

IN THE SUPREME COURT OF PENNSYLVANIA

No. 28 WAP 2024

**REPUBLICAN NATIONAL COMMITTEE, REPUBLICAN PARTY
OF PENNSYLVANIA, and WASHINGTON COUNTY BOARD OF
ELECTIONS,**

Appellants,

v.

CENTER FOR COALFIELD JUSTICE, et al.,

Appellees.

**AMICUS BRIEF OF SECRETARY AL SCHMIDT AND
DEPARTMENT OF STATE**

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October 11, 2024

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INTEREST OF AMICI CURIAE

The Secretary of the Commonwealth and the Department of State file this amicus brief to aid the Court's resolution of this matter.

The Department of State administers the Statewide Uniform Registry of Electors ("SURE"). 25 Pa.C.S. § 1222. The SURE system is highly relevant to the arguments made by the parties and is directly implicated by the relief ordered in this matter.

In addition, the Secretary has a strong interest in ensuring that counties are canvassing ballots and certifying election results consistent with the requirements of the Election Code and the Pennsylvania and U.S. Constitutions so that he may properly fulfill his statutory responsibilities, which includes certifying the results of all elections in Pennsylvania. 25 P.S. §§ 2621(f), 3159.¹

¹ This brief was not authored or paid for, in whole or in part, by any person or entity other than *amici* and their counsel.

ARGUMENT

This appeal concerns the actions of a single county board of elections that segregated mail-ballot² packets returned with obvious but fatal defects, but then refused to tell inquiring voters whether their mail ballot had been segregated. Opinion and Order, *Ctr. for Coalfield Justice v. Washington Cty. Bd. of Elections*, No. 2024-3953, at 5 (C.P. Washington, Aug. 23, 2024) (“C.P. Washington Op.”); Memorandum Opinion, *Ctr. for Coalfield Justice v. Washington Cty. Bd. of Elections*, No. 1172 C.D. 2024, at 2-3 (Pa. Cwmlth., Sept. 24, 2024) (“Cmwlth. Ct. Op.”).

In response to this specific factual situation, Common Pleas Court ordered the Washington County Board of Elections to, among other things, “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,” and “input the accurate status of the mail-in packet in the SURE system and provide the status to the elector *if requested*.” C.P. Washington Op. at 4 (emphasis added).

² The Secretary and the Department refer to absentee ballots and no-excuse mail ballots together as “mail ballots.”

The Secretary of the Commonwealth and the Department of State (“the Secretary”) file this amicus brief to provide relevant background information and address certain points for the benefit of the Court as it undertakes its expedited review of the unusual facts presented in this appeal.

1. The Statewide Uniform Registry of Electors (“SURE”)

Common Pleas Court ordered Washington County to “input the accurate status of the mail-in packet in the SURE system.” C.P. Washington Op. at 4. This relief refers to a mechanism used by the county boards of elections to assign a status to a mail ballot in the Statewide Uniform Registry of Electors (or “SURE”), which is administered by the Department of State. 25 Pa.C.S. § 1222.

The SURE system is the statewide database of voter registration, voting records, and mail ballot processing. 25 Pa.C.S. § 1222; Marks Dep. Tr. at 24:3-16, *Ctr. for Coalfield Justice v. Washington Cty. Bd. of Elections*, No. 2024-3953 (C.P. Washington, July 23, 2024) (Exhibits at E7). Among other things, the SURE system has an entry for every mail ballot issued to a voter in each election. Each mail ballot entry is linked

to a barcode, unique to each voter, that is printed on the return envelope of the mail-ballot packet.

When a mail-ballot packet is returned by the voter to the county board of elections, the county scans the barcode into SURE to log that the ballot has been returned. Counties can then select a code to update the status of that ballot. Assigning certain codes to a mail ballot sends an automatically generated email to the voter if the voter provided an email with their mail-ballot application. The email is based on a template and varies depending on the code that the county has chosen to assign.

To facilitate the effective administration of elections, the Secretary has worked closely with the county boards of elections over the past four years to develop and update ballot status codes to reflect the various reasons why a county board would not count a mail ballot, and to draft the associated email templates received by voters. *See, e.g.*, Pa. Dep't of State, Statewide Uniform Registry of Electors (SURE) Project, B 23.9.0_County Release Notes (Mar. 11, 2024) (Exhibits at E35-E52); Pa. Dep't of State, Statewide Uniform Registry of Electors (SURE) Project, County Release Notes Build 24.8 (Aug. 23, 2024) (Exhibits at E53-E68);

Marks Dep. Tr. at 34:12-35:2, 36:21-37:2 (Exhibits at E10).³ The Department has endeavored to create ballot status codes that all counties can use no matter their practices.

There are currently three general categories of ballot status codes for returned mail-ballot packets. The first is “RECORD,” which designates that a voter’s mail-ballot packet has been returned in some form. Exhibits at E44, E66; Marks Dep. Tr. at 94:3-9 (Exhibits at E25). The second is “PEND,” which is one option for counties that choose to notify voters of obvious errors that will likely result in their ballot being cancelled during canvassing and to offer those voters an opportunity to address the error (i.e., “notice and cure”). Exhibits at E63-E64 (listing PEND codes). There are multiple PEND codes (e.g., “PEND – NO SIGNATURE”) that can be used depending on the nature of the issue. *Id.* Use of PEND codes is completely optional. Exhibits at E36. The third is

³ The Secretary’s exhibits do not substantively modify the record before the Court. The RNC’s appendix included excerpts of the deposition of Deputy Secretary of Elections and Commissions Jonathan Marks, as well as the March 2024 SURE release notes. Because the appendix was not numbered, the Secretary attaches the full Marks deposition and re-attaches the March 2024 release notes for ease of reference. The Secretary also attaches the currently operative SURE release notes, which were issued in August 2024.

“CANC,” to be applied if the ballot will not be counted, or has not been counted, due to an error. Exhibits at E64-E65 (listing CANC codes). Here, too, there are multiple CANC codes (e.g., “CANC – NO SIGNATURE”) that can be used depending on the defect. *Id.*

The Department first offered the PEND codes ahead of the 2024 Primary Election as an option for counties that “offer[] ballot curing.” Exhibits at E36; Marks Dep. Tr. at 31:6-32:15, 34:9-35:2 (Exhibits at E9, E10). In response to feedback from the county boards, the Department revised the release notes in August 2024. Exhibits at E53-E68; Marks Dep. Tr. at 75:13-78:10 (Exhibits at E20-E21).

Consistent with state and federal law, *see infra* 7-8, if a county board of elections selects a PEND or CANC code, the associated automated email will inform the voter that they can go to their polling place on Election Day and “cast” or “request” a provisional ballot. Exhibits at E63-E65; *contra* RNC Br. at 9. By design, however, the message does not state that the provisional ballot will be counted.

Counties have complete discretion on *whether and when* to select a PEND or a CANC codes, including after Election Day. Marks Dep. Tr. at 39:4-9, 69:1-4, 83:23-84:1, 88:18-89:15, 96:2-12 (Exhibits at E11, E19,

E22, E23-E24, E25). The Secretary does, however, encourage counties to accurately update a mail ballot's final status in SURE. Accurate records facilitate effective election administration and enable the Secretary to identify and address systemic errors that prevent registered, eligible voters from having their ballot count.

2. Any question about provisional voting should be addressed by this Court in *Genser*

The RNC repeats several arguments challenging provisional voting that are squarely covered by this Court's grant of allocatur in *Genser v. Butler County*. RNC Br. at 4-5, 16-17, 21-26. The Court should address the RNC's arguments there, where the factual record concerns provisional voting and the legal questions have been thoroughly briefed by the parties and amici.

As the Secretary explained in *Genser*, every voter in this country is entitled to fill out a provisional ballot on Election Day if they believe they are registered and eligible to vote but their eligibility to vote at their polling place is in doubt. Br. of Dep't of State and Secretary Al Schmidt as Amici Curiae in Support of Appellants, at 6-11 & n.5, *Genser v. Butler Cty.*, Nos. 26 & 27 WAP 2024 (Pa. filed Sept. 26, 2024); accord 52 U.S.C. § 21082(a); 25 P.S. § 3050(a.2), (a.4)(1); *In re Canvass of Provisional*

Ballots in 2024 Primary Election, No. 55 MAP 2024, 2024 WL 4181584, at *3 (Pa. Sept. 13, 2024); *contra* RNC Br. at 4-5, 16-17, 23-25. A Pennsylvania mail voter does not need to live in a county that has chosen to offer “notice and cure” to access their statutory right to cast a provisional ballot at their polling place.

3. This appeal does not concern “notice and cure”

This appeal does not concern the discretionary authority of counties to notify mail voters of obvious errors on the mail-ballot packet that will likely result in their ballot being cancelled during canvassing and offer those voters an opportunity to address the error—a process often called “notice and cure.”

The RNC raises arguments that appear to challenge this discretionary authority. RNC Br. at 5, 28, 36-37, 38-43. These arguments mirror those made in its recently denied King’s Bench application. *See* Application for the Exercise of King’s Bench Power or Extraordinary Jurisdiction, at 30-31, 33-38, *RNC v. Schmidt*, No. 108 MM 2024 (Pa. filed Sept. 18, 2024) (application denied Oct. 5, 2024). The Court should not permit the RNC to backdoor the issues raised in its unsuccessful application into this appeal of a single county’s decision to deny voters

information about the status of their segregated mail-ballot packets. *See* Cmwlth Ct. Op. at 2-3; C.P. Washington Op. at 5.

The RNC's arguments are also irrelevant to this matter. Common Pleas Court did not order Washington County to conduct "notice and cure"—to the contrary, its order specifically stated that notice was "so the voter has an opportunity to *challenge (not cure)* the alleged defects." C.P. Washington Op. at 4 (emphasis added). Nor did Common Pleas Court order Washington County to "determine whether an elector's mail ballot is valid" and "report that determination to the elector." *Contra* RNC Br. at 38-43. Instead, Common Pleas Court ordered Washington County to "notify any elector whose mail-in packet is *segregated* for a disqualifying error" that the ballot has been segregated. C.P. Washington Op. at 4 (emphasis added). It did so in the face of Washington County affirmatively withholding information from voters who inquired about the status of their ballot. There was no order to examine mail-ballot packets or segregate those with obvious but fatal defects.

Nor does this appeal implicate any holding from *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020); *contra* RNC Br. at 5, 23-25. In that case, this Court determined that counties did not have

to adopt the specific procedure requested by petitioners: “having the Boards contact those individuals whose ballots the Boards have reviewed and identified as including ‘minor’ or ‘facial’ defects—and for whom the Boards have contact information—and then afford those individuals the opportunity to cure defects until the UOCAVA deadline” of one week after election day. *Pa. Democratic Party*, 238 A.3d at 372. That procedure is not what Common Pleas Court ordered here. *Cf.* C.P. Washington Op. at 4.

The RNC’s claim that “the General Assembly has forbidden do-overs,” RNC Br. at 28, goes well beyond anything this Court held in *Pennsylvania Democratic Party*. It would also add a punitive dimension to the Election Code in direct conflict with its actual purpose. *Pa. Democratic Party*, 238 A.3d at 356 (“The purpose and objective of the Election Code is to obtain freedom of choice, a fair election and an honest election return.” (cleaned up)).

4. The RNC’s reliance on 25 P.S. § 3154 is inapt

Although the Secretary takes no position on the constitutional question raised in this appeal, 25 P.S. § 3154 does not support the RNC’s position. *Contra* RNC Br. at 29, 34-35, 37-38. The RNC argues that no

due process violation exists because, in part, § 3154(a) states that the computation and canvassing of election returns is public. But § 3154(a) is not a notice provision. Instead, it states only that the “county board shall, at nine o’clock A. M. on the third day following the primary or election, ... publicly commence the computation and canvassing of the returns, and continue the same from day to day until completed, in the manner hereinafter provided.” 25 P.S. § 3154(a). Nothing in this language requires a county board of elections to take any specific action that would “provide notice of mail ballot defects” to individual mail voters who choose to attend. *Contra* RNC Br. at 37.

To the contrary, reading any such requirement into § 3154(a) would be inconsistent with 25 P.S. § 3146.8, which specifically governs the pre-canvass and canvass of mail ballots. There, the Election Code requires the pre-canvass of mail ballots to begin at 7 a.m. on Election Day and the canvass no earlier than 8 p.m. on Election Day. *Id.* § 3146.8(g)(1.1), (2); *cf. id.* § 3154(a). It also limits who may observe the canvass of mail ballots. *Id.* § 3146.8(g)(1.1), (2); *In re Canvassing Observation*, 241 A.3d 339, 349 (Pa. 2020). And, because challenges to mail ballots “are not permissible under the Election Code,” any individual permitted to

observe the canvass of mail ballots would not learn whether and why any individual mail ballot was set aside. *In re Canvassing Observation*, 241 A.3d at 350-51 (upholding county regulations governing the locations where observers were permitted to stand because, in part, observers had no right to “view the actual declarations on the ballot envelopes”).

5. Common Pleas Court’s order concerning poll books is unnecessary

Common Pleas Court ordered the Washington County Board of Elections 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. §150.16 (which will allow the elector the opportunity to cast a provisional ballot).” C.P. Washington Op. at 4. This relief is unnecessary for two reasons.

First, district poll registers (i.e., poll books) are used by poll workers at polling places on Election Day. Amending the poll book would not provide notice to a mail voter, who would have no reason to visit the polling place unless they already intended to cast a provisional ballot.

Second, this relief does not change the voter’s right to cast a provisional ballot nor any other decision that is made at a polling place on Election Day. As stated above, every voter in Pennsylvania is entitled

to cast a provisional ballot on Election Day if they believe they are registered and eligible to vote but their eligibility is questioned. Nothing appearing in a poll book modifies that right. A provisional ballot will not be *counted*, however, unless and until the county board of elections confirms both that “the individual was registered and entitled to vote” and that “the individual did not cast any other ballot, including an absentee ballot, in the election.” 25 P.S. § 3050(a.4)(5)(i), (7)(i)(A); *see Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 570 (6th Cir. 2004).

October 11, 2024

Respectfully submitted,

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Department of State*

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.

Date: October 11, 2024

/s/ Aimee D. Thomson

Aimee D. Thomson

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CERTIFICATE OF LENGTH

I certify that this brief complies with the word count requirement set forth in Pennsylvania Rule of Appellate Procedure 531(b)(3). Excluding matters identified in Pennsylvania Rule of Appellate Procedure 2135(b), this brief is 2,523 words. I have relied on Word's word count function to determine the length of this brief.

Date: October 11, 2024

/s/ Aimee D. Thomson

Aimee D. Thomson

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Exhibits

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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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Transcript of Jonathan Marks
Conducted on July 23, 2024

1 (1 to 4)

1	1	1	3
1	IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,	1	A P P E A R A N C E S
2	PENNSYLVANIA	2	ON BEHALF OF THE PLAINTIFF:
3	-----x	3	KATHLEEN A. MULLEN, ESQUIRE
4	CENTER FOR COAL FIELD JUSTICE,:	4	OFFICE OF CHIEF COUNSEL DEPARTMENT OF
5	WASHINGTON BRANCH NAACP, :	5	STATE
6	BRUCE JACOBS, JEFFREY MARKS, :	6	306 North Office Building 401 North Street
7	JUNE DEVAUGHN HYTHON, ERIKA :	7	Harrisburg, PA 17120
8	WOROBEC, SANDRA MACIOCE, :	8	(717) 783-0839
9	KENNETH ELLIOT, and DAVID :	9	
10	DEAN, :	10	ON BEHALF OF THE PLAINTIFF:
11	Plaintiffs, :	11	MARTIN BLACK, ESQUIRE
12	v. : Case No. 2024-3953	12	DECHERT, LLP
13	WASHINGTON COUNTY BOARD :	13	Cira Centre, 2929 Arch Street
14	OF ELECTIONS, :	14	Philadelphia, PA United States of America
15	Defendant. :	15	19104-2808
16	-----x	16	(215) 994-2222
17		17	
18	Deposition of JONATHAN MARKS	18	ON BEHALF OF THE DEFENDANT:
19	Harrisburg, Pennsylvania	19	KATHLEEN A. GALLAGHER, ESQUIRE
20	Tuesday, July 23, 2024	20	THE GALLAGHER FIRM, LLC
21	10:01 a.m.	21	3100 Koppers Building 436 Seventh Avenue
22		22	Pittsburgh, PA 15219
23	Job: 546180	23	(412) 308-5512
24	Pages: 1 - 132	24	
25	Transcribed by: Robert Kreb	25	
1	2	1	4
1	Deposition of JONATHAN MARKS, held at the	1	A P P E A R A N C E S
2	offices of:	2	ON BEHALF OF THE DEFENDANT:
3		3	DAVID J. BERARDINELLI, ESQUIRE
4		4	DEFOREST KOSCELNICK & BERARDINELLI
5	OFFICE OF GENERAL COUNSEL	5	436 Seventh Avenue 30th Floor
6	333 Market Street, 17th Floor	6	Pittsburgh, PA 15219
7	Harrisburg, Pennsylvania 17101	7	(412) 227-3135
8	(717) 783-6563	8	
9		9	ALSO PRESENT:
10		10	Brad Sydorick - Videographer
11	Pursuant to Notice, before KYLAN BARRY, Notary	11	Konly Harding -Planet Depos Tech
12	Public in and for PENNSYLVANIA.	12	Sara-Paige Silvestro - Public interest law
13		13	Claudia De Palma - Public interest law
14		14	Mimi Mckenzie - Public Interest Law
15		15	Marian K. Schneider, Esquire
16		16	Kate Steiker-Ginzberg, Esquire
17		17	Witold Walczak, Esquire
18		18	
19		19	
20		20	
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Transcript of Jonathan Marks
Conducted on July 23, 2024

2 (5 to 8)

