.

The solution to notify affected voters is straightforward. As Director Ostrander explained, counties can enter codes into the SURE system that trigger an automatic email to voters who have provided an email address. But rather than doing that, it appears that the Board’s most recent directive calls for election staff to enter the ballots as “received”—even when the return-envelope is obviously deficient—which will email the voter *only* that the mail ballot has arrived in the election office. Moreover, the email message, in our understanding, advises the voter that they may not vote at their polling place on Election Day. That admonition is inaccurate because voters whose mail ballots will not count can cast a provisional ballot and preserve their fundamental right to vote. Absent a hint of any problem, these voters will reasonably believe their ballots will be counted—which is not true. That misleading email is unfair.

Rather than marking defective mail ballots as “received,” Board staff should enter the appropriate “canceled” or “pending” codes provided by the Department of State. These options will generate an automatic email that notifies the affected voters that their mail-in ballot will *not* be counted, thereby giving the individual time before 8:00 p.m. on Election Day to cure the defect and preserve

³ Mike Jones, *Washington County elections officials considering options for ballot ‘curing,’* Washington Observer-Reporter (March 13, 2024), available at <https://www.observer-reporter.com/news/local-news/2024/mar/13/washington-county-elections-officials-considering-options-for-ballot-curing/>

their vote. For instance, the PEND-OTHER code⁴ notifies voters that the county has “noticed an error” on the ballot envelope and instructs voters that they may “go to [their] polling place on election day and cast a provisional ballot.”

This straightforward SURE-system protocol—which is not burdensome on the election office—will notify voters that their ballot will not be counted and give them critical information about an *existing* procedure to salvage their vote under the Election Code. *See Keohane v. Delaware Cnty. Bd. of Elections*, No. 2023-004458 (Ct. Comm. Pls. Sept. 21, 2023) (ordering the Delaware County Board of Elections to count provisional ballots cast by voters who learned that their mail-in ballot had been canceled due to errors on the outer envelope). Inputting the rejection into SURE to make the voter aware that their vote will not count is a *minimal* due process protection that the Board of Elections can readily provide to protect the fundamental right to vote and ensure that this sacred right is not irremediably denied.

The Board’s April 11 decision not to notify or allow voters with facially deficient mail-ballot-return envelopes to cure the deficiency—based on a serious misreading of a case being handled by some of undersigned counsel—risks violating Washington County voters’ constitutional due process rights under the Pennsylvania Constitution. We urge the Board to reverse course and direct Election staff to enter “pending” or “canceled” codes in the SURE system. That is the least the Board could do to protect its residents’ right to vote. The County could go a step further, as some counties do, by contacting the affected voters and advising about the provisional ballot process, or by publishing a list of voters to non-profit organizations and political parties who can do that outreach. We urge the Board to take both steps to minimize how many Washington County voters will be disenfranchised. Please feel free to contact us at ksteiker-ginzberg@aclupa.org.

Public Interest Law Center
Mimi McKenzie
Legal Director

Benjamin Geffen
Senior Attorney

ACLU of Pennsylvania
Witold Walczak
Legal Director

Marian K. Schneider
Senior Policy Counsel for Voting Rights

Stephen Loney
Senior Supervising Attorney

Kate Steiker-Ginzberg
Voting Rights Legal Fellow

cc: Chairman Nick Sherman (*via email c/o Administrative Assistant*)
Vice Chair Electra Janis (*via email c/o Administrative Assistant*)
Commissioner Larry Maggi (*via email c/o Administrative Assistant*)
Election Director Melanie Ostrander (*via email*)

⁴ Based on current information, the PEND-OTHER code generates an automatic email to voters that reads: “The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.”

EXHIBIT

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County of Washington

COMMONWEALTH OF PENNSYLVANIA

Commissioners

NICK SHERMAN
Chairman

ELECTRA S. JANIS
Vice Chair

LARRY MAGGI
Commissioner



DARYL W. PRICE
Chief of Staff

CYNTHIA B. GRIFFIN
Chief Clerk

95 W. BEAU ST., SUITE 605 - WASHINGTON, PA 15301 - 724-228-6724

May 17, 2024

SENT VIA EMAIL: ksteiker-ginzberg@aclupa.org

Kate Steiker-Ginzberg
ACLU of Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102

Dear Ms. Steiker-Ginzberg:

Thank you for writing to Washington County with your request for records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. § 67.101 *et seq.* Your RTKL request was received on May 10, 2024, and your request was reviewed, and a response is set forth below.

Requests

A complete list of mail-in ballot voters in the April 23, 2024 primary election whose ballots were timely received, but were set aside and not counted due to one of the following reasons: (1) missing or incorrect date on the outer envelope declaration; (2) missing signature on the outer envelope declaration; (3) missing secrecy envelope. Please provide each individual's name, the date the ballot was received at the election office, and the reason the ballot was set aside.

Responses

In response to your request above, this request is granted, and the document is attached to this email.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Regards,

Cynthia B. Griffin

Cynthia B. Griffin
Chief Clerk and Agency Open-Records Officer for Washington County

/cbg

EXHIBIT F

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

CENTER FOR COALFIELD JUSTICE,
WASHINGTON BRANCH NAACP,
BRUCE JACOBS, JEFFREY MARKS,
JUNE DEVAUGHN HYTHON, ERIKA
WOROBEC, SANDRA MACIOCE,
KENNETH ELLIOTT, and DAVID
DEAN,

Plaintiffs,

v.

WASHINGTON COUNTY BOARD
OF ELECTIONS,

Defendant.

CIVIL DIVISION

No. 2024-3953

Judge Brandon P. Neuman

***PARTIES' JOINT STIPULATION
OF FACTS***

Filed on behalf of Plaintiffs

Counsel of Record for these Parties:

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Marian K. Schneider (No. 50337)
Kate I. Steiker-Ginzberg (No. 332236)
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PARTIES' JOINT STIPULATION OF FACTS

Plaintiffs, Defendant Washington County Board of Elections (“Washington County” or “Board”), and Intervenor-Defendant Republican National Committee (“RNC”),¹ by and through their respective attorneys, hereby stipulate as follows:

Parties

1. Plaintiff Center for Coalfield Justice (“CCJ”) is a 501(c)(3) Pennsylvania nonprofit organization headquartered in Washington County. CCJ has 300 individual members, many of whom are registered voters and regularly vote in Washington County. CCJ uses public education, organizing, and advocacy to advance policies that address the health and environmental impacts of the coal, oil, and gas industries on Washington and Greene Counties; to strengthen the area’s local economies; and to ensure that area residents have a voice in electing officials that will be accountable on the issues that matter most to their community. In 2020, CCJ launched the Defending Democracy Program to increase civic engagement of community members and to educate Washington County residents about political candidates’ positions on important environmental, public health, and economic issues. CCJ also engages in non-partisan voter education efforts to ensure that all residents of Washington County have the information they need to participate in the democratic process.

2. In April 2024, upon learning that Washington County was (a) segregating mail-in ballots with disqualifying errors on their declaration envelopes and (b) because Washington County had voted to adopt a policy of not providing notice and an opportunity to cure a legally invalid mail-in ballot, Washington County was not disclosing to voters that a ballot had been segregated for disqualifying errors (as set forth in ¶¶ 27-39, *infra*), CCJ redirected staff and

¹ Intervenor-Defendant Republican Party of Pennsylvania takes no position with respect to the Joint Stipulations of Fact.

resources to investigate and analyze the Board's new policy and to conduct outreach to potentially affected voters before Election Day. As a result of Washington County's policy of not providing notice and an opportunity to cure a legally invalid mail-in ballot, CCJ delayed important initiatives, including a public education campaign to raise awareness about fracking in coalfields and statewide advocacy work around climate equity. If the Board's policy remains in effect for November's general election, CCJ will need to continue putting projects on hold and will continue to divert resources towards an outreach campaign to alert its 300 members and other potentially affected Washington County voters that they will not be able to learn about if their mail-in ballot has been segregated for a disqualifying error, and work to minimize the number of voters affected by the Board's policy.

3. Plaintiff Washington Branch NAACP is a non-profit, non-partisan organization operating in Washington County, Pennsylvania, and is affiliated with the NAACP Pennsylvania State Conference and the national NAACP. Washington Branch NAACP's mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination in Washington County. Washington Branch NAACP has nearly 200 individual members, many of whom are registered voters and regularly vote in Washington County. The Washington Branch NAACP works to expand voter participation among its members through voter registration and turnout efforts, organizes candidate fora to help voters make informed decisions at the polls, and provides public education to improve trust in the political process.

4. As a result of Washington County's April 2024 policy change to not provide notice and an opportunity to cure a legally invalid mail-in ballot (as set forth in ¶¶ 27-39, *infra*), the Washington Branch NAACP shifted its resources away from previously planned initiatives,

including a campaign to promote mental health among Black residents. Instead, the NAACP redirected resources to address the Board's policy change, advocating against the new policy and investigating concerns about whether its members' ballots were included in those the Board segregated for disqualifying errors. If the Board's policy remains in place for the November general election, the Washington Branch NAACP will continue to divert staff time and funding to develop and implement materials to address voter concerns about whether their votes will be counted, and to prevent disqualification of mail-in voters' ballots.

5. The Center for Coalfield Justice and Washington Branch NAACP ("Organizational Plaintiffs") were each aware of the Washington County Board of Election's decision not to provide notice and an opportunity to cure in the 2024 primary election before the election took place.

6. Each Organizational Plaintiff was aware prior to the 2024 primary election that the Washington County Board of Elections was not informing voters whether or not a voter's mail-in ballot was defective and would not be counted.

7. The seven named Voter Plaintiffs are all eligible, qualified Pennsylvania voters entitled to vote in Washington County. All seven submitted timely ballots for the April 2024 primary, i.e., the Washington County Board of Elections received them before 8:00 p.m. on Election Day. Washington County set aside all seven voters' ballots for various deficiencies on the declaration envelope containing their ballot, as detailed below.

8. Voter Plaintiffs have each previously successfully voted by mail in prior elections; each intend to vote by mail in the November 2024 general election; each is aware of the requirements for filling out a mail-in ballot, including the outer envelope and declaration; and each intend to completely comply with those requirements. However, if any of the Voter

Plaintiffs fail to do so, they will not receive notice before election day under Washington County's current policy.

9. Plaintiff Bruce Jacobs is a 65-year-old registered voter who lives in Venetia, Pennsylvania. The Washington County Board of Elections did not count Mr. Jacobs' ballot in the election tally because he failed to sign and date the declaration envelope. Mr. Jacobs did not learn that his mail-in ballot was not counted until after the April 2024 election when he received a phone call from a non-profit organization. If Mr. Jacobs had known that Washington County had segregated his mail-in ballot for having a disqualifying error on his declaration envelope, he would have attempted to take necessary measures to try and ensure that his vote was counted, including trying to cast a provisional ballot at his polling place on Election Day.² Mr. Jacobs will vote by mail again in the November 2024 General Election.

10. Plaintiff Jeffrey Marks is a 72-year-old registered voter who lives in Washington, Pennsylvania. On April 22, 2024, Mr. Marks received an email, a true and correct copy of which is attached as Exhibit A. The email led Mr. Marks to believe that his vote would be counted. Washington County did not count Mr. Marks' ballot in the election tally because he wrote an "incomplete date" on the declaration envelope. Mr. Marks did not learn that his mail-in ballot was not counted until after the April 2024 primary election when he received a phone call from a non-profit organization. Had Mr. Marks known that his mail-in ballot would not be counted, he would have attempted to cast a provisional ballot at his polling place on Election Day to try and ensure that his vote was counted. Mr. Marks will vote by mail in the November 2024 general election.

² By agreeing to the stipulations in paragraphs 9-15, Defendant and Intervenor-Defendants do not concede or agree that a provisional ballot can be cast to cure a legally defective mail-in ballot, particularly in a county like Washington County that has adopted a policy of not providing notice and an opportunity to cure a legally invalid mail-in ballot.

11. Plaintiff June DeVaughn Hython is an 85-year-old, longtime registered voter who lives in Canonsburg. She previously served as a poll worker in Washington County. Ms. DeVaughn Hython voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. In the April 2024 primary election, Washington County did not count Ms. DeVaughn Hython's ballot in the election tally because she signed in the "incorrect area" and failed to date the declaration envelope. She only learned that her mail-in ballot was not counted when she received a phone call from a non-profit organization two months after the election. Had Ms. DeVaughn Hython known that Washington County had segregated her mail-in ballot for having a disqualifying error on her declaration envelope, she would have attempted to do whatever was necessary to make try and make sure her vote was counted, including trying to cast a provisional ballot at her polling place on Election Day.

12. Plaintiff Erika Worobec is a 45-year-old registered voter who lives in Cecil. Washington County did not count Ms. Worobec's ballot in the April 2024 election tally because she wrote an "incomplete date" on the declaration envelope. She only learned that her mail-in ballot was not counted when she received a phone call from a non-profit organization after the election. Had Ms. Worobec known that Washington County had segregated her mail-in ballot for having a disqualifying error on her declaration envelope, she would have attempted to do whatever was necessary to try and make sure her vote was counted, including trying to cast a provisional ballot at her polling place on Election Day. Ms. Worobec will vote by mail in the November 2024 general election.

13. Plaintiff Sandra Macioce is a 64-year-old, longtime registered voter who lives in Canonsburg. On April 15, 2024, Ms. Macioce received an email, a true and correct copy of which is attached as Exhibit B. Washington County did not count Ms. Macioce's ballot in the

election tally because she wrote an “incomplete date” on the outer declaration envelope. Ms. Macioce did not learn that her mail-in ballot was not counted until after the April 2024 primary election when she received a phone call from a non-profit organization. Had Ms. Macioce known that Washington County had segregated her mail-in ballot for having a disqualifying error on the declaration envelope, she would have attempted to do whatever was necessary to try and make sure her vote was counted, including trying to cast a provisional ballot at her polling place on Election Day. Ms. Macioce will vote by mail in the November 2024 general election.

14. Plaintiff Kenneth Elliott is a 48-year-old registered voter who lives in Amity. On April 22, 2024, Mr. Elliott received an email, a true and correct copy of which is attached as Exhibit C. The Washington County Board of Elections did not count Mr. Elliott’s ballot in the election tally because he wrote an “incomplete date” on the declaration envelope. Mr. Elliott did not learn that his mail-in ballot was not counted until he received a phone call after the election from Washington Branch NAACP President David Gatling explaining that his vote had not been counted. Had Mr. Elliott known that Washington County had segregated his mail-in ballot for having a disqualifying error on his declaration envelope, he would have attempted to cast a provisional ballot at his polling place on Election Day to try and ensure that his vote was counted.

15. Plaintiff David Dean is a 54-year-old, longtime registered voter who lives in Canonsburg. On Election Day, Mr. Dean works as a poll worker in Washington County. Washington County did not count Mr. Dean’s ballot in the April 2024 election tally because he wrote an “incomplete date” on the declaration envelope. Mr. Dean only learned that his mail-in ballot was not counted several months after the election when he received a phone call from Washington Branch NAACP President David Gatling, who explained that his vote had not been

counted in the election. Had Mr. Dean known that Washington County had segregated his mail-in ballot for having a disqualifying error on his declaration envelope, he would have attempted to do whatever was necessary to try and make sure his vote was counted, including attempting to cast a provisional ballot at his polling place on Election Day. Mr. Dean will vote by mail in the November 2024 general election.

16. Defendant Washington County Board of Elections is a local government agency that is responsible for overseeing the conduct of all elections in Washington County, 25 P.S. § 2641.

17. Intervenor the Republican Party of Pennsylvania (“RPP”) is a major political party, 25 P.S. § 2831(a), and the “State committee” for the Republican Party in Pennsylvania, 25 P.S. § 2834, as well as a federally registered “State Committee” of the Republican Party as defined by 52 U.S.C. § 30101(15). The RPP on behalf of itself and its members nominates, promotes, and assists Republican candidates seeking election or appointment to federal, state, and local office in Pennsylvania.

18. The RNC and the RPP each have made significant contributions and expenditures in support of Republican candidates up and down the ballot and in mobilizing and educating voters in Pennsylvania in past election cycles and are doing so again in 2024. These efforts include devoting substantial time and resources towards monitoring the voting and vote counting processes in Pennsylvania and ensuring those processes are conducted lawfully. The RNC and the RPP make expenditures to ensure they and their voters understand the rules governing the elections process, including the requirements for voting absentee or by mail and the policies for curing mail-in ballots adopted by each county board of elections in the Commonwealth. Any time a voting or election rule is changed by law, a court order, or an elections official in Pennsylvania, the RNC’s and the

RPP's past expenditures on learning and educating voters, volunteers, and candidates regarding the past rule are wasted, and the RNC and the RPP are required to make new expenditures to learn and to educate voters, volunteers, and candidates regarding the new rule.

19. Accordingly, any judicial order requiring the Washington County Board of Elections to change its notice or curing policy with respect to mail-in ballots would harm the RNC and the RPP by affecting their core business activities of educating voters, volunteers, and candidates and attempting to win elections. Indeed, such an order could change the outcome of an election in which a Republican candidate would have prevailed but another candidate is declared the winner due to the court-ordered change in the Washington County Board of Elections' policy. Moreover, and at a minimum, such a judicial order would require the RNC and the RPP to make new expenditures to understand the order and to educate voters, volunteers, and candidates regarding it. Those new expenditures would require the RNC and the RPP to divert resources from their other core business activities toward revising their training and education programs.

Voting by Mail in Pennsylvania

20. Ahead of the April 23, 2024, primary election, the Department of State redesigned the declaration envelope and instructions provided to mail-in ballot voters to "reduce voter errors and confusion." The changes included highlighting the fields the voter must complete on the declaration envelope and pre-filling "20" for the year to help ensure voters write the current date instead of their birthdate, a common disqualifying error. DOS also gave counties the option to include a hole punch on the outer envelope, which would allow election officials to readily see when mail-ballot voters had forgotten to include the inner yellow secrecy envelope.

21. Washington County uses the Statewide Uniform Registry of Electors (SURE) system to record the status of mail-in ballots.

22. DOS's recent software updates to the SURE system, which are reflected in DOS's March 11, 2024 SURE Project County Release Notes, affords election offices more options of codes they may use when they receive a mail-in ballot with a disqualifying error. A true and correct copy of the March 11, 2024 County Release Notes is attached as Exhibit D.

23. Entry of voters' mail ballot status also allows each voter to "track" the status of their mail-in ballot at a DOS website:

<https://www.pavoterservices.pa.gov/pages/ballottracking.aspx>

24. When the county election office selects the "cancelled" or "pending" code into the SURE system, both the automatic email sent through the SURE system and DOS's mail-ballot tracker inform the elector that their mail-in ballot has a disqualifying error. This data is also made publicly available to requestors, enabling political parties and voting rights organizations to reach out to affected voters and notify them of their ballot status. *See* 25 P.S. §§ 3146.9, 3150.17.

25. The emails found at Exs. A, B, and C are auto-generated emails sent through the SURE system, and the text of the email is not approved by Washington County or the Washington County Board of Elections.

Washington County Board of Elections Mail-in-Voting Policy and Practice

26. In 2023, the Washington County Board of Elections voted to adopt a policy that provided absentee and mail-in voters with notice of and the opportunity to cure certain defects in their mail-in ballots in both the 2023 primary election and 2023 general election.³

27. Because the Board of Elections had voted to adopt a policy that permitted voters to attempt to cure potentially defective mail-in ballots, in the lead-up to both the 2023 primary

³ For ease of reference, these Stipulated and Agreed Facts use the term "mail-in ballots" to encompass both absentee and mail-in ballots as described in the Election Code.

and general elections, Washington County recorded defective mail-in ballots in the SURE system as “CANC – NO DATE” and “CANC – NO SIGNATURE” prior to Election Day.

28. Pursuant to the Board of Elections’ adopted policy, in 2023 the County permitted voters to “cure” mail-in ballots that lacked a signature by going to the election office to add the signature. Voters who forgot the date or wrote an “incorrect date” could request a replacement mail-in ballot or vote a provisional ballot at their local polling place on Election Day.

29. On March 12, 2024, the Washington County Board of Elections discussed whether or not to continue its policy of providing notice and cure procedures, or to adopt a different policy.

30. At the March 12 meeting, Election Director Melanie Ostrander explained that counties had “multiple options” to handle “curing” in light of the DOS SURE system update. Board members could continue directing the election office to mark erroneous ballots “cancelled” so the voter received an email alerting them to the problem, or they could implement a “notice and cure” procedure in which election staff contact voters about the problem and allow them to fix it in the office.

31. Washington County sent out the vast majority of its mail-in ballots on April 1, 2024, according to SURE system data.

32. Mail-in ballots prepared and sent to voters by the Washington County Board of Elections contain instructions for filling out the ballot, including the declaration on the return envelope and indicate at the top, “For your ballot to count, you must follow all of these steps.” A true and correct copy of the instructions is attached as Exhibit E.

33. On April 11, 2024, the Washington County Board of Elections met again to discuss whether to change the existing “notice and cure” process for the April 2024 election.

Director Ostrander told the Board that their office had already identified “60 defective ballots,” about half of which were missing the final two digits in the year.

34. Election Director Ostrander again explained options for how counties can handle ballots with errors. She told the Board that (1) counties can contact the voter to let them know about the error and provide an opportunity to fix it at the election office; (2) the election office can mark the ballot “cancelled” so the voter will be notified by email that they need to request a new ballot or vote provisionally at their polling place; or (3) the election office can take no action and the voter will not learn about the error or have any opportunity to correct it.

35. Following the discussion, the Washington County Board of Elections voted 2-1 to enact a policy that does not provide voters with notice of and the opportunity to cure defective mail-in ballots.

36. On April 16, 2024, attorneys from the American Civil Liberties Union of Pennsylvania (ACLU-PA) and the Public Interest Law Center (PILC) delivered a letter to the Washington County Board of Elections urging the Board to change its decision and allow “curing” or at a minimum, to enter the segregated ballots into the SURE system as “cancelled” so that voters would be notified and have the option to cast a provisional ballot on Election Day. The Board never responded to the letter but the County Commissioners did discuss the issue at a meeting on April 18, 2024.⁴

37. At the County Commissioners’ meeting on April 18, 2024, community members, including representatives from Washington Branch NAACP, provided public comment criticizing the Board’s decision not to notify voters who made mistakes on their declaration

⁴ The County has three Commissioners and those three Commissioners also comprise the Board of Elections.

envelopes. At the meeting, 27 individuals provided public comment in support of “curing” mail-in ballots and 7 spoke in favor of the Board’s decision.

38. Commissioner Maggi asked his colleagues to reconsider their decision not to allow “curing.” His motion to “reconvene to reconsider this issue” did not receive a second from either Commissioner Sherman or Commissioner Janis and, therefore, was not eligible for further discussion or voting. Commissioner Sherman stated, “My vote would not change.”

39. As of the April 18th meeting, 170 ballots had already been identified and segregated for disqualifying errors on the declaration envelopes.

40. When Washington County sends a voter a mail-in ballot, Washington County marks this in the SURE system.

41. When Washington County receives a mail-in ballot from a voter, Washington County marks the receipt in the SURE system.

42. To record the Washington County Board of Elections’ receipt of absentee and mail-in ballots in the 2024 primary election, representatives of the Board of Elections selected in SURE the “Record – Ballot Returned” drop-down. Representatives entered this code for every mail-in ballot, including mail-in ballots that were segregated for disqualifying errors.

43. After receiving a mail-in ballot, the Washington County Board of Elections locks the ballot in a secure location.

44. In April 2024, the election office told voters who inquired about their mail-in ballot whether the ballot had been received. The office did not provide any voters with information about whether their mail-in ballot had been segregated for a disqualifying error on the declaration envelope.

45. The primary election in Pennsylvania was held on April 23, 2024.

46. On Election Day, the poll books in Washington County indicated only which voters had requested a mail-in ballot and whether each such voter's ballot had been received by the Board.

47. If a voter's mail-in ballot is received by the Washington County Board of Elections before the close of the polls and that voter also fills out a provisional ballot, the provisional ballot will not be counted by the Board, even if that mail ballot had disqualifying errors such as a missing signature on the declaration envelope, a missing or incorrect date on the declaration envelope, or a missing secrecy envelope.

48. No representative of either Organizational Plaintiff attended the public canvassing for the 2024 primary election.

49. None of the voters in Washington County whose mail-in ballots had been set aside in the April 2024 primary cast a provisional ballot on Election Day.

50. No Voter Plaintiff contested his/her vote not being counted by appealing under 25 P.S. § 3157.

51. On May 17, 2024, Washington County responded to a Right-to-Know-Law request submitted by the ACLU of Pennsylvania, which sought a list of all mail-in voters whose ballots were set aside and not counted due to a disqualifying error. A true and correct copy of the May 17, 2024 response is attached as Exhibit F. According to the information provided in that Right-to-Know-Law response, Washington County did not count the following timely-received ballots for the April 2024 election:

- a. 126 ballot envelopes were signed, but had an "incomplete date";
- b. 41 ballot envelopes were signed, but had an "incorrect date";
- c. 18 ballot envelopes were signed, but undated;

- d. 3 ballot envelopes were undated and had a signature in the “wrong area”;
- e. 1 ballot envelope was not signed and had an incomplete date;
- f. 6 ballot envelopes were dated, but not signed;
- g. 52 ballot envelopes were neither signed nor dated; and
- h. 12 ballot packets were lacking a secrecy envelope.

52. In total, Washington County did not count in the vote tally 259 timely-received mail-in ballots for the April 2024 primary election. This represents 2% of all mail-in ballots that were timely-received by the election office. These voters are both Democrats and Republicans.

53. In May of 2024, as documented in an email from Assistant Secretary of State Jonathan Marks, the Department of State held “feedback sessions” with County Boards of Elections officials to “work with you on revising the language included in SURE-generated emails to voters based on the selection of a mail-in ballot status code. The Department has sought to include language that reflects the differing practices of every county, and we welcome all of your feedback in helping us to craft language that represents what each and every one of you do.” A true and correct copy of Assistant Secretary of State Marks’s email is attached as Exhibit G.

54. On July 1, 2024, the Department of State issued a Directive Concerning the Form of Absentee and Mail-in Ballot Materials (Directive) that, among other things, includes mandatory requirements for how all County Boards of Elections must prepare and print the form of the declaration on the outer envelope of all absentee and mail-in ballots for the November 2024 general election. A true and correct copy of the Directive is attached as Exhibit H.

55. The Directive requires County Boards of Elections to print above the date field on the declaration: “Today’s date here (REQUIRED).”

56. The Directive requires County Boards of Elections to provide four boxes in the date field of the declaration, print “Month” under the first two boxes, and print “Day” under the second two boxes.

57. The Directive also requires County Boards of Elections to print the full year (“2024”) in the date field of the declaration.

58. The parties agree to the admissibility of the following documents, true and correct copies of which are attached as:

- Ex. A: April 22, 2024 email to Jeffrey Marks
- Ex. B: April 15, 2024 email to Sandra Macioce
- Ex. C: April 22, 2024 email to Kenneth Elliott
- Ex. D: Pa. Dep’t of State, SURE Project, County Release Notes (Mar. 11, 2024) (Compl. Ex. 10)
- Ex. E: Washington County mail-in ballot voter instructions
- Ex. F: Right-to-Know Law Response from Washington County producing the names of mail-in ballot voters who submitted timely ballots in the April 23, 2024 election but were set aside for errors (Compl. Ex. 20)
- Ex. G: May 10, 2024 email from Assistant Secretary of State Jonathan Marks re: “Feedback Sessions”
- Ex. H: July 1, 2024 Department of State Directive Concerning the Form of Absentee and Mail-in Ballot Materials
- Ex. I: Department of State Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes (Apr. 3, 2023) (Compl. Ex. 9)
- Ex. J: Department of State Pennsylvania Provisional Voting Guidance (Mar. 11, 2024) (Compl. Ex. 13)
- Ex. K: Washington County Board of Elections Meeting Minutes from April 26, 2023 and Sept. 19, 2023 (Compl. Ex. 17)
- Ex. L: Washington County Board of Elections Meeting Minutes from March 12, 2024
- Ex. M: Washington County Board of Elections Meeting Minutes from April 11, 2024 (Compl. Ex. 18)
- Ex. N: Washington County Board of Commissioners’ Meeting Minutes from April 18, 2024

Dated: July 26, 2024

STIPULATED AND AGREED TO BY:

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*Counsel for Intervenor-Defendant
Republican National Committee*

Joint Stipulation

Exhibit A

RETRIEVEDFROMDEMOCRACYDOCKET.COM

FW: Your Ballot Has Been Received

skram1092 <skram1092@aol.com>

Mon, Jun 17, 2024 at 4:45 PM

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

See attached

Jeff

Sent from my T-Mobile 5G Device

----- Original message -----

From: RA-voterregstatcert@state.pa.us

Date: 4/22/24 10:26 AM (GMT-05:00)

To: SKRAM1092@AOL.COM

Subject: Your Ballot Has Been Received

Dear JEFFREY R MARKS,

Your ballot has been received by WASHINGTON County as of April 22, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx> .
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>。

Thank you.

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

Joint Stipulation

Exhibit B

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Fwd: Your Ballot Has Been Received

Gary Macioce <legacy1052019@gmail.com>
To: ksteiker-ginzberg@aclupa.org
Cc: cdepalma@pubintl.org

Wed, Jun 26, 2024 at 2:32 PM

----- Forwarded message -----

From: <RA-voterregstatcert@state.pa.us>
Date: Mon, Apr 15, 2024 at 12:03 PM
Subject: Your Ballot Has Been Received
To: <legacy1052019@gmail.com>

Dear SANDRA L MACIOCE,

Your ballot has been received by WASHINGTON County as of April 15, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx> .
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>。

Thank you.

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

--

Gary and Sandy Macioce
105 Legacy Drive
Canonsburg, PA 15317

legacy1052019@gmail.com

Joint Stipulation

Exhibit C

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Fwd: Your Ballot Has Been Received

1 message

Ken Elliott <kenelliott76@gmail.com>
To: Ksteiker-ginzberg@aclupa.org

Fri, Jun 28, 2024 at 7:00 PM

Sent from my iPhone

Begin forwarded message:

From: RA-voterregstatcert@state.pa.us
Date: 22 April 2024 at 11:06:53 GMT-4
To: kenelliott76@gmail.com
Subject: Your Ballot Has Been Received

Dear KENNETH B ELLIOTT,

Your ballot has been received by WASHINGTON County as of April 22, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx> .
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>。

Thank you.

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

Joint Stipulation

Exhibit D

RETRIEVEDFROMDEMOCRACYDOCKET.COM



Changes to SURE VR and PA Voter Services as of March 11, 2024

The following information outlines the additions and changes which will be deployed after the close of business on March 11, 2024, as part of the B 23.9.0 release. Please contact the SURE Help Desk for further information or with questions regarding any item(s) on the list provided below.

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SURE VR

Ballot Response Type Updates

As part of this release, modifications have been made within the SURE VR system to add 6 OPTIONAL 'Pending' Status Reasons when recording 'Response Types' for absentee and/or mail in ballot labels. These options may be used if a county offers ballot curing. If a county chooses to apply these Status Reasons and the voter's ballot application contains an email address, the system will then send an email to the voter which will provide them with information relating to the status of their ballot with a URL link to the Department of State website. Email details are provided later in this document.