<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF JONATHAN MARKS PAGE</p> <p>3 By Ms. Gallagher 7</p> <p>4 By Mr. Berardinelli 81</p> <p>5 By Mr. Black 85</p> <p>6 By Mr. Berardinelli 113</p> <p>7 By Ms. Gallagher 120</p> <p>8 By Mr. Black 125</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11 (Retained by counsel.)</p> <p>12 MARKS DEPOSITION EXHIBIT PAGE</p> <p>13 Marks' 1 Release Notes SURE System 30</p> <p>14 Marks' 2 PA Provisional Voting 33</p> <p>15 Guidance</p> <p>16 Ostrander's 5 Email example from SURE 69</p> <p>17 System</p> <p>18 Ostrander's 9 Meeting Invitation 75</p> <p>19 Marks' 3 Guidance absentee 89</p> <p>20 ballots 04/03</p> <p>21 Ostrander's 10 Ballot Instructions 119</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 ACLU Pennsylvania for Plaintiffs.</p> <p>2 MS. MULLEN: Kathleen Mullen, Deputy Chief</p> <p>3 Counsel, Pennsylvania Department of State for the</p> <p>4 Witness, Deputy Secretary Marks.</p> <p>5 THE VIDEOGRAPHER: The court reporter</p> <p>6 today is Kylan Barry, representing Planet Depos. The</p> <p>7 witness will now be sworn.</p> <p>8 Whereupon,</p> <p>9 JONATHAN MARKS,</p> <p>10 being first duly sworn or affirmed to testify to the</p> <p>11 truth, the whole truth, and nothing but the truth,</p> <p>12 was examined and testified as follows:</p> <p>13 THE REPORTER: Thank you. We may begin.</p> <p>14 EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>15 BY MS. GALLAGHER:</p> <p>16 Q Can you state your name, please?</p> <p>17 A Yes. First name is Jonathan, J-O-N-A-T-H-</p> <p>18 A-N, last name Marks M-A-R-K-S.</p> <p>19 Q Mr. Marks, I'm Kathy Gallagher. And we'll</p> <p>20 be asking you some questions today. Preliminarily,</p> <p>21 thank you and your counsel for being available for</p> <p>22 us. We know it was relatively short notice.</p> <p>23 Hopefully we're not going to get -- take too long,</p> <p>24 too long today and be to get you through and out of</p> <p>25 here. Could you tell us, please give us some of your</p>
<p>6</p> <p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: Here begins media</p> <p>3 number 1 in the videotaped deposition of Jonathan</p> <p>4 Marks in the matter of Center for Coalfield Justice</p> <p>5 et al, v. Washington County Board of Elections in the</p> <p>6 Court of Common Pleas, Washington County,</p> <p>7 Pennsylvania, case number 2024-3953.</p> <p>8 Today's date is July 23rd, 2024. And the</p> <p>9 time on the video monitor is 10:11 a.m. the</p> <p>10 videographer today is Brad Sydorick, representing</p> <p>11 Planet Depos. This video deposition is taking place</p> <p>12 at 333 Market Street on the 17th floor in Harrisburg,</p> <p>13 Pennsylvania, 17101.</p> <p>14 Would counsel please voice identify</p> <p>15 themselves and state whom they represent?</p> <p>16 MS. GALLAGHER: Kathleen Gallagher on</p> <p>17 behalf of the Republican National Committee and for</p> <p>18 purposes of this deposition, I'll also be asking</p> <p>19 questions on behalf of the Republican Party of</p> <p>20 Pennsylvania.</p> <p>21 MR. BERARDINELLI: David Berardinelli for</p> <p>22 the Washington County Board of Elections.</p> <p>23 MR. BLACK: And Martin Black from Dechert,</p> <p>24 LLP for the plaintiffs.</p> <p>25 MS. SCHNEIDER: Marian Schneider from the</p>	<p>8</p> <p>1 educational background?</p> <p>2 A So my educational background was actually</p> <p>3 a adult student, I attended Ashford University</p> <p>4 remotely in Iowa for two years. My work history</p> <p>5 since February of 2019, I've been Deputy Secretary</p> <p>6 for Elections and Commissions. Prior to that I was</p> <p>7 the commissioner for the Bureau of Commissions</p> <p>8 Elections and Legislation at the Department of State.</p> <p>9 That was from 2011 through 2019. Do you need me to</p> <p>10 go back further than that?</p> <p>11 Q I think that would do it.</p> <p>12 A All right.</p> <p>13 Q And if you could tell us briefly, please,</p> <p>14 what are your duties now as Deputy Secretary of</p> <p>15 Elections and Commissions?</p> <p>16 A So I oversee the Bureau of Elections, also</p> <p>17 the Bureau of Campaign Finance and Lobbying</p> <p>18 Disclosure, as well as the Bureau of notaries and</p> <p>19 legislation.</p> <p>20 Q And with respect to overseeing elections,</p> <p>21 given February, 2019, you were -- you held your</p> <p>22 position when Act 77 was enacted in October of that</p> <p>23 year. Is that correct?</p> <p>24 A I did, yes.</p> <p>25 Q Okay. Did you have any input Deputy</p>

<p>9</p> <p>1 Secretary with or work with the General Assembly in 2 the creation of Act 17? 3 MS. MULLEN: Objection. Go ahead. 4 A The Department of State did provide input 5 on the legislation through its legislative staff. 6 Q And could you also tell us please, what 7 you did, if anything, to prepare for today? 8 A I read a copy of the complaint and the 9 attached appendices, also reviewed some emails the 10 previously sent regarding the SURE status codes. 11 THE VIDEOGRAPHER: Sorry, I don't mean to 12 interrupt, but I did drop out of the Zoom due to 13 connection error, so I don't know if you want to go 14 off the record. 15 MS. GALLAGHER: Yeah, let's -- yeah, we 16 want to go on -- we'll wait. 17 THE VIDEOGRAPHER: All right. One minute. 18 We're going off the record. The time is 10:14. 19 (Off the record.) 20 THE VIDEOGRAPHER: We are back on the 21 record. The time is 10:16. 22 MS. GALLAGHER: Could you read back the 23 last question, please? 24 (Playback as requested.) 25 THE REPORTER: Were you able to hear that?</p>	<p>11</p> <p>1 voter is a registered voter within the county, and 2 also verifying the identify -- identification 3 information provided by the voter. If the 4 identification information checks out, then the 5 county issues a mail ballot to the voter. And that 6 process involves printing out a mailing label, 7 essentially, that has the voter's unique information 8 as well as a unique identifying number that is 9 attached to the mail ballot request and attached 10 likewise to the voter's record. 11 That is then mailed out to the voter. The 12 voter, once the -- once she receives the ballot, will 13 complete the ballot, insert the ballot in the inner 14 secrecy envelope is the term of art most people use. 15 It's a yellow envelope, seal that envelope, then 16 insert that envelope into the outer declaration 17 envelope on which is the declaration of the voter 18 verifying where they have to affirm that they are 19 qualified to vote in the election, and they must also 20 sign and date the declaration envelope and then 21 return it to the county election office. 22 If a county -- if a voter is on the 23 permanent mail-in voter list -- 24 Q Could you explain, excuse me. I don't 25 mean --</p>
<p>10</p> <p>1 MS. GALLAGHER: Yeah. 2 BY MS. GALLAGHER: 3 Q And Deputy Secretary Marks, did you meet 4 with -- other than your counsel, did you meet with 5 anyone else prior to today in preparation of your 6 deposition? 7 A No, just counsel. 8 Q Okay. I'd like if you would -- with 9 respect to mail-in ballots, could you walk us through 10 the process of from, you know, applicate -- from the 11 voter perspective? 12 A From the voter's perspective? 13 Q Uh-huh. 14 A Okay. So from the voter's perspective the 15 voter must first submit an application to request a 16 mail-in ballot. And -- well, I'll get into the 17 permanent mail-in voter list in a minute. But you 18 submit an application that application, you have to 19 provide identification in the form of either your 20 driver's license number, if you do not have a 21 driver's license number, the last four digits of your 22 social security number. 23 Submit that application to your county 24 election office. The county election office 25 processes that, and that involves confirming that the</p>	<p>12</p> <p>1 A Yeah. 2 Q -- to interrupt. If you could explain for 3 the record what that means. 4 A Permanent -- so the statute calls it 5 permanent. It's actually -- we use the term annual 6 when we're describing it because the voter has to 7 submit an application annually. But if the voter 8 does that, they are entitled to receive mail-in 9 ballots for every election in that election cycle up 10 to actually, I believe into February. 11 And I forget if it's the first Monday or 12 second Monday in February. But they're entitled to 13 receive without having to make any additional 14 request, a mail-in ballot for every election, they're 15 entitled to vote in during that period of time. 16 Q So once the ballot is sent back in, we've 17 -- you've gotten that far, and I apologize for 18 interrupting you, then what's the process for the 19 ballot? 20 A So the first thing the county does is they 21 will mark it as received, and we -- our guidance is 22 to date that, to mark the date that it was received, 23 and then they will scan it into the SURE system, the 24 Statewide Uniform Registry of Electors. And at that 25 point, the ballot will be marked as received.</p>

<p>13</p> <p>1 Q You just get this out of the way. You</p> <p>2 just referred to the term guidance, I believe. Could</p> <p>3 you tell us please what that means? What a guidance</p> <p>4 is?</p> <p>5 A A guidance is basically the department's</p> <p>6 guidance or articulation of best practices to county</p> <p>7 election offices for how to process work in the</p> <p>8 administration of elections.</p> <p>9 Q With respect to the county boards and your</p> <p>10 office, is there a division of jurisdiction, for lack</p> <p>11 of a better word?</p> <p>12 MS. MULLEN: Objection.</p> <p>13 Q Or responsibility?</p> <p>14 A There is, the -- both the secretary and</p> <p>15 the Commonwealth -- secretary of the Commonwealth and</p> <p>16 the County Boards of Elections have in the election</p> <p>17 code, they have their separate scope of authority and</p> <p>18 it's outlined in the Pennsylvania election code.</p> <p>19 Q And I'm not asking for you for a legal</p> <p>20 opinion, I'm sure your counsel will tell me, but in</p> <p>21 your understanding, what is the authority of the</p> <p>22 county boards with respect to mail-in ballots in the</p> <p>23 mail-in ballot system?</p> <p>24 MS. MULLEN: Objection to vagueness.</p> <p>25 MR. BLACK: Objection to form</p>	<p>15</p> <p>1 it does not have the force and effective law. If</p> <p>2 that's -- if that's your question. That's my</p> <p>3 layman's understanding of it.</p> <p>4 Q Anyway, you anticipated the question, so</p> <p>5 that was great. Are you familiar with the term</p> <p>6 directive?</p> <p>7 A Yes.</p> <p>8 Q Could you tell us please what a directive</p> <p>9 is?</p> <p>10 A A directive is something that the</p> <p>11 Secretary of the Commonwealth has explicit authority</p> <p>12 to issue on matters of election administration. An</p> <p>13 example would be directive on the use and</p> <p>14 implementation of voting systems, for example.</p> <p>15 Q With respect to mail-in ballots, what is</p> <p>16 the authority of the secretary with respect to mail-</p> <p>17 in ballots as -- go ahead.</p> <p>18 MS. MULLEN: Objection.</p> <p>19 Q To the ballot itself, and the envelope --</p> <p>20 declaration envelope.</p> <p>21 A Well, I -- to the ballot itself, well,</p> <p>22 I'll start with the envelope. The secretary does</p> <p>23 have the statutory authority to prescribe the form of</p> <p>24 the balloting envelopes as well as the instructions</p> <p>25 that are included with those envelopes.</p>
<p>14</p> <p>1 Q As to -- let me re-ask the question. Who</p> <p>2 administers or has responsibility at the county level</p> <p>3 for handling and processing a voter's mail-in ballot?</p> <p>4 A That would be the County Board of</p> <p>5 Elections.</p> <p>6 Q Okay. And with respect to the term</p> <p>7 curing, are you familiar with that, that term?</p> <p>8 A I am, yes.</p> <p>9 Q And what's your understanding of the term</p> <p>10 curing?</p> <p>11 A My understanding of the term curing is</p> <p>12 giving a voter who has made a fixable error on ballot</p> <p>13 envelope, an opportunity to cure that defect before</p> <p>14 election day.</p> <p>15 Q Who makes the decision as to whether or</p> <p>16 not a voter gets that opportunity?</p> <p>17 A That would also be the County Board of</p> <p>18 Elections.</p> <p>19 Q And as we just spoke guidance, is a</p> <p>20 guidance finding, and I don't mean that in a legal</p> <p>21 sense or is it -- could you describe what authority</p> <p>22 guidance has from the Department of State level?</p> <p>23 MR. BLACK: Objection to form.</p> <p>24 A It is our expectation when we issue</p> <p>25 guidance that counties will follow that guidance, but</p>	<p>16</p> <p>1 Q And I believe earlier you referred to</p> <p>2 something commonly referred to as a secrecy envelope.</p> <p>3 A Correct.</p> <p>4 Q Is that also the design or that envelope</p> <p>5 also a responsibility of Department of State?</p> <p>6 A Yes.</p> <p>7 Q With respect to what refer to as the</p> <p>8 declaration envelope or the outside envelope, I</p> <p>9 believe you testified that's within the secretary's</p> <p>10 authority. Does that -- what does that authority</p> <p>11 extend to with respect to the declaration envelope?</p> <p>12 MS. MULLEN: Objection.</p> <p>13 THE WITNESS: I'm not sure what you're</p> <p>14 asking. I mean, it's a --</p> <p>15 BY MS. GALLAGHER:</p> <p>16 Q Okay. Yeah, that was probably not a good</p> <p>17 way to ask it. On the -- could you tell us what</p> <p>18 appears on a declaration envelope?</p> <p>19 A So it's the declaration of the voter</p> <p>20 essentially affirming that they're qualified to vote</p> <p>21 in the election, and that they haven't cast another</p> <p>22 ballot in the election. And then under that</p> <p>23 affirmation or perhaps next to the affirmation,</p> <p>24 depending on given county's envelope layout is an</p> <p>25 area for the voter to sign affirming that information</p>

<p>17</p> <p>1 and also insert a date for when they completed that.</p> <p>2 Q And is that -- is the envelope that you've</p> <p>3 just discussed, the envelope that is mailed to the</p> <p>4 County Board of Election?</p> <p>5 A By the voter --</p> <p>6 Q Yes.</p> <p>7 A -- yes.</p> <p>8 Q The other one I would ask -- so we talked</p> <p>9 about guidance and directive. What about a</p> <p>10 regulation, what's a regulation?</p> <p>11 A A regulation is essentially a -- it is</p> <p>12 something that an agency has been authorized to</p> <p>13 issue. And it usually accompanies a statute that for</p> <p>14 the Department of State, the best example would be</p> <p>15 the regulations related to the use of the Statewide</p> <p>16 Uniform Registry of Electors.</p> <p>17 Q When you say -- I want to get that</p> <p>18 regulation related to the use, I just want to make</p> <p>19 sure I use your word. What do you mean by that?</p> <p>20 A Well, it's -- so -- and those regulations</p> <p>21 sometimes cover not only the activities of, so in the</p> <p>22 example of SURE, it's not just activities of the</p> <p>23 county, but also may include activities related to</p> <p>24 the -- to SURE of the department and even outside</p> <p>25 entities that may be requesting information regarding</p>	<p>19</p> <p>1 begin pre-canvassing or canvassing the ballots.</p> <p>2 You know, in the interim, you know, they</p> <p>3 may be organizing them, you know, by precinct, for</p> <p>4 example, to prepare for the pre-canvassing. But</p> <p>5 generally once they've recorded the ballot, they are</p> <p>6 required by statute to keep those ballots securely</p> <p>7 until pre-canvassing begins.</p> <p>8 Q And when does the pre-canvass begin?</p> <p>9 A It cannot begin earlier than election day</p> <p>10 7:00 a.m., I believe, on election day.</p> <p>11 Q Okay. What occurs during the pre-canvass?</p> <p>12 A Basically, the county election office, or</p> <p>13 the County Board of Elections will go through all of</p> <p>14 the ballots that have been submitted by voters,</p> <p>15 confirm that the information is accurate and</p> <p>16 complete. They will set aside any ballots that may</p> <p>17 have a defect at that time, the rest of the ballots</p> <p>18 ultimately will be approved. And then the outer</p> <p>19 envelope is opened exposing the secrecy envelope that</p> <p>20 contains the ballot. Those are ultimately opened and</p> <p>21 then tabulated by the Board of Elections.</p> <p>22 Q And is there a name for the process when</p> <p>23 they're tabulated?</p> <p>24 A Well, it's -- they're tabulated as part of</p> <p>25 the -- of the pre-canvass or the official canvass.</p>
<p>18</p> <p>1 or that's contained in the Statewide Uniform Registry</p> <p>2 of Electors. But it's basically a -- it's rulemaking</p> <p>3 by an agency as opposed to a statutory requirement.</p> <p>4 Q And is there a process that a regulation</p> <p>5 goes through before it's adopted?</p> <p>6 A There is --</p> <p>7 MS. MULLEN: Objection.</p> <p>8 A Sorry. There is -- there's a drafting</p> <p>9 process to my knowledge, again, not an attorney, but</p> <p>10 I believe there's public comment period typically on</p> <p>11 regulations. And then there's an independent review</p> <p>12 body that reviews proposed regulations before they're</p> <p>13 ultimately published.</p> <p>14 Q And I think we can go back. We've covered</p> <p>15 that another way. We were talking about what happens</p> <p>16 to a ballot, it's received in the County Board of</p> <p>17 Elections, is where we dropped off. If you could</p> <p>18 walk us through that again, please.</p> <p>19 MS. MULLEN: Objection.</p> <p>20 A So once it's received, as I said, our</p> <p>21 guidance to county says that they date stamp it so</p> <p>22 that it's clear what date it was received and then</p> <p>23 they scan it. And that records the ballot as</p> <p>24 returned in the -- in the SURE system. And then</p> <p>25 counties must keep those ballots secure until they</p>	<p>20</p> <p>1 Q And when does the official canvass start?</p> <p>2 A The official canvass of all of the votes</p> <p>3 from the election starts on Friday morning, the</p> <p>4 Friday after election day.</p> <p>5 Q Right.</p> <p>6 A So the pre-canvass and canvass of mail-in</p> <p>7 ballots is distinct from the official canvass. I know</p> <p>8 the term is used a lot, but --</p> <p>9 Q That's what I would --</p> <p>10 A -- they're different --</p> <p>11 Q -- trying to get --</p> <p>12 A -- distinct.</p> <p>13 Q -- trying to breaking down. Could you</p> <p>14 tell us what those differences are?</p> <p>15 A Well, the pre-canvass and canvass of mail-</p> <p>16 in ballots applies strictly to ballots cast --</p> <p>17 absentee or mail-in ballots cast by voters. The</p> <p>18 official canvass is actually the process of going</p> <p>19 through all of the votes cast. Those include</p> <p>20 election ballots cast at a polling place on election</p> <p>21 day, as well as mail-in ballots. It includes a</p> <p>22 little further downstream, the actual, you know, the</p> <p>23 canvass and tabulation of any military and oversea</p> <p>24 civilian ballots that may have come in up to seven</p> <p>25 days after the election.</p>

<p>21</p> <p>1 In the case of a -- of an absentee or 2 mail-in ballot where the voter's ID could not be 3 verified prior to election day, voters within six 4 days have an opportunity to provide a valid form of 5 ID and have those counted. So that official canvass 6 includes all of those activities. It also includes 7 reconciling all of the records of the counties during 8 the -- during the election. So it's a -- it's a long 9 tedious process to get to the end.</p> <p>10 Q Are you familiar with the term provisional 11 ballot?</p> <p>12 A I am, yes.</p> <p>13 Q And when are provisional ballots processed 14 or canvassed?</p> <p>15 A Provisional ballots are canvassed during 16 the official canvass period.</p> <p>17 Q Subsequent -- upon completion of the 18 canvass process, is that what process then begins, or 19 what is the next step in the responsibility of the 20 Board of Elections?</p> <p>21 A Once the official canvass has completed, 22 the next step is the process of certifying the 23 official election results.</p> <p>24 Q And what does that mean?</p> <p>25 A So the County Board of Elections, after it</p>	<p>23</p> <p>1 A So -- and you can see this on our website, 2 so it'll be broken down by election day votes cast 3 for candidates, votes cast by mail, as well as votes 4 cast by provisional ballot.</p> <p>5 Q With respect to mail-in ballots, is there 6 a breakdown of ballots which were -- for this, we'll 7 say, counted and ballots which were not counted for a 8 potential defect or a defect?</p> <p>9 MS. MULLEN: Objection.</p> <p>10 A Those can be reported by the county 11 election officer. I wouldn't -- I wouldn't say 12 that's necessarily part of the certification of the 13 official results. The certification of the results 14 of the election is the certification of the vote 15 totals, so that would only include vote totals from 16 ballots that were ultimately counted, but the county 17 can report on ballots that were not counted and the 18 reason they were not counted. And the same is true 19 of, you know, whether it's mail ballots or 20 provisional ballots, the county can provide an 21 accounting of why certain ballots were not counted, 22 or the votes on certain ballots were not counted to 23 be very particular.</p> <p>24 Q Thank you. I'd like to talk a little bit 25 about the SURE system. For the record, could you</p>
<p>22</p> <p>1 is -- it is done, all of the activities that we just 2 talked about, will basically provide an unofficial 3 tabulation of the votes for the election. And at 4 that point, most counties call it their first 5 signing, where they'll sign off, the board will sign 6 off on the official returns, and then that starts a 7 five-day clock within which individuals -- individual 8 voters can request recount, for example, if they -- 9 if they believe that any of the election results are 10 in error for any reason. And then once that five-day 11 clock ends, the county will sign off on the official 12 return.</p> <p>13 Q And with respect to the official return, 14 so a voter in Pennsylvania, you did objection to form 15 here, can either vote at the polls on the machine, or 16 by mail-in ballot. Correct? Are they reported 17 differently or are they reported in the same manner?</p> <p>18 MS. MULLEN: Objection.</p> <p>19 A I'm not sure what you mean by reported.</p> <p>20 Q Are the results of the election -- of any 21 election on the -- in the certification process, does 22 the totals, are they broken down by how the voter 23 cast a ballot?</p> <p>24 A They are, yes.</p> <p>25 Q Okay. Could you -- and how is that?</p>	<p>24</p> <p>1 explain what the SURE system is? What we refer to as 2 the SURE system?</p> <p>3 A I'll try to be as brief as possible, but 4 the acronym SURE stands for Statewide Uniform 5 Registry of Electors. It is essentially the 6 Commonwealth's single uniform voter registration 7 database and that database, aside from allowing -- 8 enabling counties to register voters and maintain 9 their official registry of voters, it also provides 10 for other processes like the processing of absentee 11 and mail-in ballots, and also the processing of 12 provisional ballots.</p> <p>13 So it's essentially the official voter 14 registration database for the Commonwealth of 15 Pennsylvania on which all counties must maintain 16 their official voter registry.</p> <p>17 Q Does that also help the -- strike that. 18 Excuse me.</p> <p>19 With respect to the term poll book 20 reconciliation, can you explain what that means?</p> <p>21 A So the term poll book is, I don't know 22 that it's actually used in the -- in the voter 23 registration law, but the poll book is the district 24 register, which is basically a list of the registered 25 voters for a specific election district or precinct,</p>

<p>25</p> <p>1 if you will, within a county.</p> <p>2 Q And the county board maintains those?</p> <p>3 A Yes.</p> <p>4 Q That was not a question, I apologize for</p> <p>5 the form, but that was posted here.</p> <p>6 A Yes. The county board maintains those.</p> <p>7 Q Does the information in the SURE system</p> <p>8 help the county board to do that? Is that the source</p> <p>9 of information in part for poll book record keeping?</p> <p>10 A Yes, because the counties must maintain</p> <p>11 their official voter roles in the SURE system. Then</p> <p>12 both the general register, which is the entire voter</p> <p>13 role for the county, and the district registers</p> <p>14 within that county are generated from the SURE</p> <p>15 system.</p> <p>16 Q With respect to an individual voter, what</p> <p>17 information is contained in the SURE system about</p> <p>18 individual voters?</p> <p>19 A Well, I -- obviously the voter's name,</p> <p>20 their address of registration. There is personal</p> <p>21 identifying information contained in the SURE system</p> <p>22 such as the voter's date of birth, identifying</p> <p>23 information like the voter's driver's license number</p> <p>24 or the last four digits of their social security</p> <p>25 number. Their record will also be linked to a</p>	<p>27</p> <p>1 answer is, some of it is, not all of it. Obviously</p> <p>2 the personal identifying information, like the</p> <p>3 driver's license number and the partial social</p> <p>4 security number are not public records. But a lot of</p> <p>5 the information is public record.</p> <p>6 BY MS. GALLAGHER:</p> <p>7 Q And just the last part, would that -- what</p> <p>8 would that include, just to get through this?</p> <p>9 A It would include -- I will probably forget</p> <p>10 some specific things, but it certainly can include</p> <p>11 the name of the registered voter, the voter's</p> <p>12 political party affiliation, their address of</p> <p>13 registration. Unless for some reason they are a</p> <p>14 confidential voter whose address cannot be disclosed.</p> <p>15 It would include vote history showing whether they</p> <p>16 voted in an election and also includes the method of</p> <p>17 voting in that election.</p> <p>18 Q Okay. Fair enough.</p> <p>19 A Includes their precinct as well, and --</p> <p>20 Q Does it show votes being recorded for --</p> <p>21 let me strike -- let me ask it this way. With</p> <p>22 respect to the upcoming general election, I'll go</p> <p>23 backwards to make sure within the prior election, the</p> <p>24 April, 2024 primary. I cast my mail-in ballot. It's</p> <p>25 in, assume it's received by my county board,</p>
<p>26</p> <p>1 specific precinct within the county which is then</p> <p>2 linked to voting district. So, you know, their</p> <p>3 congressional district, their state senate district,</p> <p>4 their state house district. So all of that</p> <p>5 information is contained on a voter's record in the</p> <p>6 SURE system.</p> <p>7 Q Is registration information -- political</p> <p>8 party registration information contained?</p> <p>9 A Yes. Their political party registration,</p> <p>10 yes.</p> <p>11 Q Is the information contained in the SURE</p> <p>12 system publicly available?</p> <p>13 MS. MULLEN: I'm going to object to this</p> <p>14 line of questioning. We're getting a little farfield</p> <p>15 from the categories of information that you talked</p> <p>16 about meeting for this case. So I'll let him answer</p> <p>17 the question. But, you know, we've talked about time</p> <p>18 limitations here, and you're going to keep wasting</p> <p>19 time then.</p> <p>20 MS. GALLAGHER: I understood. For</p> <p>21 purposes of the record, there are allegations or</p> <p>22 discussions about information gleaned from the SURE</p> <p>23 system.</p> <p>24 THE WITNESS: So I believe your question</p> <p>25 was, is that information, public information and the</p>	<p>28</p> <p>1 Allegheny County. Is that reflected in the SURE</p> <p>2 system?</p> <p>3 A It -- there will be a vote history record</p> <p>4 that will show that the voter voted, and it will also</p> <p>5 indicate the method of voting. So if a voter voted</p> <p>6 by mail ballot, it'll indicate that in the public --</p> <p>7 publicly available information.</p> <p>8 Q And is that information available in real</p> <p>9 time or there -- is it sequenced when the information</p> <p>10 can be made available, if that makes sense?</p> <p>11 A It's -- well, I can only speak to the</p> <p>12 department. The department provides what's called</p> <p>13 the full voter export, which is actually a list of</p> <p>14 every valid, you know, registered voter in the</p> <p>15 Commonwealth. And it includes vote history and all</p> <p>16 the other information we talked about, that is</p> <p>17 published once a week.</p> <p>18 Q Okay.</p> <p>19 A If someone goes to a county board of</p> <p>20 elections and request public information, I believe</p> <p>21 the county would be obligated to provide that as</p> <p>22 quickly as possible.</p> <p>23 Q Thank you. And one other question is</p> <p>24 regard, which has been on -- every time I listen to</p> <p>25 the news and hear about Pennsylvania's ballots are</p>

<p>29</p> <p>1 about to go out. When do ballots go out in 2 Pennsylvania, mail ballot? 3 A Well, the answer is it depends on the 4 individual county. So -- 5 Q Well, the earliest date that they can go 6 out. 7 MS. MULLEN: Talking about for a general 8 election? 9 MS. GALLAGHER: General election of 10 November. 11 A About 50 days. There are some exceptions. 12 Certain military and overseas civilian ballots 13 actually have to go out earlier than that. But 14 generally, it wouldn't be earlier than 50 days before 15 an election depending on when a county has all of its 16 balloting materials printed, it's -- it's going to be 17 the answer to your question about when they go out in 18 an individual county. And sometimes that can vary 19 because of things like litigation or other things 20 that may hold up the process of finalizing the 21 ballot. 22 Q Is there a date by which they have to go 23 out? 24 A There is, yes. It is the second Tuesday. 25 It's basically two weeks before election day is the</p>	<p>31</p> <p>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</p>
<p>30</p> <p>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</p>	<p>32</p> <p>1 changes that we've made to the SURE system. So it is 2 developed with our election staff in concerts with 3 the IT staff that is developing the changes to the 4 SURE system. But it is really designed to summarize 5 for the counties what is -- what is being changed in 6 the SURE system. 7 Q Almost a user manual, is that -- is that 8 if -- 9 A I don't know that I would call it a user 10 manual so much as it's -- it's kind of a -- trying to 11 think of a good analogy, it would be almost like a 12 product notification. So for example, if Microsoft 13 make changes to one of its products, they may issue a 14 document that summarizes those changes. That's what 15 this is. 16 Q Okay. 17 A It is sometimes accompanied with updated 18 guidance if the process has changed and the guidance 19 that it's been issued previously needs to be changed 20 as a result. 21 Q Was the March 11th, 2024 release notes, 22 were they accompanied by a guidance? 23 A It would be referenced here, and I'm not - 24 - we may have updated a job aid that goes through the 25 process of processing absentee and mail-in ballots as</p>

<p>33</p> <p>1 a result of these changes.</p> <p>2 Q Why don't we -- it would be Marks' 2. And</p> <p>3 I apologize, this was produced in another case, so I</p> <p>4 just keep it. Marks' 2.</p> <p>5 MR. BLACK: Just so we're clear, Marks' 2</p> <p>6 is the Pennsylvania Provisional Voting Guidance</p> <p>7 document.</p> <p>8 MS. GALLAGHER: Yeah.</p> <p>9 MR. BLACK: Dated March 11th, 2024,</p> <p>10 version 2.1.</p> <p>11 Q Deputy Secretary, Marks' -- Counsel's done</p> <p>12 a good job of that, but could you identify it for us,</p> <p>13 please?</p> <p>14 A Yes. This is Pennsylvania provisional</p> <p>15 voting guidance dated March 11th, 2024.</p> <p>16 (Marks' 2 was marked for identification</p> <p>17 and is attached to the transcript.)</p> <p>18 Q And we will come back to it, but just for</p> <p>19 purposes of clarity, because the release notes which</p> <p>20 you've mark -- which is Marks' 1's updated that same</p> <p>21 date, it's not -- I just wanted to make sure, are</p> <p>22 these related to each other at all?</p> <p>23 A I don't know that they're directly related</p> <p>24 to each other, but we did -- we did make changes to</p> <p>25 this, and this is guidance, the -- as noted on the</p>	<p>35</p> <p>1 need to do additional follow up with the County Board</p> <p>2 of Elections to resolve that.</p> <p>3 Q Fair enough. With respect to what the</p> <p>4 board, putting aside the update and what's contained</p> <p>5 in the release notes, which we'll get to in a moment,</p> <p>6 what is the obligation of a county board to input</p> <p>7 into the SURE system when it receives a mail-in</p> <p>8 ballot?</p> <p>9 MULLEN: Objection.</p> <p>10 Q I'm not asking for a legal just to be</p> <p>11 clear, but from a practical standpoint, what does the</p> <p>12 SURE system have to reflect?</p> <p>13 A The SURE system would at least have to</p> <p>14 reflect that a ballot was received.</p> <p>15 Q And again, not, I'm asking you legal</p> <p>16 conclusion, I'm sure your counsel will object,</p> <p>17 received, is there any other information that has to</p> <p>18 be provided about that information to the best of</p> <p>19 your knowledge?</p> <p>20 MS. MULLEN: Objection.</p> <p>21 Q About ballot, excuse me. Other than it</p> <p>22 was received.</p> <p>23 A The date I want you is received.</p> <p>24 Q If you could take a look at, in the top</p> <p>25 left hand corner, there is a -- I'm not sure what</p>
<p>34</p> <p>1 cover. But we did make changes to our guidance on</p> <p>2 the processing of provisional ballots at the same</p> <p>3 time that we were deploying these changes to the SURE</p> <p>4 system.</p> <p>5 Q Fair enough. I just wanted to make sure</p> <p>6 it was not related to the actual release notes. If</p> <p>7 we could turn back to those, could you tell us --</p> <p>8 A The release notes?</p> <p>9 Q The release notes, yes. Why were the</p> <p>10 release notes developed or why were the changes to</p> <p>11 the SURE system?</p> <p>12 A Well, the changes to the SURE system were</p> <p>13 developed to provide counties with options that best</p> <p>14 met their needs -- that best met their needs for</p> <p>15 processing absentee and mail ballots.</p> <p>16 Q Could you explain that a little better?</p> <p>17 A So we -- the primary change that we are</p> <p>18 announcing here was the addition of pending status</p> <p>19 codes. So for example, we talked a while ago about</p> <p>20 the term cure. So for example, if a county provides</p> <p>21 voters an opportunity to cure a ballot, they may want</p> <p>22 to put them into a pending status. And we were -- we</p> <p>23 were trying to accommodate that process where it</p> <p>24 would essentially tell the voter, your ballot is in</p> <p>25 this pending status because you made an error and you</p>	<p>36</p> <p>1 that says. I believe it says TOP plus amber plus</p> <p>2 strict.</p> <p>3 A In the right hand corner.</p> <p>4 Q In the right hand corner.</p> <p>5 A Yes.</p> <p>6 Q I'm sorry, I'm left-handed always looks</p> <p>7 backwards. Could you tell us what that means?</p> <p>8 A That's a traffic light protocol marking.</p> <p>9 It's something that the department adopted. The</p> <p>10 federal government uses it to identify information</p> <p>11 that may be sensitive in nature. So amber plus</p> <p>12 strict, is this was intended to be distributed only</p> <p>13 to county election officials who needed to know this</p> <p>14 information.</p> <p>15 Q And what was the purpose of limiting</p> <p>16 dissemination, for lack of a better word?</p> <p>17 A Well, in -- our release notes, in many</p> <p>18 cases, go into details about the SURE system that</p> <p>19 could potentially compromise the security of the</p> <p>20 system.</p> <p>21 Q Fair enough. Who is involved and with</p> <p>22 respect to the development of the changes to the SURE</p> <p>23 system that are reflected in the release notes?</p> <p>24 A Well, I -- that includes certainly</p> <p>25 counties provide input. A lot of the changes we make</p>

<p>37</p> <p>1 to the SURE system are the result of requests made by 2 county election officials. It also involves our own 3 staff in our division of SURE who work with our IT 4 staff to actually define and then ultimately develop 5 the systematic changes to the SURE system.</p> <p>6 Q And without asking what they -- what any 7 opinions are, do you also obtain legal opinions 8 during the course of the process?</p> <p>9 A If it is necessary to consult our counsel 10 about a change to the SURE system, yes.</p> <p>11 Q Okay. And were legal opinions required 12 for this document?</p> <p>13 MS. MULLEN: Objection.</p> <p>14 Q For the -- excuse, strike that. For the 15 changes to the SURE system.</p> <p>16 A I believe -- I believe we did consult with 17 our counsel. The department consulted with counsel 18 regarding the addition of the pending codes to the 19 SURE system.</p> <p>20 Q Thank you. If you could turn to page 2 of 21 the document. I apologize to -- first page, 22 following information outlines the changes which will 23 be deployed after the close of business on March 24 11th, 2024. Do you agree that that's what that 25 portion of the document reads?</p>	<p>39</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>24 A That they scan it at the -- there's a 25 unique barcode and the county scans that and that</p>
<p>38</p> <p>1 A Yes, the first sentence in that first full 2 paragraph, yes.</p> <p>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?</p> <p>6 A They were, yes.</p> <p>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?</p> <p>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.</p> <p>17 Q What do you mean by disposition of ballot?</p> <p>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.</p> <p>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</p>	<p>40</p> <p>1 updates the system to indicate that the ballot has 2 been received.</p> <p>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?</p> <p>6 A Yes, they may -- they may select one of 7 those status reasons if that is consistent with their 8 county's practice.</p> <p>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?</p> <p>13 A Yes.</p> <p>14 Q Okay. So we have an incorrect date. And 15 how would the county determine if there was an 16 incorrect date?</p> <p>17 MS. MULLEN: Objection.</p> <p>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.</p> <p>24 Q Deputy Secretary Marks, earlier on, and we 25 can read it back, I want to make sure I'm stating it</p>