Below are the new 'Pending' Status Reasons:

- PEND – INCORRECT DATE
- PEND – NO DATE
- PEND – NO SIGNATURE
- PEND – NO SECRECY ENVELOPE
- PEND – NO ID
- PEND – OTHER

The new response types are available for selection for each of the following ballot labels:

- Absentee Ballot Label
- Mail-In Ballot Label
- PA – Bedridden Veteran Ballot Label
- PA – Email – Bedridden Veteran Ballot Label
- PA – Email – Military and Civilian Overseas Ballot Label
- PA – Email – Remote/Isolated Bedridden Veteran Ballot Label
- PA – Email – Remote/Isolated Overseas Ballot Label
- PA – Military and Civilian Overseas Ballot Label
- PA – Remote/Isolated Bedridden Veteran Ballot Label
- PA – Remote/Isolated Overseas Ballot Label



The response types are available in the following areas within the SURE VR system:

- **Record Mailings Screen**

Response Date: 02/22/2024 Letter Type: Absentee Ballot Label
Ballot Counted: Resp Type:
Ballot Re
Record Response Response History
Submit for Printing Later ID-Only
Bar Code(ID): Name: R
Name:
Res:
Mail:

CANCEL - EMAIL BALLOT UND BATCH
CANCEL - EMAIL BALLOT UNDELIVERABLE
CANCEL - INCORRECT DATE
CANCEL - LABEL CANCELLED
CANCEL - NO DATE
CANCEL - NO ID
CANCEL - NO SECRECY ENVELOPE
CANCEL - NO SIGNATURE
CANCEL - OTHER
CANCEL - REPLACED
CANCEL - RETURNED AFTER DEADLINE
CANCEL - UNDELIVERABLE
CANCEL - VOTE CHALLENGED
PEND - INCORRECT DATE
PEND - NO DATE
PEND - NO ID
PEND - NO SECRECY ENVELOPE
PEND - NO SIGNATURE
PEND - NOT YET RETURNED
PEND - OTHER
RECORD - BALLOT RETURNED

- **Bulk Ballot Response Utility Screen**

Bulk Ballot Response Utilities
File Upload Affected Voters Exception Corr Record Response Exception Response
Record Response
Election: 2024 GENERAL ELECTION (11/05/2024)
Response Type:
Response Date:
Ballot Received:
Total Number of:
Record
Cancel

CANCEL - EMAIL BALLOT UND BATCH
CANCEL - EMAIL BALLOT UNDELIVERABLE
CANCEL - INCORRECT DATE
CANCEL - LABEL CANCELLED
CANCEL - NO DATE
CANCEL - NO ID
CANCEL - NO SECRECY ENVELOPE
CANCEL - NO SIGNATURE
CANCEL - OTHER
CANCEL - REPLACED
CANCEL - RETURNED AFTER DEADLINE
CANCEL - UNDELIVERABLE
CANCEL - VOTE CHALLENGED
PEND - INCORRECT DATE
PEND - NO DATE
PEND - NO ID
PEND - NO SECRECY ENVELOPE
PEND - NO SIGNATURE
PEND - NOT YET RETURNED
PEND - OTHER
RECORD - BALLOT RETURNED



TLP:AMBER+STRICT

Department of State
Statewide Uniform Registry of Electors (SURE) Project
B 23.9.0_County Release Notes
March 11, 2024

- **Ballots** tab on the **Absentee/Mail-In Voting** screen

Absentee/Mail-In Voting

ADAMS, LISA A
35-012-1
S. ABINGTON W-00 P 1-2

Select Application: 2024 GENERAL PRIMARY (04/23) ID: 116910675

Application App Details App Status **Ballots** Permanent ID Verification Application Queue

Ballot Received Method	Status-Reason	Ballot Delivery	Date Sent	Date Received
USPS	RECORD - BALLOT RETURNED	USPS		
Comments	CANC - EMAIL BALLOT UNDELIVERABLE CANC - EMAIL BALLOT UNDELIVERABLE CANC - INCORRECT DATE CANC - LABEL CANCELLED CANC - NO DATE CANC - NO ID CANC - NO SECRET ENVELOPE CANC - NO SIGNATURE CANC - OTHER CANC - REPLACED CANC - RETURNED AFTER DEADLINE CANC - UNDELIVERABLE CANC - VOTE CHALLENGED FWAB OVERRIDE-OFFICIAL BALLOT RECEIVED FEND - INCORRECT DATE FEND - NO DATE FEND - NO ID FEND - NO SECRET ENVELOPE FEND - NO SIGNATURE FEND - OTHER RECORD - BALLOT RETURNED RECORD - FWAB RETURNED			

Record Vote New Ballot Delete Ballot OK Cancel

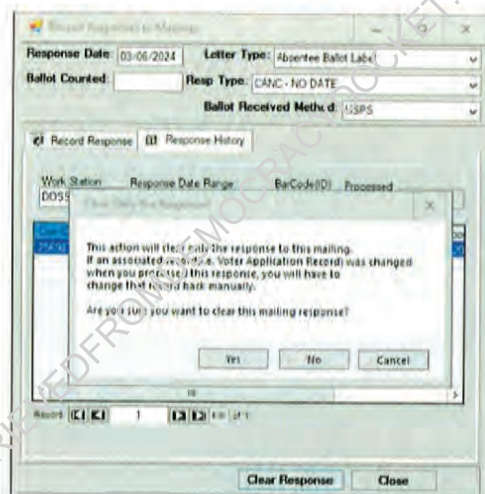
Please Note: Although changes were made to include the new response types under the **Ballots** tab of the **Absentee/Mail-In Voting** screen, the Department of State strongly recommends if a Status Reason update is needed, that the change should be made by utilizing the **Record Mailings** or **Bulk Ballot Response Utility** screens.



By current design, changing the Status Reason from the **Absentee/Mail In Voting** screen, *Ballots* tab will not properly update the *Correspondence* tab on the voter record.

If using the **Record Mailings** screen, it will be necessary to access the *Response History* tab of the **Record Mailings** screen to clear the previous response before you can proceed to update the new response type.

Please reference the "Clearing an Absentee Ballot Label Response" in the Absentee Processing User Guide for detailed steps to clear a response.



Additionally, the response type of 'CANC-VOTE CANCELLED' has been removed as a drop-down selection. Any previous ballot applications associated with this status will not be affected for historical purposes.



Ballot Response Email Verbiage Updates

As part of this release, emails that are triggered upon recording a response have been updated to include the new pending Response Types and will provide the applicant with more information regarding their current ballot status. These apply when a change has been made to the ballot or when the ballot has been recorded as received,

The table below lists each of the 'Response Types' as well as the 'Business Reason' for which they apply. The 'Second Paragraph Email Verbiage' describes language that is associated to each Response Type and will appear as dynamic text in the second paragraph of the emails. This information will also appear on the PAVS Election Ballot Status Tracker updates described later below.

Response Type	Business Reason	Second Paragraph Email Verbiage
PEND – OTHER	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed a submission error.	The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – INCORRECT DATE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter used the wrong date.	Your mail ballot may not be counted because you did not correctly date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO DATE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter left	The county has noticed that you did not date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.



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	the ballot return envelope undated.	If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO SIGNATURE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter left the ballot return envelope unsigned.	The county has noticed that you did not sign your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information. If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO SECRECY ENVELOPE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter returned the ballot without a secrecy envelope.	The county has noticed that when you returned your ballot, you placed it in the ballot return envelope without placing it into the secrecy envelope that says "OFFICIAL ELECTION BALLOT." This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelopes, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information. If you cannot fix your ballot envelopes in time, you can go to your polling place on election day and cast a provisional ballot.
CANC – EMAIL BALLOT UND BATCH	This is used by SURE VR when an email ballot correspondence cannot be delivered to the absentee email address. Ballots with this type of response were automatically placed in an UND DEL absentee application batch.	Your ballot will not be counted because your emailed balloting materials have been returned as undeliverable.
CANC – EMAIL BALLOT UNDELIVERABLE	Cancels a ballot label that has been sent via email if the email has been returned as undeliverable.	Your email balloting materials were returned as undeliverable. Your county will send you a new paper ballot to the address on file.



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	Recording a ballot label as CANCEL- Email Ballot Undeliverable will automatically queue a paper ballot label for the voter.	
CANCEL – INCORRECT DATE	This cancels the ballot if it is returned to the county with an incorrect date on the ballot envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your mail ballot may not be counted because you did not correctly date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANCEL – LABEL CANCELLED	Used if a ballot label is misplaced or damaged and is cancelled in order to create another one; also used to generate 2 nd ballot labels.	Your ballot status has been updated to cancelled because your original ballot has been misplaced or damaged. A new ballot is being created and will be provided to you. No email generated.
PENDING – NO ID	To be used by any county that has received a ballot for a voter who did not include the required ID, and who wants to alert the voter to this issue.	Your ballot application did not include valid identifying information, and your ballot was returned without the necessary ID. Your ballot will not be counted unless you bring valid identifying information to your county election official. You can find more information on the necessary ID here: https://www.vote.pa.gov/Voting-in-PA/Documents/DOS_Identification_for_absentee_voting.pdf .
CANCEL – NO DATE	Cancels the ballot if it is returned to the county with no date on the ballot envelope. It should only be used when the county has made a final decision as to	Your mail ballot may not be counted because you did not date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.



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	the ballot, or it does not offer the opportunity to cure.	
CANC – NO ID	Cancels ballot if absentee or mail-in requiring ID is not provided.	Your ballot will not be counted because you did not timely provide proof of identification.
CANC – NO SECRECY ENVELOPE	Cancels ballot if county receives ballot and it is not in the inner secrecy envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your ballot will not be counted because it was not returned in a secrecy envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO SIGNATURE	Cancels the ballot if it is returned to the county with no signature on the ballot envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your ballot will not be counted because you did not sign the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date] or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – REPLACED	Used to cancel a lost ballot if a replacement is sent.	No email generated.
CANC – RETURNED AFTER DEADLINE	After Deadline Cancels the ballot if it is invalid due to being returned after the deadline.	Your ballot will not be counted because it was received after the deadline.
CANC – UNDELIVERABLE	Cancels the ballot if it is returned undeliverable by the Post Office.	Your ballot will not be counted because it was returned as undeliverable by the United States Postal Service (USPS). If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you



		can go to your polling place on election day and cast a provisional ballot.
CANC – OTHER	The CANC– OTHER status reason should be used <i>only</i> when no other field more aptly applies. This may be for a secrecy envelope with disqualifying markings on it, or other issues that do not fall into another SURE categories. Do not use this code for any other cancellation reason.	The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – VOTE CHALLENGED	Used if a ballot is not counted because of a successful challenge.	Your ballot will not be counted because of a successful challenge.
PEND – NOT YET RETURNED	Status the label is in after the ballot is sent and before it is returned.	No email generated.
RECORD – BALLOT RETURNED	Records the voter's ballot as returned prior to the deadline.	Your ballot has been received by [County Name] County as of [DateRecorded]. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot and you are no longer permitted to vote at your polling place location.
RECORD-FWAB RETURNED	Used to record a Federal Write In Ballot was received prior to the Official Ballot being returned.	Your ballot has been received by [CountyName] County as of [DateRecorded].
FWAB OVERRIDE-OFFICIAL BALLOT RECEIVED	Used to record an Official Ballot as returned and	Your ballot has been received by [CountyName] County as of [DateRecorded].



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	overrides the Federal Write In Absentee Ballot previously recorded.	
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Sample Emails:

The email gives the voter notice that their ballot has been received and has additional language stating that the voter may receive further communication if an error is identified with their ballot.

Subject Line: Your Ballot Has Been Received

Email Body:

Dear [ApplicantName],

Your ballot has been received by [CountyName] County as of [DateRecorded].

Please note, if [CountyName] County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact [CountyName] County at [CountyContact].
Thank you.

To read this information in Spanish, go to [ballot tracker URL] - In Spanish

To read this information in Chinese, go to [ballot tracker URL] - In traditional Chinese

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

FWAB Ballots

Subject Line: Your Ballot Has Been Received

Email Body:

Dear [ApplicantName],

Your ballot has been received by [CountyName] County as of [DateRecorded]. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact [CountyName] County at [CountyContact].
Thank you.

To read this information in Spanish, go to [ballot tracker URL] - In Spanish

To read this information in Chinese, go to [ballot tracker URL] - In traditional Chinese



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

Your Ballot Status Has Changed

The email below is generated when certain cancel codes and pending codes are recorded in SURE VR.
The second paragraph dynamic email language will be the same as shown in the table above.

Subject Line: Your Ballot Status Has Changed – Check for Updates

Email Body:

Dear [ApplicantName],

After your ballot was received by [CountyName] County, it received a new status.

(THE SECOND PARAGRAPH DYNAMIC EMAIL LANGUAGE WILL APPEAR HERE.)

You can get more information on your ballot's new status by going to
<https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions or need more information after checking your ballot's status, please contact
[CountyName] County at [CountyContact].

To read this information in Spanish, go to [ballot tracker URL] - In Spanish

To read this information in Chinese, go to [ballot tracker URL] - In traditional Chinese

Thank you.

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



SURE VR Disconnects

Modifications to the SURE VR system to address county reported issues with the 'Add Last Scan Document' and 'Add Last Scan' buttons, stemming from a discovered issue with system disconnects from the 'Z Drive'. Currently, users must select a map drive button in CITRIX when this issue occurs. This release will include systematic logic to reconnect the drive when the system detects a disconnect has occurred.

- The system will now give an updated error message when an incorrect file format is being used.

Vote! Applications

Address Not Verified New

Application App Status Correspondence HAVA Checks

Source: [Dropdown] ☒ New ☐ Cancel

Last Name: [Text] Suffix: [Text] First Name: [Text]

House #: 1/2 Dir: [Dropdown] Street Name: [Text]

Address Line 2: [Text] Mail Addr Line 1: [Text]

Birth Date: [Text] SSN: [Text] Drivers Lic: [Text]

Email Address: [Text] Insert [Text]

App Date: 03/11/2024 Reg Date: [Text] Assistance: [Text]

Old Name: [Text] Title: [Text] Last Name: [Text] Suffix: [Text] First Name: [Text] Middle Name: [Text] Voter Number: [Text]

Old Address: [Text] House #: [Text] Street Name: [Text] Unit #: [Text] Unit #: [Text] City: [Text] State: [Text] Zip Code: [Text] County: [Text]

Approve App Process App Delete App OK Cancel

Record [Icons] 0 of 0

Invalid Scan

TIF format file not exists in C:\Windows\temp

OK



PA VOTER SERVICES

Election Ballot Status Tracker

In addition to the updates mentioned above, modifications have also been made to the PAVS Election Ballot Status Tracker for a voter wishing to view their ballot status for a ballot application as follows:

- The 'Ballot Type' column has been updated to display either "Absentee" or "Mail-In".
- The 'Status' column displays the Response Types associated to the ballot.
- Below each ballot line item will be a brief description of the status listed to give additional information to the voter.
- In the event multiple Response Types exist for an active election, then each of the ballot line items will be displayed along with the status of each ballot.

The tracker and all columns have been updated to appear in English, Spanish, and Traditional Chinese based on the selection made by the voter.

Please see the screenshots below:



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You cannot use the tracker to track the status of a ballot voted in person on Election Day.

First Name (as it appeared on your application)

Lee

Last Name (as it appeared on your application)

Johnson

Date of Birth (mm/dd/yyyy)

08/26/1963

County

LACKAWANNA

Submit

Your Ballot Status Result(s)

Ballot Type	Election	Application Received	Application Processed	Ballot Mailed On	Ballot Received	Status
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC - OTHER

The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before [April 08, 2024], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

The table above provides a summary of your application and ballot status. The columns will update as your county processes your application or ballot. The status column will read as "Vote Recorded" after your county has received your voted ballot.

If you have any questions about the status of your ballot, please contact LACKAWANNA County at (570) 963-6737 or visit www.vote.pa.gov/county for more information.

Column Descriptions:

Ballot Type - Absentee or Mail-In

Election - The requested ballot is for this election.

Application Received - The date when your county received your application.

Application Processed - The date when your county processed your application.

Ballot Mailed On - The date when your county mailed your ballot to the address on your application.

Ballot Received by County - The date when your county received your voted ballot.

Status - The status of your ballot request is the last known state of where your ballot request stands.



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Estado de la boleta electoral

Puede rastrear el estado de su **papeleta de voto por correo** o en ausencia completando los campos abajo. **No puede usar el rastreador para rastrear el estado de la papeleta que completó en persona el día de las elecciones.**

Nombre (tal y como aparecía en su solicitud)

Lee

Apellido (tal y como aparecía en su solicitud)

Johnson

Fecha de Nacimiento (MM/DD/YYYY)

08/26/1963

Condado

LACKAWANNA

Enviar

Resultado(s) del estado de su boleta

Tipo de boleta	Elección	Solicitud recibida	Solicitud procesada	Boleta enviada por correo	Boleta recibida	Estado
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC – OTHER

El condado ha identificado un error en el (los) sobre(s) de su papeleta y su papeleta no será contada. Si no tiene tiempo para solicitar una nueva papeleta antes de la April 08, 2024, o si la fecha límite ya pasó, puede ir a su lugar de votación el día de las elecciones y emitir una papeleta provisional.

El cuadro de arriba presenta un resumen de su solicitud y estado de boleta. Las columnas se actualizarán a medida que en su condado se procese su solicitud o boleta. En la columna de estado aparecerá "Vote Recorded" después de que su condado haya recibido su boleta de votación.

Si tiene alguna pregunta sobre el estado de su boleta, por favor comuníquese con el Condado de LACKAWANNA en (570) 963-6737 o visite www.vote.pa.gov/county para más información.

Descripciones de las columnas

Tipo de boleta - Ausente o por correo

Elección - La boleta solicitada es para esta elección.

Solicitud recibida - La fecha en la que su condado recibió su solicitud.

Solicitud procesada - La fecha en la que su condado procesó su solicitud.

Boleta enviada por correo - La fecha en la que su condado le envió su boleta a la dirección que figura en su solicitud.

Boleta recibida por el condado - La fecha en la que su condado recibió su boleta de votación.

Estado - El estado de su solicitud de boleta es el último estado conocido en el que se encuentra su solicitud de boleta.



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選票狀態

填寫下列欄位，即可追蹤您的郵寄或缺席選票狀態。若選票是在選舉日當天由本人投入，則您無法使用追蹤器進行追蹤。

名字 (如申請上所示)

Lee

姓氏 (如申請上所示)

Johnson

出生日期 (月/日/年)

08/26/1963

縣

LACKAWANNA

提交

您的選票狀態結果

選票類型	選舉	申請接收日期	申請處理日期	選票郵寄日期	選票已接收	狀態
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC - OTHER

如果本縣發現您的選票信封有錯誤，您的選票將不予計數。如果您在 April 08, 2024 前沒有時間申請一張新選票，或如果截止日期已過，您可在選舉當日前往投票站投下一張臨時選票。

上表提供您申請與選票狀態的摘要。只要您的縣處理您的申請或選票，欄就會更新。縣收到您的投票選票之後，狀態欄就會變成「投票已記錄」。

若您對您的選票狀態有任何疑問，請聯絡 LACKAWANNA 縣 ((570) 963-5777)，或造訪 www.vote.pa.gov/county 以獲取更多資訊。

備說明：

選票類型 - 缺席還是郵寄

選舉 - 申請的選票用於此選舉。

申請接收日期 - 您的縣收到您申請的日期。

申請處理日期 - 您的縣處理您申請的日期。

選票郵寄日期 - 您的縣將您的選票寄到您申請地址的日期。

縣收到選票日期 - 您的縣收到您投票選票的日期。

狀態 - 您選票申請的狀態是您選票申請最近的已知狀態。



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DEPARTMENT OF STATE

English

Español

繁體中文

HOME

OTHER LINKS

Election Ballot Status

Your **Mail-in or Absentee Ballot status** can be tracked by completing the fields below.
You cannot use the tracker to track the status of a ballot voted in person on Election Day.

First Name (as it appeared on your application)

Jeff

Last Name (as it appeared on your application)

Penndot

Date of Birth (mm/dd/yyyy)

10/03/1965

County

LACKAWANNA

Submit

Your Ballot Status Result(s)

Ballot Type	Election	Application Received	Application Processed	Ballot Mailed On	Ballot Received	Status
Mail-In	2024 GENERAL PRIMARY	03/06/2024	03/06/2024			PEND - NOT YET RETURNED

Your ballot has not yet been returned to LACKAWANNA county. The status of your ballot will be updated once the county receives your ballot.

Absentee	2024 GENERAL PRIMARY	02/20/2024	02/20/2024			CANC - OTHER
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The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before April 16, 2024, or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

Note: The above shows multiple Response Types that are associated to the ballot.

Joint Stipulation

Exhibit E

RETRIEVEDFROMDEMOCRACYDOCKET.COM



Instructions – How to Pack Your Ballot

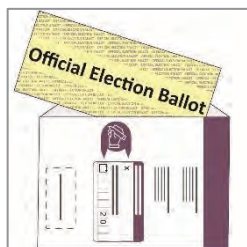
For your ballot to count, you must follow all of these steps.



1. Mark your ballot in black ink, and put it in the yellow envelope that says “Official Election Ballot.”

Put your ballot in the yellow envelope that says “Official Election Ballot” and seal it. This keeps your ballot secret.

Do not write your name, sign, or put any other type of mark on this yellow envelope.



2. Put the yellow envelope that says “Official Election Ballot” in the return envelope with the purple coloring.

Put the yellow envelope that says “Official Election Ballot” (with your ballot in it) in the return envelope with the purple coloring.



3. Sign inside the yellow box and put today’s date on the return envelope.

- Sign your name inside the yellow box.
- Put today’s date—not your birthdate.

If you have an illness or disability that prevents you from signing, make a mark inside the yellow box and have your witness complete the witness section.



4. Return your ballot right away.

- By mail – Put a stamp on it.
- In person – Bring your ballot to your county election office. Check the county website for times.

Deadline – Your ballot must be received by your county board of elections by 8 p.m. on Election Day.

Track your ballot at Vote.pa.gov/MailBallotStatus

- ✓ **If you deliver your ballot in person**, you must deliver it yourself. If you have a disability that prevents you from delivering your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake**, contact us at the phone number below.
- ✓ **If you receive an absentee or mail-in ballot and return your voted ballot by the deadline**, you cannot vote at your polling place on election day. If you are unable to return your voted absentee or mail-in ballot by the deadline, you can only vote a provisional ballot at your polling place on election day. But if you bring your absentee or mail-in ballot and the return envelope with you to your polling place, you can give up your mail ballot and vote in-person.

Contact:

Washington County Board of Elections
95 W Beau St, Ste G10
Washington, PA 15301
724-228-6750
9:00 a.m. – 4:30 p.m.

Joint Stipulation

Exhibit F

RETRIEVEDFROMDEMOCRACYDOCKET.COM

County of Washington

COMMONWEALTH OF PENNSYLVANIA

Commissioners

NICK SHERMAN
Chairman

ELECTRA S. JANIS
Vice Chair

LARRY MAGGI
Commissioner



DARYL W. PRICE
Chief of Staff

CYNTHIA B. GRIFFIN
Chief Clerk

95 W. BEAU ST., SUITE 605 - WASHINGTON, PA 15301 - 724-228-6724

May 17, 2024

SENT VIA EMAIL: ksteiker-ginzberg@aclupa.org

Kate Steiker-Ginzberg
ACLU of Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102

Dear Ms. Steiker-Ginzberg:

Thank you for writing to Washington County with your request for records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. § 67.101 *et seq.* Your RTKL request was received on May 10, 2024, and your request was reviewed, and a response is set forth below.

Requests

A complete list of mail-in ballot voters in the April 23, 2024 primary election whose ballots were timely received, but were set aside and not counted due to one of the following reasons: (1) missing or incorrect date on the outer envelope declaration; (2) missing signature on the outer envelope declaration; (3) missing secrecy envelope. Please provide each individual's name, the date the ballot was received at the election office, and the reason the ballot was set aside.

Responses

In response to your request above, this request is granted, and the document is attached to this email.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Regards,

Cynthia B. Griffin

Cynthia B. Griffin
Chief Clerk and Agency Open-Records Officer for Washington County

/cbg

Signed, incomplete date

Name	Address	City State Zip	Precinct	Party	Rec'd
Mae F Gannis	352 Victory Ln	Canonsburg PA 15317	Cecil 7	D	4/17/2024
George A Heckman	111 Driftwood Dr	Washington PA 15301	Carroll 5	R	4/15/2024
Kimberly E Aufmuth-Shell	1074 Woodlawn Dr	Canonsburg PA 15317	North Strabane 9	D	4/15/2024
Donna L Russell	390 Hiawatha Rd	Prosperity PA 15329	South Franklin 1	R	4/15/2024
Ann Louise Madia	10 Linda Ct	Canonsburg PA 15317	North Strabane 2	D	4/15/2024
Howard J Ferguson	811 Evergreen Dr	Washington PA 15301	South Strabane 2	D	4/15/2024
Mary Anne Bandalo	630 Sixth St	Donora PA 15033	Donora 4	D	4/15/2024
Lorre E Jacobs	2000 Tall Grass Ln Unit 206	Canonsburg PA 15317	Cecil 6	R	4/17/2024
Claire S Crowley	126 Lakewood Dr	Canonsburg PA 15317	North Strabane 9	D	4/17/2024
Mary M Patnesky	381 First St Po Box 183	Lawrence PA 15055	Cecil 8	D	4/17/2024
Barbara B Sheetz	133 Valley Rd	Eighty Four PA 15330	Nottingham 2	D	4/19/2024
Donna Rae Mersky	1298 Donnan Ave Apt B11	Washington PA 15301	Washington 7-3	R	4/18/2024
Melissa Marie DiLeo	198 Roscommon Pl	McMurray PA 15317	Peters A-1	D	4/17/2024
Cheryl H Konwick	195 Kevech Rd	Monongahela PA 15063	Fallowfield 2	D	4/19/2024
Charlene S Veydt	100 Highrise Way Apt 207	Burgettstown PA 15021	Burgettstown PA 15021	R	4/11/2024
Hortense D Davis	121 N Central Ave Apt 104	Canonsburg PA 15317	Canonsburg 2-2	D	4/11/2024
Kim Orlando	1400 Deer Creek Crossing Dr	Canonsburg PA 15317	Cecil 6	D	4/15/2024
Lynne K Plitt	367 Laurel Ridge Rd	Scenery Hill PA 15360	West Bethlehem	D	4/15/2024
Christopher T Berger	162 Muse Bishop Rd	Canonsburg PA 15317	Cecil 5	D	4/15/2024
Patricia A Clausi	13 Truman Rd	Charleroi PA 15022	Fallowfield 1	D	4/15/2024
Ashley M Vollmer	114 Sundial Dr	Canonsburg PA 15317	Cecil 5	D	4/15/2024
Henry T Likar Jr	555 McClane Farm Rd	Washington PA 15301	Chartiers 3	R	4/15/2024
Sandra L Macioce	105 Legacy Dr	Canonsburg PA 15317	North Strabane 3	R	4/15/2024
Savannah Lynn Poyer	111 Scenery Hill Dr	Canonsburg PA 15317	Cecil 5	R	4/15/2024
Diane Denice Richie	145 Smithfield St	Canonsburg PA 15317	Canonsburg 3-3	D	4/15/2024
Tonia Kay Grazzini	1003 Shady Ave	Charleroi PA 15022	Charleroi 6	R	4/15/2024
Jeanne Marie Kabacinski	2006 Trillium Ct	Canonsburg PA 15317	North Strabane 9	D	4/12/2024
Richard James Egnosak	466 Hunting Creek Rd	Canonsburg PA 15317	North Strabane 9	R	4/11/2024
Karen L Jurczak	617 Fourth St	North Charleroi PA 15022	North Charleroi	D	4/12/2024
Mary Elizabeth Griffin	114 Scenery Hill Dr	Canonsburg PA 15317	Cecil 5	R	4/12/2024
Marie Metz	217 Parkwood Circle	Canonsburg PA 15317	Cecil 4	D	4/12/2024
Eric Charles Glomb	327 Bridlewood Ct	Canonsburg PA 15317	North Strabane 5	D	4/12/2024
David Michael Hawk	410 Franklin ave	Canonsburg PA 15317	Canonsburg 1-3	R	4/12/2024
David Zelenko	397 Pine Ridge Dr	Venetia PA 15367	Peters D-1	D	4/12/2024
Charlene M Megyesy	204 Bench Ave	Washington PA 15301	Canton 5	R	4/12/2024
Kimberly Bouchon	13 Robb St	McDonald PA 15057	Robinson 3	D	4/11/2024
Michael B Kostrej Jr	850 Beech St Apt 209	Washington PA 15301	South Strabane 1	D	4/11/2024
Edward J Shiel Jr	907 Mary St Po Box 432	Langeloth PA 15054	Smith 6	D	4/11/2024
Nancy A Kostrej	850 Beech St Apt 209	Washington PA 15301	South Strabane 1	D	4/11/2024
James A Mauger	136 Kimber Dr	McMurray PA 15317	Peters A-3	R	4/12/2024
Erika Lyn Worobec	134 Wilson Ave	Cecil PA 15321	Cecil 4	D	4/11/2024
Gary W Froelich	217 Village Green Dr	McMurray PA 15317	Peters A-1	D	4/11/2024
Tod N Todd	523 Francis Mine State Rd	Burgettstown PA 15021	Hanover 2	D	4/8/2024
Glenn Butcher Jr	368 Narigon Run Rd	Claysville PA 15323	Independence 1	D	4/8/2024
Louis J Pellegrini	43 Pearl Alley	Monongahela PA 15063	Carroll 1	D	4/8/2024
Linda M Dolan	843 Western Ave	Washington PA 15301	Chartiers 6	D	4/8/2024
Bonnie L Knox	24 Ankrom Rd	Washington PA 15301	Amwell 1	D	4/8/2024
Susan M Lavallee	104 Woodhaven Dr	McDonald PA 15057	Cecil 1	D	4/17/2024
Mark Gregory Bloom	115 Victoria Ct	Canonsburg PA 15317	North Strabane 7	D	4/17/2024
Pamela F Lauff	414 Valley St PO Box 291	Midway PA 15060	Midway	D	4/17/2024
Linda C Amos	201 Montgomery Ave	Washington PA 15301	Washington 7-3	D	4/17/2024
Jessica Anne Bruyer	26 Covered Bridge Rd	McDonald PA 15057	Smith 4	D	4/17/2024
Thomas K Nutting	705 Eleventh St	Charleroi PA 15022	Charleroi 6	R	4/17/2024
Lauren Ashleigh MacWithey	71 1/2 W Katherine Ave	Washington PA 15301	Washington 6-3	D	4/17/2024
Joy L Kowcheck	2006 Avella Rd	Avella PA 15312	Independence 1	D	4/17/2024
Denise Ann Weisman	217 Fieldbrook Dr	Canonsburg PA 15317	North Strabane 4	D	4/17/2024
Elizabeth A Carey	205 Stonegate Dr	McMurray PA 15317	North Strabane 1	D	4/17/2024