<p>41</p> <p>1 correctly, but I believe you testified that when a 2 ballot's received, it's stamped, entered into the 3 SURE system, and then it's supposed to be kept 4 secure, locked for whatever -- until the pre-canvass. 5 A Correct. 6 Q Would you agree with me that the pre- 7 canvass is the inspection of ballots? 8 MS. MULLEN: Objection. 9 A I -- the pre-canvass might include the 10 inspection of ballots. 11 Q Can mailing ballots to the best of your 12 knowledge be inspected prior to the pre-canvass? 13 A I'm not aware of, I mean, I guess, it 14 depends on what you mean by the -- by inspected, but 15 I'm not aware of anything that would preclude a 16 county from looking at the outer envelope on a ballot 17 to make a determination as to, for example, whether 18 it was dated or signed. 19 Q Let me ask this question then. If the 20 ballot is not -- the declaration envelope does not 21 bear the voter's signature, can that ballot be 22 counted during the final canvas? 23 MS. MULLEN: Objection. 24 A If at the time -- if the ballot during the 25 canvass is not signed, the County Board of Elections</p>	<p>43</p> <p>1 can that ballot be counted? 2 A If at the -- if at the time of the canvass 3 the ballot does not contain a signature, then the 4 board would have to set that ballot aside. 5 Q I believe the next pending is no secrecy 6 envelope. 7 A Correct. 8 Q And if a ballot does not contain a secrecy 9 envelope, can that ballot ultimately be counted? 10 A No. 11 Q All right. At the time that a ballot is 12 received -- strike that. 13 Could you describe for us for the record, so 14 it's clear where the secrecy envelope is with respect 15 to a mail ballot 16 A Where it is when it's returned by the 17 voter? 18 Q Yes. 19 A It is enclosed inside the outer 20 declaration. 21 Q And is the ballot itself then in turn 22 inside the secrecy envelope? 23 A Yes. 24 Q Can declaration envelopes be opened or the 25 contents of the envelope determine the declaration</p>
<p>42</p> <p>1 would not be able to -- they would be required to set 2 that ballot aside because it did not contain a 3 signature of the voter. 4 Q Would this same be true as to a mail-in 5 ballot where the declaration envelope did not bear 6 the date or signature? 7 A It would, yes. 8 Q And recently, just to clear this up, has 9 the department issued a directive with respect to 10 assisting voters as to the year, the full year that 11 appears on the declaration envelope? 12 MS. MULLEN: Objection. 13 A Yes. If you're -- if you're referring to 14 our updated envelope that the secretary prescribed 15 under the statute, yes, we did update the directive 16 indicating that moving forward county should include 17 the full year in the dating area of the declaration 18 envelope. 19 Q Thank you. And as we go down, no date, 20 the next one would be no signature. If a ballot -- a 21 mail-in ballot is submitted without a signature at 22 the end of the finals canvas, can that ballot be -- 23 strike that. I apologize, it was an articulate. 24 If the mail-in ballot is received and the 25 declaration envelope does not contain a signature,</p>	<p>44</p> <p>1 envelope prior to the pre-canvass? 2 MS. MULLEN: Objection. 3 A Can they be determined, yes. 4 Q Okay. On what basis? 5 A Well, a lot of counties will use -- they 6 have a whole punch in there that will enable them, 7 you know, and it serves a couple of purposes. One 8 of, of course, is it enables the county to determine 9 whether there's a secrecy envelope inside that 10 declaration envelope. It also helps them on the back 11 end of the process to verify that they've actually 12 removed all the secrecy envelopes from the 13 declaration envelope. 14 Other counties are able to determine that 15 based on the equipment that they use to process 16 incoming mail ballots. In some cases they can 17 actually weigh the ballot to determine whether it 18 contains a secrecy envelope and the ballot inside the 19 declaration envelope. 20 Q Would you agree with me, Deputy Secretary 21 Marks that, and again, not asking for a legal 22 conclusion, but it does come out of the -- my 23 question is, practice and that comes out of the 24 election vote. When is the first time that a mail-in 25 ballot that is received can be opened?</p>

<p>45</p> <p>1 MS. MULLEN: Objection.</p> <p>2 A The first time that a ballot can be</p> <p>3 removed from its secrecy envelope, or?</p> <p>4 A I mean, let's -- I want to be very clear.</p> <p>5 Now, the ballot arrives in the declaration envelope.</p> <p>6 A Right.</p> <p>7 Q When is the first time under the election</p> <p>8 code, if you're aware, that that declaration envelope</p> <p>9 can actually be opened?</p> <p>10 A My understanding is that the declaration</p> <p>11 envelope cannot be opened until the pre-canvass or</p> <p>12 the canvass of mail-in ballots.</p> <p>13 Q Would you agree with me that the opening</p> <p>14 of the envelope allows the county to board to know on</p> <p>15 whether or not the -- excuse me, whether or not a</p> <p>16 secrecy envelope is included?</p> <p>17 MR. BLACK: Objection to form.</p> <p>18 A I mean, certainly that is one way to</p> <p>19 determine, it's not the only way, though.</p> <p>20 Q Okay. We'll get back to that. But by</p> <p>21 opening it, that would be the way -- one way to</p> <p>22 determine it, correct?</p> <p>23 A Correct.</p> <p>24 Q Okay. And we've agreed that a ballot that</p> <p>25 does not contain a secrecy envelope or is not</p>	<p>47</p> <p>1 determination as to whether a mail-in ballot can be</p> <p>2 counted and is -- and is in fact counted different?</p> <p>3 Is there any difference between those two?</p> <p>4 MS. MULLEN: Objection.</p> <p>5 MR. BLACK: Objection to form of</p> <p>6 questions.</p> <p>7 A I -- I'm not sure exactly what you mean.</p> <p>8 Q Okay. So --</p> <p>9 A If we're, you know, I think the pre-</p> <p>10 canvass and the canvass include multiple steps that</p> <p>11 the County Board of Elections has to go through. But</p> <p>12 I want to make sure that we're distinguishing that</p> <p>13 from the intake the counties do prior to the pre-</p> <p>14 canvass, where they may observe, for example, an</p> <p>15 error that is made by a voter. And if it is the</p> <p>16 county's practice to notify those voters and allow</p> <p>17 them to cure it, then they can do that during that</p> <p>18 period of time.</p> <p>19 Q I'm not even --</p> <p>20 A Just separate and distinct from the pre-</p> <p>21 canvass and canvass.</p> <p>22 Q I apologize. My (indiscernible) 00:57:53</p> <p>23 coming and I'm not trying to talk with my hands. I</p> <p>24 wasn't even getting --</p> <p>25 A Sorry, I do it too.</p>
<p>46</p> <p>1 enclosed in a secrecy envelope to be more precise,</p> <p>2 cannot at the end of the canvass be counted, correct?</p> <p>3 A Correct.</p> <p>4 Q Okay. So at the final canvass process, if</p> <p>5 that -- from what I understood, if the declaration</p> <p>6 envelope did not contain a signature or a date or the</p> <p>7 appropriate date, which you say that, that ballot</p> <p>8 cannot be counted?</p> <p>9 MS. MULLEN: Objection,</p> <p>10 Q Correct?</p> <p>11 A That's correct. If the -- if we're at the</p> <p>12 end of the canvass and, you know, I'm not sure</p> <p>13 exactly what you mean by end of canvass, but if --</p> <p>14 Q At the tabulation.</p> <p>15 A If we're making the ultimate determination</p> <p>16 at that point, yes, that ballot cannot be counted.</p> <p>17 Q Can that termination be made any time to</p> <p>18 the best of your knowledge prior to the actual board</p> <p>19 decision during the final canvass process?</p> <p>20 MS. MULLEN: Objection.</p> <p>21 A Can the determination whether to count the</p> <p>22 ballot be made prior to?</p> <p>23 Q Yes.</p> <p>24 A No, not to my knowledge.</p> <p>25 Q Is there a difference between a</p>	<p>48</p> <p>1 Q No, that's -- I wasn't even trying to get</p> <p>2 to that. I'm just trying to get to --</p> <p>3 A I'm pretty sure I bumped the microphone</p> <p>4 several times.</p> <p>5 Q The actual -- understanding the process,</p> <p>6 is it -- when the ballot's received, is it your</p> <p>7 understanding that if a county has decided to, what</p> <p>8 will refer to as cure, they can at that time make a</p> <p>9 determination as to whether a ballot as received</p> <p>10 during that -- will count or not, or is eligible,</p> <p>11 would you count it?</p> <p>12 MS. MULLEN: Objection.</p> <p>13 A I think the county is making a</p> <p>14 determination at that point that there appears to be</p> <p>15 an error on the ballot that may lead to the ballot</p> <p>16 not being counted. And as a result, they are</p> <p>17 providing voters -- impacted voters an opportunity to</p> <p>18 remedy that error prior, of course, to 8:00 p.m. on</p> <p>19 election day, the deadline to return the ballot.</p> <p>20 Q So you believe that there's a difference</p> <p>21 between that determination and the determination that</p> <p>22 is made at the time the board needs to decide whether</p> <p>23 -- strike that.</p> <p>24 Let me ask it this way. Two ballots come into</p> <p>25 -- let's pick a county, Allegheny, all right, on the</p>

<p style="text-align: right;">49</p> <p>1 same day, one has a signature, one does not have a 2 signature. Those ballots at that time are reviewed. 3 One is marked. Does Allegheny County have, and let's 4 say one of your codes, your code is entered pending, 5 no signature. 6 A Right. 7 Q All right. Okay. The other one is 8 obviously correct, let's assume it's correct, and it 9 has everything in it gets to the pre-canvass and 10 there is a -- there are secrecy envelopes. There is 11 no contact of the voter that's -- the Allegheny 12 County does not cure. Will the ballot without a 13 signature count? 14 MS. MULLEN: Objection. 15 A If-- the ballot would not count, no. 16 Q And that is as the result of a deficiency, 17 we'll say, or an error on the date that it was 18 submitted? 19 MS. MULLEN: Objection. 20 Q Received. Received. 21 MS. MULLEN: Objection. 22 A Correct, yes. 23 Q Okay. So as we go down the list, pending 24 no ID, and we agree that the voter has the chance, I 25 believe it's six days after the election, to provide</p>	<p style="text-align: right;">51</p> <p>1 A I mentioned military and overseas civilian 2 voters. They are -- there are special provisions in 3 the election code and also in federal law that allow 4 them to submit a request for a ballot electronically 5 and also receive balloting materials electronically. 6 And we do that by sending a secure email to the voter 7 that contains their -- basically a PDF of their 8 balloting materials along with instructions and an 9 envelope template that they can use to download the 10 ballot, fill it out, and return it to their county 11 election office. And this is just basically saying 12 that these -- that the response types that we've 13 added are available for all these types of voters, if 14 applicable. 15 Q Deputy Secretary, I have a question, there 16 may be an objection to it for, let me -- try to ask 17 it more slowly giving your counsel time to object if 18 necessary. You testified earlier that you became the 19 deputy secretary in 2019 prior to the enactment of 20 Act 77. Were you in that -- in your current position 21 at the time -- strike that. Are you available or 22 familiar with the case known as Pennsylvania 23 Democratic Party versus Boockvar in 2020? 24 A I am. If I'm not getting them mixed up, 25 there's a lot of litigation. So I am, I believe I</p>
<p style="text-align: right;">50</p> <p>1 ID to correct that, pending other, what would that 2 mean? 3 A Pending other would basically capture 4 anything that's not -- and I can't think of a -- an 5 example, perhaps a ballot that came back in the mail 6 damage, for example, might fall into that category. 7 I think the first five categories capture the 8 overwhelming majority of errors or issues with 9 ballots. But pending other there is there in the 10 event that for some other reason that -- and the one 11 that comes to mind is, I'm sure you've gotten mail 12 before that was damaged in the process of mail 13 making, its way through the mail stream. So it might 14 include that. 15 Q Okay. If we go to the next step, the new 16 response types are available for selection for each 17 of the following ballot labels. If you could just 18 walk us through those, please. 19 A Absentee ballot label, mail-in ballot 20 label, PA bedridden veteran ballot label, PA email 21 bedridden veteran ballot label, email, military and 22 civilian overseas ballot label, email remote isolated 23 bedridden veteran ballot label. If it helps, I can 24 explain, you know -- 25 Q That would -- please.</p>	<p style="text-align: right;">52</p> <p>1 know which one you're referring to. 2 Q Okay. 3 A Which I -- is that the one that resulted 4 in a Pennsylvania Supreme Court ruling on September 5 11th, 2020? 6 Q I believe so. 7 A Okay. 8 Q Now I know the page numbers of that 9 opinion by now, but I don't know the date it was 10 actually entered. Do you recall, if you recall, that 11 the -- in that case there was a request by the 12 petitioners for the Court to mandate what's now 13 curing? Do you recall that? 14 A I do recall that that was -- that was 15 certainly one of the issues addressed in that case. 16 Q Do you recall what the position of the 17 secretary was in that case with respect to the issue 18 of curing? 19 MS. MULLEN: Objection again, we're going 20 outside the scope of this deposition. 21 MS. GALLAGHER: Last question. 22 A I don't -- I don't recall exactly what the 23 -- what the secretary's opinion. I -- what I recall 24 is what ultimately the PA Supreme Court's opinion is 25 on the matter. And that -- that is what we've been</p>

<p>53</p> <p>1 operating under since then.</p> <p>2 Q Okay. I'd like you to turn to page 3 of</p> <p>3 Marks' 1. You can get through the rest of this</p> <p>4 pretty quickly, I believe. I believe that first line</p> <p>5 there, is the last response types are available in</p> <p>6 the following areas with the SURE VR system. If you</p> <p>7 could tell us what that --</p> <p>8 A What's in the SURE VR system?</p> <p>9 Q Uh-huh.</p> <p>10 A Yeah. That -- that's the statewide voter</p> <p>11 registry.</p> <p>12 Q Okay. So record mailings, bulk ballot</p> <p>13 response. What's a bulk ballot response?</p> <p>14 A It's basically a utility that counties can</p> <p>15 use. So if they're using, you know, a machinery to</p> <p>16 scan their ballots as they come in, they can actually</p> <p>17 upload the -- those ballots recorded into the system</p> <p>18 in bulk as opposed to having to scan them one at a</p> <p>19 time.</p> <p>20 Q Okay. And the next page, page 2, is that</p> <p>21 just the availability of the various tabs on the</p> <p>22 absentee and mail-in voting screen, effectively a</p> <p>23 dropdown menu?</p> <p>24 A Yes.</p> <p>25 Q Is that what that is?</p>	<p>55</p> <p>1 the disposition of a ballot?</p> <p>2 A Well, it could happen, you know, during</p> <p>3 the intake where they notice something about the</p> <p>4 ballot. It could happen during the pre-canvass or</p> <p>5 canvass, or even after the canvass, so that the -- so</p> <p>6 that the county is accurately capturing the</p> <p>7 disposition of the ballot.</p> <p>8 Q And again, I'm -- this is an</p> <p>9 argumentative, I'm just trying to -- when you say</p> <p>10 disposition, what does that mean?</p> <p>11 A Well, whether it's the interim disposition</p> <p>12 or final disposition of the ballot, it's basically</p> <p>13 the status of the ballot. So we talked earlier about</p> <p>14 ballots that weren't signed. If the county provides</p> <p>15 notice and cure and wants to notify the voter that</p> <p>16 that ballot is pending some action from the voter,</p> <p>17 they would use the pending status. If the voter does</p> <p>18 not cure that, then ultimately the county will have</p> <p>19 to update the disposition to cancel no signature to</p> <p>20 properly record it in the SURE system.</p> <p>21 Q Fair enough. At the bottom, additionally,</p> <p>22 the response type of CANC, I think that's canceled,</p> <p>23 vote canceled, has been removed as a dropdown</p> <p>24 selection?</p> <p>25 A Correct.</p>
<p>54</p> <p>1 A Yes.</p> <p>2 Q Okay. And turning to page 5, it says, by</p> <p>3 current design changing the status reason from the</p> <p>4 absentee mail-in voting screen ballots tab will not</p> <p>5 properly update the correspondence tab on the voter</p> <p>6 record. Could you tell us what that means?</p> <p>7 A Yeah, I think you have to read on it will</p> <p>8 -- it goes on to say if you are using the record</p> <p>9 mailing screens, it is necessary for you to access</p> <p>10 the response history tab to clear the previous</p> <p>11 response before you can proceed to update the new</p> <p>12 response type.</p> <p>13 Q Could you explain for us in practical</p> <p>14 terms what that means for County Board of Elections?</p> <p>15 A Well, it -- it's basically telling them</p> <p>16 that there's a right way to do this process. If they</p> <p>17 want to clear a label response type and update it.</p> <p>18 Q Okay. If you're aware, why would be there</p> <p>19 -- why would there be a need to update a label</p> <p>20 response type?</p> <p>21 A Well, either the county initially made a</p> <p>22 mistake or the county needs to update the disposition</p> <p>23 of the correspondence, the ballot.</p> <p>24 Q And for what reason would, if you know,</p> <p>25 would a county need to update the correspondence of</p>	<p>56</p> <p>1 Q Do you know why that was removed?</p> <p>2 A It was -- it was kind of a being used as a</p> <p>3 catchall, so we removed it.</p> <p>4 Q Okay. I'd like to go through -- look at -</p> <p>5 - turn to page 6 and very quickly if we can go</p> <p>6 through, I'm not going to ask you for every category,</p> <p>7 but I'd just like to, so the response type where they</p> <p>8 say pending, does that -- that's what's reflected in</p> <p>9 the new changes, is that fair enough to say?</p> <p>10 A It is, yes.</p> <p>11 Q Okay. On the very first one or the second</p> <p>12 pending incorrect date to be used when a county</p> <p>13 offers the opportunity for voters to replace or</p> <p>14 correct the submission error, and the county has</p> <p>15 noticed that the voter used the wrong date, a date's</p> <p>16 missing or incorrect date, and the county offers</p> <p>17 curing, would this be the correct tab?</p> <p>18 A Yes, they could --</p> <p>19 Q Okay.</p> <p>20 A They could use that response type.</p> <p>21 Q And when the county enters it under that</p> <p>22 ballot scans, under that tab, then what occurs?</p> <p>23 A Well, the -- so you'll see in this far</p> <p>24 right column it refers to the second paragraph email</p> <p>25 verbiage. So this would be the notice, the</p>

<p>57</p> <p>1 systematic notice that the voter would get regarding 2 the status of their ballot. 3 Q Do the Department of State always notify a 4 voter, a mail ballot when their voter was -- vote was 5 received or their ballot was received? 6 MS. MULLEN: Objection. 7 A We've provided for many years emails, 8 systematically generated emails that would go out 9 based on actions taken by the county. And in this 10 case, it's updating the response type which would 11 generate an email to the voter provided that the 12 voter has provided an email address. 13 Q Okay. And in that second -- in that 14 third, bless you, the third paragraph, your mail 15 ballot may not be counted because you did not 16 correctly date the declaration on your ballot return. 17 If you do not have time to request a new ballot 18 before, in parenthetical, ballot application deadline 19 date, or if the deadline has passed, you can go to 20 your polling place on election day and cast a 21 provisional ballot. 22 A Correct. 23 Q Who determine that language or develop the 24 language that goes to the voter? 25 A Well, the department as I mentioned</p>	<p>59</p> <p>1 may be able to answer, you may be not. Understanding 2 your response, I go into vote in the polls on 3 election day, I'm qualified to vote, I fill up my 4 ballot, it's busy, I walk out and I realized I didn't 5 vote for school board. I recognize I failed to vote 6 for school board. Do I have an opportunity to 7 correct that? 8 MS. MULLEN: Objection 9 A Once you've -- once you've inserted the 10 ballot into the -- into the scanner, no. You do have 11 an opportunity to correct that up to that point. You 12 could -- it's called spoiling the ballot. You could 13 receive a replacement ballot, but once you've 14 actually inserted that into the -- into the scanner, 15 which that goes into the secure ballot box, no. 16 Q Okay. But I just made a mistake. I mean, 17 it was an error and I've realized it. I don't get to 18 correct my error. 19 A You do up to a certain point. That's what 20 the ballot curing process or the ballot spoiling 21 process is for. 22 Q Okay. But at the time I hit that button 23 and confirm in the ballots process, I no longer have 24 that right. Would you agree? 25 A At the time -- you're talking about, at</p>
<p>58</p> <p>1 earlier ultimately determine the language with input 2 from county election officials as well as other folks 3 within the department state. 4 Q Do you obtain the consent from each county 5 as to whether -- as to the language that's included? 6 MS. MULLEN: Objection. 7 A From each individual county, no. It is a 8 -- it's a uniform system, so we do try to, as we 9 engage with counties, reach consensus if possible 10 among the counties. But that is not possible in all 11 cases. 12 Q And who made the determination that a 13 voter whose ballot did not have the -- did not bear 14 an incorrect date, I apologize if I do -- could cast 15 a provisional ballot to cure that ballot -- to cure 16 the existing ballot? 17 MS. MULLEN: Objection. 18 A Well, I -- again, keeping in mind I'm not 19 a lawyer, it's my understanding that voter is 20 entitled to cast a provisional ballot if they believe 21 they're qualified to vote. And that certainly would 22 apply to somebody who may have submitted their ballot 23 to the county, but knows that that ballot has an 24 error. 25 Q So let me ask you this hypothetical, you</p>	<p>60</p> <p>1 the time that you take your ballot and insert it into 2 the scanner? 3 Q I hand it over to that machine and it's 4 scanned in. I no longer have the opportunity to fix 5 an error. 6 A Correct. 7 Q That I recall -- know that I made -- 8 A Correct. Yeah. Up until that point 9 though, you can spoil the ballot and receive a new 10 ballot. 11 Q If I submit a mail-in ballot, do I have 12 the right to call and find out from -- well, strike 13 that. I'd like to go to the next page. When it says 14 it would be the third block down, cancel email 15 ballot, I don't -- UND batch. What does that mean? 16 A Undeliverable. 17 Q Okay. 18 A This would apply to those military and 19 overseas civilian voters we were talking about 20 earlier. They may have had their balloting materials 21 -- 22 Q Okay. 23 A -- sent electronically. 24 Q So it says cancel is that -- is the CANC 25 that means cancel, correct?</p>

<p>61</p> <p>1 A Correct.</p> <p>2 Q Okay. Is that a term of art with respect</p> <p>3 to a mail ballot?</p> <p>4 A I -- cancel, I don't know that it's a term</p> <p>5 of art. It's a -- it's a term that is used within</p> <p>6 the SURE system, and it could mean rejecting a</p> <p>7 ballot. It really depends on the response type. It</p> <p>8 could also -- you could also cancel, replace for</p> <p>9 example, which isn't necessarily a rejection, but and</p> <p>10 I believe that's on the next page, cancel label,</p> <p>11 cancel replace, maybe it's not.</p> <p>12 Q Well, let's go to page 8. Maybe that'll</p> <p>13 help.</p> <p>14 A Anyway, it -- so it's not a term of art so</p> <p>15 much as it is a technical term that we've been stuck</p> <p>16 with in the SURE system for many years.</p> <p>17 Q Okay. Is it -- can a cancel ballot be</p> <p>18 counted?</p> <p>19 A It would depend on why it's been canceled.</p> <p>20 Q Why don't I ask this? Can you tell --</p> <p>21 A I mean, I think we have to distinguish</p> <p>22 here between recording things in the SURE system and</p> <p>23 the official canvass. The Board of Elections makes</p> <p>24 the determination as to whether a ballot is counted,</p> <p>25 whether that's a mail-in ballot or a provisional</p>	<p>63</p> <p>1 ballot at the time they're recording it into -- as</p> <p>2 received into the SURE system?</p> <p>3 A Well, that would mean that after the --</p> <p>4 after the pre-canvass or canvass, the county's final</p> <p>5 determination is that that ballot cannot be counted</p> <p>6 because of an incorrect date. We are telling them</p> <p>7 that is the --</p> <p>8 Q Final decision. Right.</p> <p>9 A And we're telling them that's the code</p> <p>10 that they -- that's the response type they should</p> <p>11 record in the SURE system for that ballot.</p> <p>12 Q Great. So let's look --</p> <p>13 A Whether they do that or not is up to them.</p> <p>14 Q But again, that would -- and the record</p> <p>15 will be what it is. That's the final decision as to</p> <p>16 that ballot. But if you look at the next block then,</p> <p>17 your ballot may not be counted because you did not</p> <p>18 correctly date the declaration on your return</p> <p>19 envelope -- on your ballot return envelope. If you</p> <p>20 do not have time to request a new ballot before</p> <p>21 ballot application deadline date, or if the deadline</p> <p>22 has passed, you can go to your polling place on</p> <p>23 election day and cast a provisional ballot.</p> <p>24 What I don't understand Deputy Secretary</p> <p>25 Marks is from your testimony, you've just add that</p>
<p>62</p> <p>1 ballot. That is -- the process of recording that</p> <p>2 activity in the SURE system supports that. But it's</p> <p>3 not necessarily one and the same.</p> <p>4 So, you know, if a county, for example</p> <p>5 recorded a ballot as canceled in the SURE system, but</p> <p>6 subsequently the voter was able to correct that,</p> <p>7 there's nothing that would prevent the county from</p> <p>8 updating that disposition if necessary.</p> <p>9 Q Okay. That's not a discussion but --</p> <p>10 A I just -- I just want to make sure that we</p> <p>11 understand that the process of recording these things</p> <p>12 in the SURE system and the process of determining</p> <p>13 whether a ballot is counted or not are not</p> <p>14 necessarily one and the same thing. It supports that</p> <p>15 activity, but the County Board of Elections</p> <p>16 determination is ultimately the determination that</p> <p>17 matters.</p> <p>18 Q Well, we'll get back to that, but let's</p> <p>19 look at again, cancel incorrect date on page 8 of --</p> <p>20 page 8. This cancels the ballot if it is returned to</p> <p>21 the county with an incorrect date on the ballot</p> <p>22 envelope. It goes on to say, it should only be used</p> <p>23 when the county has made a final decision as to the</p> <p>24 ballot. Let's stop there. What final decision can a</p> <p>25 -- can the county make at the -- about a mail-in</p>	<p>64</p> <p>1 canceling correct date is for a final decision on a</p> <p>2 ballot. So if a final decision has been made, how</p> <p>3 can a voter then go in and correct that decision?</p> <p>4 MS. MULLEN: Objection.</p> <p>5 A Well, if it is up -- if it is prior to</p> <p>6 8:00 p.m. on election day, it is still possible for</p> <p>7 the voter to go in and request a provisional ballot.</p> <p>8 Q Okay.</p> <p>9 A And then that determination on that</p> <p>10 provisional ballot will be made by the Board of</p> <p>11 Elections at a later time.</p> <p>12 Q So is it your testimony --</p> <p>13 A Two different ballots, I mean, it's --</p> <p>14 we're talking about the mail-in ballot and the</p> <p>15 disposition of that versus a provisional ballot that</p> <p>16 may have been cast by the same voter.</p> <p>17 Q Correct. And I'm only referring to the</p> <p>18 original, not the provisional ballot, but the final</p> <p>19 disposition of a mail-in ballot. Wouldn't you agree</p> <p>20 with me that then that final disposition as to that</p> <p>21 mail-in ballot --</p> <p>22 A Right.</p> <p>23 Q -- is being made at the time this dropdown</p> <p>24 option is corrected?</p> <p>25 MS. MULLEN: Objection.</p>

<p>65</p> <p>1 MR. BLACK: Objection to form.</p> <p>2 A It is -- what we are telling counties is</p> <p>3 that that is the code you should use when a final</p> <p>4 disposition is made or a final determination is made</p> <p>5 on that ballot.</p> <p>6 Q And that would be then cancel incorrect in</p> <p>7 a non-curing county that did -- where a ballot did</p> <p>8 not have a date or had the incorrect date, that final</p> <p>9 decision would then come during the final</p> <p>10 determination of the canvass -- in the canvass,</p> <p>11 correct?</p> <p>12 MR. BLACK: Objection to form. Asking for</p> <p>13 the mental impressions of people he's not privy to.</p> <p>14 MS. GALLAGHER: I'm sorry, I couldn't hear</p> <p>15 you.</p> <p>16 MR. BLACK: You're asking him to opine on</p> <p>17 the mental impressions of people that other than</p> <p>18 himself, it's --</p> <p>19 MS. GALLAGHER: I'd be glad to clear it up</p> <p>20 because we're only asking for process. I'm trying to</p> <p>21 understand process with respect to the term final</p> <p>22 decision. But, you know, we can move on. I think I</p> <p>23 have enough on it.</p> <p>24 BY MS. GALLAGHER:</p> <p>25 Q So I have a question. If we would go</p>	<p>67</p> <p>1 right.</p> <p>2 Q Okay. So it's the opinion -- but would</p> <p>3 you agree with me, Deputy Secretary Marks, that the</p> <p>4 casting of that provisional ballot is an attempt to</p> <p>5 cure a ballot, which under this has been marked</p> <p>6 canceled and incorrect?</p> <p>7 MS. MULLEN: Objection.</p> <p>8 A I don't know that I would say this is an</p> <p>9 attempt to cure the ballot. I think it is a -- it's</p> <p>10 an attempt by the voter to remedy their canceled</p> <p>11 ballot during the provisional ballot process --</p> <p>12 Q And --</p> <p>13 A Because again, we're talking about a --</p> <p>14 MS. MULLEN: Let him finish.</p> <p>15 A We're talking about a voter here who has</p> <p>16 been notified late in the process that their ballot</p> <p>17 is not going to be counted. This voter is qualified.</p> <p>18 Nobody's raised an issue about the qualifications of</p> <p>19 the voter. We believe that the voter does have the</p> <p>20 right to go to their polling place if they are able</p> <p>21 to on election day and cast a provisional ballot,</p> <p>22 which will later be reviewed and a determination will</p> <p>23 be made by the County Board of Elections as to</p> <p>24 whether that ballot should be counted or not.</p> <p>25 Q And you believe that to be correct,</p>
<p>66</p> <p>1 down, so this, I understand the third box is the --</p> <p>2 the email, the verbiage in the second paragraph of</p> <p>3 the email that goes to the voter, correct?</p> <p>4 A Correct.</p> <p>5 Q All right. So, and I believe you</p> <p>6 testified earlier this was to help with counties who</p> <p>7 have elected to cure. If you could look at the next</p> <p>8 line as we go down, used -- it should only be used,</p> <p>9 and again, we're in canceling correct date. It</p> <p>10 should only be used when the county has made a final</p> <p>11 decision to, as to the ballot, or it does not offer</p> <p>12 the opportunity to cure. Correct?</p> <p>13 A Correct.</p> <p>14 Q So county does not -- an opportunity to</p> <p>15 cure, they've made this decision as to the incorrect</p> <p>16 date, and this is the automatically generated email</p> <p>17 that goes out to the voter?</p> <p>18 A Correct.</p> <p>19 Q Okay. So if a county does not offer the</p> <p>20 opportunity to cure, could you explain why there -- a</p> <p>21 voter in that county, would receive an email from the</p> <p>22 Department of State telling them that they had the</p> <p>23 right -- let me finish, to go to the polling place on</p> <p>24 election day and cast a provisional ballot?</p> <p>25 A Because in our opinion, they do have that</p>	<p>68</p> <p>1 whether a county offers curing or not?</p> <p>2 A Yes.</p> <p>3 Q Okay. Would you agree that a non-curing</p> <p>4 county does not have the obligation to count that</p> <p>5 provisional ballot?</p> <p>6 MS. MULLEN: Objection.</p> <p>7 MR. BLACK: Objection. That calls for a</p> <p>8 legal conclusion.</p> <p>9 Q They're a non-curing county, I mean --</p> <p>10 A Yeah, I mean --</p> <p>11 Q -- testimony as to what that is.</p> <p>12 A Yeah, I think the department believes that</p> <p>13 those ballots can and should be counted. I believe</p> <p>14 our guidance on provisional ballots says that, but</p> <p>15 ultimately, going all the way back when we talked</p> <p>16 about the scope of authority of the Board of</p> <p>17 Elections, that is ultimately the Board of Elections</p> <p>18 determination to make.</p> <p>19 Q But yet your email tells that voter, that</p> <p>20 they have a right -- strike it. I think it's --</p> <p>21 we'll strike it.</p> <p>22 Let's go through -- was consideration made, if,</p> <p>23 you know, for a non-curing county who has made a</p> <p>24 final decision about a ballot should not have a</p> <p>25 corresponding email sent to the voter?</p>

<p>69</p> <p>1 A Well, if a county doesn't want this email 2 sent to the voter, one option they have is to leave 3 that in the ballot return status and only update this 4 after 8:00 p.m. on election. 5 Q Okay. Fair enough. And for a non-curing 6 county, that would be acceptable, correct? 7 MS. MULLEN: Objection, 8 A It -- are you asking if it would be 9 acceptable to the department and it's certainly -- 10 Q Correct. 11 A -- with, you know, within our 12 understanding and my understanding of the Supreme 13 Court's ruling on notice and cure, that is an option 14 that is available to the county. 15 Q That's all I'm going to ask. Could we 16 look please at Ostrander 5. I'm not going to expect 17 you to testify as to an actual email that went to the 18 voter identified here. This format of email, have 19 you seen it before? 20 A I have, yes. 21 (Ostrander's 5, previously marked, is 22 attached to the transcript. 23 Q Okay. Could you tell us what it is 24 please? 25 A This is the -- this is an example of an</p>	<p>71</p> <p>1 -- this is what a non-curing county would select. Do 2 you know, as you sit here today, the date of this 3 email, I believe from -- at the top, from the 4 Department of State, was Monday, April 15th, 2024. 5 Within that time period, was that directly prior -- 6 shortly prior to the 2024 primary election? 7 A It was. It was about eight days before 8 the April 23rd primary. 9 Q Subject, your ballot has been received. 10 If you could go down to the second paragraph. Do you 11 know if Washington County had a noticed and cure 12 policy in place for the April, 2024 primary? 13 A It is my understanding that they did not 14 for the April, 2024 primary. 15 Q And it say, please know if Washington 16 County observes an issue with your ballot envelopes, 17 you may receive another email from this account with 18 additional information. Are you aware of what other 19 information the Department of State would be sending 20 to that voter, if any? 21 MS. MULLEN: Objection. 22 A Well, the county, it says you may receive 23 another email from this account with additional 24 information. 25 Q Right.</p>
<p>70</p> <p>1 email that is generated from the SURE system. 2 Q And how is it generated from the SURE 3 system? 4 A Well, it is generated when the county 5 updates the ballot response type for an individual 6 voter. 7 Q So would this email then have been 8 generated when a county received a mail-in ballot and 9 entered it into the SURE system -- recorded it, I 10 want to try to use it correct? 11 A Recorded it as received, yes. 12 Q Can you tell from this email which 13 dropdown menu, the county in which this voter resides 14 would have used? I believe it's Washington. 15 A I believe it would just be ballot 16 recorded. Basically, this is when the county records 17 the ballot as returned -- 18 Q Is that -- 19 A -- this email is general. 20 Q Isn't that -- is that email, if we can 21 agree, ballot record -- record ballot return, I 22 believe is the term? 23 A Record ballot return. 24 Q Okay. If that make a lot of sense. If 25 you look down and we just spoke about that the county</p>	<p>72</p> <p>1 A So ultimately it would be the county's 2 decision whether they were going to update the ballot 3 response type, thus kicking off another email to the 4 voter. Or if, let's say that this is -- that 5 Washington County was a county that provides notice 6 and cure, they may actually receive communication 7 directly from the county about the status of their 8 ballot. 9 Q I'd like you to turn your attention to 10 what we will mark -- what was previously been marked 11 as Marks' 2. And I believe that you had testified 12 this was a guidance which the department issued in 13 March -- on March 11th, with respect to provisional 14 ballot. I'd like you to turn to -- well, if you 15 could identify this document. 16 A Yes. Just refreshing my memory. Yes. 17 This is Pennsylvania provisional voting guidance 18 issued March 11th, 2024. 19 Q Okay. I'd like you to look at page 1 at 20 the bottom. Actually, in the middle, using 21 provisional ballots. I believe it states provisional 22 ballots are utilized when a voter believes that 23 they're eligible voter but the poll worker is unable 24 to confirm the voter's eligibility. The next 25 paragraph, voters are entitled to a provisional</p>