Audrey Lee Adams Sims	530 Euclid Ave	Canonsburg PA 15317	Canonsburg 1-3	D	4/17/2024
Jeffrey R Marks	645 Lone Pine Rd	Washington PA 15301	West Bethlehem	D	4/22/2024
Linda M Azman	130 Veltri dr	Washington PA 15301	Canton 5	D	4/22/2024
Janet K Brownlee	207 Verona Dr	Washington PA 15301	South Strabane 2	D	4/22/2024
Victoria Claire Heilman	321 Doubletree Dr	Venetia PA 15367	Peters B-3	R	4/22/2024
D Glenn Garee	161 Mounts Rd	Washington PA 15301	South Franklin 1	R	4/22/2024
Sallie A Otto	14 Otto Ln	Charleroi PA 15022	Twilight	R	4/22/2024
Kathy J Gigliotti	115 Kinder Ave	Charleroi PA 15022	Fallowfield 1	D	4/22/2024
David Anthony D'Errico	701 Joffre Bulger Rd	Bulger PA 15019	Smith 7	R	4/22/2024
William F Zickefoose	243 Purdy Rd	Burgettstown PA 15021	Hanover 1	R	4/22/2024
James D Sirianni Jr	88 Nancy Ln	McMurray PA 15317	North Strabane 1	D	4/23/2024
Elizabeth M Olah	101 Fair Meadow Dr	Washington PA 15301	Chartiers 3	D	4/23/2024
Donna Lee Abraham	314 Anthem Way	Canonsburg PA 15317	Cecil 7	R	4/8/2024
Bernadette L Ohrman	505 Meadow Ave Rear	Charleroi PA 15022	Charleroi 3	D	4/11/2024
Thomas Michael Abraham	314 Anthem Way	Canonsburg PA 15317	Cecil 7	R	4/8/2024
Stephen James Morgo	37 Cherry St PO Box 88	Ellsworth PA 15331	Ellsworth	D	4/8/2024
Eileen Sappir	215 Overlook Dr	McMurray PA 15317	Peters A-1	D	4/8/2024
Marsha Lynn Kwait	230 Maple Ridge Dr	Canonsburg PA 15317	Cecil 7	D	4/12/2024
Rose Marie Ruble	441 Valley Brook Rd Apt 251	McMurray PA 15317	Peters A-3	D	4/15/2024
Cindy G Craig	114 Summit Circle	Houston PA 15342	Chartiers 7	D	4/8/2024
Janice K Milton	47 Preston Rd	Bentleyville PA 15314	Somerset 1	D	4/8/2024
Andrew Albert Boscan	532 Isabella Ave	North Charleroi PA 15022	North Charleroi	D	4/17/2024
Helen Zupan	711 Locust Ln	North Charleroi PA 15022	North Charleroi	D	4/8/2024
Abigail Elise Hay	91 Nancy Dr	McMurray PA 15317	Peters C-2	R	4/16/2024
David M Vizneki	1208 Sunset Dr	Bulger PA 15019	Robinson 1	R	4/11/2024
Caroline G Frazier	20 Round Top Dr	Finleyville PA 15332	Union 7	R	4/22/2024
Joanne H Piatt	940 Berry Rd	Washington PA 15301	South Strabane 2	D	4/22/2024
Kimberly P Staub	101 Walnut Rd	McDonald PA 15057	Mt Pleasant 1	R	4/11/2024
James M Rowan	72 Highland Ave	West Alexander PA 15376	Donegal 1	D	4/11/2024
John Debord	750 Clare Dr	Washington PA 15301	South Strabane 6	D	4/8/2024
Frank John Krautheim Jr	123 Heather Dr	Canonsburg PA 15317	North Strabane 9	D	4/18/2024
William M Stewart	324 Elm Dr	Canonsburg PA 15317	Cecil 6	D	4/18/2024
Jordan Christopher Matijevch	134 Stonegate Dr	McMurray PA 15317	North Strabane 1	R	4/18/2024
Rachel A Stevenson	236 Walnut St	Houston PA 15342	Chartiers 7	D	4/18/2024
Karen Faith Bryan	542 Fair Meadow Dr	Washington PA 15301	Chartiers 3	D	4/18/2024
David H Clapp	3493 route 40	Washington PA 15301	Buffalo	D	4/10/2024
Michaelene Brezarich	325 McClay Rd	Washington PA 15301	Canton 5	D	4/11/2024
Millay Victoria Shipley	803 First St Apt 201	Canonsburg PA 15317	Canonsburg 1-4	D	4/10/2024
Vincent Paul Golle	30 Chestnut Ln	McDonald PA 15057	Mt Pleasant 1	D	4/10/2024
Dana Lynn Geyer	4084 Overview Dr	Canonsburg PA 15317	Cecil 6	R	4/10/2024
Amy D Currey	138 Foxchase Dr	Canonsburg PA 15317	North Strabane 8	D	4/10/2024
Marion L Gaster	456 Low Hill Rd	Brownsville PA 15417	Centerville 6	D	4/10/2024
Amber Lynne Felmlee	172 Sunset Dr	Washington PA 15301	Canton 4	D	4/11/2024
Carol Sue Thomas	147 Dyers Stone Dr	Eighty Four PA 15330	Nottingham 2	R	4/10/2024
Blane A Black	121 Fair Meadow Dr	Washington PA 15301	Chartiers 3	D	4/10/2024
John D Stewart	139 W Fair Meadow Dr	Canonsburg PA 15317	North Strabane 2	R	4/11/2024
Carl M Ward	227 Hooks Ln	Canonsburg PA 15317	Canonsburg 1-4	D	4/10/2024
Dixie-Lee McKelvey	103 Merino Dr	Canonsburg PA 15317	North Strabane 8	D	4/10/2024
David L Dean	502 Ketchum Dr	Canonsburg PA 15317	Canonsburg 2-2	D	4/8/2024
Thomas L Buckels	74 Enterprise Rd	Washington PA 15301	South Strabane 2	D	4/8/2024
Kathryn Ann Severin	4 Core St	Washington PA 15301	Washington 6-3	D	4/8/2024
Thomas V Roberts Sr	9 Roberts Dr	Burgettstown PA 15021	Jefferson	D	4/8/2024
Gary M Stefansky	421 Ironwood Dr	Canonsburg PA 15317	Cecil 6	D	4/8/2024
Deborah Anita Holland	201 Buffalo Ridge Rd	McMurray PA 15317	Peters A-3	D	4/8/2024
Maryanne Marth	454 Linnwood Rd	Eighty Four PA 15330	North Strabane 3	R	4/8/2024
Phillip Lavelle	14 Patriot Dr	Canonsburg PA 15317	Cecil 7	D	4/11/2024
Dawn Eileen Miller	106 Fulton Rd	Canonsburg PA 15317	North Strabane 3	D	4/10/2024
Terrissa J Orme	2425 Route 136 Apt B	Eighty Four PA 15330	Somerset 2	D	4/22/2024

Seamonee D Smith	105 Bridle Ln	Washington PA 15301	Chartiers 3	D	4/22/2024
Richard Laughlin	249 W McMurray Rd Apt 202B	McMurray PA 15317	Peters A-1	D	4/22/2024
Kenneth B Elliott	110 Hatfield Rd	Amity PA 15311	Amwell 2	D	4/22/2024
Kathryn Kyluck	420 Vance Dr	Burgettstown PA 15021	Smith 6	D	4/15/2024
Mary Jane Silcott	351 Cloverdale Ave	Canonsburg PA 15317	Chartiers 2	R	4/22/2024
Daniel H Burt	1402 St Andrews Dr	Washington PA 15301	South Strabane 2	R	4/15/2024
Edward J Gannis	352 Victory Ln	Canonsburg PA 15317	Cecil 7	D	4/17/2024
Joyce A Freeman	1400 Main St Apt 611	Canonsburg PA 15317	Cecil 6	D	4/17/2024
Steffanie B Elkins	307 Park Ave	Monongahela PA 15063	Monongahela 1	R	4/10/2024
Edward Todd Stenson	1623 Pierce St	Aliquippa PA 15001	Centerville 4	R	4/15/2024
Michele Majestic	1045 Woodridge Dr	Canonsburg PA 15317	North Strabane 9	D	4/15/2024

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Name	Address	City State Zip	Precinct	Party	Rec'd
John S Coffey	1413 Yorktowne Dr	Lawrence PA 15055	Cecil 8	R	4/10/2024
Richard J Chester	40 Paul Dr	Washington PA 15301	South Strabane 6	D	4/8/2024
Joanne L Russell	112 Farmview Pl	Venetia PA 15367	Peters D-3	D	4/10/2024
Shirley M Shoaf	612 Clubhouse Dr	Washington PA 15301	South Strabane 6	R	4/11/2024
Kay L Sherwin	5032 Meadow Ave	Finleyville PA 15332	Union 1	D	4/15/2024
Vincent E Celento	241 Patterson Rd	Eighty Four PA 15330	Nottingham 1	D	4/15/2024
Dennis W Myers	106 Cove Ct	McMurray PA 15317	Peters A-3	R	4/10/2024
Lori Lee McWilliams	295 Walker Rd	Canonsburg PA 15317	North Strabane 2	D	4/15/2024
Joseph W Sulla	4015 Park Ave	Prosperity PA 15329	South Franklin 1	R	4/17/2024
Margaret Ann Archer	642 Creek Rd	Bulger PA 15019	Smith 3	D	4/17/2024
Gary W Nicholls	2269 E National Pike	Scenery Hill PA 15360	North Bethlehem	R	4/11/2024
Shirley McLaughlin	317 Wellness Way Apt 316	Washington PA 15301	South Strabane 3	D	4/11/2024
Carmon C LaSalvia Jr	110 Waynesburg Rd	Washington PA 15301	Amwell 1	D	4/12/2024
Doris P Riggle	319 Wellness Way Apt 321	Washington PA 15301	South Strabane 3	R	4/23/2024
Mary C Fortunato	1880 W Chestnut St Apt 2	Washington PA 15301	North Franklin 2	D	4/23/2024
Thomas P Howe Jr	104 Druid Dr	McMurray PA 15317	Peters D-3	R	4/22/2024
Magdalena A Hudson	502 Huntclub Dr	McMurray PA 15317	North Strabane 1	D	4/8/2024
Lori L Karavolis	246 Liberty Blvd	Canonsburg PA 15317	Cecil 7	D	4/17/2024
Frank E Brink Jr	367 Cecil Henderson Rd	Canonsburg PA 15317	Cecil 6	D	4/22/2024
Ewing J Rhoades	261 Hazelwood Dr	Washington PA 15301	North Franklin 1	R	4/8/2024
Ettore Cercone	253 Fort Cherry Rd	McDonald PA 15057	Mt Pleasant 1	D	4/10/2024
James V Scarsellato	15 Giffin Dr	Canonsburg PA 15317	North Strabane 7	D	4/17/2024
Nancy A McCreight	48 Morgan Ave	Washington PA 15301	East Washington	D	4/12/2024
Doris D Swesky	2172 Jefferson Ave	Washington PA 15301	Canton 2	D	4/15/2024
Loretta J Wilson	30 Dye Rd	Washington PA 15301	Canton 4	R	4/11/2024
Reba N Van Riper	502 Clubhouse Dr	Washington PA 15301	South Strabane 6	R	4/10/2024
Peter J Eaves	441 Valley Brook Rd Apt 244	McMurray PA 15317	Peters A-3	D	4/10/2024
Anne M Paris	85 Thompson Ave	Donora PA 15033	Donora 2	D	4/18/2024
Barbara Lynn Saunders	238 Fox Run Dr	Venetia PA 15367	Peters B-3	D	4/10/2024
Sandra Marie Grudevich	138 Walker Rd	Canonsburg PA 15317	North Strabane 3	R	4/22/2024
Marellen J Lowman	540 Church Hill Rd	Venetia PA 15367	Peters B-2	R	4/11/2024
Peter L Rudman	110 Morgan Dr	Washington PA 15301	South Strabane 2	D	4/8/2024
Beverly A Rudman	110 Morgan Dr	Washington PA 15301	South Strabane 2	D	4/8/2024
Louis S Sepe	440 Vaneal Rd	Washington PA 15301	South Franklin 1	R	4/22/2024
Maria J Sepe	440 Vaneal Rd	Washington PA 15301	South Franklin 1	R	4/22/2024
Nicholas Clinton Marshman	1823 N Main St	Washington PA 15301	South Strabane 1	D	4/15/2024
Daniel L Rudman	110 Morgan Dr	Washington PA 15301	South Strabane 2	D	4/10/2024
Howard F Anderson	277 Preston Dr	Washington PA 15301	South Strabane 1	D	4/10/2024
Marlene J Pascarella	204 Main St	New Eagle PA 15067	New Eagle 1	D	4/8/2024
Nolan T Vance	9812 Steubenville Pike	Bulger PA 15019	Robinson 1	D	4/18/2024
Grayce E Klein	20 DeGarmo Ln	Claysville PA 15323	Donegal 2	R	4/10/2024

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Name	Address	City State Zip	Precinct	Party	Rec'd
Virginia M Murphy	240 Cedar Hill Dr	McMurray PA 15317	Peters D-2	D	4/10/2024
Arthur S Harris	925 Shutterly St	California PA 15419	California 2	D	4/18/2024
Virginia J Wallace	176 May Ave	Washington PA 15301	Washington 8-1	D	4/8/2024
Lateasha Shaylin Wallace	176 May Ave	Washington PA 15301	Washington 8-1	D	4/8/2024
Dorian Eli Wallace	176 May Ave	Washington PA 15301	Washington 8-1	D	4/8/2024
Robert Clair Blanc	105 Anderson Dr	Canonsburg PA 15317	North Strabane 8	D	4/15/2024
Doris J Rayman	1483 Yorktowne Dr	Lawrence PA 15055	Cecil 8	R	4/15/2024
Ramona Lemmon Bice	1485 Allison Ave	Washington PA 15301	Washington 7-2	R	4/15/2024
Catherine A Louis	328 Twin Bridges Rd	Charleroi PA 15022	Fallowfield 4	R	4/12/2024
Deborah Ann Noble	9 Ferguson St	Burgettstown PA 15021	Hanover 2	D	4/11/2024
Patricia B DelBusse	35 Ginger Hill Rd	Finleyville PA 15332	Nottingham 1	D	4/17/2024
Karen Marie Ninness	94 Poplar St	Canonsburg PA 15317	North Strabane 2	R	4/17/2024
Charlotte Jean Flanagan	4016 Bentwood Dr	Canonsburg PA 15317	North Strabane 2	D	4/17/2024
Vijay Satchidanand Warty	240 Liberty Blvd	Canonsburg PA 15317	Cecil 7	D	4/15/2024
Susan J Wilson	363 Rock Hollow Rd	Claysville PA 15332	East Finley	D	4/15/2024
Betty J Gipson	7208 Sapphire Ln	Washington PA 15301	South Strabane 3	D	4/15/2024
Richard C Stephens Jr	410 Allison Ave	Washington PA 15301	Washington 7-1	R	4/19/2024
Alisha Raelynn Moore	827 Thompson Ave	Donora PA 15033	Donora 7	D	4/22/2024

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Name	Address	City State Zip	Precinct	Party	Rec'd
Beverly Henry	6326 Jack St	Finleyville PA 15332	Union 5	D	4/10/2024
June DeVaughn-Hyhton	304 Papp Rd	Canonsburg PA 15317	Cecil 6	D	4/12/2024
Mary Ann Stewart	835 S Main St	Washington PA 15301	North Franklin 1	D	4/11/2024

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Name	Address	City State Zip	Precinct	Party	Rec'd
Robin R Hraby	7 Front St	Monongahela PA 15063	Carroll 5	D	4/10/2024

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Name	Address	City State Zip	Precinct	Party	Rec'd
Thomas E Baxter IV	1623 Center Dr	Monongahela PA 15063	Carroll 5	R	4/15/2024
Mary C Zak	113 Kelly Dr	Washington PA 15301	South Strabane 1	R	4/10/2024
Alice Oblock	131 Mawhinney Rd	Cecil PA 15321	Cecil 4	D	4/17/2024
Sandra K Patterson	790 Nevin St	Monongahela PA 15063	Monongahela 1	D	4/18/2024
Beverly D Kostka	710 Howard St	Canonsburg PA 15317	Canonsburg 1-4	D	4/11/2024
James V Tustin	2956 S Bridge Rd	Washington PA 15301	Buffalo	D	4/23/2024

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Name	Address	City State Zip	Precinct	Party	Date Rec'd
Andrew L Shuble	115 S Jefferson Ave	Canonsburg PA 15317	Canonsburg 3-1	D	4/11/2024
Arthur DelCorso Jr	28 Sycamore St PO Box 134	Muse PA 15350	Cecil 5	D	4/8/2024
Bonnie B West	800 E Beau St Apt 5A	Washington PA 15301	South Strabane 5	R	4/18/2024
Bruce M Jacobs	327 Azalea Dr	Venetia PA 15367	Peters B-1	D	4/22/2024
Camille J Cortis	107 Norris Dr	Canonsburg PA 15317	North Strabane 7	R	4/10/2024
Carol Jean Hoffman	128 Prosser Dr	Monongahela PA 15063	Carroll 5	R	4/10/2024
Colleen Ruth Barber	32 Belmont Ave	Finleyville PA 15332	Union 1	R	4/8/2024
Dallas R Henry	1039 Bayberry Dr	Canonsburg PA 15317	North Strabane 7	D	4/11/2024
David Iams	29 Roberts Rd	Washington PA 15301	South Strabane 6	R	4/17/2024
Dolores J Gentile	334 Sawhill Rd	Claysville PA 15323	East Finley	D	4/10/2024
Donald S Kuzy	243 McDowell Ln Apt 323	Canonsburg PA 15317	North Strabane 9	D	4/11/2024
Dorothy Weldon	125 Tower St	Monongahela PA 15063	Carroll 5	D	4/8/2024
Elena Tiano	317 Wellness Way Apt 215	Washington PA 15301	South Strabane 3	D	4/15/2024
Ellen Gency	21 Wisetown Rd	Charleroi PA 15022	Fallowfield 4	R	4/11/2024
Estella Mary Cochran	156 Ahepa Dr Apt 308	Canonsburg PA 15317	North Strabane 9	R	4/19/2024
Frederick O Hython	304 Papp Rd	Canonsburg PA 15317	Cecil 6	D	4/15/2024
Gary McKee	329 Maid Marion Ln	McMurray PA 15317	Peters D-2	R	4/8/2024
Gregory Micjan	246 Sixth St	California PA 15419	California 2	D	4/8/2024
Irwin Quail Jr	334 Pike Run Dr	Daisytown PA 15427	West Pike Run 2	R	4/17/2024
Isabelle Alderson	317 Wellness Way Apt 104	Washington PA 15301	South Strabane 3	R	4/15/2024
Jackie S Batson	862 Beech St Apt 307	Washington PA 15301	South Strabane 1	D	4/12/2024
Janet Lynne Breiding	208 Friar Ln	McMurray PA 15317	Peters C-2	D	4/8/2024
Jennifer S Filipiak	303 Sixth Ave	New Eagle PA 15067	New Eagle 1	R	4/15/2024
Joan D Ferrari	195 Delaware Trail	Venetia PA 15367	Peters B-1	D	4/15/2024
Joan L Anderson	145 Ford St	Washington PA 15301	Canton 1	D	4/8/2024
Joseph F Girardi III	1098 Bayberry Dr	Canonsburg PA 15317	North Strabane 7	D	4/12/2024
Josephine Jeffries	247 Vankirk Ridge Rd	Washington PA 15301	Amwell 1	R	4/22/2024
Judy M Cain	331 Sunset Blvd	Washington PA 15301	South Strabane 1	D	4/15/2024
Kathleen Meyer	123 Lenore Way	McMurray PA 15317	North Strabane 1	D	4/8/2024
Lester L Gentile Sr	334 Sawhill Rd	Claysville PA 15323	East Finley	D	4/11/2024
Linda K Mankey	15 Moroz Ln	Washington PA 15301	Amwell 1	R	4/18/2024
Linda Robinson	685 Meldon Ave Apt 912	Donora PA 15033	Donora 5	D	4/8/2024
Marcia L Kalka	44 Windcrest Dr	Cecil PA 15321	Cecil 4	R	4/22/2024
Margaret M Koget	115 Isabelle St	Monongahela PA 15063	Carroll 4	D	4/8/2024
Marianne M Kuzy	243 McDowell Ln	Canonsburg PA 15317	North Strabane 9	D	4/10/2024
Mary Beth Mascaro-Corwin	452 N Kings Creek Rd	Burgettstown PA 15022	Hanover 1	R	4/8/2024
Michelle D Jacobs	246 Burton Ave	Washington PA 15301	Washington 6-1	D	4/12/2024
Mildred Blanch Amos	672 Maple Terrace	Washington PA 15301	Washington 7-2	D	4/8/2024
Mildred Mary Newman	1 W College St Apt 310	Canonsburg PA 15317	Canonsburg 2-2	R	4/10/2024
Nanciann Eneix	355 Shirls Ave	Washington PA 15301	Washington 7-1	R	4/11/2024
Norma Jacobs	246 Burton Ave	Washington PA 15301	Washington 6-1	D	4/12/2024
Patricia Ann Gavazzi	103 Reservoir Dr	Bentleyville PA 15317	Bentleyville	D	4/19/2024
Patricia Peters	896 Sugar Run Rd PO Box 1	Eighty Four PA 15330	Nottingham 1	D	4/19/2024
Patricia Santmyer	113 Kelly Dr	Washington PA 15301	South Strabane 1	R	4/11/2024
Richard A Sherman	700 Redwood Dr	McDonald PA 15057	Cecil 3	D	4/11/2024
Richard D Scott	327 McClane Farm Rd	Washington PA 15301	Chartiers 3	D	4/15/2024
Robert L Jones	125 Valley Rd	Canonsburg PA 15317	Canonsburg 3-3	D	4/17/2024
Robert Whiten Sr	905 Second St	Charleroi PA 15022	Charleroi 3	D	4/15/2024
Ronald J Korintus	604 Valley View	Canonsburg PA 15317	Canonsburg 3-3	D	4/10/2024
Stephen M Koget	115 Isabelle St	Monongahela PA 15063	Carroll 4	D	4/8/2024
Susan B Schantz	889 Bebout Rd	Venetia PA 15367	Peters B-1	D	4/18/2024
Thomas Schweitzer	110 Foxchase Dr	Canonsburg PA 15317	North Strabane 8	D	4/22/2024

No secrecy envelope

Name	Address	City State Zip	Precinct	Party	Rec'd
Thomas A Collura	37 Shannon Rd	Monongahela PA 15063	Fallowfield 2	R	4/11/2024
Dennis G Messick	127 Elm Alley Po Box 661	Ellsworth PA 15331	Ellsworth	D	4/11/2024
Patricia D Stinley	636 E Beau St	Washington PA 15301	East Washington	R	4/22/2024
Warren E Gaster	254 Ridge Rd	Brownsville PA 15417	Centerville 6	D	4/10/2024
Michael Livelli	150 Liberty Blvd	Canonsburg PA 15317	Cecil 7	D	4/22/2024
Ronald E Bruzda	401 Lincoln Ave	Charleroi PA 15022	Charleroi 2	D	4/19/2024
Maureen Andrews	19 Lavonne Ave	Charleroi PA 15022	Fallowfield 3	D	4/10/2024
Michael C Hall	151 Cummins Ave	Houston PA 15342	Chartiers 7	D	4/10/2024
Christine Kief	369 Georgetown Rd	Canonsburg PA 15317	Cecil 8	R	4/15/2024
Emilie Anne Simone	106 Bittersweet Circle	Venetia PA 15367	Peters B-1	D	4/22/2024
Richard K Polk	30 Virginia Lane	Canonsburg PA 15317	Cecil 6	D	4/12/2024
Tabitha L Blumen	55 Myers Lane	Washington PA 15301	Chartiers 1	D	4/23/2024

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Joint Stipulation

Exhibit G

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Ostrander, Melanie

Subject:	Feedback Session for SURE-generated emails to voters based on the selection of a mail ballot status code
Location:	Microsoft Teams Meeting
Start:	Fri 5/10/2024 2:00 PM
End:	Fri 5/10/2024 3:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Organizer:	Marks, Jonathan

"CAUTION: This email originated from outside of this organization. DO NOT click links or open attachments unless you recognize or expect an email from the sender and know the content is safe."

Dear County Election Officials,

As the Department noted in its February 29, 2024 email, it intends to hold a series of feedback sessions to work with you on revising the language included in SURE-generated emails to voters based on the selection of a mail ballot status code. The Department has sought to include language that reflects the different practices of every county, and we welcome all of your feedback in helping us to craft language that represents what each and every one of you do. Proposed language that can capture these broad ranges of practices will be implemented before the 2024 General Election ballots are sent out.

To that end, the Department will be holding sessions on the below dates and times, which are being scheduled shortly after the primary, to allow for fresh feedback and to maximize the amount of time in which to implement these improvements. Although there is no need to RSVP, and we encourage you to join when you are able, we encourage you to reach out if you are cannot make any of the times below.

We look forward to your thoughts, and thank you for all you do for Pennsylvania's voters.

Scheduled Times

- * Friday, May 10, 2-3pm.
- * Tuesday, May 14, 1-2pm.
- * Wednesday, May 15, 10-11am.

Kind regards,
Jonathan

Microsoft Teams Need help?<<https://aka.ms/JoinTeamsMeeting?omkt=en-US>>
Join the meeting now<https://teams.microsoft.com/l/meetup-join/19%3ameeting_Y2MjYzTcxYzUtNzQyYy00ZDg2LWE1ZTYtZDE4YjE0OWI4Y2lw%40thread.v2/0?context=%7b%22Tid%22%3a%22418e2841-0128-4dd5-9b6c-47fc5a9a1bde%22%2c%22Oid%22%3a%22076d9efa-6d8d-47d7-9f4d-6026042f2447%22%7d%7d>

Joint Stipulation

Exhibit H

RETRIEVEDFROMDEMOCRACYDOCKET.COM



Directive Concerning the Form of Absentee and Mail-in Ballot Materials

Date: July 1, 2024

Version: 2.0

Directive 2 of 2024

The following Directive is issued July 1, 2024, by the Secretary of the Commonwealth (“Secretary”) pursuant to authority contained at Sections 201, 1304, and 1304-D of the Pennsylvania Election Code, 25 P.S. §§ 2621, 3146.4, 3150.14.

Background

Pennsylvania law requires county officials to provide qualified electors voting by absentee or mail-in ballot with “two envelopes, the official [] ballot, lists of candidates, when authorized by [law], the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else.”¹ Moreover, certain counties are subject to Section 203 of the federal Voting Rights Act (“Section 203”),² requiring them to provide voting materials in non-English languages.

This Directive prescribes these forms and provides English, bilingual, and in some instances, trilingual versions. This Directive also prescribes a process for counties to seek a variance where necessary to accommodate equipment limitations or specifications. The highlighted portions of each form in **Appendix A** are those whose contents may be altered to provide information unique to the county, voter, or election, without requesting permission for a variance as provided in Section 6. These alterations may be made to the content of the text. Provided, however, that the discretion to adjust the contents is subject to additional prescriptions in the relevant sections.

As discussed further in Sections 2 and 5, Counties are left with discretion to arrange text orientation, and to enlarge text font sizes, in order to best serve their voters and accommodate different equipment specifications. Likewise, counties may adjust the orientation in order to accommodate envelopes with dimensions different from those presented in the samples.

The forms prescribed under this Directive will also be provided to counties under separate, secure cover in a digital format that can be directly used for printing and formatting. This Directive provides only minimum requirements for compliance with Pennsylvania law and the Secretary's prescriptions. Although nothing in this Directive is intended to be incompatible with known county equipment requirements, each county is responsible for ensuring that their iterations of the forms are compliant with their existing equipment and postal selections. Likewise, each county should verify with the United

¹ 25 P.S. §§ 3146.4, 3150.14.

² 52 USC § 10503.

States Postal Service (USPS) that their materials comport with the election mail specifications set by USPS.

Mailing Envelopes

Mailing envelopes are used to send outgoing mail-in and absentee balloting materials to qualified electors. The Department has provided samples in two sizes, attached as **Appendix B**. These samples include different language configurations, which can be adopted by any county, provided that all counties subject to Section 203 use a form including all required languages.

Counties should use the font sizes, logos, and colors,³ as provided. Counties may use envelopes of a size different than presented, provided that the size of the envelope is large enough to include all other materials described herein. So long as the content, font type, font size, logos, logo sizes, and coloration are maintained, the arrangement of the materials on these forms is at the discretion of the counties to orient. Counties may adjust as necessary to accommodate, among other things, additional bar code tracking materials.

Secrecy Envelopes/Inner Envelopes

Pennsylvania law provides that two envelopes shall be mailed to each absentee or mail-in elector; the smaller of these envelopes is sometimes referred to alternatively as the “secrecy envelope,” or “inner envelope.”

The secrecy envelope shall be rectangular and of a size large enough to contain all content included on the prescribed forms. For example, a standard size nine envelope (3.875” by 8.875”) would comply.

The secrecy envelope should be in a yellow color, such as the samples shown in **Appendix C**. These samples include different language configurations, which can be adopted by any county, provided that all counties subject to Section 203 use a form including all required languages.

Pennsylvania law requires the inner envelope to bear the text “official election ballot.”⁴ The samples in **Appendix B** contain watermarking with the statutorily required language.

³ The blue color is used to ensure it is a familiarized color recognized by the USPS as outgoing election mail.

⁴ 25 P.S. §§ 3146.4, 3150.14(a).

Instructions

The uniform instructions shall be printed on paper no smaller than a standard paper size of 8.5" by 11". The paper must be of a non-white color.

The text font, text size, logos, and language must be in conformance with the samples prescribed in **Appendix D**. Each sample includes a different language configuration, which can be adopted by any county, provided that all counties subject to Section 203 use a form including all required languages.

Although the line "[INSERT ELECTION DATE]" is highlighted in **Appendix A**, this highlighting does not permit a county to use generic text in the absence of a variance. Counties must include the date of the relevant election.

The contents of this Appendix have been revised since version 1.1 of this Directive issued in December 2023.

Outer Envelopes/Declaration Envelopes

Pennsylvania law provides that two envelopes shall be mailed to each absentee or mail-in elector; the larger of these envelopes is sometimes referred to alternatively as the "outer envelope" or "declaration envelope." Samples of the prescribed forms are shown in **Appendix E**. These samples include different language configurations, which can be adopted by any county, provided that all counties subject to Section 203 use a form including all required languages.

The outer envelope shall be rectangular and of a size large enough to contain all prescribed content. For example, a standard size ten envelope (4.125" by 9.5") would comply.

The flap of any such envelope must leave proper space to include the designs prescribed in **Appendix E**.

Counties may replace the portions of the samples in **Appendix E** that are in purple color with any other non-white and non-black color ink. Such counties should coordinate with all bordering counties to minimize the possibility that neighboring counties will use the same non-purple color. This replacement does not require the seeking of a variance, but counties must update the graphics and text in the uniform instructions to reflect the colors of their declaration envelopes.

All templates in **Appendix E** have been revised to include "Y"s in the last two boxes of the dating portion of the template. These digits are also highlighted in **Appendix A**, to

indicate that this text must be edited by counties. Counties must replace the “Y”s in these boxes with the digits reflecting the year of the election in which the envelopes are to be used. For example, if the envelopes will be used for an election taking place in 2024, the “Y”s must be replaced with a “2” and a “4.” This prescription is immediately in effect for all elections taking place following the issuance of this Directive.

Counties that use mail envelopes with “windows” may make alterations to the arrangements of the contents to accommodate the placement of barcodes and unique identifiers in places that will be visible through the window. Such minor alterations, so long as they do not alter the font size or content, may be implemented without seeking a variance. Likewise, so long as the content, font type, minimum font size, logos, logo sizes, and coloration are maintained, the arrangement of the materials on these forms are at discretion of the counties to orient or enlarge.

The Department further notes that any county opting to use green color ink is not permitted to allow the green coloring to wrap over the top of the envelope, in order to avoid interference with USPS sorting equipment. The Department again advises that counties vet all mail ballot materials through the USPS procedures.

Lastly, counties may apply a hole punch in the outer envelope without seeking a variance. Counties providing envelopes to blind and low vision voters must hole punch the return envelope provided to such voters under the Department’s [Guidance on Managing Accessible Remote Absentee and Mail-in Voting for Voters with Disabilities](#).

Variance Procedures

Any county that believes it is unable to comply with the prescriptions of this Directive, or that wishes to implement changes to the forms that are in line with the aims of this Directive, may seek permission from the Department for a variance. A variance will only be granted where the county demonstrates that it is in line with the Directive’s twin goals of promoting uniformity and improving the voting experience.

A county seeking a variance must provide the Bureau of Elections with a proposed alternative to the prescribed forms, as well as the additional information described in this section, at least 60 days before the election for which the materials will be used.

The Department is also providing templates of forms with logos and formations that deviate from those shown in **Appendixes A-E**. These pre-approved variant forms are included as **Appendix F**. Counties are permitted to use the forms in Appendix X without seeking a variance, provided that the icons on the instructions are updated accordingly.

The below table includes a set of pre-approved variances that do not require Department approval to implement. This table is not intended to provide an exhaustive list of the variances the Department has approved or would approve if sought by a county.

<u>Short Title</u>	<u>Specifications</u>	<u>Other Notes</u>
Highlighting in Declaration Envelope Fields	Counties are permitted to shade the entry boxes of the sign and date fields on the declaration envelope in a yellow color.	Counties are responsible for ensuring that the shading will not impact the mail sorting equipment they use. Counties must update the logos of the instructions to reflect this change.
Increased font size	Counties are permitted to increase the font size of any prescribed content, provided all other requirements and specifications are satisfied.	The United States Postal Service Mailpiece Design Analyst (USPS MDA) must review and approve all font size changes made to outgoing and return envelopes.

###

Version	Date	Description
1.0	11/28/2023	Initial document release
1.1	12/14/2023	Appendices Revised
2.0	7/1/2024	Appendices and Prescriptions Revised

Appendix A

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Official Ballot

Your ballot must be received
by 8 p.m. on election day at
your county election board

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Vivian Voter
1234 Crest Blvd.
Sample, PA 99999-4321



See instructions inside

Official Ballot

Ways to return your ballot



By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.



In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

Return your ballot right away!

Your ballot must be received by 8 p.m. on election day at your county election board.

Contact information



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



www.franklincounty.gov/elections



elections@franklincounty.gov



English: 111-222-3333
Español: 111-222-4444



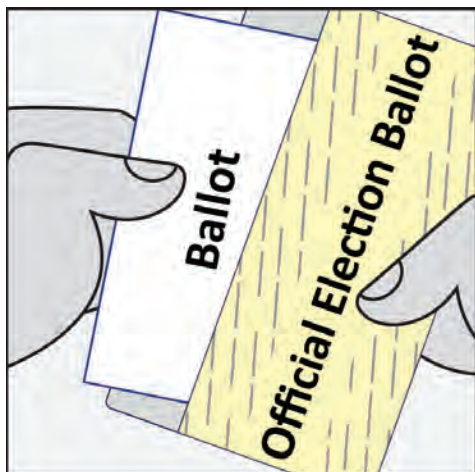
Fax: 111-222-6666



TTY: 1-222-555-1222



Instructions—Make your ballot count!



1. Put your ballot in the yellow envelope that says **“Official Election Ballot”** and seal it.
2. Put the yellow envelope that says **“Official Election Ballot”** in the **return envelope with the purple coloring**.
3. Sign and date the return envelope. **Put today’s date**—the date you are signing.



Return your ballot right away. Your ballot must be received by your county **board of elections** by 8 p.m. on **[INSERT ELECTION DATE]**.

Track your ballot at <https://vote.pa.gov/mailballotstatus>.

- ✓ **You must either mail or return your ballot yourself.** If you have a disability that prevents you from returning your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake,** contact us at the phone number below.
- ✓ **If you return your voted mail ballot by 8 p.m. on election day,** you cannot vote in-person at your polling place.
 - **If you bring your mail ballot and return envelope to your polling place,** you can vote in-person at your polling place.
 - **If you do not bring your mail ballot and return envelope to your polling place,** you can only vote a provisional ballot at your polling place.

Contact

Franklin County

franklincountyelections.gov

1-222-555-1222

4321 Sample Avenue, Sample, PA 99999

7 a.m. – 7 p.m.

Official Ballot Return Envelope

Your ballot must be received
by 8 p.m. on election day at
your county election board

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED

Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

Sign and date



Sign or mark here (REQUIRED)

X

Today's date here (REQUIRED)

Month

Day

Year

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Witness, sign here

Witness address

Street _____

City _____ Zip _____

For county election use only

Appendix B

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Official Ballot
Papeleta oficial
官方選票

Your ballot must be
received by 8 p.m. on
election day at your county
election board

Su papeleta debe recibirse
antes de las 8 p.m. el día de
las elecciones en la junta
electoral de su condado

您所在縣的選舉委員會必
須在選舉日晚上8點前收
到您的選票

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Vivian Voter
1234 Crest Blvd.
Sample, PA 99999-4321



Official Ballot
Papeleta oficial
官方選票

See instructions inside
Ver instrucciones en el interior
請參閱裡面的說明

How to return your ballot **Formas de devolver su papeleta** **交回選票的方法**



By Mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

Por correo

Envíe su papeleta por correo para que la oficina electoral de su condado la reciba antes de las 8 p.m. el día de las elecciones.

郵寄

郵寄您的選票，以便您所在縣的選舉委員會在選舉日晚上8點前收到您的選票。



In person

Return your ballot to your county election office or an official county drop-off site by 5 p.m. on election day.

En persona

Devuelva su papeleta a la oficina electoral de su condado o a un sitio oficial de entrega del condado antes de las 8 p.m. el día de las elecciones.

親自遞交

在選舉日晚上8點前將選票交回您所在縣的選舉辦事處或官方縣投遞點。

Contact information **Información de contacto** **聯絡資訊**



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



www.franklincounty.gov/elections



elections@franklincounty.gov



English: 111-222-3333
Español: 111-222-4444
中文: 111-222-4444



Fax/ 傳真: 111-222-6666



TTY: 1-222-555-1222

Official Ballot

Papeleta oficial

Your ballot must be received
by 8 p.m. on election day at
your county election board

Su papeleta debe recibirse
antes de las 8 p.m. el día de
las elecciones en la junta
electoral de su condado

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Vivian Voter
1234 Crest Blvd.
Sample, PA 99999-4321



See instructions inside
Ver instrucciones en el interior

Official Ballot
Papeleta oficial

Ways to return your ballot Formas de devolver su papeleta



By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

Por correo

Envíe su papeleta por correo para que la oficina electoral de su condado la reciba antes de las 8 p.m. el día de las elecciones.



In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

En persona

Devuelva su papeleta a la oficina electoral de su condado o a un sitio oficial de entrega del condado antes de las 8 p.m. el día de las elecciones..

Return your ballot right away! ¡Devuelva su papeleta de inmediato!

Your ballot must be received by 8 p.m. on election day at your county election board.

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado.

Contact information Información de contacto



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



www.franklincounty.gov/elections



elections@franklincounty.gov



English: 111-222-3333
Español: 111-222-4444



Fax: 111-222-6666



TTY: 1-222-555-1222

Official Ballot 官方選票

Your ballot must be
received by 8 p.m. on
election day at your county
election board

您所在縣的選舉委員會必
須在選舉日晚上8點前收
到您的選票

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Vivian Voter
1234 Crest Blvd.
Sample, PA 99999-4321



See instructions inside
請參閱裡面的說明

Official Ballot
官方選票

How to return your ballot 交回選票的方法



By Mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

郵寄

郵寄您的選票，以便您所在縣的選舉委員會在選舉日晚上8點前收到您的選票。



In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

親自遞交

在選舉日晚上8點前將選票交回您所在縣的選舉辦事處或官方縣投遞點。

Return your ballot right away! 儘快回郵您的選票！

Your ballot must be received by 8 p.m. on election day at your county election board

您所在縣的選舉委員會必須在選舉日晚上8點前收到您的選票。

Contact information 聯絡資訊



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



www.franklincounty.gov/elections



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English: 111-222-3333
中文: 111-222-4444



Fax/ 傳真: 111-222-6666

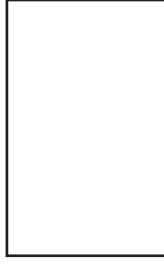


TTY: 1-222-555-1222

Official Ballot

Your ballot must be received
by 8 p.m. on election day at
your county election board

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Vivian Voter
1234 Crest Blvd.
Sample, PA 99999-4321



See instructions inside

Official Ballot

Ways to return your ballot



By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.



In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

Return your ballot right away!

Your ballot must be received by 8 p.m. on election day at your county election board.

Contact information



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



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elections@franklincounty.gov



English: 111-222-3333
Español: 111-222-4444



Fax: 111-222-6666



TTY: 1-222-555-1222

Official Ballot

Papeleta oficial

官方選票

Your ballot must be
received by 8 p.m. on
election day at your county
election board

Su papeleta debe recibirse
antes de las 8 p.m. el día de
las elecciones en la junta
electoral de su condado

您所在縣的選舉委員會必
須在選舉日晚上8點前收
到您的選票

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Vivian Voter
1234 Crest Blvd.
Sample, PA 99999-4321

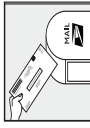


Official Ballot Papeleta oficial 官方選票

See instructions inside
Ver instrucciones en el interior
請參閱裡面的說明

Ways to return your ballot

Formas de devolver su papeleta
交回選票的方法



By Mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

Por correo

Envíe su papeleta por correo para que la oficina electoral de su condado la reciba antes de las 8 p.m. el día de las elecciones.

郵寄

郵寄您的選票，以便您所在縣的選舉委員會在選舉日晚上8點前收到您的選票。



In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

En persona

Devuelva su papeleta a la oficina electoral de su condado o a un sitio oficial de entrega del condado antes de las 8 p.m. el día de las elecciones.

親自遞交

在選舉日晚上8點前將選票交回您所
在縣的選舉辦事處或官方縣投遞點。

Contact information Información de contacto 聯繫信息



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



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English: 111-222-3333

Español: 111-222-4444

中文: 111-222-4444



Fax/ 傳真: 111-222-6666



TTY: 1-222-555-1222

Official Ballot

Papeleta oficial

Your ballot must be received by 8 p.m. on election day at your county election board

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



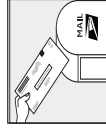
Vivian Voter
1234 Crest Blvd.
Sample, PA 99999-4321



Official Ballot Papeleta Oficial

See instructions inside
Ver instrucciones en el interior

Ways to return your ballot Formas de devolver su papeleta



By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.

Por correo

Envíe su papeleta por correo para que la oficina electoral de su condado la reciba antes de las 8 p.m. el día de las elecciones.



In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

En persona

Devuelva su papeleta a la oficina electoral de su condado o a un sitio oficial de entrega del condado antes de las 8 p.m. el día de las elecciones.

Return your ballot right away! ¡Devuelva su papeleta de inmediato!

Your ballot must be received by 8 p.m. on election day at your county election board.

Su papeleta debe recibirse antes de las 8 p.m. el día de las elecciones en la junta electoral de su condado.

Contact information Información de contacto



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4321 Sample Avenue
Sample, PA 99999-1234



www.franklincounty.gov/elections



elections@franklincounty.gov



English: 111-222-3333

Español: 111-222-4444



Fax: 111-222-6666



TTY: 1-222-555-1222

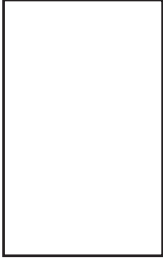
Official Ballot

Your ballot must be received
by 8 p.m. on election day at
your county election board

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Vivian Voter
1234 Crest Blvd.
Sample, PA 99999-4321



Official Ballot

See instructions inside

Return your ballot right away!

Your ballot must be received by 8 p.m. on election day at your county election board.

Ways to return your ballot



By mail

Mail your ballot so it is received by your county election office by 8 p.m. on election day.



In person

Return your ballot to your county election office or an official county drop-off site by 8 p.m. on election day.

Contact information



Franklin County Elections
Department
4321 Sample Avenue
Sample, PA 99999-1234



www.franklincounty.gov/elections



elections@franklincounty.gov



English: 111-222-3333

Español: 111-222-4444



Fax: 111-222-6666



TTY: 1-222-555-1222

Appendix C

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Official Election Ballot

Papeleta Electoral Oficial



Official Election Ballot



Official Election Ballot

Papeleta Electoral Oficial

官方選舉選票



Official Election Ballot

Papeleta Electoral Oficial



Official Election Ballot

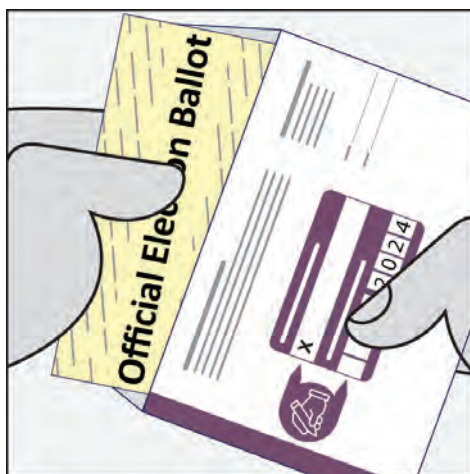
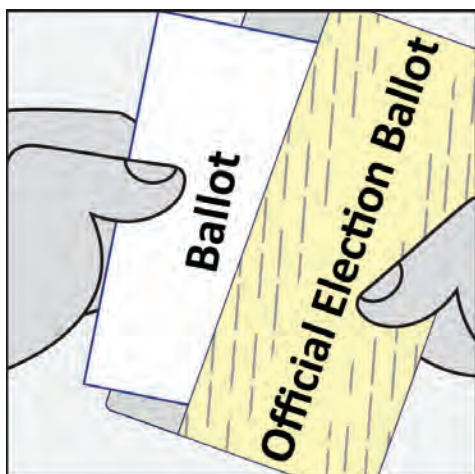


Appendix D

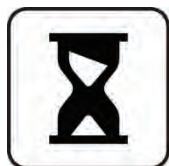
RETRIEVEDFROMDEMOCRACYDOCKET.COM



Instructions—Make your ballot count!



1. Put your ballot in the yellow envelope that says **“Official Election Ballot”** and seal it.
2. Put the yellow envelope that says **“Official Election Ballot”** in the **return envelope with the purple coloring**.
3. Sign and date the return envelope. **Put today’s date**—the date you are signing.



Return your ballot right away. Your ballot must be received by your county board of elections by 8 p.m. on [INSERT ELECTION DATE]. Track your ballot at <https://vote.pa.gov/mailballotstatus>.

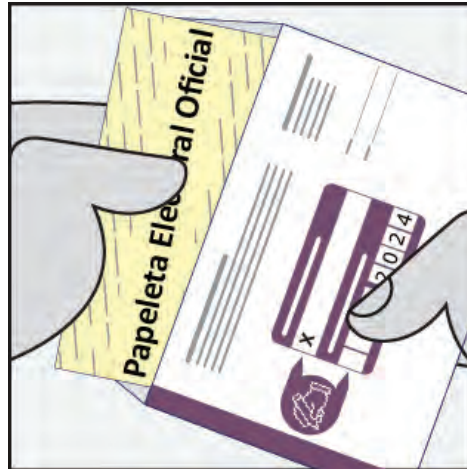
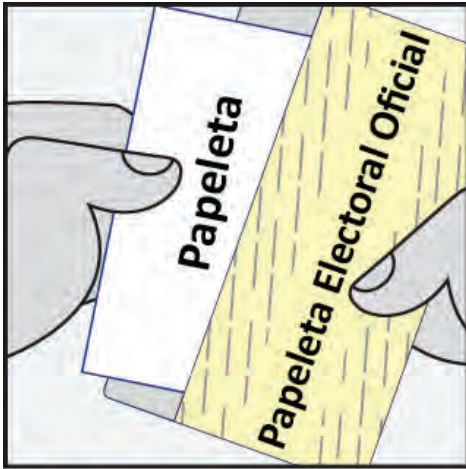
- ✓ **You must either mail or return your ballot yourself.** If you have a disability that prevents you from returning your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake,** contact us at the phone number below.
- ✓ **If you return your voted mail ballot by 8 p.m. on election day,** you cannot vote in-person at your polling place.
 - **If you bring your mail ballot and return envelope to your polling place,** you can vote in-person at your polling place.
 - **If you do not bring your mail ballot and return envelope to your polling place,** you can only vote a provisional ballot at your polling place.

Contact

Franklin County
Franklincountyelections.gov
1-222-555-1222
4321 Sample Avenue, Sample, PA 99999
7 a.m. – 7 p.m.



Instrucciones: ¡Haga que su papeleta cuente!



1. Coloque su papeleta en el sobre amarillo que indica **"Papeleta electoral oficial"** y séllelo.
2. Coloque el sobre amarillo que dice **"Papeleta electoral oficial"** en el sobre de devolución de color púrpura.
3. Firme y escriba la fecha en el sobre de devolución. **Escriba la fecha de hoy**, la fecha en la que está firmando.



Devuelva su papeleta de inmediato. su papeleta debe ser recibida por la junta electoral de su condado antes de las 8 p.m. el [INSERT ELECTION DATE].

Podrá rastrear su papeleta en vote.pa.gov/MailBallotStatus

- ✓ **Debe enviar su papeleta por correo o devolverla usted mismo.** Si tiene una discapacidad que le impide devolver su papeleta usted mismo, contáctenos al número de teléfono que aparece a continuación.
- ✓ **Si pierde su papeleta o comete un error,** contáctenos al número de teléfono que aparece a continuación.
- ✓ **Si devuelve su papeleta votada por correo antes de las 8 p.m. el día de las elecciones,** no puede votar en persona en su centro de votación.
 - **Si trae la papeleta que se le envió por correo y el sobre de devolución a su centro de votación,** puede votar en persona en su centro de votación.
 - **Si no trae la papeleta que se le envió por correo y el sobre de devolución a su centro de votación,** solo podrá votar con una papeleta provisional en su centro de votación.

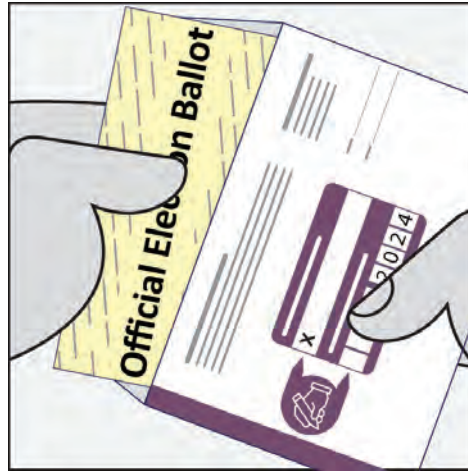
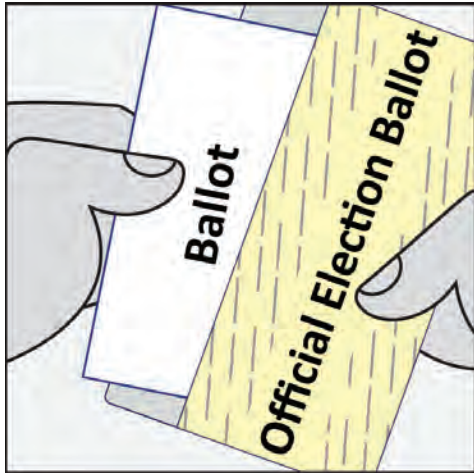
Contacto

Franklin County
franklincountyelections.gov
1-222-555-1222
4321 Sample Avenue, Sample, PA 99999
7 a.m. – 7 p.m.

Turn over for English



Instructions—Make your ballot count!



1. Put your ballot in the yellow envelope that says **“Official Election Ballot”** and seal it.
2. Put the yellow envelope that says **“Official Election Ballot”** in the **return envelope with the purple coloring**.
3. Sign and date the return envelope. **Put today’s date**—the date you are signing.



Return your ballot right away. Your ballot must be received by your county board of elections by 8 p.m. on [INSERT ELECTION DATE].
Track your ballot at <https://vote.pa.gov/mailballotstatus>.

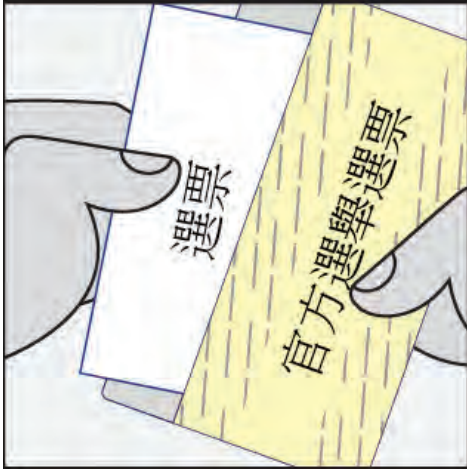
- ✓ **You must either mail or return your ballot yourself.** If you have a disability that prevents you from returning your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake,** contact us at the phone number below.
- ✓ **If you return your voted mail ballot by 8 p.m. on election day,** you cannot vote in-person at your polling place.
 - **If you bring your mail ballot and return envelope to your polling place,** you can vote in-person at your polling place.
 - **If you do not bring your mail ballot and return envelope to your polling place,** you can only vote a provisional ballot at your polling place.

Contact

Franklin County
Franklincountyelections.gov
1-222-555-1222
4321 Sample Avenue, Sample, PA 99999
7 a.m. – 7 p.m.



說明—讓你的選票算數！



1. 將選票放入記有「**官方選舉選票**」的黃色信封並密封。
2. 將記有「**官方選舉選票**」的黃色信封放入紫色的回郵信封。
3. 在交回的信封上簽名並注明日期。寫上今天的日期，即您簽名的日期。



立即交回您的選票。 您所在縣的選舉委員會必須在以下時間前收到您的選票：[INSERT ELECTION DATE] 晚上8點。

在此追蹤您的選票：vote.pa.gov/MailBallotStatus。

- ✓ 您必須自行郵寄或交回您的選票。如果您有殘疾，無法親自交回選票，請撥打以下電話號碼與聯絡我們聯繫。
- ✓ 若您遺失選票或犯了錯誤，請通過以下電話號碼聯絡我們。
- ✓ 如果您在選舉當天晚上 8 點之前將已投票的郵寄選票寄回，則不能親自前往投票站投票。
 - 如果您將郵寄選票和回郵信封帶到投票站，您可以親自到投票站投票。
 - 如果您未將郵寄選票和回郵信封帶到投票站，您只能在投票站投臨時選票。

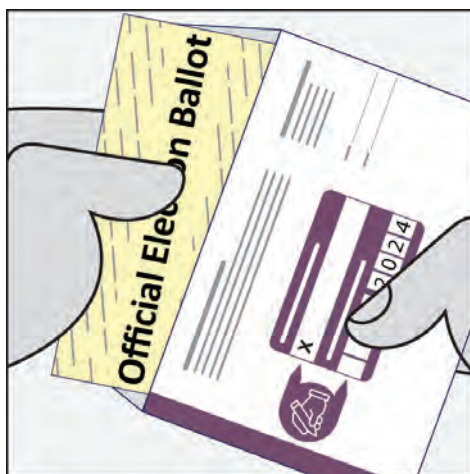
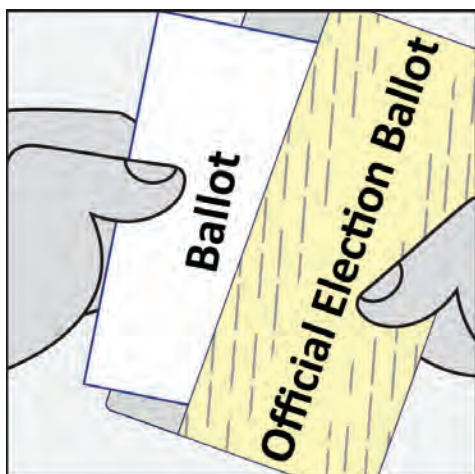
聯絡資訊

Franklin County
franklincountyelections.gov
1-222-555-1222
4321 Sample Avenue, Sample, PA 99999
7 a.m. – 7 p.m.

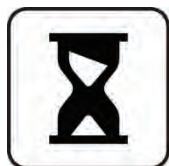
Turn over for English



Instructions—Make your ballot count!



1. Put your ballot in the yellow envelope that says **“Official Election Ballot”** and seal it.
2. Put the yellow envelope that says **“Official Election Ballot”** in the **return envelope with the purple coloring**.
3. Sign and date the return envelope. **Put today’s date**—the date you are signing.



Return your ballot right away. Your ballot must be received by your county board of elections by 8 p.m. on [INSERT ELECTION DATE].
Track your ballot at <https://vote.pa.gov/mailballotstatus>.

- ✓ **You must either mail or return your ballot yourself.** If you have a disability that prevents you from returning your ballot yourself, contact us at the phone number below.
- ✓ **If you lose your ballot or make a mistake,** contact us at the phone number below.
- ✓ **If you return your voted mail ballot by 8 p.m. on election day,** you cannot vote in-person at your polling place.
 - **If you bring your mail ballot and return envelope to your polling place,** you can vote in-person at your polling place.
 - **If you do not bring your mail ballot and return envelope to your polling place,** you can only vote a provisional ballot at your polling place.

Contact

Franklin County
Franklincountyelections.gov
1-222-555-1222
4321 Sample Avenue, Sample, PA 99999
7 a.m. – 7 p.m.

Appendix E

RETRIEVEDFROMDEMOCRACYDOCKET.COM

**Official Ballot
Return Envelope
Papeleta oficial
Sobre de
devolución**

Your ballot must be received
by 8 p.m. on election day at
your county election board
Su papeleta debe recibirse
antes de las 8 p.m. el día de
las elecciones en la junta
electoral de su condado

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



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PRIMERA CLASE



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Sign and date



Firmar y fechar

Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

¡Antes de completar este lado!

1. Selle su papeleta en el sobre amarillo que dice "Papeleta electoral oficial."
2. Luego Luego selle ese sobre dentro de este sobre.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

Declaración del votante

Estoy calificado para votar en la papeleta adjunta y aún no he votado en esta elección.

Si no puedo firmar sin ayuda porque tengo una enfermedad o discapacidad física, he dejado mi huella o alguien me ha ayudado a dejar mi huella.

Sign or mark here (REQUIRED)
Firme o marque aquí (OBLIGATORIO)

X

Today's date here (REQUIRED)
Escriba la fecha de hoy aquí (OBLIGATORIO)

				2	0	Y	Y
Month/Mes		Day/Día		Year/Año			

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Soló para tu testigo

Si tiene una enfermedad o discapacidad física que le impide firmar, pídale a su testigo que complete esta sección.

Witness, sign here | Testigo, firme aquí

Witness address | Dirección del testigo

Street | Calle _____

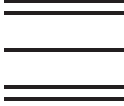
City | Ciudad _____ Zip | Código postal _____

For county election use only
Para uso exclusivo en las elecciones del condado

Official Ballot
Return Envelope
官方選票
回郵信封

Your ballot must be received
by 8 p.m. on election day at
your county election board
您所在縣的選舉委員會必
須在選舉日晚上8點前收到
您的選票

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED
需要一級郵資



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

在完成此面之前!

1. 將選票封入記有「官方選舉選票」的黃色信封裡。
2. 然後將那個信封封入這個信封裡。

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

選民聲明

我有所附選票進行投票的資格，而我尚未在本次選舉中投票。

如果我因疾病或身心障礙而無法在沒有幫助的情況下簽名，我會留下我的印記，或者有人會幫我留下我的印記。

Sign and date



簽名並註明日期

Sign or mark here (REQUIRED)

在此簽名或標記 (必填)

X

Today's date here (REQUIRED)

今日的日期在此 (必填)

Month/月

Day/日

Year/年

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

僅供您的見證人

如果您因疾病或身心障礙而無法簽字，請讓您的見證人填寫此部分。

Witness, sign here | 見證人在此簽名

Witness address | 見證人地址

Street | 街道 _____

City | 市 _____ Zip | 郵遞區號 _____

For county election use only

僅供縣選舉使用

Official Ballot
Return Envelope

Your ballot must be received
by 8 p.m. on election day at
your county election board

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



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Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

Sign and date



Sign or mark here (REQUIRED)

X

Today's date here (REQUIRED)

Month

Day

Year

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Witness, sign here

Witness address

Street _____

City _____ Zip _____

For county election use only

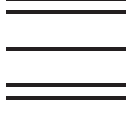
**Official Ballot
Return
Envelope**

**Papeleta oficial
Sobre de
devolución**

Your ballot must be
received by 8 p.m. on
election day at your
county election board

Su papeleta debe
recibirse antes de las
8 p.m. el día de las
elecciones en la junta
electoral de su condado

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



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PRIMERA CLASE



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

¡Antes de completar este lado!

1. Selle su papeleta en el sobre amarillo que dice "Papeleta electoral oficial."
2. Luego selle ese sobre dentro de este sobre.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.
If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

Declaración del elector

Estoy calificado para votar en la papeleta adjunta y aún no he votado en esta elección.
Si no puedo firmar sin ayuda porque tengo una enfermedad o discapacidad física, he dejado mi huella o alguien me ha ayudado a dejar mi huella.

Sign and date



Firmar y fechar

Sign or mark here (REQUIRED) Firme o marque aquí (OBLIGATORIO)					
<div>X</div>					
Today's date here (REQUIRED) Escriba la fecha de hoy aquí (OBLIGATORIO)					
<div></div>	<div></div>	<div></div>	<div>2</div>	<div>0</div>	<div>Y</div>
Month/Mes		Day/Día		Year/Año	

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Sólo para su testigo

Si tiene una enfermedad o discapacidad física que le impide firmar, pídale a su testigo que complete esta sección.