<p>73</p> <p>1 ballot when their eligibility to vote is uncertain. 2 What does that mean? 3 A Well, and I mean, it is -- we tried to 4 capture a pretty broad concept in a few words, but 5 it's basically that is your -- the provisional ballot 6 is kind of your last chance. If, you know, whether 7 it's -- and we go on to list the reasons under which 8 or the circumstances under which as -- a voter is 9 entitled to vote by provisional ballot. But it is as 10 the name of it suggest, it is kind of, it's like a -- 11 it's like hitting a provisional drive in golf. 12 You don't know for sure whether you're 13 going to be able to find the first ball you hit, so 14 you hit a provisional in the event that you're not 15 able to find the first ball. In the same case here, 16 if the voter, this is kind of their provisional 17 option for voting, which is subject to a later 18 determination by the County Board of Election. So if 19 a voter believes that they're qualified to vote, that 20 they're eligible to vote but for some reason they 21 cannot cast a ballot in the traditional manner, this 22 is the option that is available to them. 23 Q Okay. And just if we can go through this 24 quickly, it's the fourth bullet point down. It is, 25 voter was issued an absentee or mail-in ballot, but</p>	<p>75</p> <p>1 record. The time is 11:58. 2 MS. GALLAGHER: Deputy -- 3 MS. MULLEN: I just want to note -- I'm 4 sorry. 5 MS. GALLAGHER: That's okay. 6 MS. MULLEN: The deputy secretary will 7 read and sign. Thank you. 8 BY MS. GALLAGHER: 9 Q Turn to Ostrander deposition 9 or 10 transcript, Exhibit 9 rather. 11 A That's okay. 12 Q Does anybody have one? 13 Deputy Secretary Marks, could you identify this 14 document or the form rather? 15 A Yes. This is a meeting invitation that I 16 sent to the county election officials regarding 17 feedback sessions that we were -- that we wanted to 18 hold and talk about the primary and the mail ballot 19 status codes specifically. 20 (Ostrander's 9, previously marked, is 21 attached to the transcript. 22 Q And just to be sure, because we had the -- 23 for the record, the mail ballot -- mail ballot status 24 codes, are those the ones we were just discussing 25 from --</p>
<p>74</p> <p>1 believes they did not successfully vote the ballot. 2 What does successfully vote mean, if you know? 3 A That means that the county -- that the 4 voter has information to believe that their ballot is 5 not going to be counted for one reason or another. 6 Q Would that be the same with the rejected? 7 A Correct. 8 MS. MULLEN: Objection. 9 Q I'm sorry. In the next bullet, the term 10 wasn't clear, the term rejected in the next bullet 11 point. One more question, and then I might just need 12 a few minutes. 13 MR. BERARDINELLI: Can you reach a good 14 break point, Kathy, can we take a restroom break? 15 MS. GALLAGHER: Yeah, absolutely. Two 16 minutes. 17 MS. MULLEN: I'm sorry. Wrong Kathy. 18 MR. BERARDINELLI: That's all right. 19 MS. GALLAGHER: We can do that now. I 20 mean, because I only -- I don't have much more, and 21 that would give me a good chance. 22 THE VIDEOGRAPHER: We're going off the 23 record. The time is 11:47. 24 (Off the record.) 25 THE VIDEOGRAPHER: We are back on the</p>	<p>76</p> <p>1 A The ballot response types, yes. 2 Q -- from the change in the SURE system? 3 A Correct. 4 Q And the date of this is, do you agree, May 5 10th, 2024? 6 A Yes. 7 Q And it would have been after the primary - 8 - the 2024 primary, correct? 9 A It would have been, yes. I don't know if 10 the date of the meeting notice was May 10th. The 11 first -- this was a meeting notice. So the first 12 meeting was held on May 10th. 13 Q Okay. Did you receive questions, or 14 emails, complaints with respect to the changes to the 15 SURE system and the new response type? 16 A We did. We did receive feedback from 17 counties both anecdotally and then obviously in this 18 series of feedback sessions as well. 19 Q Do you recall any of the feedback that you 20 received? 21 A I'm not going to claim that I'll recall 22 all of it, but, you know, certainly there were -- 23 there were concerns by a number of counties regarding 24 some of the wording and the emails that voters were 25 receiving. So we listened to them, got some feedback</p>

<p>77</p> <p>1 from them. They were primarily concerned about 2 things that they believe might be misleading to 3 voters under certain circumstances. And they offered 4 some suggestions on how we might change that. 5 Q And in what way did these -- whoever 6 reported this believed that information might have 7 been misleading? 8 A Some counties believe that, you know, for 9 example, indicating that the voter may receive an 10 additional communication from the county as I recall, 11 they wanted sort of different message there, or 12 actually not so much different as less words, was 13 certainly one of the -- one of the concerns that was 14 raised by the counties. Other counties had some 15 specific feedback regarding the portion of the 16 message that -- well, I'd have to -- I'd have to go 17 back through to know, but it was -- a lot of it was 18 about how we were saying things in the email messages 19 and county's had suggestions for how that might be 20 changed. 21 Q With respect to the misleading, would that 22 -- information that you said was discussed, would 23 that have been, if you recall, from a non-curing 24 county who believed that the email -- 25 MS. MULLEN: Let her finish.</p>	<p>79</p> <p>1 MS. GALLAGHER: Attorney Mullen, I would 2 ask if you would mind producing those in conjunction 3 with Mr. Marks' testimony here today. 4 THE VIDEOGRAPHER: Counsel, do you mind 5 putting your -- 6 MS. GALLAGHER: Oh gosh, I'm sorry. 7 THE VIDEOGRAPHER: It's okay. I can still 8 hear everything. 9 MS. MULLEN: Just put something in 10 writing. 11 MS. GALLAGHER: And we have -- for 12 purposes of the record, I made a request to counsel 13 for the state to produce all of the SURE system 14 release document since the date of enactment of Act 15 77. 16 MS. MULLEN: Do you mean with respect to - 17 - 18 MS. GALLAGHER: With respect to -- 19 MS. MULLEN: -- dropdown menu? 20 MS. GALLAGHER: -- dropdown menu, yes. 21 BY MS. GALLAGHER: 22 Q Are changes going to be made to the 23 dropdown menus, do you know? 24 A It is -- it is our intent to change not 25 necessarily dropdown menus, but to change the wording</p>
<p>78</p> <p>1 Q That's okay. 2 A Sorry. 3 Q Who may have believed that an email that 4 was sent was misleading voters? 5 A I can't recall whether it was -- whether 6 it was specifically a non-curing county. You know, I 7 think, one example that sticks out is, you know, the 8 email for record ballot returned. Ultimately what 9 counties wanted was just simply a message that says 10 your ballot has been received. 11 Q Prior to the changes in the SURE systems, 12 was that, at one time, what was -- that that was all 13 that was entered, received? 14 A I would have to go back to review to 15 recall exactly what may have been said there. But it 16 was probably similar to that. But I can't say for 17 sure exactly what it said back at that point in time. 18 Q Deputy Secretary Marks, would the 19 department maintain, or does the department maintain 20 records as to the various dropdown options or 21 recording options that were available to the county 22 since the inception of mail of Act 77? 23 A I'm sure we would have release notes for 24 any of our releases, the changes that we made to the 25 SURE system.</p>	<p>80</p> <p>1 in the emails based on the feedback we received from 2 counties. 3 Q Do you know when those -- do you know what 4 the -- excuse, strike that. I apologize. 5 Do you know what types of changes, as you 6 sit here today, will be made to the emails? 7 A As I said the overarching message with 8 counties, this kind of less, not more, you know, one 9 other example is sometimes it was very specific words 10 that counties didn't like and they suggested 11 different words. So for example, on the message 12 related to provisional ballots they suggested that 13 you can request a provisional ballot as opposed to 14 cast a provisional ballot. 15 Q Are you aware of litigation, which was 16 filed in Butler County as a result of voters there 17 who received one of your emails and Butler County did 18 not count it because -- did not count the provisional 19 ballot because they had a non-curing policy as to 20 secrecy envelope. Are you aware of that? 21 A I am aware that litigation was filed in 22 Butler County. 23 Q Do you know when the new information will 24 be available? 25 A No later than 45 days before the election.</p>

<p>81</p> <p>1 MR. BLACK: Just so the record is clear, 2 so information meaning what? 3 MS. GALLAGHER: I was going to get -- 4 MR. BLACK: I'm just going to -- objection 5 there. 6 Q I was going to -- I was going to go back 7 to that. So when the new, the updated emails? 8 A Correct. 9 Q And how will those be distributed to the 10 counties, or how will the counties be made aware of 11 them? Would be another release note? 12 A It'll be -- it'll be additional release 13 notes, yes. 14 Q Okay. Does the Department of State 15 maintain or compile information with respect to 16 ballots that are canceled, and the reasons they're 17 canceled, or ballots which are rejected? 18 MS. MULLEN: Objection. 19 A Well, there's information contained in the 20 SURE system. So that is available through the SURE 21 system. 22 MS. GALLAGHER: Okay. I think I may be 23 finished. In case I find that I have something else, 24 I'll reserve the right, but I believe I'm finished. 25 EXAMINATION BY COUNSEL FOR THE DEFENDANT</p>	<p>83</p> <p>1 dropdown menu they see, the menu that's pictured on 2 page 4? 3 A Yes. This is a depiction of the dropdown 4 menu they would -- they would see for status reason. 5 Q And when they're viewing this screen, it 6 doesn't automatically show them what email will be 7 sent, correct? 8 A It does not, no. 9 Q And mine is small, but I think I counted 10 23 different options that a county could choose. 11 Right? 12 A I'm not going to disagree. I'd have to 13 count them myself, but yes, it looks like about two 14 dozen. 15 Q And I used the word options because I 16 think you used that word because this release was 17 about putting six new options for counties to choose 18 from. 19 A Right. 20 Q And assume for my counting is correct, 21 that would mean there was 17 prior? 22 A Yes. 23 Q And the county, if I understand your 24 testimony, has the discretion which of those 23 it's 25 going to use?</p>
<p>82</p> <p>1 BY MR. BERARDINELLI: 2 Q Mr. Marks, my name's David Berardinelli, 3 and I just have a couple brief follow ups. I 4 represent the Washington County Board of Elections. 5 As to the new emails that are going to be used for 6 the November general election, is it the department's 7 intent to use an email for the received ballot 8 return, like which was suggested, and I think what 9 you testified to was some of the counties wanted 10 simply your ballot has been received. Will that be 11 an option? 12 A Yes. I -- based on what, you know, came 13 out of those feedback sessions, I believe we will 14 shorten the text in that email to simply say the 15 ballot's been received and that if the voter wants 16 additional information to reach out to the county 17 election office. 18 Q Can you get out the, I'm going to call it 19 the SURE release notes if I've got the right term of 20 art. 21 A Marks' 1? 22 Q Yeah, please. 23 A Yes. 24 Q Page 4, if you don't mind. When a county 25 is inputting information into the system, is this the</p>	<p>84</p> <p>1 A Correct. 2 Q I'm jumping around a little bit, I 3 apologize. But right at the start of your 4 deposition, I think you were talking about the 5 instructions that are sent to a voter, right, mail-in 6 voter? And those instructions are ultimately sent by 7 the County Board of Elections, right? 8 A Correct. 9 Q But the Department of State is essentially 10 the author of those instructions? 11 A Yes. The department prescribes that. 12 Q And at the top of those instructions, 13 there's language that tells the voter for you -- for 14 your ballot to count, you must follow all these 15 steps. You're aware of that, right? 16 A That sounds right. If -- I'd have to see 17 a copy to know if that's verbatim, but yes, we do -- 18 we do notify voters that -- to ensure that their 19 ballot is counted, they must do certain things. 20 Q And I think you may have just answered, 21 but why do you -- why do you have that language on 22 there? 23 A Well, we want voters to know how to 24 properly complete their balloting materials to ensure 25 that there -- that they will be counted.</p>

Transcript of Jonathan Marks
Conducted on July 23, 2024

22 (85 to 88)

<p>85</p> <p>1 MR. BERARDINELLI: I think that's all I 2 have. I'm going to review, but someone else may have 3 a couple questions. 4 THE VIDEOGRAPHER: You're going to pass 5 the witness? 6 MR. BERARDINELLI: Yeah. I will pass the 7 witness and -- 8 THE VIDEOGRAPHER: Should I take the -- 9 MR. BLACK: Yeah, if you don't mind -- 10 THE VIDEOGRAPHER: (indiscernible) 11 01:49:43 12 MR. BERARDINELLI: Yeah, I'm loud to -- 13 hopefully you got me. 14 THE VIDEOGRAPHER: Yeah, no, your volume 15 is great. 16 MR. BERARDINELLI: Thank you. 17 EXAMINATION BY COUNSEL FOR THE PLAINTIFF 18 BY MR. BLACK: 19 Q Okay. Deputy Secretary Marks, my name's 20 Martin Black, I'm from the Dechert firm, and I 21 represent the plaintiffs. And I also have a few 22 questions for you. Let's just go back and make sure 23 we understand the process from the moment that the 24 ballot comes into the election office. So the mail- 25 in ballot comes into the election office, and the</p>	<p>87</p> <p>1 else. 2 Q Okay. At this point, the election worker 3 has seen the ballot. If the signature's missing, 4 they know that the ballot is not countable, correct? 5 A Correct. 6 Q And at that point, they go to the SURE 7 system then, or sometime later that day, to enter a 8 code to be correlated with that ballot in the SURE 9 system, correct? 10 A Correct. 11 MS. MULLEN: Just objection to the -- 12 MR. BLACK: Asking -- form. 13 MS. MULLEN: He -- he can't say what each 14 county's going to do, but -- 15 THE WITNESS: Right. Okay. It -- yeah, 16 assuming that a county -- 17 MS. MULLEN: Maybe just -- 18 THE WITNESS: -- once has a notice and 19 cure process, and wants the voter to receive a 20 particular message, they would use it. 21 BY MR. BLACK: 22 Q Well, we didn't get there yet. I'm just 23 saying if somebody's in a county, let's say they 24 don't have a notice and cure policy. 25 A Right.</p>
<p>86</p> <p>1 election worker looks at the ballot, and I assume can 2 see right away, for instance, if there's a signature 3 missing, correct? 4 A Correct. 5 Q And they can see right away if the date's 6 missing, correct? 7 A Correct. 8 Q And they can see right away in many cases, 9 if the date is wrong, like the voter has put in his 10 birthdate rather than 2024. Correct? 11 A I -- yeah, I would think that's certainly 12 the case. 13 Q Now, I believe the next step is for the 14 election worker to stamp the date on the ballot. Is 15 that what you directing to -- 16 A That is our guidance to stamp the date so 17 there's no question about when the ballot was 18 received. 19 Q And does the stamp go on the side of the 20 envelope with the signature on it or on the other 21 side, or is it -- varied? 22 A It varies depending on county practice. I 23 do believe we intentionally left some space on the 24 declaration side of the envelope that the county 25 could use. So it didn't interfere with anything</p>	<p>88</p> <p>1 Q But the ballot comes in, the election 2 worker sees the ballot, they can immediately see 3 whether the signature is there or not, correct? 4 A Correct. 5 Q Okay. And that ballot then has to be 6 recorded in the SURE system, preferably that day, 7 right? 8 A Correct. 9 Q And the poll worker, excuse me, the 10 election worker looks into the SURE system and looks 11 at the dropdown menu that you just preferred to with 12 23 different codes, right? 13 A Correct. 14 Q And their job is to pick the best code to 15 reflect the status of that ballot at the time? 16 MS. GALLAGHER: Objection to form. 17 MR. BERARDINELLI: Object to the form. 18 A I would think -- it will depend on the 19 county's practice. If the county does not offer 20 notice and cure, it may be the county's practice to 21 leave it in the, I can never remember this, but 22 record ballot returned status until such time that 23 they enter the final disposition of the ballot. 24 Q But if they already know that it's missing 25 a signature, then the more accurate code would be one</p>

<p>89</p> <p>1 of the codes that says signature incorrect. Is that 2 right?</p> <p>3 MR. BERARDINELLI: Objection. 4 MS. GALLAGHER: Objection to form. 5 MS. MULLEN: Objection; form. 6 MR. BERARDINELLI: Sorry. 7 MS. GALAGHER: You can go ahead.</p> <p>8 A I mean, if you're asking my personal 9 opinion, what I would do or what I believe is the 10 most accurate code, but it really does depend on the 11 county's practice if they offer notice and cure. If 12 they don't -- then they may not be updating the 13 disposition of the ballot at that point, they may be 14 leaving it in the record ballot returned status.</p> <p>15 Q Right. And you understand that's the 16 subject and part of this litigation, correct?</p> <p>17 A It is. And it's a -- it's a question of 18 law that the Court's going to answer.</p> <p>19 Q Okay.</p> <p>20 A And I can't answer that, so.</p> <p>21 Q Let's take a look at -- let's mark an 22 exhibit -- guidance exhibit from April 3rd, 2023. Is 23 this Marks' 3, I guess?</p> <p>24 A Yes.</p> <p>25 (Marks' 3 was marked for identification</p>	<p>91</p> <p>1 signed or dated or is dated with a date deemed to be 2 incorrect, that ballot return envelope must be set 3 aside and the ballot not counted, correct?</p> <p>4 A Correct.</p> <p>5 Q And is that an accurate statement of the 6 DOS guidance?</p> <p>7 A It is, yes.</p> <p>8 Q Okay. The last sentence says, it is 9 important that the ballot return status is promptly 10 and accurately recorded in SURE using the specific 11 response type as to the disposition for each ballot 12 received, correct?</p> <p>13 A Correct.</p> <p>14 Q And that refers to the 20 -- today 23 15 codes that are in the SURE system that could be 16 attached to a ballot, right?</p> <p>17 A Correct.</p> <p>18 Q And it's the DOS guidance that that code 19 should be accurate, correct?</p> <p>20 MR. BERARDINELLI: Objection; form. 21 MS. GALLAGHER: Objection; form. Sorry.</p> <p>22 Q Is the DOS's guidance that the code should 23 be accurate or inaccurately recorded in the SURE 24 uniform system designed by the state to record --</p> <p>25 A Well, our guidance says accurately</p>
<p>90</p> <p>1 and is attached to the transcript.)</p> <p>2 Q Can you tell us what this document is?</p> <p>3 A Yes, it's guidance concerning examination 4 of absentee and mail-in ballot return envelopes. 5 This is guidance issued on April 3rd, 2023 to the 6 county election.</p> <p>7 Q And on the --</p> <p>8 A County Boards of Elections.</p> <p>9 Q And on the second page, the first sentence 10 in the background says, the Pennsylvania election 11 code describes processes that a qualified voter 12 follows to apply for, receive complete, and timely 13 return, an absentee or mail-in ballot to their County 14 Board of Election. Do you see that?</p> <p>15 A I do. Yes.</p> <p>16 Q And then there are various processes in 17 here which are described that the county should 18 follow under DOS guidance, correct?</p> <p>19 A Correct.</p> <p>20 Q Item 3 says, examination of declaration on 21 mail ballot return envelopes. Do you see that?</p> <p>22 A I do. That's on page 3?</p> <p>23 Q Yes, that's correct. Yes. And if you 24 look at the fourth paragraph, which starts with, if 25 the voter's declaration on the return envelope is not</p>	<p>92</p> <p>1 recorded in SURE so.</p> <p>2 Q So you would agree that the counties 3 should be selecting the most accurate code, correct?</p> <p>4 MR. BERARDINELLI: Objection; form. 5 MS. GALLAGHER: Objection; form.</p> <p>6 A I would agree that the county should be 7 selecting the most accurate code considering the 8 county's practice as it relates to notice and cure.</p> <p>9 Q Well, the codes have statements associated 10 with them that go out to the voters, correct?</p> <p>11 A Correct.</p> <p>12 Q And some of those statements would inform 13 the voter of the status of their ballot if it's 14 incorrectly dated or is missing the signature, 15 correct?</p> <p>16 A Correct.</p> <p>17 Q And some of the status codes would not 18 provide that information to the voter, correct?</p> <p>19 A Correct.</p> <p>20 Q And if the county selects the one that is 21 most accurate, they would be providing information to 22 the voter about the status of the ballot and that 23 it's missing a signature?</p> <p>24 MS. GALLAGHER: Objection as to form. 25 MR. BERARDINELLI: Join.</p>