Witness, sign here | Testigo, firme aquí

Witness address | Dirección del testigo

Street | Calle _____
City | Ciudad _____ Zip | Código postal _____

For county election use only

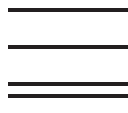
Para uso exclusivo en las elecciones del condado

**Official Ballot
Return
Envelope
官方選票
回郵信封**

Your ballot must be
received by 8 p.m.
on election day at
your county election
board

您所在縣的選舉委
員會必須在選舉日
晚上8點前收到您的
選票

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED
需要一級郵資



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

在完成此面之前!

1. 將選票封入記有「官方選舉選票」的黃色信封裡。
2. 然後將那個信封封入這個信封裡。

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

選民聲明

我有用所附選票進行投票的資格,而我尚未在本次選舉中投票。

如果我因疾病或身心障礙而無法在沒有幫助的情況下簽名,我會留下我的印記,或者有人會幫我留下我的印記。

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

僅供您的見證人

如果您因疾病或身心障礙而無法簽字,請讓您的見證人填寫此部分。

Witness, sign here | 見證人在此簽名

Witness address | 見證人地址

Street | 街道

City | 市

Zip | 郵遞區號

Sign and date



簽名並註明日期

Sign or mark here (REQUIRED)
在此簽名或標記 (必填)

X

Today's date here (REQUIRED)
今日的日期在此 (必填)

Month/月

Day/日

Year/年

Y

Y

2

0

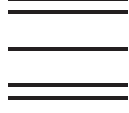
For county election use only

僅供縣選舉使用

**Official
Ballot
Return
Envelope**

Your ballot must
be received by 8
p.m. on election
day at your county
election board

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
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Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Witness, sign here

Witness address

Street _____

City _____

Zip _____

Sign or mark here (REQUIRED)

X

Today's date here (REQUIRED)

Month

Day

2 0 Y

Year

For county election use only

Sign and date



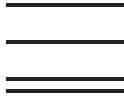
Appendix F

RETRIEVEDFROMDEMOCRACYDOCKET.COM

**Official Ballot
Return Envelope
Papeleta oficial
Sobre de
devolución**

Your ballot must be received
by 8 p.m. on election day at
your county election board
Su papeleta debe recibirse
antes de las 8 p.m. el día de
las elecciones en la junta
electoral de su condado

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED
SE REQUIERE ENVÍO DE
PRIMERA CLASE



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

¡Antes de completar este lado!

1. Selle su papeleta en el sobre amarillo que dice "Papeleta electoral oficial."
2. Luego Luego selle ese sobre dentro de este sobre.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

Declaración del votante

Estoy calificado para votar en la papeleta adjunta y aún no he votado en esta elección.

Si no puedo firmar sin ayuda porque tengo una enfermedad o discapacidad física, he dejado mi huella o alguien me ha ayudado a dejar mi huella.



Sign/Firmar

Sign or mark here (Required)
Firme o marque aquí (Obligatorio)

X

Today's date here (Required)
Escriba la fecha de hoy aquí (Obligatorio)

Date/Fechar



Month/Mes

Day/Día

20YY

Year/Año

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Soló para tu testigo

Si tiene una enfermedad o discapacidad física que le impide firmar, pídale a su testigo que complete esta sección.

Witness, sign here | Testigo, firme aquí

Witness address | Dirección del testigo

Street | Calle

City | Ciudad

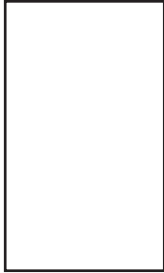
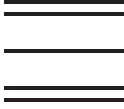
Zip | Código postal

For county election use only
Para uso exclusivo en las elecciones del condado

Official Ballot
Return Envelope
官方選票
回郵信封

Your ballot must be received
by 8 p.m. on election day at
your county election board
您所在的縣選舉委員會必
須在選舉日的晚上八點之
前收到您的選票。

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED
需要平信郵費

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot".
2. Then seal that envelope inside this envelope.

在您完成這一頁之前!

1. 將您的選票封在只寫著“官方選舉選票”的信封裡
2. 然後,將信封封在此信封裡

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

選民聲明

我有資格參加本次選舉;而且尚未在本次選舉中投票。
如果因為疾病或殘疾而無法簽署聲明,我決定在接受協助情況下,以特殊標記代替本人簽名。



Sign/簽名



Date/日期

Sign or mark here (Required)
在此簽名或標記 (必填)

X

Today's date here (Required)
今日的日期在此 (必填)

Month/月

Day/日

20YY

Year/年

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

如果無法簽名

如果因為疾病或殘疾而無法簽名,請您的見證人完成此部分。

Witness, sign here | 見證人,在此簽名

Witness address | 見證人的地址

Street | 地址

City | 城市

Zip | 郵政編碼

For county election use only

**Official Ballot
Return Envelope**

Your ballot must be received
by 8 p.m. on election day at
your county election board

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED

Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.



Sign

Sign or mark here *(Required)*

X

Today's date here *(Required)*

Date



		20YY
<i>Month</i>	<i>Day</i>	<i>Year</i>

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Witness, sign here

Witness address

Street _____

City _____ Zip _____

For county election use only

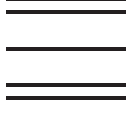
**Official Ballot
Return
Envelope**

**Papeleta oficial
Sobre de
devolución**

Your ballot must be
received by 8 p.m. on
election day at your
county election board

Su papeleta debe
recibirse antes de las
8 p.m. el día de las
elecciones en la junta
electoral de su condado

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED
SE REQUIERE ENVÍO DE
PRIMERA CLASE



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

¡Antes de completar este lado!

1. Selle su papeleta en el sobre amarillo que dice "Papeleta electoral oficial."
2. Luego selle ese sobre dentro de este sobre.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.
If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

Declaración del elector

Estoy calificado para votar en la papeleta adjunta y aún no he votado en esta elección.
Si no puedo firmar sin ayuda porque tengo una enfermedad o discapacidad física, he dejado mi huella o alguien me ha ayudado a dejar mi huella.



Sign/Firmar

Sign or mark here (Required)
Firme o marque aquí (Obligatoria)

X

Today's date here (Required)
Escriba la fecha de hoy aquí (Obligatoria)

20YY

Month/Mes

Day/Día

Year/Año

Date/Fechar



For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Sólo para su testigo

Si tiene una enfermedad o discapacidad física que le impide firmar, pídale a su testigo que complete esta sección.

Witness, sign here | Testigo, firme aquí

Witness address | Dirección del testigo

Street | Calle

City | Ciudad

Zip | Código postal

For county election use only
Para uso exclusivo en las elecciones del condado

**Official Ballot
Return
Envelope
官方選票
回郵信封**

Your ballot must be
received by 8 p.m.
on election day at
your county election
board

您所在縣的選舉委
員會必須在選舉日
晚上8點前收到您的
選票

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED
需要一級郵資



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

在完成此面之前!

1. 將選票封入記有「官方選舉選票」的黃色信封裡。
2. 然後將那個信封封入這個信封裡。

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

選民聲明

我有用所附選票進行投票的資格，而我尚未在本次選舉中投票。

如果我因疾病或身心障礙而無法在沒有幫助的情況下簽名，我會留下我的印記，或者有人會幫我留下我的印記。



Sign/簽名

Date/日期



Sign or mark here (Required)

在此簽名或標記 (必填)

X

Today's date here (Required)

今日的日期在此 (必填)

20YY

Month/月

Day/日

Year/年

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

僅供您的見證人

如果您因疾病或身心障礙而無法簽字，請讓您的見證人填寫此部分。

Witness, sign here | 見證人在此簽名

Witness address | 見證人地址

Street | 街道

City | 市

Zip | 郵遞區號

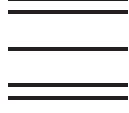
For county election use only

僅供縣選舉使用

**Official
Ballot
Return
Envelope**

Your ballot must
be received by 8
p.m. on election
day at your county
election board

Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



FIRST CLASS
POSTAGE REQUIRED



Franklin County Elections Department
4321 Sample Avenue
Sample, PA 99999-1234



Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

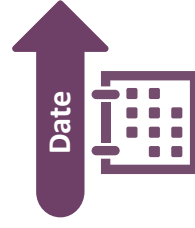
Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.



Sign



Date

Sign or mark here (Required)		
X		
Today's date here (Required)		
		20YY
Month	Day	Year

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Witness, sign here

Witness address

Street _____

City _____

Zip _____

For county election use only

Joint Stipulation

Exhibit I

RETRIEVEDFROMDEMOCRACYDOCKET.COM



GUIDANCE CONCERNING EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES

Updated: April 3, 2023

Version: 4.0

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES

1 BACKGROUND:

The Pennsylvania Election Code describes processes that a qualified voter follows to apply for, receive, complete, and timely return an absentee or mail-in ballot to their county board of election. These processes include multiple secure methods used by the voter's county board of election to verify that the qualified voter's absentee or mail-in application is complete and that the statutory requirements are satisfied. These methods include voter identification verification confirmed by either a valid driver's license number, the last four digits of the voter's Social Security number or other valid photo identification, and unique information on the application, including the voter's residence and date of birth. Before sending the ballot to the applicant, the county board of elections confirms the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained in the voter record. If the county is satisfied that the applicant is qualified, the application must be approved. This approval shall be final and binding, except that challenges may be made only on the grounds that the applicant was not a qualified voter, and those challenges must be made to the county prior to five o'clock p.m. on the Friday prior to the election.

Once the qualified voter's absentee or mail-in ballot application is approved, the voter is mailed a ballot with instructions and two envelopes. The outer envelope includes both a unique correspondence ID barcode that links the envelope to the qualified voter's application and a pre-printed Voter's Declaration that the voter must sign and date representing that the voter is qualified to vote the enclosed ballot and has not already voted. This Guidance addresses the examination of the Voter's Declaration on the outer ballot return envelope. This Guidance assumes that the voter has satisfactorily completed the steps described above as to application for, receipt of and return of an absentee or mail-in ballot.

2 RECORDING THE RETURN DATE, RETURN METHOD AND BALLOT STATUS FOR RETURNED MAIL BALLOTS:

County boards of elections should have processes in place to record the return date, return method, and ballot status for all voted mail ballots received. County boards of elections must store and maintain returned mail ballots in a secure location until the ballots are to be pre-canvassed or canvassed.

County boards of elections should stamp the date of receipt on the ballot-return envelope. County boards of elections should record the receipt of absentee and mail-in ballots daily in the Statewide Uniform Registry of Electors (SURE) system. To record a

ballot as returned, the staff should scan the correspondence ID barcode on the outside of the outer ballot return envelope. The correspondence ID on the envelope is unique to each absentee or mail-in voter and each issuance of a ballot to a voter. Once a correspondence ID has been recorded as returned in the SURE system, it cannot be recorded again. Further, if a ballot issuance record is cancelled by the county board of elections (e.g., voided to reissue a replacement ballot) in the SURE system, the correspondence ID on the cancelled ballot will become invalid. If the same barcode is subsequently scanned, the SURE system will not allow the returned ballot to be marked as being approved for counting.

The county boards of elections should record the date a mail ballot is received (not the date that a returned ballot is processed). In the event a county board of elections is entering a mail ballot on a date other than the date it was received, county personnel should ensure that the SURE record reflects the date of receipt, rather than the date of entry, since by default, SURE will automatically populate both the 'Date Received' and 'Vote Recorded' fields with the current date and time unless users manually correct the date to reflect the date received.

3 EXAMINATION OF DECLARATION ON MAIL BALLOT RETURN ENVELOPES:

The county board of elections is responsible for approving ballots to be counted during pre-canvassing and canvassing.

To promote consistency across the 67 counties, the county boards of elections should follow the following steps when processing returned absentee and mail-in ballots.

After setting aside ballots of electors who died prior to the opening of the polls, the county board of elections shall examine the Voter's Declaration on the outer envelope of each returned ballot and compare the information on the outer envelope, i.e., the voter's name and address, with the information contained on the list of absentee and mail-in voters.

If the Voter's Declaration on the return envelope is not signed or dated, or is dated with a date deemed to be incorrect, that ballot return envelope must be set aside and the ballot not counted. If the board determines that a ballot should not be counted, the final ballot disposition should be noted in SURE. The ballot return status (Resp Type) should be noted using the appropriate drop-down selection. It is important that the ballot return status is promptly and accurately recorded in SURE using the specific response type as to the disposition for each ballot received.

Due to ongoing litigation, ballots that have been administratively determined to be undated or incorrectly dated should be set aside and segregated from other ballots. Counties may prefer to keep segregated undated and incorrectly dated ballots organized by precinct and alphabetically by last name within each precinct. The department strongly recommends that counties also segregate into separate groups undated ballots versus incorrectly dated ballots.

When voters return their ballots in person to election offices, it is recommended that office personnel remind voters to confirm that they signed and correctly dated their ballots,

If the county election board is satisfied that the declaration is sufficient, the mail-in or absentee ballot should be approved for the pre-canvass or canvass unless the application was challenged in accordance with the Pennsylvania Election Code.

The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.

Version	Date	Description
1.0	9.11.2020	Initial document release
2.0	5.24.2022	Updates related to court decisions
3.0	9.26.2022	Updates related to court decisions
4.0	4.3.2023	Updates to conform to administrative changes and litigation

Joint Stipulation

Exhibit J

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Pennsylvania Provisional Voting Guidance

Date: March 11, 2024

Version: 2.1

Background

This revised guidance addresses the issuance, voting, and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA).

Generally, under the applicable statutes, if a voter is not eligible to be issued a regular ballot, that voter is entitled to submit a provisional ballot at the polling place. Provisional ballots may be issued at the polling place until the close of polls on Election Day absent a court order extending voting hours.

Using Provisional Ballots

Provisional ballots are utilized when a voter believes that they are eligible to vote, but the poll worker is unable to confirm the voter's eligibility. Provisional ballots permit the voter to submit a ballot, although the ballot is initially segregated from the regular ballots returned by voters whose eligibility was confirmed at the polls on Election Day. After Election Day, the county board of elections must adjudicate the provisional ballot voter's eligibility to vote. If the board determines that the voter is eligible and did not already vote in that election, then the provisional ballot is counted or partially counted, if applicable.

Voters are entitled to a provisional ballot when their eligibility to vote is uncertain. A poll worker must inform voters that they have a right to use a provisional ballot if their eligibility is uncertain. The circumstances which would create a situation where a voter may be issued a provisional ballot include, but are not necessarily limited to:

- Voter's name was not in the poll book or supplemental poll book.
 - For example, the voter reported to the wrong precinct, or
 - The voter did not report a recent change in residence to the county election office.
- Voter is required to show ID but cannot do so.
- Voter eligibility was challenged by an election official.
- Voter was issued an absentee or mail-in ballot but believes that they did not successfully vote the ballot, and the ballot and outer return envelope were not surrendered at the polling place to be spoiled.
- Voter returned a completed absentee or mail-in ballot that will be rejected by the county board of elections, and the voter believes they are eligible to vote.
- A special court order was issued with respect to the voter's status.
- A special court order was issued related to extending the hours of voting.

- Voter claims they are registered in a political party with which they are not affiliated (for primary elections only).

Process for the Voter

Any voter who intends to submit a provisional ballot shall follow these steps:

- 1) Before receiving a provisional ballot, the voter must complete the sections on the provisional ballot envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials.
- 2) Upon completion of the above sections of the provisional ballot envelope, the voter must mark their provisional ballot.
- 3) After the voter marks their provisional ballot, they must seal their ballot in the secrecy envelope and then place the secrecy envelope in the provisional ballot envelope.
- 4) The voter must fill out the Voter Signature Section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector.
- 5) The voter must sign both the Voter Affidavit for Provisional Ballot and the front of the provisional ballot envelope.
- 6) The Judge of Elections and the Minority Inspector will then sign the affidavit after noting the reason for the provisional ballot.

Voters can check the status of their provisional ballot after the election by calling their county board of elections, checking the PA Voter Services website, or calling the PA Department of State.

Note: The online provisional ballot search will return results only for the active election and cannot be used to search provisional ballots from previous elections.

Voters will need to provide their provisional ballot number or their full name and date of birth to check the status of their provisional ballot.

- Voters can find the phone number for their county election office online at vote.pa.gov/county.
- The website for PA Voter Services is vote.pa.gov/provisional.
- The phone number for the PA Department of State is 1-877-VOTESPA (1-877-868-3772), option 6.

Process for Poll Workers

Voters who requested an absentee or mail-in ballot may arrive at their polling place on Election Day seeking to vote. Poll workers should follow the instructions below for these voters.

- 1) For voters who were issued an absentee or mail-in ballot but **did not** successfully return their ballot to the board of elections:
 - a. These voters' names will be found in section 1 of the poll book, and the signature line will say either "Remit Absentee Ballot or Vote Provisionally" or "Remit Mail-in Ballot or Vote Provisionally."
 - i. Option A. If the voter has their unvoted absentee or mail-in ballot and outer envelope with them, the poll worker shall permit the voter to surrender their mail ballot and envelope and sign the Elector's Declaration to Surrender their Mail Ballot form (see **Appendix A**). After the voter does this, the poll worker shall allow the voter to vote by regular ballot the same as any other voter.
 - ii. Option B. If the voter is designated in the poll book as having been issued an absentee or mail-in ballot but the voter does not have their absentee or mail-in ballot and outer envelope with them, the voter may submit only a provisional ballot, and the poll worker shall offer them this option.
- 2) For voters who **did** successfully return their absentee or mail-in ballot:
 - a. If a voter was issued an absentee or mail-in ballot and successfully returned their ballot, their name will be found in section 2 of the poll book, and the signature line will say either "Absentee – Ballot Cast/Not Eligible" or "Mail-in – Ballot Cast/Not Eligible."
 - b. If a voter listed in section 2 of the poll book believes that they have not successfully voted their absentee or mail-in ballot or otherwise contests their ballot status, the poll worker must provide the voter a provisional ballot.

For **everyone** receiving a provisional ballot, poll workers must ensure that, before the provisional ballot is issued, the Voter Information, Voter Affidavit for Provisional Ballot, and Current Address sections on the provisional ballot envelope are completed by the voter. Again, the voter must sign **both** the Voter Affidavit for Provisional Ballot **and** the front of the provisional ballot envelope.

Poll workers must ensure that the voter signs their name in the presence of both the Judge of Elections and the Minority Inspector. Poll workers must also ensure that both the Judge of Elections and Minority Inspector sign the affidavit.

If polling place hours are extended beyond 8:00 p.m. on Election Day by court order, all votes submitted after 8:00 p.m. shall be submitted via provisional ballot only.

Process for County Elections Officials

Within seven days after the election, the county board of elections must review and make a determination for each provisional ballot cast on Election Day.

Counties should notify parties and the public a week in advance of the date that election officials will meet to examine and reconcile provisional ballots during the post-election official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act¹ for public meetings.

Parameters for canvassing provisional ballots

- When determining whether to count a provisional ballot, the county board of elections must reconcile provisional ballots with ballots cast in person on Election Day and with returned absentee and mail-in ballots. If a voter cast an Election Day ballot or successfully voted an absentee or mail-in ballot, the provisional ballot shall not be counted.
- A county board of elections can approve a provisional ballot for counting only if the voter is qualified and eligible to vote in the election.
- When researching provisional ballots during the canvassing period, the county election staff should enter the voter's provisional voting information from the provisional envelope into the SURE system to maintain an accounting of the number of provisional ballots issued for the election.
- If a voter's mail-in or absentee ballot was rejected for a reason unrelated to the voter's qualifications, and the voter submitted a provisional ballot and meets other provisional ballot requirements, the provisional ballot shall be counted if the county determines that the voter is eligible to vote.²
- Counties are prohibited from counting a provisional ballot submitted by a qualified registered voter of another county.
- During the canvass, the county board of elections must determine, for each provisional ballot, whether:
 - The provisional ballot should be counted in full (i.e., all contests on the ballot are counted);
 - The provisional ballot should be partially counted (i.e., some contests but not all contests on the ballot are counted) and the reason(s) for the partial counting;

¹ 65 Pa.C.S. § 701, *et seq.*

² The Department agrees with the analysis of the Delaware County Court of Common Pleas in *Keohane v. Delaware County Board of Elections*, No. 2023-004458 (Sept. 21, 2023); *but see In Re Allegheny Cnty. Provisional Ballots in the 2020 Gen. Election*, 241 A.3d 695 (Pa. Commw. Ct. 2020) (unpublished).

- The provisional ballot is invalid because the voter successfully submitted another ballot; or
- The provisional ballot should be rejected for another reason(s) and the reason(s) for the rejection.

Hearings for provisional ballots challenged during the canvass

If a provisional ballot is challenged during the canvass, the county board of elections must schedule a hearing within seven days of the challenge to consider the challenge and determine the disposition of the ballot. Additionally, notice shall be given where possible to the challenged provisional voter and to the attorney, watcher, or candidate who made the challenge.

- It is recommended that counties notify parties and the public of the hearing a week in advance of the date, noting that election officials will meet to examine and reconcile provisional ballots during the post-election official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act³ for public meetings.
- During the hearing, the county board of elections must decide whether to uphold or dismiss the challenge. The county board is not bound by the Pennsylvania Rules of Evidence. Any testimony presented must be stenographically recorded.

###

Version	Date	Description
1.0	3.5.2020	Initial document release
1.1	10.21.2020	Updated per Act 12 of 2020
2.0	10.12.2023	Updated to reflect judicial guidance
2.1	3.11.2024	Updated to implement clarifying edits and modified affidavit form.

³ 65 Pa.C.S. § 701, *et seq.*

Elector's Declaration to Surrender Their Mail Ballot**For the Voter:**

I hereby declare that I am a qualified registered elector who was issued an absentee or mail-in ballot for this election, but that I have not mailed or cast an absentee or mail-in ballot in this election. Instead, I am hereby remitting my absentee or mail-in ballot and its declaration envelope to the judge of elections at my polling place to be spoiled. I request that my absentee or mail-in ballot be voided, and that I be permitted to sign the poll book and vote a regular ballot.

I verify that the statements made in this declaration are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the criminal penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(Printed Name of Elector)

(Signature of Elector)

(Address of Elector)

For Election Officials Only:

I hereby declare I have received the voter's ballot and envelope containing the voter's declaration from the voter and I am spoiling it and permitting the voter to sign the poll book and vote a regular ballot.

(Printed Name of Judge of Elections)

(Judge of Elections Signature)

(Precinct)

Instructions after completion: This form should be attached to the voter's surrendered balloting material and returned in the [container] [bag] designated for spoiled ballots. Do not forget to check the **"BALLOT REMITTED?"** option next to the voter's name in the poll book.

Joint Stipulation

Exhibit K

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Washington County Board of Elections
April 26, 2023

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chair Diana Irey Vaughan, Monica Merrell, and Todd Pappasergi. Also present were Solicitor Jana Grimm, Election Director Melanie Ostrander, Chief of Staff Michael Namie, Washington County Republican Party Treasurer April Betzner, Washington County Republican Party Tina Whited, Washington County Republican Party Vice Chair Jeffrey Elias, candidate for County Commissioner and concerned citizen Ashley Duff, and Observer Reporter journalist Mike Jones.

Mrs. Vaughan called the meeting to order at 10:00 am.

Mrs. Vaughan led the attendees in prayer.

Mrs. Vaughan led the Pledge of Allegiance.

Public Comment

Tina Whited inquired on the set up for election night to allow the public to view the return of results by the poll workers.

Mrs. Vaughan called for a motion to amend the agenda to include approval of the minutes of the April 11, 2023 meeting, which was omitted in error.

Mr. Pappasergi moved to amend the agenda to include approval of the minutes of the April 11, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Mr. Pappasergi moved to approve the minutes of the April 11, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Election Director Comment

Ms. Ostrander reported to the Board her review of how other counties handle the process of public viewing of the election night returns process, and her suggestion for Washington County.

There are seven security cameras in the election night returns areas; one outside, one in the stairwell, two in the hallway, one in the ballot room, one in the ballot storage room, and one in the EMS computer room. The Public Meeting Room has two large flat screen televisions. The live stream from these seven cameras can be displayed on the two televisions. The public can enter the Public Meeting Room from the door on North Franklin Street and be able to view the live stream from these security cameras. Two Sheriff Deputies are needed to provide security for the Room; one at the entrance and one at the entrance to the hallway. The capacity of the room is 100 people.

New Business

Appointment of Pre-Canvass Workers

Mr. Pappasergi moved to appoint the following people to serve as pre-canvass workers for Election Day, May 16, 2023 beginning at 9:00 am:

Charles Mahoney, Miles Glotfelty, Jessica Glotfelty, David Kresh, Catherine Kresh, Betsy West, James Blue, Peggy Wilson, Joseph Trifaro Jr, Mary Lea Dutton, Linda Andrews, and Maureen Jones.

Mrs. Merrell seconded the motion.

Motion approved.

Appointment of Election Night Workers

Mr. Pappasergi moved to appoint the following people to serve as election night workers for Election Day, May 16, 2023 beginning at 7:00 pm:

Penny Folino, Eric Fowler, Matthew Malik, Mitchell Malik, David Gump, Ashley Ostrander, Bridgett Gerba, and KC Lindley.

Mrs. Merrell seconded the motion.

Motion approved.

Appointment of the Canvass Board

Mr. Pappasergi moved to appoint the following people to serve as the Canvass Board.

David Kresh, Catherine Kresh, Charles Watts, Mary Lea Dutton, and Maureen Jones.

Mrs. Merrell is awaiting response from a person to make six appointments. If that person is not available, the Canvass Board will remain at five members.

Mrs. Merrell seconded the motion.

Motion approved.

Mr. Pappasergi moved to allow curing of absentee and mail in ballots if the voter failed to sign the return envelope under the Voter's Declaration, and to not allow curing if the voter signed but did not date the envelope under the Voter's Declaration.

Mrs. Merrell seconded the motion.

Motion approved.

Announcements

The next Board of Elections meeting will occur Thursday, June 1, 2023 at 10:00 am in the Crossroads Center Conference Room, Room G-17, Washington, PA.

There being no further business, Chair Vaughan declared the meeting adjourned at 10:45 am.

Washington County Board of Elections
September 19, 2023

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chair Diana Irey Vaughan, Monica Merrell, and Todd Pappasergi. Also present were Solicitor Jana Grimm and Elections Director Melanie Ostrander.

Mrs. Vaughan called the meeting to order at 10:02 am.

Mrs. Grimm led the attendees in prayer.

Ms. Ostrander led the Pledge of Allegiance.

Mr. Pappasergi moved to approve the minutes of the June 1, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Public Comment

No public comments

Election Director Comments

We received 10 affidavits challenging the residency of 10 registered voters based on the fact their names appeared on the National Change of Address report.

Absentee and Mail in ballots will be mailed beginning on October 10.

As of today, we have approximately 12,500 applications for mail ballots.

New Business

Todd Pappasergi moved for Solicitor Grimm to review the challenge affidavits, the Pennsylvania Election Code, and the National Voter Registration Act and make a recommendation to the Board at the next BOE meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Ms. Ostrander will contact the Pre-Canvass Workers, Election Night Workers, and Canvass Board members from the May 16, 2023 Municipal Primary for availability. The appointments will be voted on at the next BOE meeting.

The process for public viewing on Election Night will remain the same as was decided at the April 26, 2023 BOE meeting, which is there are seven security cameras in the election night returns areas; one outside, one in the stairwell, two in the hallway, one in the ballot room, one in the ballot storage room, and one in the EMS computer room. The Public Meeting Room has two large flat screen televisions. The live stream from these seven cameras can be displayed on the two televisions. The public can enter the Public Meeting Room from the door on North Franklin Street and be able to view the live stream from these security cameras. Two Sheriff Deputies are

needed to provide security for the Room; one at the entrance and one at the entrance to the hallway. The capacity of the room is 100 people.

The process for curing received absentee and mail in ballots will remain the same as was voted on at the April 26, 2023 BOE meeting, which is curing of absentee and mail in ballots if the voter failed to sign the return envelope under the Voter's Declaration, and to not allow curing if the voter signed but did not date the envelope under the Voter's Declaration.

Announcements

The next Board of Elections meeting will occur Tuesday, October 17, 2023 at 10:00 am in the Crossroads Center Conference Room, Room G-17, Washington, PA.

There being no further business, Chair Vaughan declared the meeting adjourned at 10:33 am.

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Joint Stipulation

Exhibit L

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Washington County Board of Elections

March 12, 2024

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chairman Nick Sherman, Electra S. Janis, and Larry Maggi. Also present were Solicitor Gary Sweat, Chief of Staff Daryl Price, Elections Director Melanie Ostrander, Executive Assistant Casey Grealish, Executive Assistant Heather Wilhelm, and Mike Jones from the Observer Reporter.

Mr. Sherman called the meeting to order at 9:30 am.

Mr. Sherman led the Pledge of Allegiance.

Mr. Maggi moved to approve the minutes of the November 27, 2023 meeting.

Ms. Janis seconded the motion.

Motion approved.

Public Comment

There was no one signed up for public comment.

Election Director Comments

The procedure for the handling of absentee and mail in ballot envelopes received as incomplete needs to be decided. Ms. Ostrander described the options available and the Board will vote at the next meeting.

Ms. Ostrander requested the following for election help from each Board member:

Pre-Canvass Workers – 5 people each

Election night Workers – 3 people each

Canvass Board – 2 people each

New Business

Mr. Maggi moved to increase the poll worker compensation to \$175 for Judge of Elections and \$150 for other poll workers.

Ms. Janis second the motion.

Motion approved.

Ms. Janis moved to approve the increases to polling place compensation per the provided attached list.

Mr. Maggi seconded the motion.

Motion approved.

MINUTE BOOK

BOARD OF ELECTIONS

WASHINGTON COUNTY, PENNSYLVANIA

IMR LIMITED E1316649LD

There being no further business, Chairman Sherman declared the meeting adjourned at 10:12 am.

THE FOREGOING MINUTES WERE SUBMITTED FOR APPROVAL:

April 11, 2024

ATTEST: Cynthia B. Griffo
CHIEF CLERK

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Joint Stipulation

Exhibit M

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Washington County Board of Elections
April 11, 2024

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chairman Nick Sherman, Electra S. Janis, and Larry Maggi. Also present were Solicitor Gary Sweat, Chief of Staff Daryl Price, Elections Director Melanie Ostrander, Executive Assistant Casey Grealish, Executive Assistant Heather Wilhelm, Mike Jones from the Observer Reporter, and Paul Fedore from the Center for Coalfield Justice.

Mr. Sherman called the meeting to order at 11:02 am.

Mr. Sherman led the Pledge of Allegiance.

Ms. Janis moved to approve the minutes of the March 12, 2024 meeting.

Mr. Maggi seconded the motion.

Motion unanimously approved.

Public Comment

Paul Fedore representing the Center for Coalfield Justice spoke on allowing voters to cure errors made on the absentee and mail in ballot declaration envelope.

Election Director Comments

Ms. Ostrander provided an update on the number of absentee and mail in ballots sent and received. Ms. Ostrander provided an example of the e-mail voters received after their absentee or mail in ballot has been received by the Elections Office.

New Business

Ms. Janis moved to increase the rover compensation to \$275.

Mr. Maggi seconded the motion.

Motion unanimously approved.

Ms. Janis moved to approve the following individuals as pre-canvass workers:

- Miles Glotfelty
- Sarah Wilhelm
- Jeffrey S Elias
- Sandra Schiffauer
- Beau Bouchard
- Dean Petrone Jr
- Michelle Fellin
- Beatriz Harrison
- Elizabeth Jackovich
- Meredith Camilletti
- Sandra Carman

- Charles Mahoney
- Linda M Andrews
- Mary Lea Dutton
- Joseph M Trifaro Jr

Mr. Maggi seconded the motion.

Motion unanimously approved.

Ms. Janis moved to approve the following individuals as election night workers.

- Dave Orndoff
- Angela Carrier
- Timothy Lesso
- Rachel Hrutkay
- Cassidy O'Connor
- Gabriella Gardner
- Lauren Lukas
- Sylvia Stoy
- Coryn Stoy

Mr. Maggi seconded the motion.

Motion unanimously approved.

Ms. Janis moved to approve the following individuals as Canvass Board members.

- Jeffrey S Elias
- Antony Gennaccaro
- John Hudock
- Gerilynn Gennaccaro
- Mary Lea Dutton
- Charles Watts

Mr. Maggi seconded the motion.

Motion unanimously approved.

Mr. Sherman moved to not allow curing of absentee and mail in ballots received with errors on the declaration envelope.

Ms. Janis seconded the motion.

Discussion was held between members regarding curing of ballots.

Roll call vote taken:

Mr. Sherman – yes; Ms. Janis – yes; Mr. Maggi – no

Ms. Janis moved to accept the following procedure for allowing viewing of election night returns:

The public has the opportunity to view the results returned from the poll workers on election night via the live feed of security cameras displayed on large televisions in the public meeting

room located on the ground floor of the Crossroads Center, 95 W Beau St, Washington. The public will enter the building via the Franklin Street entrance.

One authorized representative per candidate on the ballot and one authorized representative per political party on the ballot are permitted to view the return of the results via pre-determined and marked areas inside the Elections Office; a letter on candidate letterhead or political party letterhead identifying you as the authorized representative to view election returns must be provided for access.

No food or drink is permitted and no photography.

Mr. Maggi seconded the motion.

Motion unanimously approved.

The next Board of Elections meeting will be May 13, 2024 at a time to be announced at a later date.

There being no further business, Chairman Sherman declared the meeting adjourned at 11:45 am.

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Joint Stipulation

Exhibit N

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MINUTE BOOK

BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

IMB LIMITED E1808491KV

Minute No. 1184

April 18, 2024

The Washington County Commissioners met in regular session in Public Meeting Room G-16, in the Crossroads Center at 95 West Beau Street, Washington, PA, with the following members in attendance: Commissioners Nick Sherman, Electra Janis and Larry Maggi. Also present were Solicitor Gary Sweat; Chief of Staff Daryl Price; Chief Clerk Cindy Griffin and Administrative Assistant Debbie Corson; Public Affairs Director Patrick Geho; Administrative Assistants Heather Wilhelm, Casey Grealish and Randi Marodi; Pastor Rob Grewe; Joanna Dragan and Katie Figgs from Sexual Violence Services, SPHS; Deputy Director, Children & Youth Services Adam Garrity; and residents: Marie A. Ferguson, Judy Kramer, Mark Kramer, Astrid Velthuisen, Kris Vanderlyn, Steve Renz, Dave Ball, Melanie Patterson, Chris Todd, Dr. Andrew Goudy, Jen Phillips, Michael Daly, Diane DiSalle, Donna Raven, Carolee Ketelaor, Ashley Duff, Susan Bender, Staci Lieber, Lois Bower-Bjornson, Annie Shaner, Byron Timmins, Geoff Ruben, Jon Volkwein, Sean Logue, Steph Rossi, Mary Matsuura, Bruce Bandel, Fred Bender, Don Fitch, Mary Jane Stewart, Margaret B. Jennings, Fern Sibert, Christina Proctor, Shane Assadzandi, Frank Gambino and many others, who did not sign up to speak.

Mr. Sherman called the meeting to order at approximately 6:30 p.m. and announced the meeting was being video and audio live streamed through YouTube and via the Commissioners' Facebook page.

Mr. Sherman introduced First Lutheran Church Pastor Rob Grewe, who led the meeting in prayer.

Mr. Maggi led with the Pledge of Allegiance.

Mr. Sherman entertained a motion to approve Minute No. 1183, dated April 4, 2024.

Moved by Ms. Janis; seconded by Mr. Maggi, approving Minute No. 1183, as written.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

SPECIAL ORDER OF BUSINESS

Mr. Maggi read a proclamation declaring April 2024 as Sexual Assault Awareness Month in Washington County.

Moved by Mr. Maggi; seconded by Ms. Janis to approve the proclamation.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Accepting the proclamation was Joanna Dragan, Supervisor of SPHS Care Center STTARS Program and their Volunteer Coordinator Katie Figgs.

Ms. Dragan expressed gratitude to the Board for their support and recognized her organization's dedicated staff, which serves hundreds of victims and families throughout Washington and Greene counties. She continued, noting the STTARS Program receives support from various departments and agencies like Children & Youth Services, the District Attorney's Office, law enforcement and others. She announced how to reach out for help via their hotline number 1-888-480-7283 or website at sttars.sphs.org.

Ms. Janis read a proclamation declaring April 2024 as Child Abuse Prevention Month in Washington County.

Moved by Ms. Janis; seconded by Mr. Maggi, to approve the proclamation.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

MINUTE BOOK

BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

IMR LIMITED E1808491KV

Accepting the proclamation was Washington County's Adam Garrity, Deputy Director of Children & Youth Services.

Before Mr. Garrity spoke, Mr. Sherman expressed gratitude for his department's quick response in getting car seats to families whose cars were destroyed during recent flooding in Canton Township.

Mr. Garrity then thanked the Board for their support to the children and families of the County. In 2023, he stated, his department received 5,559 referrals and that child abuse comes in various forms and happens in every community. Prevention is key and starts with each one of us being vigilant and observant in recognizing the signs and not ignoring them, he continued. His department is working to create safe spaces for children where they feel empowered to speak up and seek help when they feel they need it, he summarized.

AGENDA COMMENTS

None.

COMMISSIONERS' RESPONSES

None.

OLD BUSINESSBID AWARD

Solicitor Sweat recommended the Board, on behalf of Purchasing, award the bid for the Joint Municipal Purchasing Program (JMPP), Summer 2024 to the listed vendors based on their delivered per unit costs, as submitted in the bid proposal; and to authorize the rebidding on all items not bid for various municipalities:

- Heidelberg Materials Northeast LLC – Connellsville, PA
- Youngblood Paving Inc. – Wampum, PA

If approved, municipalities are free to enter into any agreement on items bid by the above-awarded vendors. This contract will be effective April 1, 2024 through March 31, 2025.

All items have been awarded to the lowest, most responsive, and responsible bid received. All bid responses were reviewed and recommended for award by the Planning and Purchasing departments.

Moved by Ms. Janis, seconded by Mr. Maggi approving the bid for the Joint Municipal Purchasing Program (JMPP), Summer 2024, effective April 1, 2024 through March 31, 2025.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

MINUTE BOOK

BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

MAR LIMITED E1808491KV

NEW BUSINESS

Chief Clerk, on behalf of the Public Defender, presented to the Board for their consideration and approval, the cost of training, lodging, and all travel related fees, within the rules of the County's travel policy, for an employee (Marie Lester) to attend the RISE24 Conference on May 22-25, 2024, in Anaheim, California. The cost will be approximately \$2,800 and will be paid from the Public Defender's Operating Budget.

Moved by Ms. Janis, seconded by Mr. Maggi approving training and travel expenses for the RISE24 Conference on May 22-25, 2024, for the approximate amount of \$2,800.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk presented to the Board for their consideration and approval, the entering into an Intergovernmental Cooperation Agreement (IGA) and a Memorandum of Understanding (MOU) between Washington County Land Bank, the County of Washington, West Bethlehem Township, and Bethlehem-Center School District for the purpose of participating in the County Land Bank.

Moved by Ms. Janis, seconded by Mr. Maggi agreeing to an IGA and MOU with Washington County Land Bank, the County of Washington, West Bethlehem Township, and Bethlehem-Center School District.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk presented to the Board for their consideration, the approval and ratification of a consulting agreement between the County and Brian Guyton in the amount of \$150/hour, plus expenses, to provide human resources consulting services as required by the County. The agreement is effective April 1, 2024 through July 31, 2024, unless terminated by either party in accordance with the provisions of the agreement. The hours worked will not exceed 12 hours/week.

Moved by Ms. Janis, seconded by Mr. Maggi approving and ratifying the consulting agreement with Brian Guyton in the amount of \$150/hour, plus expenses, effective April 1, 2024 through July 31, 2024.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk presented to the Board for their consideration and approval, the termination of the County's contract with MRA, Inc., dated August 24, 2023, for the installation of the countywide public safety radio system project and authorize the County Solicitor to notify MRA of the Board's decision. The Commissioners request all drawings, site plans, tower-land lease documentation, and the system's final design documentation be delivered to the County.

Moved by Ms. Janis, seconded by Mr. Sherman agreeing to terminate the County's contract with MRA, Inc., dated August 24, 2023.

Roll call vote taken:

Mr. Maggi – No; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried.

Chief Clerk presented to the Board for their consideration and approval, an agreement with Mission Critical Partners, LLC (MPC), based on their hourly rate schedule. The total amount will not exceed \$200,000, plus expenses. The purpose of the agreement is for consulting support services for the County's Public Safety Department on various projects. This agreement will be for a one-year period from the date of agreement and is subject to finalization of the agreement by both the County and the Solicitor.

Moved by Ms. Janis, seconded by Mr. Sherman approving the agreement with MPC in an amount not to exceed \$200,000, plus expenses, for a period of one year.

Roll call vote taken:

Mr. Maggi – No; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried.

MINUTE BOOK

BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

IMPLIMITED E1808491KV

Chief Clerk presented to the Board for their consideration and approval, the preparation of a scope of work (SOW) and bid specifications, to complete the Public Safety Radio System Project for the County, by Mission Critical Partners, the County's Public Safety Advisory Committee, and the Land Mobile Sub-Committee. The project will not be advertised for bid until the 30-day notice of termination to MRA has expired.

Moved by Ms. Janis, seconded by Mr. Sherman approving the preparation of the SOW and bid specifications for the completion of the County's Public Safety Radio System Project.

Roll call vote taken:

Mr. Maggi – No; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried.

Chief Clerk presented to the Board for their consideration and approval, the appointment of Cozen O'Connor, a law firm, located at One Oxford Centre, 301 Grant Street, 41st Floor, Pittsburgh, PA 15219, to serve as special counsel to the County for the construction, finance, and bond-related issues concerning Courthouse Square office/garage and related projects.

Moved by Ms. Janis, seconded by Mr. Maggi approving the appointment of Cozen O'Connor as special counsel to the County for the construction, finance, and bond-related issues.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of the Redevelopment Authority of the County of Washington, as agent for the Washington County Airport, presented to the Board for their consideration and approval, a Consent to Assignment Agreement between the County and Aeronational, Inc. for consent to its assignment of the land lease with AAW Holdings, LLC. All other terms and conditions of the agreement shall remain the same.

Moved by Ms. Janis, seconded by Mr. Maggi approving the Consent to Assignment Agreement with Aeronational, Inc.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of the Tax Assessment Office, presented to the Board for their consideration and approval, an agreement with Lane Turturice, Esquire to provide solicitor services for the Tax Assessment office. The agreement will be the same as the previous solicitor's fee agreement, is effective the date of agreement, and shall be continuous until terminated by either party.

Moved by Ms. Janis, seconded by Mr. Maggi approving the agreement with Lane Turturice, Esquire.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Planning, presented to the Board for their consideration and approval, a cooperative agreement with the Redevelopment Authority of the County of Washington (RAWC) for the Local Share Account (LSA) grant in the amount of \$629,000 for Hall 1 building improvements at the Washington County Fairgrounds.

Moved by Ms. Janis, seconded by Mr. Maggi approving the cooperative agreement with RAWC for the LSA grant in the amount of \$629,000.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

MINUTE BOOK

BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

IMRLIMITED E1808491KV

Chief Clerk, on behalf of Planning, presented to the Board for their consideration and approval, the signing for a Chapter 102 General Permit Application for developmental work at the County Fairgrounds. The permit will allow the Fair to construct a historic barn on Fairgrounds' property. As owners of the property, the County Commissioners are required to sign the Permit Application and provide a letter of consent for the work to be completed.

Moved by Ms. Janis, seconded by Mr. Maggi approving the signing for a Chapter 102 General Permit Application.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Children & Youth Services, presented to the Board for their consideration and approval, a provider agreement with BCL Partners, LLC for Leading Youth for Excellence (LYFE), a residential placement program, for the period of March 1, 2024 through June 30, 2024. The contract authorization amount is \$225,000 and no additional county funds are required.

Moved by Ms. Janis, seconded by Mr. Maggi approving the provider agreement with BCL Partners, in the amount of \$225,000, effective March 1, 2024 through June 30, 2024.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Children & Youth Services, presented to the Board for their consideration and approval, a provider agreement with Donnelly-Boland and Associates to assist transitioning from civil service to merit hire, for the period of May 1, 2024 through April 30, 2025. The contract authorization amount is \$15,000 and no additional county funds are required.

Moved by Ms. Janis, seconded by Mr. Maggi approving the provider agreement with Donnelly-Boland and Associates in the amount of \$15,000, effective May 1, 2024 through April 30, 2025.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Children & Youth Services, presented to the Board for their consideration and approval, a provider agreement with CDLewis Consulting to provide a comprehensive training program for professional development for the period of April 1, 2024 through June 30, 2025. The contract authorization amount is \$8,000 and no additional county funds are required.

Moved by Ms. Janis, seconded by Mr. Maggi approving the provider agreement with CDLewis Consulting in the amount of \$8,000, effective April 1, 2024 through June 30, 2025.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Human Services, presented to the Board for their consideration and approval, a provider agreement addendum with Connect, Inc. to administer the Permanent Supportive Housing grant for the period of May 1, 2023 through April 30, 2024. The contract authorization amount will be increased by \$2,335 to \$826,048 and no county funds are required.

Moved by Ms. Janis, seconded by Mr. Maggi approving the provider agreement addendum with Connect, Inc in the additional amount of \$2,335, effective May 1, 2023 through April 30, 2024.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Human Services, presented to the Board for their consideration and approval, a provider agreement addendum with Connect, Inc. to administer the Rapid Re-Housing grant for the period of June 1, 2023 through June 30, 2024. The contract authorization amount will be increased by \$4,000 to \$681,830 and no county funds are required.

Moved by Ms. Janis, seconded by Mr. Maggi approving the provider agreement addendum with Connect, Inc in the additional amount of \$4,000, effective June 1, 2023 through June 30, 2024.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Purchasing, presented to the Board for their consideration and approval, the advertising for a risk management consultant.

Moved by Ms. Janis, seconded by Mr. Maggi approving the advertising for a risk management consultant.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Purchasing and the Sheriff, presented to the Board for their consideration and approval, the advertising for narcotic identification kits (NIK).

Moved by Ms. Janis, seconded by Mr. Maggi approving the advertising for narcotic identification kits.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Purchasing and Children & Youth Services, presented to the Board for their consideration and approval, the advertising for non-offending parenting treatment.

Moved by Ms. Janis, seconded by Mr. Maggi approving the advertising for non-offending parenting treatment.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Purchasing and Parks & Recreation, presented to the Board for their consideration and approval, the advertising for concrete services at Crosscreek Park, Shelters #5 & #6.

Moved by Ms. Janis, seconded by Mr. Maggi approving the advertising for concrete services.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Purchasing and Planning, presented to the Board for their consideration and approval, the advertising for the replacement of the Harmon Creek Bridge #7.

Moved by Ms. Janis, seconded by Mr. Maggi approving the advertising for replacement of the Harmon Creek Bridge #7.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

MINUTE BOOK

BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

IMR LIMITED E1316649LD

Chief Clerk, on behalf of Purchasing and Information Technology, presented to the Board for their consideration and approval, a software agreement with Titan HQ for the purpose of providing Arc Titan Cloud 1000 for all users. Service will include all product features, updates, full support, and deployment assistance. This agreement will be effective the date of agreement, in the amount of \$44,600 for year one and \$35,100/year thereafter. Costs will be charged to I.T.'s Operating Budget.

Moved by Ms. Janis, seconded by Mr. Maggi approving the software agreement with Titan HQ in the amount of \$44,600 for year one and \$35,100/year thereafter.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Purchasing and Information Technology, presented to the Board for their consideration and approval, an antivirus agreement with Capital Area Intermediate Unit 15 for the purpose of providing Sentinel One Workstation and server licenses, including onboarding and implementation. This agreement will be effective April 1, 2024 through December 31, 2026, at a prorated cost of \$28,597.50 for year one and \$38,130/year thereafter. Costs will be charged to I.T.'s operating budget.

Moved by Ms. Janis, seconded by Mr. Maggi approving the antivirus agreement with Capital Area Intermediate Unit 15 in the amount of \$28,597.50 for year one and \$38,130/year thereafter, effective April 1, 2024 through December 31, 2026.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Purchasing and Buildings & Grounds, presented to the Board for their consideration and approval, an addendum with Cintas Corporation to include exchanging current Courthouse mats with those with the new Court logo. The addendum, under the terms and conditions of the original agreement, will be effective the date of agreement through December 31, 2024.

Moved by Ms. Janis, seconded by Mr. Maggi approving the a addendum with Cintas Corporation effective the date of agreement through December 31, 2024.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Chief Clerk, on behalf of Purchasing and the Coroner, presented to the Board for their consideration and approval, a software agreement with Cellebrite, Inc. for a forensic workstation. This agreement will be effective April 3, 2024 through April 2, 2025, at the cost of \$23,500/year and will be charged to the Coroner's operating budget.

Moved by Ms. Janis, seconded by Mr. Maggi approving the software agreement with Cellebrite, Inc., in the amount of \$23,500/year, effective April 3, 2024 through April 2, 2025.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

PUBLIC COMMENT

Several individuals offered public comment asking the Board to reverse their position on ballot notification and curing, calling it discriminatory, disenfranchising and not fair for elderly and underprivileged voters. These residents were: Marie A. Ferguson, Judy Kramer, Mark Kramer, Astrid Velthuisen, Melanie Patterson, Chris Todd, Dr. Andrew Goudy, Jen Phillips, Michael Daly, Diane DiSalle, Donna Raven, Carolee Ketelaor, Susan Bender, Staci Lieber, Lois Bower-Bjornson, Annie Shaner, Byron Timmins, Geoff Ruben, Jon Volkwein, Mary Matsuura, Fred Bender, Don Fitch, Mary Jane Stewart, Margaret B. Jennings, Christina Proctor, Shane Assadzandi, and Frank Gambino.

The following individuals supported the Commissioners' decision to not permit mail-in ballots to not be cured, nor voters notified for missing or wrong dates or signatures: Kris Vanderllyn, Steve Renz, Dave Ball, Ashley Duff, Sean Logue, Steph Rossi, and Bruce Bandel.

Fern Sibert from Clean & Tidy County Inc. requested volunteers to help with Earth Day roadside cleanup. She also asked for help with the cleaning of donated bottle caps, which had been damaged by flood waters in the storage unit.

COMMISSIONERS' RESPONSE

Mr. Sherman thanked all speakers for taking the time to come to the meeting.

Mr. Maggi stated he had spoken to the Solicitor about the Board having the right to ask the Election Board to call an emergency meeting to reconsider the notification and curing of ballots in the County. He then made a motion requesting the Election Board hold an emergency meeting to reconsider their earlier ruling on notification and curing of ballots. The motion died due to lack of a second.

SOLICITOR

Solicitor Sweat presented to the Board for their consideration and approval tax refunds in the amount of \$44,761.58.

Moved by Ms. Janis; seconded by Mr. Maggi, approving the above tax refunds.

Roll call vote taken:

Mr. Maggi – Yes; Ms. Janis – Yes; Mr. Sherman – Yes.

Motion carried unanimously.

Cycle C Tax Refunds - 04/18/24 - Meeting No. 1184

YR	AMT	DATE	NAME	ADDRESS	CITY	ST	ZIP	DISTRICT	PARCEL
2018	\$41.17	4/2/2024	TRUESTATE LLC	5984 WALLACE AVE	BETHEL PARK	PA	15102	UNION	640-002-00-00-0019-00
2019	\$41.17	4/2/2024	TRUESTATE LLC	5984 WALLACE AVE	BETHEL PARK	PA	15102	UNION	640-002-00-00-0019-00
2020	\$37.43	4/2/2024	TRUESTATE LLC	5984 WALLACE AVE	BETHEL PARK	PA	15102	UNION	640-002-00-00-0019-00
2021	\$41.17	4/2/2024	TRUESTATE LLC	5984 WALLACE AVE	BETHEL PARK	PA	15102	UNION	640-002-00-00-0019-00
2022	\$37.43	4/2/2024	TRUESTATE LLC	5984 WALLACE AVE	BETHEL PARK	PA	15102	UNION	640-002-00-00-0019-00
2023	\$36.68	4/2/2024	TRUESTATE LLC	5984 WALLACE AVE	BETHEL PARK	PA	15102	UNION	640-002-00-00-0019-00
2024	\$247.90	4/2/2024	TRIBBLE PATRICK G	196 WEAVER RUN RD	WASHINGTON	PA	15301	AMWELL	020-016-00-00-0051-04
2024	\$44.53	4/2/2024	LEMLEY NORMAN III & BRITTANY	652 BANETOWN RD	WASHINGTON	PA	15301	AMWELL	020-015-00-00-0022-01
2024	\$491.05	4/2/2024	NORTH TEN MILE BAPTIST CHURCH	322 RIDGE CHURCH RD	AMITY	PA	15311	AMWELL	020-023-00-00-0009-00
2024	\$133.59	4/2/2024	MISH ANDREW DAVID & KAYLA	125 MAIN ST	BENTLEYVILLE	PA	15314	BENTLEYVILLE	040-033-00-00-0014-00
2024	\$30.73	4/2/2024	BEATTY LEVI R	2974 S BRIDGE RD	WASHINGTON	PA	15301	BUFFALO	060-009-00-00-0030-16
2024	\$626.31	4/2/2024	GRAMPA JONATHAN	119 REESE ROAD	WASHINGTON	PA	15301	BUFFALO	060-002-00-00-0032-00
2024	\$580.35	4/2/2024	HOWES PAUL M & ASHLEY	164 POPLAR DRIVE	COAL CENTER	PA	15423	CALIFORNIA	080-038-00-00-0002-00
2024	\$126.21	4/2/2024	OFT NICHOLAS M	510 MCNARY AVE	CANONSBURG	PA	15317	CANONSBURG 1ST W	090-004-00-00-0016-00
2024	\$10.24	4/2/2024	STAUDT BENJAMIN	533 CHARTIERS AVE	CANONSBURG	PA	15317	CANONSBURG 1ST W	090-015-00-03-0014-00
2024	\$263.62	4/2/2024	STAUDT BENJAMIN	533 CHARTIERS AVE	CANONSBURG	PA	15317	CANONSBURG 1ST W	090-015-00-03-0015-00
2024	\$286.72	4/2/2024	ANDOGA ZACK	448 CROSBY DR	CANONSBURG	PA	15317	CANONSBURG 2ND W	100-007-00-00-0052-05
2024	\$235.28	4/2/2024	SMELTZER MARK & ARYN	239 SMITHFIELD ST	CANONSBURG	PA	15317	CANONSBURG 3RD W	110-039-00-03-0015-00

MINUTE BOOK

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BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

IMR LIMITED E1316649LD

Cycle C Tax Refunds - 04/18/24 - Meeting No. 1184

YR	AMT	DATE	NAME	ADDRESS	CITY	ST	ZIP	DISTRICT	PARCEL
2024	\$222.67	4/2/2024	JOX E JEFFREY & PAMELA J	411 RICHLAND AVE	CANONSBURG	PA	15317	CANONSBURG 3RD W	110-015-00-00-0010-00
2024	\$195.04	4/2/2024	KOENIG COURTNEY	111 BOYLE AVE	CANONSBURG	PA	15317	CANONSBURG 3RD W	110-020-00-00-0023-00
2024	\$13.81	4/2/2024	BAYSHORE HOME VENTURE 1 LLC	1000 HENDERSON AVE	WASHINGTON	PA	15301	CANTON	120-003-09-99-0093-00T
2024	\$480.09	4/2/2024	GOLNA DEREK J & DAWN M BALACH	2292 THE CIRCLE	WASHINGTON	PA	15301	CANTON	120-012-08-00-0006-00
2024	\$347.45	4/2/2024	AMENT JESSICA	280 HILLTOP LANE	WASHINGTON	PA	15301	CANTON	120-009-03-01-0015-00
2024	\$277.67	4/2/2024	BAKER JESSICA	1951 W THE ROAD	WASHINGTON	PA	15301	CANTON	120-012-05-01-0009-00
2024	\$423.17	4/2/2024	MUELLER JULIANN	482 HEWITT AVE	WASHINGTON	PA	15301	CANTON	120-008-03-03-0002-00
2024	\$16.90	4/2/2024	REIHNER FREDERICK C	356 BEACON AVE	WASHINGTON	PA	15301	CANTON	120-010-09-99-0356-00T
2024	\$33.10	4/2/2024	BARTOLOTTA ALDO & JOAN G	69 ORCHARD ST	CHARLEROI	PA	15022	CARROLL	130-011-01-02-0007-00
2024	\$33.82	4/2/2024	BARTOLOTTA ALDO L & JOAN	69 ORCHARD ST	CHARLEROI	PA	15022	CARROLL	130-011-01-02-0010-01
2024	\$10.48	4/2/2024	BARTOLOTTA ALDO L & JOAN	69 ORCHARD ST	CHARLEROI	PA	15022	CARROLL	130-011-01-02-0010-02
2024	\$242.42	4/2/2024	ZIMMERMAN SCOTT R & JUDITH A	15 HIGHLAND ST	MONONGAHELA	PA	15063	CARROLL	130-002-01-00-0002-00
2024	\$799.92	4/2/2024	ASCOLILLO ANTHONY E VETERANS EXEMPT	16 RIDGEWOOD DR	MCDONALD	PA	15057	CECIL	140-006-10-00-0005-00
2024	\$1,448.84	4/2/2024	COHEN MATTHEW PHILLIP & MELANIE	3024 BROOKSTONE DR	CANONSBURG	PA	15317	CECIL	140-010-09-00-0019-00
2024	\$664.41	4/2/2024	DAVID JUSTIN	481 DOGWOOD LANE	MCDONALD	PA	15057	CECIL	140-006-25-00-0002-03
2024	\$16.19	4/2/2024	HATHAWAY DAVID & MELANIE L	202 MARKWOOD DR	CANONSBURG	PA	15317	CECIL	140-009-16-00-0012-00
2024	\$501.52	4/2/2024	MENDICINO YVONNE	832 EAGLE POINTE DR	CANONSBURG	PA	15317	CECIL	140-010-05-00-0008-06
2024	\$1,014.00	4/2/2024	KANE PETER TIMOTHY & SHANNON VIRGIN	1005 MAGNOLIA COURT	MCDONALD	PA	15057	CECIL	140-006-25-00-0016-00
2024	\$31.19	4/2/2024	MICHALOWSKI DAVID E & SARAH E	538 SWIHART RD	MCDONALD	PA	15057	CECIL	140-005-00-00-0041-07
2024	\$319.11	4/2/2024	OLENAK LIVING TRUST & OLENAK KRISTEN	377 JUBILEE DR	BRIDGEVILLE	PA	15017	CECIL	140-012-16-00-0070-00F
2024	\$1,083.30	4/2/2024	PANDYA AESHA VALAY & VALAY DIPAKBHA	525 DOGWOOD LANE	MCDONALD	PA	15057	CECIL	140-006-25-00-0010-00
2024	\$55.49	4/2/2024	UNION GOSPEL MISSION OF CECIL	PO BOX 264	CECIL	PA	15321	CECIL	140-007-00-00-0026-02

Cycle C Tax Refunds - 04/18/24 - Meeting No. 1184

YR	AMT	DATE	NAME	ADDRESS	CITY	ST	ZIP	DISTRICT	PARCEL
2024	\$194.32	4/2/2024	BITTNER JARROD & MARKEE L	118 MALDEN RD	BROWNSVILLE	PA	15417	CENTERVILLE 2ND W	152-021-00- 03-0005-00
2024	\$19.53	4/2/2024	WADSWORTH CASSIE & PHILLIP	119 CHERRY AVE	BROWNSVILLE	PA	15417	CENTERVILLE 2ND W	152-025-00- 01-0017-00
2024	\$238.14	4/2/2024	PERGOLA BRANDON	917 CREST AVE	CHARLEROI	PA	15022	CHARLEROI	160-009-00- 04-0010-00
2024	\$145.75	4/2/2024	DAY DONALD W & PATRICIA ANN	PO BOX 576				CHARTIERS	170-017-04- 03-0017-00
2024	\$13.34	4/2/2024	JOHNSTON KELLEY J	317 REED AVE	HOUSTON	PA	15342	CHARTIERS	170-006-04- 05-0012-00
2024	\$171.23	4/2/2024	IMLK REAL EST LLC	78 SOUTHVIEW RD	MCDONALD	PA	15057	CHARTIERS	170-017-06- 02-0006-00
2024	\$294.34	4/2/2024	MORTIMER ROBERT ALLEN III & GRAYSON	366 OAK SPRING RD	CANONSBURG	PA	15317	CHARTIERS	170-006-03- 08-0008-00
2024	\$331.73	4/2/2024	CONGIE JOSEPH P JR & CELEDONIA STEP	221 LOCUST ST	HOUSTON	PA	15342	CHARTIERS	170-016-08- 04-0012-00
2024	\$280.29	4/2/2024	OBRIEN AUSTIN & SHAYNA	190 ARDEN ROAD	WASHINGTON	PA	15301	CHARTIERS	170-018-00- 00-0016-05
2024	\$323.87	4/2/2024	ELLENWOOD DAVID & EVELYN	100 PLAT ESTATES DR	WASHINGTON	PA	15301	CHARTIERS	170-017-07- 00-0001-00
2024	\$154.79	4/2/2024	SCHROEDER STUART A & KIM L	1001 MAN O WAR COURT	WASHINGTON	PA	15301	CHARTIERS	170-017-11- 00-0020-00
2024	\$203.61	4/2/2024	BURD RYAN M	103 MILL STREET, P.O. BOX 242	CLAYSVILLE	PA	15323	CLAYSVILLE	180-006-00- 01-0009-00
2024	\$5.24	4/2/2024	HARMISON DEBORAH L	1088 CROSS CREEK RD	BURGETTSTOWN	PA	15021	CROSS CREEK	210-002-01- 04-0002-00
2024	\$202.65	4/2/2024	GRAHEK KYLE	177 RIDGEWOOD DR	FREDRICKTOWN	PA	15333	DEEMSTON	220-006-00- 00-0022-00
2024	\$396.03	4/2/2024	LEMMON JOHN E JR	5 SKEDDLE LN	CLAYSVILLE	PA	15323	DONEGAL	230-012-00- 00-0062-01
2024	\$177.65	4/2/2024	HALL SARA RILEY	118 HIGHLAND AVE	W ALEXANDER	PA	15376	DONEGAL	230-028-00- 00-0005-00
2024	\$209.56	4/2/2024	POLAND ADAM W	37 N LIBERTY ST	W ALEXANDER	PA	15376	DONEGAL	230-030-00- 00-0004-00
2024	\$91.20	4/2/2024	YOEST CHRISTOPHER & MARIA REVOC TR C/O CHRISTOPHER A & MARIA J	YOEST, 2471 E FINLEY DR	CLAYSVILLE	PA	15323	DONEGAL	230-001-00- 00-0050-00
2024	\$69.30	4/2/2024	ARMSTRONG CHARLES H JR & SHARON K	544 CASTNER AVE	DONORA	PA	15033	DONORA	240-018-00- 04-0010-00
2024	\$62.40	4/2/2024	FRAINO MARIO D & LISA M	623 10TH STREET	DONORA	PA	15033	DONORA	240-045-05- 02-0002-01
2024	\$95.26	4/2/2024	ZIMMERMAN RICHARD K & DULCITA M	82 CASTNER AVE	DONORA	PA	15033	DONORA	240-031-00- 03-0003-00
2024	\$241.48	4/2/2024	GIOVANELLI THEODORE A	PO BOX 241	MILLSBORO	PA	15348	E BETHLEHEM	260-005-00- 00-0023-00