<p>93</p> <p>1 MS. GALLAGHER: Calls for a legal 2 conclusion. 3 A Yeah, I'm not going to be able to answer a 4 legal question, if you're asking me, certainly we 5 encourage counties to provide notice to voters about 6 the disposition of their ballots. But we are -- the 7 current status quo is what the Supreme Court ruled 8 back in 2020, that notice and cures is allowed, but 9 it's not mandatory, so. 10 Q Did the Supreme Court address, if you 11 know, you may not know, the due process claim at 12 issue in this case? Do you know? 13 MS. MULLEN: Objection. 14 MS. GALLAGHER: Objection. 15 MS. MULLEN: He's not a lawyer. 16 THE WITNESS: I don't -- yeah, I don't 17 recall that, but okay. 18 BY MR. BLACK: 19 Q Are you aware of just -- strike that. 20 Just mechanically, when the ballot comes 21 in, the election worker sees that there's no 22 signature on the ballot, they need to enter a code 23 and they look at the dropdown menu with the 23 codes. 24 Do you see that? Do you have the codes in front of 25 you, by the way?</p>	<p>95</p> <p>1 MS. GALLAGHER: Objection to form. 2 A I think it's our view that the Supreme 3 Court has ruled on this and we are trying to offer 4 county's options under that reality. And if a county 5 does not wish to notify voters and offer them an 6 opportunity to cure, there's nothing we can do to 7 mandate that. 8 Q I understand that's a -- I'm just asking a 9 simpler question. Is it okay for counties to provide 10 inaccurate information to voters? 11 MR. BERARDINELLI: Objection. 12 MS. GALLAGHER: Objection to form. 13 MS. MULLEN: Objection. 14 THE WITNESS: I -- again, I think it's 15 accurate based on the county's practice. You know, 16 and I know it sounds like semantics, but I, you know, 17 if I were a county that did not provide notice and 18 cure, I may consciously not look at the outer 19 envelopes during the intake process so that I 20 wouldn't have to deal with that. 21 But those are all options that each 22 individual county has to consider. And, you know, 23 however I feel about it is irrelevant because we 24 can't mandate that. 25 BY MR. BLACK:</p>
<p>94</p> <p>1 A Yeah, well -- 2 Q I'm sorry. 3 A I do. Just to be clear, when the county 4 receives it, they're scanning it in and it -- the 5 default, as I understand it, is record ballot return. 6 Whether the county updates the disposition to another 7 ballot response type is going to depend on the 8 county's individual practice as it relates to notice 9 and cure. 10 Q But you would agree that practice should 11 be as accurate as possible in communicating to the 12 voters? 13 MR. BERARDINELLI: Object to the form. 14 MS. MULLEN: Objection. Asked and 15 answered. 16 MR. BERARDINELLI: Three times. 17 THE WITNESS: Right. Yeah, I may agree 18 that that is what -- 19 MR. BLACK: That's all we ask for. 20 THE WITNESS: -- I would do, but as noted, 21 that is a determination for each county to do. 22 BY MR. BLACK: 23 Q So it's your view that it's up to the 24 county to determine whether or not to provide 25 accurate information or not to the voters?</p>	<p>96</p> <p>1 Q Is the -- strike that. 2 Once the canvassing is concluded and the 3 final determinations have been made with respect to 4 whether or not a mail-in ballot is going to be 5 accepted, is the county required to update the code 6 at that point? 7 MR. BERARDINELLI: Object to the form. 8 Required. 9 A It is -- it is our expectation that they - 10 - and it is our guidance that they do that so that 11 we, and they have good information contained in the 12 system about the ultimate disposition of the ballot. 13 Q Let's say a ballot comes in, doesn't have 14 a signature on it and is recorded in the system just 15 simply as received. Okay. Later the ballot goes 16 through canvassing and it's determined that it cannot 17 be counted and the ballot is therefore rejected. Do 18 you understand that? 19 A Yes. 20 Q Is the county obligated at that point to 21 update the SURE code to show that the ballot's been 22 rejected and why? 23 MR. BERARDINELLI: Objection; form. 24 Obligated. 25 A It is -- it is our guidance that counties</p>

<p>97</p> <p>1 do that again, so that we have good information. 2 Certainly, we and the county, I would think, want to 3 know how many ballots are being rejected and for what 4 reason because it informs voter education that we may 5 do in the future. 6 Q Does it also impact the voting records of 7 the state as to whether somebody cast a ballot in 8 that election? 9 MR. BERARDINELLI: Form. 10 MS. GALLAGHER: Objection to Form. 11 A It could impact their vote history 12 depending on whether the county credited them as 13 having voted. 14 Q Can you explain that? 15 A Well, it -- the county records vote 16 history in the SURE system. And by method if a 17 county -- if a county, and I -- I'm not aware that 18 this is occurring, but if county consciously 19 determined that a voter who submitted a ballot should 20 not receive vote history in the SURE system, it 21 wouldn't show up on their voter record. 22 Q So it would -- it would show up as a vote 23 that was received but not counted? I'm not sure what 24 would -- what would show up on the voter record. 25 A Correct. It would not be clear. I -- it</p>	<p>99</p> <p>1 A I -- after the election the voter would be 2 able to determine whether their ballot was counted or 3 not. And the email notifications, I guess, that 4 would really depend on when the county ultimately 5 recorded the disposition of the ballot. But, you 6 know, I believe the voter has the right to know 7 whether their ballot was counted or not. But how the 8 county handles requests from voters on the 9 disposition of ballots is unfortunately a decision 10 that each county is entitled to make under the 11 current status of the law, as I understand it. 12 Q So if they don't update the code after the 13 canvass, SURE will have inaccurate information in it; 14 is that right? 15 MS. GALLAGHER: Objection; form. 16 MS. MULLEN: Objection. 17 MR. BERARDINELLI: Join. 18 THE WITNESS: I -- it would certainly be 19 incomplete information, and I would argue that it's 20 inaccurate. For me as an election administrator, it 21 is important to have good information and good data 22 on this stuff because it informs our decision making. 23 So I would hope that at some point the county would 24 update the final disposition to accurately reflect 25 what the final disposition of the ballot was.</p>
<p>98</p> <p>1 would not be an accurate description of the final 2 disposition of the ballot. 3 Q And so if someone looked to see whether or 4 not the person had voted in the last election, would 5 it show that they voted or didn't vote? 6 MR. BERARDINELLI: Object to the form. 7 MS. GALLAGHER: Objection; form. 8 A It -- I think it would ultimately depend 9 on what the county does -- 10 Q Right. 11 A -- in terms of vote history. But it 12 wouldn't be clear that the voter's ballot wasn't 13 counted. 14 Q So I'm just totally ignorant of this. So 15 you'll may have to walk me through it, but if the -- 16 if a ballot -- mail-in ballot comes in, it's missing 17 a signature and is ultimately rejected at the 18 canvass, the original label in the SURE system 19 would've been received, but -- or recorded rather, 20 but if it was ultimately rejected, is there something 21 that would tell the voter that it was rejected -- 22 MS. GALLAGHER: Object to the form. 23 MR. BERARDINELLI: Join. 24 Q -- at the end of the day, or not? 25 MS. MULLEN: Object.</p>	<p>100</p> <p>1 BY MR. BLACK: 2 Q Going back to Marks' 1, which is the 3 release note. You were asked some questions about 4 the cancel incorrect date on page 8. Do you recall 5 that? 6 A I do, yes. 7 Q The email response that would go out if 8 that code is selected, is stated in the right-hand 9 column, it starts with your mail ballot may not be 10 counted, et cetera. Do you see that? 11 A I do, yes. 12 Q It says in the second sentence that if you 13 do not have time to request a new ballot before 14 ballot application deadline, or if deadline has 15 passed, and then it says you can go cast a 16 provisional ballot. Right? 17 A Right. 18 Q Under what circumstance would someone be 19 able to request a new ballot after having already 20 sent in a mail-in ballot? 21 MR. BERARDINELLI: Objection; form. 22 A If -- so if -- so, the counties that do 23 notice and cure actually have different practices, 24 probably not a surprise to anyone in this room. In 25 some cases, the county will actually cancel the</p>

<p>101</p> <p>1 original ballot and issue a new ballot to the voter. 2 In other cases, they're asking the voter to perfect 3 their original ballot. So we tried to capture in 4 this language, and keep in mind we are -- we're 5 trying to capture in a message that all counties have 6 to use a variety of different practices in individual 7 counties. 8 So -- but that might be a circumstance 9 under which the voter becomes aware either from the 10 county or otherwise, that something is wrong with 11 their ballot. They reach out to the -- to the County 12 Board of Elections and the county's practice is to 13 cancel that initial ballot and reissue another one. 14 And that typically happens, you know, two, three 15 weeks before election day when there's still time to 16 facilitate that. 17 Q Has it struck you at all that the U in 18 SURE uniform is not really uniform? 19 MR. BERARDINELLI: Yeah, object to the 20 form. 21 MS. MULLEN: Objection. 22 A The system is uniform. County practices 23 are not in many cases, and this is one of those 24 cases. 25 Q So the system is uniform, but it's not</p>	<p>103</p> <p>1 reason, it says. 2 A Yeah, it's, we're basically telling 3 counties in this -- in this matrix under what 4 circumstances they'd be -- they would want to select 5 this ballot response type out of the dropdown list. 6 Q And so they should select cancel incorrect 7 date if the reason in the box on page 8 next to that 8 is -- 9 MS. GALLAGHER: I'm going to -- 10 Q -- true? Is that what the guidance is 11 trying to communicate? 12 MR. BERARDINELLI: Objection. 13 MS. MULLEN: Objection. 14 MS. GALLAGHER: Objection to the form. 15 THE WITNESS: Yeah, I, I think it speaks 16 for itself. I mean, you know, we're expecting that 17 counties will select this cancellation reason if a 18 final disposition -- if they determine what the final 19 disposition of the ballot is, that is why we added 20 the pending codes. It is if a county uses notice and 21 cure, it is our -- or has a notice and cure process, 22 it is our expectation that they would be using the 23 pending codes as opposed to the cancellation codes. 24 But that may not be the case in every county, 25 depending on the county's practice.</p>
<p>102</p> <p>1 uniformly used by all the counties? 2 MR. BERARDINELLI: Objection; form. 3 MS. GALLAGHER: Objection; form. 4 MS. MULLEN: Form. 5 MS. GALLAGHER: That's more than form. 6 That's a (indiscernible) 02:10:00 right. 7 MS. MULLEN: It's a uniform 8 (indiscernible) 02:10:03 of electors, so. 9 A No, we -- again, we -- and I think it says 10 it in this release notes or the accompanying email 11 that, you know, our goal here was to provide counties 12 with options that best met their specific practices, 13 acknowledging that their practices are not uniform 14 from county to county, that doesn't necessarily mean 15 that the system isn't but we certainly designed 16 flexibility into this process based on the Supreme 17 Court's ruling in 2020 on the issue of notice and 18 cure. 19 Q So under the cancel incorrect date code 20 that we were just referring to -- 21 A Correct. 22 Q -- the guidance is in the second column; 23 is that right? 24 MR. BERARDINELLI: Object to the form. 25 Q What is the second column, business</p>	<p>104</p> <p>1 BY MR. BLACK: 2 Q And it says here that the cancellation 3 incorrect date, "It should only be used when the 4 county has made a final decision as to the ballot, or 5 it does not offer the opportunity to cure it." 6 MS. GALLAGHER: I'm going to object to the 7 form. 8 MR. BLACK: What's the objection? I just 9 read the box -- read the -- 10 MS. GALLAGHER: I don't believe it -- I 11 don't believe it says should be. 12 MR. BLACK: I read the language -- 13 MS. GALLAGHER: May I -- 14 MR. BLACK: -- in the box. Please stop 15 interrupting my questions. 16 MS. GALLAGHER: Excuse me. If I -- you 17 believe -- I don't believe it says should. 18 MR. BERARDINELLI: Why don't we just -- 19 why don't we just -- 20 MS. GALLAGHER: Right. That's what you 21 just said -- 22 MR. BERARDINELLI: Why don't we just re- 23 ask the question, Martin? 24 BY MR. BLACK: 25 Q And it says, "It should only be used when</p>

<p>105</p> <p>1 the county has made a final decision as to the</p> <p>2 ballot, or it does not offer the opportunity to</p> <p>3 cure." Is that right?</p> <p>4 A That is correct, yes.</p> <p>5 Q And that is the guidance that DOS provided</p> <p>6 with respect to the use of the cancel-incorrect date</p> <p>7 code, correct?</p> <p>8 MS. MULLEN: Objection to the term</p> <p>9 guidance.</p> <p>10 MR. BLACK: Thank you.</p> <p>11 MR. BERARDINELLI: Form.</p> <p>12 THE WITNESS: It is -- we provided this</p> <p>13 matrix to give counties basically the business reason</p> <p>14 is we are telling counties based on their individual</p> <p>15 practices, we're kind of giving them cues when they</p> <p>16 would use this code versus another code. That does</p> <p>17 not necessarily mean that a county is going to follow</p> <p>18 our recommended process there.</p> <p>19 BY MR. BLACK:</p> <p>20 Q I'm not asking you to say it's mandated by</p> <p>21 law or --</p> <p>22 A Correct.</p> <p>23 Q -- to predict what counties are going to</p> <p>24 do. I'm just asking you to confirm that --</p> <p>25 A This is our opinion of when it should be</p>	<p>107</p> <p>1 in no cure counties versus cure counties? Do you</p> <p>2 study that?</p> <p>3 A We looked at it, I can't recall what those</p> <p>4 numbers look like, no cure versus cure counties.</p> <p>5 Q We've seen some data that suggests that</p> <p>6 curing processes in some counties can cure up to 60,</p> <p>7 65 percent of the ballots. Does that seem correct?</p> <p>8 A I believe that --</p> <p>9 MR. BERARDINELLI: Object to the form.</p> <p>10 MS. GALLAGHER: Objection; form.</p> <p>11 A I believe that may be the case in</p> <p>12 Allegheny County, if I'm not mistaken.</p> <p>13 Q Just talk a minute about the interaction</p> <p>14 between the SURE system and the poll books. And</p> <p>15 forgive me, I understand almost nothing about this.</p> <p>16 So I know the pulpits are printed. I show up to vote</p> <p>17 and they say my name's in it because they always</p> <p>18 have. But if I were to cast a mail-in ballot and</p> <p>19 show up to vote, what would be in the poll book?</p> <p>20 A If -- it would depend on whether the --</p> <p>21 your ballot was returned to the county or not. So</p> <p>22 it's -- and it's going to appear at a different</p> <p>23 location in the poll book, depending on that factor.</p> <p>24 So if you requested a ballot but didn't return it,</p> <p>25 you can actually go into the polling place and the</p>
<p>106</p> <p>1 used.</p> <p>2 Q And that opinion is that it should be used</p> <p>3 when the county does not offer the opportunity to</p> <p>4 cure; is that right?</p> <p>5 A Correct.</p> <p>6 Q Thank you. We haven't asked these</p> <p>7 questions yet, and I don't expect you to have exact</p> <p>8 numbers, but just generally, how many -- if you know,</p> <p>9 how many mail-in ballots were cast in the primary</p> <p>10 this year?</p> <p>11 MR. BERARDINELLI: Objection; form.</p> <p>12 Statewide or in Washington?</p> <p>13 MR. BLACK: Statewide. Statewide.</p> <p>14 THE WITNESS: Boy, that is a -- that is a</p> <p>15 good question. It's hundreds of thousands, and I</p> <p>16 don't recall off the top of my head.</p> <p>17 BY MR. BLACK:</p> <p>18 Q Several hundred thousand?</p> <p>19 A Yes.</p> <p>20 Q Do you have any sense of the number that</p> <p>21 were rejected or percentage that were rejected?</p> <p>22 A I think it was a little over 1 percent, as</p> <p>23 I recall. It was certainly thousands of ballots that</p> <p>24 were rejected ultimately.</p> <p>25 Q Do you know how many ballots were rejected</p>	<p>108</p> <p>1 poll book will indicate that in one section.</p> <p>2 You can actually take your ballot, your</p> <p>3 unvoted ballot remit that to the local election</p> <p>4 officials, sign the poll, and then you can vote in</p> <p>5 the normal manner. If the poll book indicates that</p> <p>6 you've already returned your ballot then your option</p> <p>7 is to vote by provisional ballot. So the poll book</p> <p>8 will indicate that you've already returned your</p> <p>9 ballot and you're not entitled to vote the</p> <p>10 traditional manner, would have to by provisional</p> <p>11 ballot.</p> <p>12 Q In an county that uses notice and cure, if</p> <p>13 they sent a notice out of a defective ballot and that</p> <p>14 person then shows up at the polling place, can they</p> <p>15 vote a provisional ballot?</p> <p>16 MR. BERARDINELLI: Object to the form.</p> <p>17 A If that voter shows up the polling place,</p> <p>18 and they affirm that they're qualified to vote, and</p> <p>19 understand that their ballot may not have been</p> <p>20 correctly submitted, they are entitled to vote by</p> <p>21 provisional ballot.</p> <p>22 Q Do canceled votes versus recorded --</p> <p>23 strike that.</p> <p>24 In a county that does notice and cure, if</p> <p>25 a voter sends in a ballot, which is rejected because</p>