Cycle C Tax Refunds - 04/18/24 - Meeting No. 1184

YR	AMT	DATE	NAME	ADDRESS	CITY	ST	ZIP	DISTRICT	PARCEL
2024	\$10.48	4/2/2024	LINGIS MICHAEL & KADY M	36 PITT ST	CLARKSVILLE	PA	15322	E BETHLEHEM	260-003-01-03-0001-00
2024	\$282.91	4/2/2024	SELENE FIN LP	3501 OLYMPUS BLVD, 5TH FLOOR SUITE 500	DALLAS	TX	75019	E BETHLEHEM	260-010-00-02-0006-00
2024	\$440.32	4/2/2024	HARDIN JOSHUA	510 EAST BEAU ST APT B	WASHINGTON	PA	15301	EAST WASHINGTON	290-008-00-04-0003-00
2024	\$440.32	4/2/2024	RIESS DEREK & JACLYN M	215 NORTH WADE AVE	WASHINGTON	PA	15301	EAST WASHINGTON	290-005-00-04-0011-00
2024	\$305.77	4/2/2024	HUSTON GREGG JR	308 RTE 88	ELCO	PA	15434	ELCO	300-005-00-04-0004-01
2024	\$686.08	4/2/2024	ALTON AMANDA	162 LOVER JOHNSTOWN RD	CHARLEROI	PA	15022	FALLOWFIELD	320-012-00-00-0012-03
2024	\$72.16	4/2/2024	BAKER CHRISTOPHER ANDREW BIERWIND	27 CAROL AVE	MONONGAHELA	PA	15063	FALLOWFIELD	320-006-00-00-0031-01
2024	\$56.67	4/2/2024	BEHERS STEPHANIE L & NICOLE M LETTI	140 COLVIN RD	CHARLEROI	PA	15022	FALLOWFIELD	320-010-00-00-0041-02
2024	\$270.05	4/2/2024	DAMICO SARAH	1714 ROUTE 481	CHARLEROI	PA	15022	FALLOWFIELD	320-006-01-03-0003-00
2024	\$604.88	4/2/2024	IANNETTI ANNETTE	825 STEUBENVILLE PIKE	BURGETTSTOWN	PA	15021	HANOVER	340-009-00-00-0005-03
2024	\$232.19	4/2/2024	MINSINGER WILLIAM & HOAK MARIE	4 WILLIAMS RD	BURGETTSTOWN	PA	15021	HANOVER	340-011-02-08-0010-00
2024	\$5.48	4/2/2024	BALZER KEVIN W & JAN L	20 MORNINGSIDE DR	AVELLA	PA	15312	INDEPENDENCE	370-003-00-00-0017-09
2024	\$343.16	4/2/2024	LUKASIK BARBARA	2070 AVELLA RD	AVELLA	PA	15312	INDEPENDENCE	370-004-00-00-0021-01
2024	\$38.58	4/2/2024	GREEN DALTON C/O PAT & MICHELE GREEN	419 LEE RD	BURGETTSTOWN	PA	15021	JEFFERSON	380-004-00-00-0043-05
2024	\$140.74	4/2/2024	ORIENT GREGORY P & ANNA MARIE & BRO WN DALE J & LAUREN R	857 BETHEL RIDGE RD	AVELLA	PA	15312	JEFFERSON	380-010-00-00-0014-01
2024	\$384.60	4/2/2024	SCHOEDEL KENNETH J & CHRISTINE L	1107 COUNTRY CLUB RD	MONONGAHELA	PA	15063	MONONGAHELA 1ST W	420-036-00-01-0023-00
2024	\$171.70	4/2/2024	WRIGHT DAYSCIA K	617 4TH ST	MONONGAHELA	PA	15063	MONONGAHELA 2ND W	430-018-00-00-0003-00
2024	\$1.67	4/2/2024	HUBERT COURTNEY & HARRISON	92 THIRD AVE	MONONGAHELA	PA	15063	MONONGAHELA 2ND W	430-019-00-03-0013-00
2024	\$148.36	4/2/2024	HUBERT COURTNEY & HARRISON	92 THIRD AVE	MONONGAHELA	PA	15063	MONONGAHELA 2ND W	430-019-00-03-0014-00
2024	\$600.35	4/2/2024	BELLUSO ROBERT L & LYNN ANN	1206 THOMAS ST	MONONGAHELA	PA	15063	MONONGAHELA 3RD W	440-029-00-00-0002-00
2024	\$42.87	4/2/2024	THORSEN CHARLOTTE W & MATTHEW E	8682 NOBLESTOWN RD	MCDONALD	PA	15057	MT PLEASANT	460-020-01-00-0032-00
2024	\$376.74	4/2/2024	YEATMAN AMY	3086 BUTTERCUP ROAD	NEENAH	WI	54956	MT PLEASANT	460-008-01-00-0015-01

Cycle C Tax Refunds - 04/18/24 - Meeting No. 1184

YR	AMT	DATE	NAME	ADDRESS	CITY	ST	ZIP	DISTRICT	PARCEL
2024	\$312.44	4/2/2024	WENTZEL ERIC & KRISTEN	142 RAILROAD ST	MCDONALD	PA	15057	MCDONALD	470-020-00- 02-0009-00
2024	\$308.40	4/2/2024	HUFNAGEL TYLER J	114 4TH AVE	NEW EAGLE	PA	15067	NEW EAGLE	480-024-00- 02-0010-00
2024	\$13.57	4/2/2024	HUFNAGEL TYLER J	114 FOURTH AVE	NEW EAGLE	PA	15067	NEW EAGLE	480-024-00- 02-0010-01
2024	\$51.91	4/2/2024	BOONE GANNON	970 OVERLOOK DR	WASHINGTON	PA	15301	N FRANKLIN	510-002-00- 00-0026-02
2024	\$551.77	4/2/2024	BOONE GANNON	970 OVERLOOK DR	WASHINGTON	PA	15301	N FRANKLIN	510-002-00- 00-0027-00
2024	\$405.07	4/2/2024	BURY CHRISTOPHER M & HEIDI S	523 SYLVAN DR	WASHINGTON	PA	15301	N FRANKLIN	510-002-15- 00-0016-00
2024	\$17.87	4/2/2024	GRAVES GREGORY D & SHELLIE A	1020 RED TAIL HOLLOW RD	WASHINGTON	PA	15301	N FRANKLIN	510-005-06- 00-0001-00
2024	\$507.72	4/2/2024	PASSALACQUA SILVO & PATRICIA L	490 SYLVAN DR	WASHINGTON	PA	15301	N FRANKLIN	510-002-15- 00-0005-00
2024	\$714.42	4/2/2024	BENJAMIN ASHTON	404 SCENIC DR	CANONSBURG	PA	15317	N STRABANE	520-001-33- 00-0013-04
2024	\$8.10	4/2/2024	CARMONA CARLOS & BETH LYNN	130 MCGREGOR AVE	CANONSBURG	PA	15317	N STRABANE	520-013-12- 01-0013-00
2024	\$440.56	4/2/2024	MBS CAPITAL HOLDINGS LLC	30 N GOULD ST, SUITE R	SHERIDAN	WY	82801	N STRABANE	520-001-04- 02-0004-00
2024	\$323.15	4/2/2024	TWIGG WESLEY	129 MEADOWVIEW DR	CANONSBURG	PA	15317	N STRABANE	520-001-11- 00-0026- 00D
2024	\$756.57	4/2/2024	KESTNER LORNA	467 GREENWOOD DR	CANONSBURG	PA	15317	N STRABANE	520-014-08- 00-0002-00
2024	\$1,554.34	4/2/2024	LEONARD THOMAS M & DEBORAH L	20 DOGWOOD COURT	CANONSBURG	PA	15317	N STRABANE	520-001-32- 00-0020-00
2024	\$135.74	4/2/2024	PRADHAN RAM & AMPIKA	103 MULTIFLORA DR	CANONSBURG	PA	15317	N STRABANE	520-015-10- 00-0015-00
2024	\$211.23	4/2/2024	MATHIA JEROME T	193 LATIMER AVE	STRABANE	PA	15363	N STRABANE	520-015-02- 01-0020-00
2024	\$379.84	4/2/2024	SPYRA JOSHUA R & RACHEL	3 JUDY DR	EIGHTY FOUR	PA	15330	N STRABANE	520-005-01- 02-0009-00
2024	\$105.98	4/2/2024	WALBROWN MADISON KAY & HOEY EMILYN	104 FILMORE DR	CANONSBURG	PA	15317	N STRABANE	520-014-09- 00-0026-00
2024	\$721.08	4/2/2024	OUEDRAOGO NOUFOU VETERANS EXEMPTION	481 GREENWOOD DR	CANONSBURG	PA	15317	N STRABANE	520-014-08- 00-0006-00
2024	\$93.35	4/2/2024	PACIGA STEVEN & RODGERS MACKENZIE	504 GREENWOOD DR	CANONSBURG	PA	15317	N STRABANE	520-014-08- 00-0014-00
2024	\$93.35	4/2/2024	QUERRIERA MARIA	502 GREENWOOD DR	CANONSBURG	PA	15317	N STRABANE	520-014-08- 00-0013-00
2024	\$4.05	4/2/2024	THARP CHRISTOPHER & AUBREY N	28 CARL AVE	EIGHTY FOUR	PA	15330	N STRABANE	520-005-01- 01-0002-01
2024	\$4.05	4/2/2024	THARP CHRISTOPHER & AUBREY N	28 CARL AVE	EIGHTY FOUR	PA	15330	N STRABANE	520-005-01- 01-0004-01
2024	\$106.68	4/2/2024	VIALE JUSTIN T & ERIN L	225 DEERFIELD DR	CANONSBURG	PA	15317	N STRABANE	520-001-11- 00-0010-00

MINUTE BOOK

BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

IMR LIMITED E1316649LD

Cycle C Tax Refunds - 04/18/24 - Meeting No. 1184

YR	AMT	DATE	NAME	ADDRESS	CITY	ST	ZIP	DISTRICT	PARCEL
2024	\$36.44	4/2/2024	ZELENKO TYLER J	167 WYLIE AVE	STRABANE	PA	15363	N STRABANE	520-015-02-16-0003-00
2024	\$150.74	4/2/2024	ZELENKO TYLER J	167 WYLIE AVE	STRABANE	PA	15363	N STRABANE	520-015-02-16-0004-00
2024	\$293.63	4/2/2024	CENCICH JOHN R & ANDREA V	1035 LINDEN RD	EIGHTY FOUR	PA	15330	NOTTINGHAM	530-002-00-00-0001-00
2024	\$960.18	4/2/2024	YEE ALAN J & DIANE L	353 DANA DR	EIGHTY FOUR	PA	15330	NOTTINGHAM	530-002-07-00-0056-00
2024	\$7.63	4/2/2024	BEJSTER REVOC TR	122 LINTEL DR	MCMURRAY	PA	15317	PETERS TWP	540-007-22-00-0002-00
2024	\$1.19	4/2/2024	BUNTON WILLIAM E JR & KATHLEEN	117 KATHY ANN LN	MCMURRAY	PA	15317	PETERS TWP	540-007-21-00-0018-00
2024	\$997.57	4/2/2024	CISNEY ROBERT & CAROL	321 AZALEA DR	VENETIA	PA	15367	PETERS TWP	540-002-29-00-0009-03
2024	\$309.10	4/2/2024	DZIKOWSKI DYLAN & KOSTIC CASSANDRA	355 E MCMURRAY RD	MCMURRAY	PA	15317	PETERS TWP	540-010-09-03-0030-00
2024	\$464.61	4/2/2024	GREALISH TIMOTHY E ASSET PROT TRUST & GREALISH TIMOTHY E	105 SHADY LANE	MC MURRAY	PA	15317	PETERS TWP	540-007-07-02-0012-00
2024	\$291.96	4/2/2024	IMBLUM SCOTT & EMILY	337 QUAIL RUN RD	VENETIA	PA	15367	PETERS TWP	540-002-00-00-0040-28E
2024	\$450.32	4/2/2024	MARTH JENNIFER L & WILLIAM ROBERT I	210 ROSCOMMON PLACE	MCMURRAY	PA	15317	PETERS TWP	540-011-00-00-0014-14E
2024	\$1,314.53	4/2/2024	MAY JEFFREY L & CLAIRE E	103 MEADOWVUE CT	VENETIA	PA	15367	PETERS TWP	540-002-21-00-0016-00
2024	\$285.05	4/2/2024	QUAIL RUN LLC	343 SNOWBERRY CIRCLE	VENETIA	PA	15367	PETERS TWP	540-002-00-00-0040-32G
2024	\$328.40	4/2/2024	QUAIL RUN LLC	343 SNOWBERRY CIRCLE	VENETIA	PA	15367	PETERS TWP	540-002-00-00-0040-32H
2024	\$1,054.48	4/2/2024	RECKER RONALD R & KELLY	119 WINDERMERE CT	MCMURRAY	PA	15317	PETERS TWP	540-006-20-00-0013-00
2024	\$101.45	4/2/2024	SUCHTA NICHOLAS R & SHANNON	205 OVERLOOK DR	CANONSBURG	PA	15317	PETERS TWP	540-009-01-01-0001-00
2024	\$1,003.05	4/2/2024	TATMAN DANIEL & TALAN	112 TANGLEWOOD DR	MCMURRAY	PA	15317	PETERS TWP	540-010-25-00-0015-00
2024	\$1,042.10	4/2/2024	TRYPUS JEFFREY A & MARY BETH	100 WYNDTREE DR	VENETIA	PA	15367	PETERS TWP	540-005-19-00-0038-00
2024	\$223.85	4/2/2024	HUGHES JOSEPH G JR	1149 ROBINSON HWY	MCDONALD	PA	15057	ROBINSON	550-017-01-00-0022-00
2024	\$279.57	4/2/2024	HOWCROFT BRYAN J & MELISSA M	9453 NOBLESTOWN RD	MCDONALD	PA	15057	ROBINSON	550-016-04-00-0005-00
2024	\$78.82	4/2/2024	LOGUT RACHAEL	6 MCKEE ST	MC DONALD	PA	15057	ROBINSON	550-017-00-00-0024-02
2024	\$218.61	4/2/2024	BUSSING KAITLYN L	45 HAMMOND AVE, PO BOX 217	SLOVAN	PA	15078	SMITH	570-023-02-01-0024-00

Cycle C Tax Refunds - 04/18/24 - Meeting No. 1184

YR	AMT	DATE	NAME	ADDRESS	CITY	ST	ZIP	DISTRICT	PARCEL
2024	\$63.35	4/2/2024	LUCHESA DANIEL J & JODIE M	1050 GRANT ST	BULGER	PA	15019	SMITH	570-010-00-0009-02
2024	\$174.79	4/2/2024	SCALISE VINCENT F & JESSICA	10 LINCOLN STREET	BULGER	PA	15019	SMITH	570-006-01-01-0027-00
2024	\$276.96	4/2/2024	CRIMSON HILL DEVT LLC	260 RTE 519	EIGHTY FOUR	PA	15330	SOMERSET	580-003-00-00-0011-00
2024	\$361.26	4/2/2024	REED WILLIAM E & COURTNEY M BAILEY	133 AMES RD	BENTLEYVILLE	PA	15314	SOMERSET	580-017-00-00-0011-00
2024	\$10.24	4/2/2024	BELLATOR VENT LLC	1934 BORDEAUX DR	WASHINGTON	PA	15301	S FRANKLIN	590-011-00-00-0013-04
2024	\$322.20	4/2/2024	NEWMAN KELLY	1634 DEERFIELD RD	WASHINGTON	PA	15301	S FRANKLIN	590-002-00-00-0002-04
2024	\$39.30	4/2/2024	STOCKDALE PATRICK D & CYNTHIA G	160 HIAWATHA RD	PROSPERITY	PA	15329	S FRANKLIN	590-007-00-00-0003-05
2024	\$507.47	4/2/2024	BITZ DANIEL ANDY	88 BEAGLE CLUB RD	WASHINGTON	PA	15301	S STRABANE	600-011-00-00-0003-00
2024	\$175.04	4/2/2024	GIORGI MARC A & JOMARIE S	100 MEYERS RD	WASHINGTON	PA	15301	S STRABANE	600-012-00-00-0016-09
2024	\$776.10	4/2/2024	GRAYSON GEOFFREY H & JODY L	1507 LOMBARD CIR	WASHINGTON	PA	15301	S STRABANE	600-005-19-00-0003-00
2024	\$5.48	4/2/2024	KING MICHAEL F & LISA L	834 GLENN ST	WASHINGTON	PA	15301	S STRABANE	600-004-11-03-0008-00
2024	\$29.52	4/2/2024	PREVOT MICHAEL C	230 PRESTON RD	WASHINGTON	PA	15301	S STRABANE	600-004-10-05-0016-00
2024	\$17.39	4/2/2024	ROBINSON RONALD & KELLY	551 POTOMAC DRIVE	WASHINGTON	PA	15301	S STRABANE	600-007-02-00-0003-12
2024	\$298.63	4/2/2024	STEWART BRANDON M & ALYSSA M INDIVIDUALS & GUARDIANS OF JAYDEN ELIAS S	30 KISH AVE	WASHINGTON	PA	15301	S STRABANE	600-003-03-02-0002-00
2024	\$247.43	4/2/2024	WASHINGTON HOSPITAL	155 WILSON AVE	WASHINGTON	PA	15301	S STRABANE	600-001-01-04-0005-00
2024	\$184.32	4/2/2024	LION BENJAMIN G & CARA L	122 PHILLIPS ST	CHARLEROI	PA	15022	SPEERS	610-016-00-03-0002-00
2024	\$224.09	4/2/2024	STEMPLE KYLE	110 RAILROAD ST, PO BOX 204	STOCKDALE	PA	15483	STOCKDALE	620-004-00-01-0020-00
2024	\$115.02	4/2/2024	ALOIA JOSHUA & PRITCHARD DAESHA	333 STATE STREET	CHARLEROI	PA	15022	TWILIGHT	630-015-00-00-0007-00
2024	\$33.10	4/2/2024	LORRAINE CANESTRALE TRUST-B C/O LORRAINE CANESTRALE	PO BOX 234	BELLE VERNON	PA	15012	UNION	640-012-00-00-0034-00
2024	\$339.82	4/2/2024	MCCOMBS CORY A & CASEY	4315 FINLEYVILLE ELRAMA RD	FINLEYVILLE	PA	15332	UNION	640-008-00-00-0139-00
2024	\$305.30	4/2/2024	PRICE ROBERT L	6164 RTE 88	FINLEYVILLE	PA	15332	UNION	640-003-08-01-0005-00
2024	\$398.41	4/2/2024	SFR3-000 CORELOGIC LLC	228 PARK AVE S.SUTTE 73833	NEW YORK	NY	10003	UNION	640-011-00-00-0127-01
2024	\$223.38	4/2/2024	ROWE DAN & ROSE	36 DANROWE LN	MARIANNA	PA	15345	W BETHLEHEM	660-009-00-00-0019-00

MINUTE BOOK

2347

BOARD OF COMMISSIONERS

WASHINGTON COUNTY, PENNSYLVANIA

IMR LIMITED E1316649LD

Cycle C Tax Refunds - 04/18/24 - Meeting No. 1184

YR	AMT	DATE	NAME	ADDRESS	CITY	ST	ZIP	DISTRICT	PARCEL
2024	\$370.55	4/2/2024	TRILLING WM BRETT & PATRICIA	76 LITTLE CREEK RD	MARIANNA	PA	15345	W BETHLEHEM	660-013-00- 00-0001-03
2024	\$1.67	4/2/2024	TOBAK MARK RANDOLPH & MARK C & AMY	624 RIVER ST	BROWNSVILLE	PA	15417	W BROWNSVILLE	670-007-00- 02-0031-00
2024	\$131.69	4/2/2024	ORRIS SARAH J	40 PERRYVIEW AVE	PITTSBURGH	PA	15214	WASHINGTON 5TH W	750-027-00- 01-0010-00
2024	\$27.63	4/2/2024	CATLIN DELORES ANN & DATES FRED	315 RIDGE AVE	WASHINGTON	PA	15301	WASHINGTON 6TH W	760-007-00- 01-0006-00
2024	\$265.53	4/2/2024	MASCARENAS TANNER	251 TYLER AVE	WASHINGTON	PA	15301	WASHINGTON 7TH W	770-019-00- 02-0006-00
2024	\$1.43	4/2/2024	ONDRA JAN	1640 N MAIN ST	WASHINGTON	PA	15301	WASHINGTON 8TH W	780-017-00- 02-0017-00
Total		\$44,761.58							

ANNOUNCEMENTS

The next regularly scheduled Board of Commissioners meeting will be held at 10 a.m. on Thursday, May 2, 2024, in Room G16, Crossroads Center, 95 W Beau St., Washington, PA. The regularly scheduled Salary Board for April 18, 2024 was canceled.

There being no further business, Chairman Sherman declared the meeting adjourned at approximately 8:37 p.m.

THE FOREGOING MINUTES WERE SUBMITTED FOR APPROVAL:

_____, 2024
May 3
 ATTEST: _____
 CHIEF CLERK
Cynthia B. Suffer

EXHIBIT G

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Transcript of Jonathan Marks

Date: July 23, 2024

Case: Center for Coalfield Justice, et al. -v- Washington County Board of Elections

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1 absolute latest that counties can begin delivering
2 mail ballots.

3 Q Okay. And I think we can go on. I'd like
4 to use the -- it would be this document. Yes. We'll
5 mark this as Marks' 1.

6 Martin, you guys gave (indiscernible) 00:32:22,
7 didn't you?

8 MS. MULLEN: That's from Ostrander?

9 MS. GALLAGHER: Excuse me.

10 MR. BLACK: No, it's fine. She just
11 remarking it Marks' 1.

12 MS. SCHNEIDER: You're remarking the
13 Ostrander case.

14 MS. GALLAGHER: I would just -- was going
15 to leave those as Ostrander just to keep it more
16 simple.

17 MS. SCHNEIDER: Okay.

18 MS. GALLAGHER: I thought it would be
19 easier.

20 MS. SCHNEIDER: Thank you.

21 (Marks' 1 was marked for identification
22 and is attached to the transcript.)

23 BY MS. GALLAGHER:

24 Q Showing you what's been marked as your
25 Exhibit 1. Could you take a look at that for us

1 please and tell me -- tell us if you're familiar with
2 that document. Yeah, that's fine.

3 A Yes, I am familiar with this.

4 Q And could you tell us what this document
5 is, please?

6 A These are -- they're release notes for a
7 deployment of changes that we made to the SURE system
8 back in March of this year.

9 Q And what's a release note?

10 A A release note is basically something that
11 we issue to the counties that outlines the changes
12 that we've made to the SURE system. It -- sometimes
13 it provides them with, you know, a job aid or some
14 other information that they may need to know the
15 process work under the new changed, you know,
16 application. In this case here, these release notes
17 were primarily related to changes that we were making
18 to the ballot response types in the SURE system.

19 Q We can get to that in a moment, but could
20 you tell us how -- this document we've spoken about,
21 guidance, directive, regulation, is this document any
22 one of the three of those?

23 A It is not, no.

24 Q And how is a release note developed?

25 A A release note is essentially a summary of

1 need to do additional follow up with the County Board
2 of Elections to resolve that.

3 Q Fair enough. With respect to what the
4 board, putting aside the update and what's contained
5 in the release notes, which we'll get to in a moment,
6 what is the obligation of a county board to input
7 into the SURE system when it receives a mail-in
8 ballot?

9 MULLEN: Objection.

10 Q I'm not asking for a legal just to be
11 clear, but from a practical standpoint, what does the
12 SURE system have to reflect?

13 A The SURE system would at least have to
14 reflect that a ballot was received.

15 Q And again, not, I'm asking you legal
16 conclusion, I'm sure your counsel will object,
17 received, is there any other information that has to
18 be provided about that information to the best of
19 your knowledge?

20 MS. MULLEN: Objection.

21 Q About ballot, excuse me. Other than it
22 was received.

23 A The date I want you is received.

24 Q If you could take a look at, in the top
25 left hand corner, there is a -- I'm not sure what

1 A Yes, the first sentence in that first full
2 paragraph, yes.

3 Q Okay. So were the changes that are
4 reflected or discussed in this document in effect for
5 the April, 2024 primary election?

6 A They were, yes.

7 Q Okay. Turn to page 2, and I would ask you
8 to look at the first paragraph. Would you agree with
9 me -- I want to try to move it along. So, ballot
10 response type updates. What is a ballot response?

11 A A ballot response is basically the
12 disposition of the ballot at a -- at a point in time.
13 So voter returns the ballot and the county would
14 essentially indicate that the ballot was received,
15 and they could subsequently update that to indicate
16 the disposition of the ballot at that point in time.

17 Q What do you mean by disposition of ballot?

18 A So -- and looking at this, for example, at
19 pend incorrect date, that would indicate that the
20 ballot was received, but based on the county's review
21 of the outer envelope, that ballot did not contain a
22 correct date.

23 Q Okay. We'll come back down to that. I'd
24 like you to look at the first paragraph, the third
25 line -- well actually the second line. And starting

1 at the end of the second line of that paragraph,
2 there were these, these options may be used if a
3 county offers ballot curing. So this was optional.
4 Was it -- is it fair to say that the options were
5 optional for the county to use?

6 A Yes. I would note that the very first
7 sentence actually spells that out very clearly in all
8 caps, they were adding six optional pending status
9 reasons.

10 Q Thank you. I'd like to go down to the
11 next paragraph or the next line below, below where
12 the new pending status reason. Could you walk us
13 through each one of those please?

14 A Sure. I think -- I think most of them are
15 self-explanatory, but pending incorrect date as I
16 noted a few minutes ago would mean that the voter did
17 not provide a correct date in the opinion of the
18 County Board of Elections.

19 Q I think it'd stop you there. So to get
20 back to what you explained before, the ballot comes
21 in, the county board stamps it, and they're then to
22 enter it into the SURE system that it was received.
23 Correct?

24 A That they scan it at the -- there's a
25 unique barcode and the county scans that and that

1 updates the system to indicate that the ballot has
2 been received.

3 Q So during that process, the county can
4 select which of -- out of these, which option of the
5 status reasons they want?

6 A Yes, they may -- they may select one of
7 those status reasons if that is consistent with their
8 county's practice.

9 Q Okay. And again, these are when a
10 ballot's first received, when it's first going to be
11 recorded into the SURE system, for lack of better
12 word?

13 A Yes.

14 Q Okay. So we have an incorrect date. And
15 how would the county determine if there was an
16 incorrect date?

17 MS. MULLEN: Objection.

18 A Well, if the county noticed on the
19 envelope as it's basically the intake of the return
20 ballots that the voter inserted, for example, their
21 birth date as opposed to the date they signed the
22 ballot, then they may -- they may wish to update the
23 disposition of the ballot to pending incorrect date.

24 Q Deputy Secretary Marks, earlier on, and we
25 can read it back, I want to make sure I'm stating it

EXHIBIT H

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Transcript of the Testimony of

MELANIE OSTRANDER

July 18, 2024

**CENTER FOR COALFIELD JUSTICE VS WASHINGTON
COUNTY BOARD OF ELECTIONS**



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IN THE COURT OF COMMON PLEAS
OF WASHINGTON COUNTY, PENNSYLVANIA

CENTER FOR COALFIELD
JUSTICE, WASHINGTON
BRANCH NAACP, BRUCE
JACOBS, JEFFREY MARKS,
JUNE DEVAUGHN HYTHON,
ERIKA WOROBEK, SANDRA
MACIOCE, KENNETH
ELLIOTT, and DAVID
DEAN,

Plaintiffs,

-vs-

WASHINGTON COUNTY BOARD
OF ELECTIONS,

Defendant.

CIVIL DIVISION

Case No. 2024 3953

DEPOSITION TRANSCRIPT OF:
MELANIE OSTRANDER

DEPOSITION DATE:
July 18, 2024
Thursday, 9:41 a.m.

PARTY TAKING DEPOSITION:
Plaintiffs

COUNSEL OF RECORD
FOR THIS PARTY:
Mary M. McKenzie, Esq.
mmckenzie@pubintl.org
PUBLIC INTEREST LAW CENTER
1500 JFK Boulevard
Suite 802
Philadelphia, PA 19102

REPORTED BY:
Kristina Kozlowsky
Notary Public
Reference No. KK60820

1 Does your office use the SURE system
2 for keeping track of voter registration?

3 A. Yes.

4 Q. And does your office use the SURE
5 system to track mail-in and absentee
6 ballots?

7 A. Yes.

8 Q. Does the SURE system track the
9 sending of mail-in and absentee ballots?

10 A. Yes.

11 Q. Do you use the office to track the
12 receipt of the mail-in and absentee
13 ballots back to your office?

14 MR. BERARDINELLI: Object to the
15 form.

16 A. Our office?

17 MR. BERARDINELLI: I think you
18 misspoke. That's all right.

19 A. Do you mean the SURE system?

20 BY MS. MCKENZIE:

21 Q. Yes. Does your office use the SURE
22 system to track the receipt of mail-in and
23 absentee ballots?

24 A. Yes.

25 Q. Does your office use the SURE

1 election, according to their party, label
2 the envelopes, insert the ballot into the
3 envelopes -- envelope along with the
4 additional information that is required
5 for the mail ballot package.

6 Q. What other additional information
7 would be in the packet?

8 A. In addition to the ballot, there
9 are two envelopes. One is the return
10 envelope for the voter with the voter's
11 declaration on it. You also have the
12 secrecy envelope, and the Department of
13 State issued instructions.

14 Q. Once the mailing packet is prepared
15 and is ready to be sent out, is the date
16 that your office sends out the mail packet
17 tracked?

18 A. Yes, in the SURE system.

19 Q. Okay, and is that by keying in a
20 date, or is it by scanning?

21 A. It's by the date that the labels
22 were printed. If the labels were printed
23 ahead of time, when we sent our first
24 mail-in out, I'm able to update that
25 address -- or, I'm sorry, update that date

1 so that it's the correct, exact date that
2 they were mailed.

3 Q. And you update that date in the
4 SURE system?

5 A. Yes.

6 Q. And was that the same process for
7 mailing out a ballot and tracking it in
8 2023?

9 A. Yes.

10 Q. So when a voter returned a mail
11 ballot or an absentee ballot -- and if I
12 say mail ballot, I'm talking about both
13 mail ballots and absentee ballots -- how
14 can a voter return the mail -- in 2023,
15 how could a voter return the ballot to the
16 elections office?

17 A. They could either mail through the
18 U.S. Postal Service or another service,
19 mail the ballot to our office, or they
20 could come in person and turn in their
21 ballot. And it's only -- the voter can
22 only return their own personal ballot in
23 person.

24 Q. Does Washington County use drop
25 boxes?

1 For example, there was a canceled -- there
2 is a canceled, deceased option. So there
3 are other codes available, but I can't
4 recall exactly the specific wording of
5 each code.

6 BY MS. McKENZIE:

7 Q. For a living voter in 2023 who
8 returned a mail ballot with a
9 disqualifying error, what were your
10 options in SURE for coding?

11 MR. BERARDINELLI: Object to
12 form, asked and answered. You can answer.

13 A. Canceled, no signature and
14 canceled, no date. As I said before, I
15 don't recall if the canceled, incorrect
16 date option was available in 2023.

17 MS. McKENZIE: I want to mark an
18 exhibit, Ostrander 1.

19 - - - -

20 (Exhibit No. 1 marked for identification.)

21 - - - -

22 BY MS. McKENZIE:

23 Q. Ms. Ostrander, I'm showing you a
24 document that's been marked Ostrander 1.
25 Do you recognize this document?

1 A. I do.

2 Q. And can you please identify it?

3 A. These are the approved minutes from
4 the Board of Elections meeting on March
5 12, 2024.

6 Q. I want to direct your attention to
7 the middle of Page 1 of the document under
8 election director comments, and the
9 minutes state that: The procedure for the
10 handling of absentee and mail-in ballot
11 envelopes received as incomplete needs to
12 be decided. Ms. Ostrander described the
13 options available, and the Board will vote
14 at the next meeting.

15 How did that discussion end up on
16 the agenda for the March 12, 2024 Board of
17 Elections meeting?

18 A. I placed it on the agenda.

19 Q. Okay, and why did you place that
20 item on the agenda?

21 A. With each new election in light of
22 court -- new court rulings and new
23 guidance from the Department of State and
24 the Board of Elections contained new
25 members because of the county

1 commissioner's election, it's appropriate
2 to review and decide if there was going to
3 be the procedure for mail-in and absentee
4 ballots.

5 Q. Prior to placing this item on the
6 agenda for the March 12, 2024 board
7 meeting, did you have any discussions with
8 any of the three commissioners?

9 MR. BERARDINELLI: About this?

10 MS. MCKENZIE: About placing it
11 on the agenda.

12 MR. BERARDINELLI: Thank you.

13 A. I emailed the three commissioners
14 who are the Board of Election members. On
15 that email, I also copied our county
16 solicitor who by election law is the Board
17 of Elections solicitor and our chief of
18 staff who is the -- he serves as a county
19 administrator in between the directors and
20 the commissioners.

21 We're a little different than other
22 offices since I have a Board of Elections
23 as well, but for -- so everyone was aware,
24 I emailed the five individuals and told
25 them that I was placing -- that we needed

1 various codes that were offered by the
2 Department of State in the SURE system as
3 the Department of State in 2024 updated
4 and provided new code options in the SURE
5 system.

6 MS. McKENZIE: I'd like to mark
7 this document Ostrander 2.

8 - - - -

9 (Exhibit No. 2 marked for identification.)

10 - - - -

11 MS. GALLAGHER: Is this from
12 Genzer?

13 MS. McKENZIE: It is. David,
14 this marking on the bottom comes from a
15 different lawsuit.

16 MR. BERARDINELLI: Okay, just so
17 the records notes it.

18 MS. GALLAGHER: That's what I
19 wanted to know.

20 - - - -

21 (The record was read by the reporter.)

22 - - - -

23 BY MS. McKENZIE:

24 Q. Ms. Ostrander, I'm showing you a
25 document that's marked Ostrander 2. Have

1 you seen this document before?

2 A. I have.

3 Q. Okay, and can you identify
4 document?

5 A. This is a document that was
6 provided to the counties by the Department
7 of State in reference to the SURE system
8 and changes for 2024 for mail ballots.

9 Q. And when you testified just a few
10 minutes ago about changes in the SURE
11 codes, are these the types of changes that
12 you're referring to?

13 A. Yes, this is what I was referring
14 to, correct.

15 Q. So in explaining to the Board about
16 the code options available in 2024, what
17 did you tell them at the March meeting?

18 A. I explained to them, to the Board
19 of Elections, if they wanted to allow
20 curing there were various codes that the
21 Department of State issued, updated in the
22 SURE system, and I explained the different
23 codes that can be used. If they wanted to
24 not cure, I also explained what codes
25 could then be used in the SURE system.

1 received return code that is entered by
2 your office?

3 A. Yes, depending on the code -- the
4 SURE code. Depending on the SURE code that
5 my office was instructed by the Board of
6 Elections to use would have determined
7 which email was generated to the voter.
8 Is that what you meant? Yeah.

9 Q. If a voter returned a mail-in
10 ballot in April of 2024 and there were no
11 disqualifying errors, what code in the
12 SURE system would your office enter?

13 A. Recorded, ballot returned.

14 Q. Okay, if a voter returned a ballot
15 in April of 2024 with a disqualifying
16 error, which code in the SURE system would
17 your office enter?

18 A. Recorded, ballot returned.

19 Q. So whether a voter had a
20 disqualifying error or not, your office
21 would enter the same SURE code in the
22 system?

23 A. Yes.

24 Q. So looking again at Ostrander
25 Exhibit 3, Page 3 of the document, second

1 page of the minutes near the bottom of the
2 page, the minutes report that: Mr.
3 Sherman moved to not allow curing of
4 absentee and mail-in ballots received with
5 errors on the declaration envelope. Ms.
6 Janis seconded the motion, and then a
7 discussion was held between members
8 regarding curing of ballots.

9 Do you recall that discussion that
10 took place at the April 11th meeting?

11 A. Yes.

12 Q. And what was that discussion?

13 A. I don't recall each detail, but a
14 summary of the discussion would be that
15 one of the members of the Board of
16 Elections disagreed and he spoke with his
17 colleagues. He let it be known that he
18 disagreed, and the three discussed as to
19 why they should allow curing and why they
20 should not allow curing. It was also
21 discussed during that which codes my staff
22 would be instructed to use in the SURE
23 system.

24 Q. Which commissioner thought that
25 curing -- or expressed a view that curing

1 should be allowed?

2 A. Commissioner Maggi.

3 Q. Did Mr. Maggi state his reasons for
4 his opinion?

5 A. He did.

6 Q. And what were his reasons?

7 A. His viewpoint is that curing --
8 that the voters should have been allowed
9 to be contacted and correct the
10 declaration envelopes. Then the ballot
11 could be counted.

12 I don't want to -- it's not
13 verbiage, but that was the summary of his
14 viewpoint. He felt voters should be
15 notified of their error and allowed to
16 correct it.

17 Q. Okay, did the other two
18 commissioners have a different viewpoint?

19 A. They did.

20 Q. And what was each of their
21 viewpoints?

22 A. Commissioner Sherman expressed that
23 the election law does not allow for
24 curing, that the canvass doesn't take
25 place until election day, and that's when

1 ballots are decided if they're eligible,
2 you know, if declaration envelope is
3 completed, correct, during the canvass.

4 Q. And did Commissioner Janis express
5 a viewpoint?

6 A. Commissioner Janis agreed with
7 Commissioner Sherman.

8 Q. Did she express any additional
9 reasoning for her viewpoint?

10 A. No.

11 Q. Was there a vote taken at that
12 meeting --

13 A. Yes.

14 Q. On the -- sorry, let me ask a
15 complete question. Was there a vote taken
16 at that meeting for the handling of
17 absentee and mail-in ballots that had
18 disqualifying errors?

19 A. Yes.

20 Q. And was there a formal motion
21 presented?

22 A. Yes.

23 Q. And what was the motion that was
24 presented?

25 A. To not allow curing of absentee and

1 mail-in ballots received with errors on
2 the declaration envelope.

3 Q. And what was the vote?

4 A. The vote was two to one.

5 Q. Okay, I believe you also mentioned
6 that at this April 11th, 2024 meeting the
7 Board of Elections gave instructions to
8 your office about what codes to use in the
9 SURE system; is that correct?

10 A. Yes. It was during the discussion.

11 Q. Okay, and what did the Board of
12 Elections tell you and your office with
13 respect to the SURE codes for the 2024
14 election?

15 A. The Board of Elections informed me
16 that all ballots would be coded as
17 recorded, ballot returned in the SURE
18 system.

19 Q. I just want to refer back to the
20 documents that have been marked Exhibits
21 4, 5, and 6, and each of these emails in
22 the middle of the email specifically
23 state, to get more information on your
24 ballot status, you can look it up at, and
25 it provides a website.

1 Q. And were they scanned into the SURE
2 system like they were in 2023?

3 A. Yes. But because the Board of
4 Elections voted, there were different
5 codes in 2024 that were used in the SURE
6 system by my staff as opposed to 2023.

7 Q. Okay, and I believe you testified
8 that the only code your office used in
9 April of 2024 was the returned received
10 code in the SURE system?

11 A. Yes, for all -- I'm sorry, did you
12 say 2023?

13 Q. 2024.

14 A. 2024, all ballots received by our
15 office were scanned in the SURE system
16 with the code record ballot returned. I
17 think that's what the code says.

18 Q. And that scanning and selection of
19 a SURE code was done on the same day that
20 the ballot was returned?

21 A. Yes.

22 Q. If a mail-in ballot or absentee
23 ballot was returned in April of 2024 and
24 it was undated, how was that ballot
25 handled?

1 MS. GALLAGHER: Object to form.

2 MR. BERARDINELLI: Can you read
3 that back? I'm sorry, I got lost.

4 MS. McKENZIE: I can just repeat
5 it.

6 MR. BERARDINELLI: I'd
7 appreciate that.

8 BY MS. McKENZIE:

9 Q. If a mail-in or absentee ballot was
10 returned to your office in April of 2024
11 and the declaration envelope was undated,
12 how did your office process that ballot?

13 A. The ballot was scanned into the
14 SURE system using the code record ballot
15 returned.

16 Q. Was that ballot set aside or
17 segregated in any way from the other mail-
18 in ballots that were returned that did not
19 have errors?

20 A. Yes.

21 Q. Were they similarly based in the
22 mail ballot room but segregated like they
23 were in 2023?

24 A. Yes. But it was different in 2024
25 as to 2023 because we were recording them

1 all as ballot returned, so those ballots
2 were -- each precinct in our mail ballot
3 room has two bins. So the ballots with the
4 properly completed declaration envelope
5 were in one bin for that precinct, and the
6 ballots with the declaration envelope that
7 contained a disqualifying error were in a
8 different bin for that precinct.

9 Q. For a mail-in or absentee ballot in
10 2024 that is undated, what did that look
11 like on the envelope?

12 A. Can you repeat that?

13 MR. BERARDINELLI: Object to the
14 form.

15 BY MS. MCKENZIE:

16 Q. What does it mean for a ballot to
17 be undated in April of 2024?

18 A. The area on the declaration
19 envelope that says today's date would be
20 blank.

21 Q. So it's missing a month and a day
22 and a year?

23 A. Correct.

24 Q. Or any one of those items, a month
25 a day or a year, or does it have to be

1 missing all three items to be undated?

2 A. Undated is all three items missing.

3 Q. Okay, what is an incorrectly dated
4 mail-in ballot in April of 2023?

5 A. You said '23.

6 Q. I'm sorry, I need more caffeine.
7 What is an incorrectly dated ballot in
8 April of 2024?

9 A. In 2024, an incorrect date would be
10 a date outside of the date April 1st,
11 2024, which is the date the first ballots
12 went out and election day which was April
13 23rd, 2024.

14 Q. If a ballot was missing the month
15 or the day on the declaration envelope, is
16 that an undated ballot or an incorrectly
17 dated ballot?

18 A. We classified those in a third
19 category called incomplete date, so the
20 date was not complete.

21 Q. So there are three categories of
22 disqualifying errors when it comes to the
23 date on the declaration envelope from the
24 Washington County Board's perspective?

25 A. In 2024, according to the date,

1 template.

2 Q. And if 2-4 was missing on the
3 declaration envelope, that ballot was
4 considered incompletely dated?

5 A. Yes.

6 MR. BERARDINELLI: Can we take a
7 quick break?

8 MS. McKENZIE: Ah-huh.

9 - - - -

10 (There was a recess in the proceedings.)

11 - - - -

12 BY MS. McKENZIE:

13 Q. Ms. Ostrander, I just wanted to ask
14 you a question about Emails 4, 5, and 6,
15 and I had directed you to the sentence
16 about the fact that if the voter goes to
17 the app to --

18 MR. BERARDINELLI: The website.

19 MS. McKENZIE: The website,
20 you're correct, to get more information on
21 their ballot status.

22 BY MS. McKENZIE:

23 Q. Does the voter get different
24 information if a canceled code is entered
25 compared to a recorded, ballot returned

1 code is entered in SURE?

2 MR. BERARDINELLI: Objection,
3 asked and answered. Go ahead.

4 A. Again, I don't know. The
5 Washington County Board of Elections
6 doesn't control the website. The
7 Department of State does, and they don't
8 ask our input. So I'm not familiar with
9 what exactly is on there other than it
10 tells them when their ballot was mailed
11 and when it was received.

12 BY MS. MCKENZIE:

13 Q. I want to direct your attention
14 back to Ostrander 2, and I want to just
15 make SURE the record is clear on this.
16 Ostrander 2 is what?

17 A. It is the SURE user guide from the
18 Department of State as to the codes
19 available in SURE when you record a
20 ballot.

21 Q. Okay, in Ostrander 2 -- actually
22 I'm going to scratch that question.
23 When you testified earlier about the
24 email you sent the commissioners and some
25 other folks before the March 12th Board of

1 by the Third Circuit Court that the
2 declaration envelope needs a date, a
3 correct date.

4 BY MS. McKENZIE:

5 Q. In April of 2024, what would the
6 poll books reflect for a voter who
7 returned a mail ballot with a
8 disqualifying error?

9 A. The poll book would say that their
10 mail ballot was returned.

11 Q. If a voter who returned a ballot
12 with a disqualifying error went to their
13 polling place on election day in April of
14 2024 and asked to vote a provisional
15 ballot, what would they have been told?

16 MR. BERARDINELLI: Object to
17 form. Go ahead.

18 A. All voters or anyone can vote a
19 provisional ballot.

20 BY MS. McKENZIE:

21 Q. If a voter returned a ballot with a
22 disqualifying error in April of 2024 and
23 they went to the polling place and voted a
24 provisional ballot, would that ballot be
25 counted?

1 A. The canvass board would make the
2 decision, but according to the election
3 law, if the voter had already returned
4 their mail ballot regardless if there was
5 a disqualifying error and then voted a
6 provisional ballot, that provisional
7 ballot would not be counted because they
8 already returned a mail ballot.

9 Q. When a voter returned a ballot in
10 person at the election office in April of
11 2024, did the election office remind the
12 voter to sign and date the declaration
13 envelope?

14 A. If the voter inquired -- if the
15 voter asked us prior to relinquishing the
16 ballot to us, we would help them. We're
17 not mean. If they didn't hand us the
18 ballot yet and they asked, we would answer
19 their question.

20 Q. In the weeks leading up to the
21 election in April of 2024, did any voters
22 who had returned a mail-in or absentee
23 ballot call the election office and ask
24 about the status of their ballot?

25 A. You do you mean are you asking on

1 specific voters or any voter? I'm sorry,
2 I didn't catch the beginning of that
3 question.

4 Q. Yes, did any voters in April of
5 2024 call and ask about the status of
6 their mail-in ballot?

7 MR. BERARDINELLI: You're not
8 asking did John Smith call? You're asking
9 in general?

10 BY MS. MCKENZIE:

11 Q. Any voters.

12 A. Yes, voters would call and inquire
13 if their ballot had been received by our
14 office.

15 Q. Okay, did any voters call and ask
16 if their ballot had disqualifying errors
17 in April of 2024?

18 A. I can't recall if specifically they
19 asked that question.

20 Q. Did the Board of Elections instruct
21 your office how to respond to voter
22 inquiries about whether they had any
23 disqualifying errors?

24 A. We would inform voters when they
25 called and asked about their mail ballot

1 that if their ballot was received, we
2 would tell them that their ballot was
3 received and it was locked -- according to
4 the election law, it was locked and it
5 would be reviewed during the canvass.

6 Q. Would anyone in your office --
7 actually, no, I'll withdraw that question.
8 Were there any written instructions
9 to the employees working in your office
10 about how to respond to voter inquiries in
11 April of 2024 about whether or not they
12 had properly filled out their declaration
13 envelope?

14 A. No, no written instructions.

15 Q. In April of 2024, did your office
16 inform any voters who called that their
17 ballot was not signed or was incorrectly
18 dated?

19 MR. BERARDINELLI: Object to
20 form. You can answer.

21 A. Can you repeat that? I didn't
22 understand.

23 BY MS. MCKENZIE:

24 Q. In April of 2024, did your office
25 tell voters if their ballot had been

1 Q. Does the Washington County Board of
2 Elections and your office intend to follow
3 that directive that was issued on July 1,
4 2024?

5 MR. BERARDINELLI: Object to the
6 form.

7 A. Yes, the Board of Elections will
8 follow the directive.

9 BY MS. MCKENZIE:

10 Q. Concerning the form of absentee and
11 mail-in ballot materials?

12 A. Yes.

13 Q. I really am getting near the end.
14 For the upcoming November general
15 election, does the Board of Elections plan
16 to use the same process for handling mail-
17 in ballots that are returned with one of
18 these disqualifying errors?

19 MR. BERARDINELLI: Object to the
20 form. Go ahead.

21 A. I haven't spoken directly to the
22 Board of Elections in regards to this, but
23 our past practice is that it's reviewed
24 prior to each election. So we will have a
25 Board of Elections public meeting, and the

1 ballot procedure -- absentee and mail-in
2 ballot procedure will be on the agenda.

3 BY MS. McKENZIE:

4 Q. Has the past practice been that the
5 absentee and mail-in ballot practice be
6 the same in the primary and the general
7 election in the same year, calendar year?

8 MR. BERARDINELLI: Object to the
9 form.

10 A. Past practice in 2023, what was
11 followed in the primary, was again voted
12 and decided and to follow in the general
13 election, so based on that, most likely it
14 will be the same.
15 I can't speak for other years
16 because of all the various litigation that
17 has gone on, but in 2023, there was not
18 any.

19 BY MS. McKENZIE:

20 Q. There was not any --

21 A. Any litigation. There were several
22 court rulings after the 2020 election,
23 after 2022.

24 Q. So the same process for processing
25 mail-in ballots in the April '23 primary

1 Elections have for the April 2024 primary
2 when entering information as to a mail-in
3 ballot that had been received?

4 MS. McKENZIE: Objection.

5 A. Based upon the codes offered in the
6 SURE system by the Department of State --
7 and in Exhibit 2 on Page 3, the drop-down
8 menu does show all of the various codes
9 available. Based on the codes that are
10 available, the Washington County Board of
11 elections used record ballot return.

12 BY MS. GALLAGHER:

13 Q. I'd like you to look at Exhibits 4,
14 5, and 6 please, and again, I believe you
15 testified earlier that these were the
16 emails which were generated to Washington
17 County voters, Plaintiffs in this case,
18 following your -- not your but the Board's
19 entering the receipt of their mail-in
20 ballots.

21 A. Yes.

22 Q. Okay.

23 A. Voters who -- because we used the
24 record ballot return code in SURE,
25 Washington County mail ballot voters

1 received this email from the Department of
2 State, the emails of 4 -- Exhibits 4, 5
3 and 6.

4 Q. Did the Washington County Board of
5 Elections have any input into the language
6 in that email?

7 A. No. To my knowledge, these emails
8 were drafted by the Department of State.

9 Q. Did the Department of State give
10 you prior review, an ability to review
11 these emails prior to the implementation
12 of the system?

13 A. The Washington County Board of
14 Elections did not have any input in the
15 language contained in the emails of
16 Exhibits 4, 5, and 6.

17 Q. I'd like you to look at the first
18 paragraph: Your ballot has been received
19 by Washington County as of April 22nd,
20 2024. Would that be an accurate statement
21 for this? I'm looking at Mr. Marks's.

22 A. Yes, that sentence.

23 Q. The next line: If your county
24 election office identifies an issue with
25 your ballot that prevents the ballot from

1 being counted, you may receive another
2 notification. As to Washington County for
3 the April 2024 primary election, is that
4 an accurate statement to that voter?

5 A. No. Based upon the decision made
6 by the Washington County Board of
7 Elections, that sentence is misleading.

8 Q. So to the extent a voter received
9 this email, could you stop -- strike that.
10 Could the Washington County Board of
11 Elections have stopped this email from
12 going to their voters, their mail-in
13 voters?

14 MS. MCKENZIE: Objection.

15 A. No, not to -- we could have not
16 included the email address in the voters'
17 --

18 BY MS. GALLAGHER:

19 Q. Well, that wouldn't have been
20 accurate, would it, though?

21 A. That wouldn't have been accurate.

22 Q. So --

23 MR. BERARDINELLI: Let her
24 finish, please.

25 A. That's the only way we could have

1 prevented the voter from receiving an
2 email is by not including their email on
3 the application in the SURE system which
4 would not have been accurate.

5 BY MS. GALLAGHER:

6 Q. But the Department of State didn't
7 give you that option, did they, Ms.
8 Ostrander --

9 MS. McKENZIE: Objection.

10 BY MS. GALLAGHER:

11 Q. -- to have an accurate email go out
12 to your voter?

13 A. The Washington County Board of
14 Elections did not have any input into the
15 language of the email.

16 Q. Was there an option not to have --
17 to not allow the email to be sent -- and I
18 said that backwards. Do you understand
19 what I meant?

20 MS. McKENZIE: Objection.

21 A. No.

22 BY MS. GALLAGHER:

23 Q. Did you have the ability to stop
24 this email from going out to Washington
25 County voters?

1 A. As I said before, the only way we
2 could have prevented this email was to not
3 have inputted the email address into the
4 application which would not have been
5 accurate. We would not have done that.

6 Q. So maybe I can ask it better. Once
7 you put in all accurate information, did
8 you have any control over what Washington
9 County voters were being told?

10 A. No.

11 Q. To the extent that a voter in
12 Washington County received this email and
13 thought, oh, if there's a problem with my
14 ballot, I may get more notification, was
15 that belief caused by Washington County?

16 MS. MCKENZIE: Objection.

17 A. I don't understand. Could you
18 rephrase?

19 BY MS. GALLAGHER:

20 Q. Once a voter received this and they
21 read this language, if your county
22 election official identifies an issue with
23 your ballot envelopes that prevent the
24 ballot from being counted, you may receive
25 another notification -- as you stated,

1 that was not true for Washington County
2 mail-in voters, correct?

3 A. Yeah. That sentence was not an
4 accurate reflection of the decision made
5 by the Washington County Board of
6 Elections, so to the voters in Washington
7 County, that sentence in my opinion is
8 misleading.

9 MR. BERARDINELLI: When you say
10 decision, you're talking about --

11 THE WITNESS: The Board of
12 Elections's decision to not cure.

13 MR. BERARDINELLI: Thank you.

14 BY MS. GALLAGHER:

15 Q. You believe that's misleading?

16 A. That's my opinion.

17 Q. To the extent it is, was that
18 caused by Washington County, or was it
19 caused by the Department of State's email?

20 MS. MCKENZIE: Objection.

21 A. Washington County and the Board of
22 Elections did not send the email, and we
23 did not draft the language contained in
24 the email. So the email our voters in
25 Washington County were receiving was not

1 from Washington County. It was from the
2 Department of State.

3 BY MS. GALLAGHER:

4 Q. With respect to -- I'd like you to
5 look at Exhibit No. 9. I believe you
6 testified that you did participate in the
7 executive session.

8 A. Yes, I did.

9 Q. Did other counties express concern
10 with the automatically generated emails?

11 A. Yes. There was concern brought up
12 by other counties as well.

13 Q. Do you recall the nature of those
14 concerns?

15 A. The counties that objected, one of
16 the objections was that they did not
17 appreciate or care -- I don't know; care
18 for that the Department of State was
19 sending emails to their county voters on
20 their Board's behalf without their Board
21 having any input into the language and
22 that the email was a blanket email for the
23 record, ballot returned code in the SURE
24 and not separate emails based upon if that
25 county's Board of Elections had decided to

1 Q. In 2024 after the Board of
2 Elections voted not to allow curing, could
3 someone get a replacement ballot if they
4 improperly filled out the declaration
5 envelope?

6 A. No, after the Board of Elections's
7 decision not to cure, no.

8 Q. Because giving them a second ballot
9 would be allowing them to cure?

10 A. Yes, that's correct.

11 Q. I want to make sure I understand
12 some of the your testimony about what
13 happens at the canvass, all right?

14 A. (Witness nods head up and down.)

15 Q. Members of the public can come,
16 right?

17 A. That is correct.

18 Q. And as part of the canvass process,
19 the canvass board is going through the
20 ballots, the mail-in ballots, that have
21 been segregated as having disqualifying
22 errors, right?

23 A. Yes.

24 Q. So those ballots have now gone
25 through first an initial -- I don't want

1 to call it cursory but an initial review
2 upon receipt by your staff and have been
3 segregated, right?

4 A. Yes.

5 Q. And then they went through a
6 prec canvass review and remained segregated,
7 right?

8 A. Yes.

9 MS. MCKENZIE: Objection.

10 BY MR. BERARDINELLI:

11 Q. And then after the close of the
12 polls sometime during the canvass process,
13 understanding that can take several days,
14 the canvass board looks at those ballots
15 and evaluates them as well, correct?

16 A. Yes.

17 Q. And if someone is there as a member
18 of the public, can they ask to see those
19 ballots that have been set aside or
20 segregated?

21 A. Yes.

22 Q. And would they be able to write
23 down the names of all the voters whose
24 ballots have been segregated?

25 A. Yes, they could.

1 curing, correct?

2 A. Yes, that is correct.

3 Q. And if I'm understanding your
4 testimony, in the course of the discussion
5 about that, they also talked about what
6 code in the SURE drop-down menu you and
7 your staff ought to use when dealing with
8 a mail-in ballot?

9 A. Yes.

10 Q. Okay, first of all, do you remember
11 any dialogue from that meeting about why
12 to use one code versus another?

13 A. Because the Board of Elections
14 decided with the code to use one code
15 versus the other because of the emails
16 that would be generated automatically to
17 the voter.

18 Q. And tell me what you remember them
19 discussing.

20 A. That the most appropriate code when
21 you take in what the code says, like the
22 SURE code, and the email that's sent out
23 that we have no control over, the record,
24 ballot returned code was the most
25 appropriate in the Board of Elections of

1 Washington County situation.

2 Q. Was the concept of, quote, unquote,
3 canceling a ballot discussed if you
4 remember?

5 A. I did ask the Board of Elections if
6 they wanted the code once the decision was
7 made whether --

8 Q. Once which decision was made?

9 A. The canvass board.

10 Q. Go ahead. Please continue.

11 A. Once the canvass board's decision
12 was made whether the ballot was counted or
13 not counted based on the declaration
14 envelope, I asked the Board if they wanted
15 the codes changed, and the Board of
16 Elections did not.

17 Q. During the discussion about --
18 strike that.

19 Was there discussion about which
20 code to use after the vote to not permit
21 curing, or was it all before?

22 A. It was during -- the decision on
23 the codes was during the discussion.

24 Q. In that discussion about the codes,
25 what, if anything, did the Board talk

1 MS. McKENZIE: I don't have any
2 further questions.

3 MR. BERARDINELLI: I just -- do
4 you have any more? Let me do mine first.

5 - - - -

6 RE-EXAMINATION

7 - - - -

8 BY MR. BERARDINELLI:

9 Q. On the language on Exhibit 2, if
10 you do not have time to request a new
11 ballot before --

12 A. You're on Page 9?

13 Q. 9 or 8. It is all the same. If
14 someone had in the primary of 2024
15 submitted their mail-in ballot already and
16 it had a defect and they got an email like
17 this and asked you for a new ballot, would
18 you have given them one?

19 A. Based upon the decision by the
20 Board of Elections, no, I was not able.

21 Q. The decision being what?

22 A. The Washington County Board of
23 Elections voted to not allow curing.

24 Q. And you were asked some questions
25 whether that same voter in this example

1 could go and vote a provisional, right?

2 A. Yeah. Any voter, even a
3 nonregistered voter, anyone can vote a
4 provisional ballot.

5 Q. If someone had sent in a mail-in
6 ballot that was received by the Board of
7 Elections and -- what was the term of art
8 we were using?

9 MS. MCKENZIE: Disqualifying
10 errors.

11 BY MR. BERARDINELLI:

12 Q. A disqualifying error or errors and
13 they voted a professional ballot on
14 election day, would the provisional ballot
15 be counted?

16 A. Let me see if I understand this
17 right. If the ballot had a disqualifying
18 error and they went to the poll and voted
19 a provisional ballot, that provisional
20 ballot would not be counted if we had a
21 ballot marked as received in our ballot
22 room because we would have received that
23 ballot.

24 Q. Mail-in ballot?

25 A. Mail-in ballot. We would have

1 received that mail-in ballot first, so
2 that ballot would count. And also the
3 canvass board -- the actual decision on
4 that ballot would not have been made until
5 it was canvassed.

6 MR. BERARDINELLI: That's all I
7 have. Thank you.

8 - - - -

9 RE-EXAMINATION

10 - - - -

11 BY MS. GALLAGHER:

12 Q. Mine is a little more basic. Could
13 you go back to that page, please?

14 A. Oh, yeah.

15 Q. You were asked if you had entered
16 canceled, incorrect date?

17 A. Yes.

18 Q. Had Washington County deemed mail-
19 in ballots for 2024 with an incorrect date
20 -- that were received with an incorrect
21 date as canceled?

22 A. No. The ballots were -- according
23 to the Board's decision not to cure, the
24 ballot was received, and then it was
25 locked and secure until it was canvassed.

CERTIFICATION OF WORD COUNT

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Brief contains 11,185 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

THE GALLAGHER FIRM LLC

Dated: October 9, 2024

/s/ Kathleen A. Gallagher

Kathleen A. Gallagher

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

THE GALLAGHER FIRM LLC

Dated: October 9, 2024

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher

*Counsel for Appellants
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Republican Party Of Pennsylvania*

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