<p>109</p> <p>1 it's missing a signature and they receive the email 2 stating that it was missing the signature, and they 3 show up at the polls, does their name show up in a 4 different part of the poll book than people who 5 recorded properly? 6 A Yes. If they return their ballot, it is - 7 - those are in a separate section of the poll book. 8 So basically anyone who returned their ballot to the 9 county are kind of segregated from the rest of the 10 voters so that counties can keep -- or local poll 11 workers can keep straight or distinguish between 12 folks who may be able to remit their balloting 13 materials versus those who've already submitted them 14 to the county. 15 Q Do you know roughly how many counties are 16 currently allowing notice and cure and how many are 17 not? 18 MR. BERARDINELLI: Object to the form. 19 MS. MULLEN: Objection. Do you want a 20 time period, primary, general, or? 21 Q Good point. For the last primary 22 election, do you have any sense of what the rough 23 number of counties that are -- 24 A I don't recall the -- the number of 25 counties. I know it is -- I believe it is at least</p>	<p>111</p> <p>1 A I don't believe so. I think it was a -- 2 it was a webinar. I don't believe that it was 3 recorded. I don't know that there are minutes 4 necessarily. The purpose of those was to give 5 counties kind of an open forum to share with the 6 department, their feedback regarding the ballot 7 response type codes, how it worked out for them in 8 their individual counties, and to get feedback on 9 what changes they might want to see moving forward. 10 MR. BLACK: Can we just take five minutes 11 off? I'm getting final questions. 12 MR. BERARDINELLI: Yeah, I might have some 13 brief. 14 MS. GALLAGHER: I have some too. 15 THE VIDEOGRAPHER: We're going off the 16 record. The time is 12:43. 17 (Off the record.) 18 THE VIDEOGRAPHER: We are back on the 19 record. The time is 12:47. 20 BY MR. BLACK: 21 Q Just a couple more questions on new topic. 22 The DOS mail-in ballot tracker, what is that? 23 A It's basically an online tool that a voter 24 could use to determine, you know, when their ballot 25 was mailed to them, when the county received their</p>
<p>110</p> <p>1 half the -- provide some -- 2 MR. BERARDINELLI: Excuse me. (sneezes) 3 MR. BLACK: Bless you. 4 MR. BERARDINELLI: Thank you. 5 A -- some form of notice and cure. 6 MR. BERARDINELLI: I'm sorry my sneeze 7 locked out the answer. What was the percentage? I'm 8 sorry. 9 THE WITNESS: I believe it is -- it is at 10 least half, probably little more than half of the 11 counties that provide some form of notice and cure. 12 MR. BERARDINELLI: Thank you. 13 THE WITNESS: Keeping in mind that there 14 are variations in that. 15 BY MR. BLACK: 16 Q You mentioned the feedback session that 17 you had with the county election officials. 18 A Yes. 19 Q Do you recall whether there were any 20 specific comments by representatives of Washington 21 County? 22 A I don't recall any comments by the 23 election director. 24 Q Are there minutes or any record of that 25 conversation?</p>	<p>112</p> <p>1 ballot as returned. 2 Q Is the information in the ballot tracker 3 available to third parties? 4 A Well, the information in the ballot 5 tracker will be contained in the mail ballot voter 6 file that we provide to third party requesters. 7 Q And that's updated every day? 8 A Yes, as we approach the election, it's 9 updated every day. 10 Q And if the code entered by a county is 11 record ballot returned, then that's what will show up 12 when the voter goes to look at his ballot status, 13 correct? 14 A I believe so, yes. I believe it would say 15 ballot returned or ballot received, something like 16 that. 17 Q And on the other hand, if a county enters 18 one of the canceled codes, it would show canceled to 19 the voter or any third party who has access to the 20 data on the -- 21 A Correct. 22 Q What happens if the code is pending, do 23 you know what the voter would see? 24 A I -- as far as I know, they would see the 25 pending code status.</p>

<p>113</p> <p>1 Q Do the tracker -- does the tracker show 2 the text of the emails or does it just have the code 3 or? 4 A It just has the code. It's very simple 5 matrix. 6 MR. BLACK: Thank you for your time. I'll 7 pass the witness. 8 MS. GALLAGHER: Do you mind if I -- 9 MR. BERARDINELLI: Yeah, if you don't 10 mind, just briefly, I want to talk about the feedback 11 sessions. 12 RE-EXAMINATION BY COUNSEL FOR THE DEFENDANT 13 BY MR. BERARDINELLI: 14 Q Okay. You mentioned that you don't recall 15 the director -- elections director for Washington 16 County speaking, testified to that? 17 A Right. 18 Q Don't recall has different connotations. 19 So I want to unpack this a little bit. Do you have a 20 recollection one way or the other, whether she spoke 21 or not? 22 A I don't. 23 Q Right. How many people spoke on the 24 meeting? 25 A A lot of counties spoke on the meeting, so</p>	<p>115</p> <p>1 reissue a ballot if there's an issue with that 2 ballot, then no. 3 Q And do you know what Washington County's 4 policy was about issuing new ballots in the 2024 5 primary? 6 A I do not, no. 7 Q Let's assume that their policy was that 8 we're non-curing county, we're not going to issue a 9 new ballot if you made an Act 47 -- Act 77 mistake. 10 Assume that for sake of my question. Okay? 11 A Okay. 12 Q If that's their policy and a voter got 13 this email, would you agree that the email would be 14 misleading because it would tell a voter that they 15 could request a new ballot? 16 A I would agree that that would certainly be 17 the county's perspective. That this email as it's 18 written, would be misleading under that circumstance. 19 Q And that's not some outrageous 20 perspective. Right? 21 A I don't want to represent it, but, you 22 know, I don't -- I certainly, if you read this and 23 match it up with the county's practice, I can 24 understand why there'd be concern about the language 25 of the message.</p>
<p>114</p> <p>1 I can't recall if a specific one Melanie spoke. 2 Q Right. So if Melanie Ostrander testified 3 under oath that she did speak, you don't have a 4 recollection that's contrary to that? 5 A Correct. 6 Q Can we pull out, hopefully for the last 7 time, Marks' Exhibit 1, and you were looking at page 8 8, and we can stay right there on page 8. Mr. Black 9 was asking you some questions about the cancel 10 incorrect date. I'm going to call it entry on this 11 spreadsheet type document. And the email that is 12 sent, if this code is selected, has language that 13 says, if you do not have time to request a new ballot 14 before, and that would be the application date for 15 that election, right? 16 A Correct. 17 Q Do you agree that implicit in that is if 18 that date hasn't passed, that someone reading this is 19 being told that they can request a new ballot? 20 A Yes. 21 Q Okay. And in a county that does not 22 permit curing, can they get a new ballot? 23 A It -- again, it would depend on the 24 county's process exactly. But if it is -- if it is 25 not the county's process to cancel a ballot and</p>	<p>116</p> <p>1 Q And what our goal here is, I think 2 collectively at least, is to make sure voters have 3 accurate information? 4 A Correct. 5 Q Can we pull out Marks' 3, the April 3rd, 6 2023 guidance. And I'm going to ask you some 7 questions about the same section on page 3 that Mr. 8 Black asked you some questions about. So under the 9 heading examination of declaration on mail ballot 10 return envelopes, are we at the same place? 11 A Yes. 12 Q Okay. And the first sentence of that 13 indicates that the county boards of elections is 14 responsible for approving ballots to be counted 15 during pre-canvassing and canvassing, right? 16 A Correct. 17 Q So this section is talking about conduct 18 during pre-canvassing and canvassing. 19 A Correct. 20 Q And pre-canvassing, I think we established 21 doesn't start until 7:00 a.m. on election day, right? 22 A Correct. 23 Q And canvassing doesn't start until the 24 Friday after election day? 25 A Well, canvassing of mail ballots starts at</p>

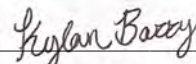
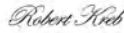
<p>117</p> <p>1 8:00 p.m. on election day.</p> <p>2 Q 8:00 p.m.</p> <p>3 A Pre-canvassing and then canvassing. Then</p> <p>4 the official canvass of all the votes starts on</p> <p>5 Friday afterwards.</p> <p>6 Q Either way, as far as canvassing goes, the</p> <p>7 polls are closed.</p> <p>8 A Correct. Yes.</p> <p>9 Q And then if we look down in the third</p> <p>10 paragraph, it's talking about when the status code</p> <p>11 ought to be updated, correct?</p> <p>12 A Correct.</p> <p>13 Q Okay. And in the second sentence,</p> <p>14 starting in the second word of the third line, it</p> <p>15 says, if the board determines that a ballot should</p> <p>16 not be counted. Do you see that language?</p> <p>17 A I do, yes.</p> <p>18 Q And that would -- that final</p> <p>19 determination, whether to count or not count the</p> <p>20 ballot happens during the canvassing, right?</p> <p>21 A Correct.</p> <p>22 Q Okay. So I'm canvassing, I say this guy</p> <p>23 doesn't have a date, we're not going to count him,</p> <p>24 right?</p> <p>25 A Right.</p>	<p>119</p> <p>1 final disposition. I don't recall the exact</p> <p>2 language, but certainly that issue was raised. And</p> <p>3 what -- what we discussed and what is our intent is</p> <p>4 to put clear language in there that some of this</p> <p>5 information would only be applicable up to 8:00 p.m.</p> <p>6 on election day.</p> <p>7 Q And that's going to be in effect for the</p> <p>8 November, 2024 election?</p> <p>9 A That is the intent. Yes.</p> <p>10 Q Let me show you what is already marked as</p> <p>11 -- that was Ostrander Exhibit 10. You and I had some</p> <p>12 discussions about the ballot instructions, right</p> <p>13 A Correct.</p> <p>14 (Ostrander's 10, previously marked, is</p> <p>15 attached to the transcript.</p> <p>16 Q And those are the ballot instructions from</p> <p>17 the primary, correct?</p> <p>18 A They are, yes.</p> <p>19 Q And can you read the -- not the immediate</p> <p>20 top line, but the second line of the document into</p> <p>21 the record.</p> <p>22 A "For your ballot to count, you must follow</p> <p>23 all of these steps."</p> <p>24 Q And that was the notice you were talking</p> <p>25 about that you wanted to provide to people who are</p>
<p>118</p> <p>1 Q If I go into the SURE system, polls are</p> <p>2 closed, right? Yes?</p> <p>3 A Correct. Yes.</p> <p>4 Q Okay. I go into the SURE system, I mark</p> <p>5 canceled no date. Okay. Is the county voter going</p> <p>6 to get this email that tells them to go vote a</p> <p>7 provisional ballot?</p> <p>8 A If -- yes. If the email notifications are</p> <p>9 being sent out, yes.</p> <p>10 Q Yeah. If Jane Smith has janesmith@yahoo</p> <p>11 on file, she's going to get this email, right?</p> <p>12 A Right.</p> <p>13 Q And this email is telling her after the</p> <p>14 polls have closed to go try and cast a provisional</p> <p>15 ballot?</p> <p>16 A Correct.</p> <p>17 Q Has the department considered adopting a</p> <p>18 code for use after the canvassing that will simply</p> <p>19 say your ballot was canceled, for example, because of</p> <p>20 an incorrect date?</p> <p>21 A We -- what we've looked at and based on</p> <p>22 our feedback during the feedback sessions while we</p> <p>23 looked at, was adding clear language that if it's --</p> <p>24 if it's after election day at the -- the voters</p> <p>25 receiving a notification that this is essentially the</p>	<p>120</p> <p>1 receiving mail-in ballots?</p> <p>2 A Correct.</p> <p>3 MR. BERARDINELLI: We couldn't remember</p> <p>4 the verbiage, so I just wanted to make sure we had</p> <p>5 it. I think that's all I have. Thanks, Mr. Marks.</p> <p>6 MR. BLACK: I have some --</p> <p>7 MS. GALLAGHER: Okay.</p> <p>8 MR. BLACK: I have some redirect.</p> <p>9 MS. GALLAGHER: Well, so I'll wait till</p> <p>10 you're done. Go ahead.</p> <p>11 MR. BLACK: No. No.</p> <p>12 MS. GALLAGHER: No, go ahead, Martin.</p> <p>13 MR. BLACK: Definitely not. You're on the</p> <p>14 same side. You guys go, go ahead. You have</p> <p>15 questions.</p> <p>16 RE-EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>17 BY MS. GALLAGHER:</p> <p>18 Q With respect to (indiscernible) 02:32:18 I</p> <p>19 cast a mail-in ballot, secrecy envelope signed and</p> <p>20 dated, gets received, you know, received, marked in,</p> <p>21 I'm in Allegheny County, they cure. How does my</p> <p>22 ballot under what your recommendation would be get</p> <p>23 entered into the SURE system?</p> <p>24 A Well, you said secrecy envelope, I'm</p> <p>25 assuming you meant declaration envelope.</p>

<p>121</p> <p>1 Q No, everything.</p> <p>2 A You wouldn't sign and date that. But --</p> <p>3 Q I didn't mean to sign.</p> <p>4 A If you're --</p> <p>5 Q Everything I had said --</p> <p>6 A So you've submitted -- you've submitted</p> <p>7 your ballot to the Allegheny County Board of</p> <p>8 Elections.</p> <p>9 Q Right.</p> <p>10 A And --</p> <p>11 Q Contains a secrecy envelope, ballots in a</p> <p>12 secrecy envelope, declaration envelope is signed and</p> <p>13 dated.</p> <p>14 A Right.</p> <p>15 Q Stamped. It gets received.</p> <p>16 A Right.</p> <p>17 Q How does that get recorded?</p> <p>18 A Returned ballot --</p> <p>19 Q Recorded.</p> <p>20 A -- recorded, yeah.</p> <p>21 Q Okay.</p> <p>22 THE VIDEOGRAPHER: Counsel, it might be</p> <p>23 best if you take the mic --</p> <p>24 MS. GALLAGHER: Oh, I'm sorry.</p> <p>25 THE VIDEOGRAPHER: No, it's okay.</p>	<p>123</p> <p>1 MS. GALLAGHER: No. No, during the</p> <p>2 canvass.</p> <p>3 THE WITNESS: It's an excellent point.</p> <p>4 MS. GALLAGHER: During the canvass.</p> <p>5 MS. MULLEN: Okay. I'm going to let him -</p> <p>6 --</p> <p>7 MS. GALLAGHER: Okay.</p> <p>8 MS. MULLEN: Ask your question.</p> <p>9 THE WITNESS: No, Counsel is correct. You</p> <p>10 wouldn't be able to go back and you wouldn't be able</p> <p>11 to determine whose voter's ballot that was at that</p> <p>12 point.</p> <p>13 MS. GALLAGHER: That's not --</p> <p>14 THE WITNESS: -- so you wouldn't be able</p> <p>15 to update the disposition.</p> <p>16 BY MS. GALLAGHER:</p> <p>17 Q Okay. That's what I'm trying to figure</p> <p>18 out. That was what my question was. Would there be</p> <p>19 a way to go back and update that then?</p> <p>20 A No, I -- because you've taken the ballot</p> <p>21 out of the secrecy envelope, maintaining the secrecy</p> <p>22 of the ballot, there would be no way to tie it back</p> <p>23 to the declaration envelope.</p> <p>24 Q What I would expect. And what does it --</p> <p>25 that it would show that my ballot was received and</p>
<p>122</p> <p>1 MS. GALLAGHER: I apologize.</p> <p>2 MR. BERARDINELLI: I don't know if it's</p> <p>3 good or bad.</p> <p>4 MS. GALLAGHER: No one has --</p> <p>5 MR. BERARDINELLI: I'm the only one that</p> <p>6 doesn't need the mic.</p> <p>7 MS. GALLAGHER: No one has ever accused me</p> <p>8 of not needing mic.</p> <p>9 Q Anyway, during the canvassing process,</p> <p>10 find out my actual ballot is blank. Is my -- then</p> <p>11 what gets entered into -- in the SURE system?</p> <p>12 A I would expect that a county would select</p> <p>13 cancel other under that circumstance --</p> <p>14 MS. MULLEN: Objection. Objection.</p> <p>15 A -- if the ballot was defected.</p> <p>16 MS. MULLEN: Hold on. Hold on.</p> <p>17 THE WITNESS: Sorry.</p> <p>18 MS. MULLEN: You're talking about the</p> <p>19 voter's actual ballot was blank?</p> <p>20 MS. GALLAGHER: Where you fill in, right.</p> <p>21 MS. MULLEN: Yeah.</p> <p>22 MS. GALLAGHER: Okay.</p> <p>23 MS. MULLEN: So they're separated. You</p> <p>24 would never -- you have secrecy in voting. You --</p> <p>25 THE WITNESS: Thank you, Counsel.</p>	<p>124</p> <p>1 recorded, correct? That the SURE system would</p> <p>2 received and recorded.</p> <p>3 A It would. Correct.</p> <p>4 Q Because there's a difference, would you</p> <p>5 agree then between the count and whether or not the</p> <p>6 ballot is received in the office, I mean, in the</p> <p>7 county board?</p> <p>8 A Well, I mean, there's a difference between</p> <p>9 the disposition of the ballot based on the Board of</p> <p>10 Elections determination during either the pre-canvass</p> <p>11 or the canvass versus the active recording the</p> <p>12 ballots status in the SURE system.</p> <p>13 Q Is that --</p> <p>14 A The two should be connected and that is --</p> <p>15 Q Right. That's what I'm trying to</p> <p>16 understand.</p> <p>17 A That's the point of our guidance, but</p> <p>18 they're two separate and distinct things.</p> <p>19 Q Okay. And speaking of separate and</p> <p>20 distinct things, would you agree that notice and cure</p> <p>21 are two step -- two separate steps in the curing</p> <p>22 process?</p> <p>23 MS. MULLEN: Objection.</p> <p>24 MR. BLACK: Objection to form.</p> <p>25 Q So if the voter gets a notice with the</p>

<p>125</p> <p>1 opportunity to cure, would be --</p> <p>2 A I mean, we're kind of having a</p> <p>3 philosophical discussion now.</p> <p>4 Q No, I'm trying ask, is it --</p> <p>5 A If you're -- if you're asking me whether</p> <p>6 notice and cure are two distinct things, there are</p> <p>7 certainly two steps, I guess, in a process.</p> <p>8 Q Right. That's what --</p> <p>9 A First, notifying the voter, and secondly,</p> <p>10 the voter actually curing the ballot.</p> <p>11 Q That's what I was asking. And would you</p> <p>12 agree that, I believe you testified earlier that what</p> <p>13 the PA Supreme Court refused to mandate were notice</p> <p>14 and cure procedures?</p> <p>15 MR. BLACK: Objection.</p> <p>16 MS. MULLEN: Objection.</p> <p>17 MR. BLACK: Calls for legal conclusion.</p> <p>18 Q I can go back, I can type it.</p> <p>19 A I -- my understanding of the Supreme</p> <p>20 Court's ruling is that it does not mandate that</p> <p>21 counties provide for notice and cure.</p> <p>22 MS. GALLAGHER: Right. That's all I was</p> <p>23 asking. Nothing further.</p> <p>24 RE-EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>25 BY MR. BLACK:</p>	<p>127</p> <p>1 counted. Do you see that sentence?</p> <p>2 A Yes.</p> <p>3 Q And that would be accurate, for instance,</p> <p>4 if you had a county that looked at the ballots,</p> <p>5 noticed that the signatures or dates were missing or</p> <p>6 wrong and then segregated them before the pre-</p> <p>7 canvass, correct?</p> <p>8 MR. BERARDINELLI: Object to the form.</p> <p>9 A I don't think that that would be the</p> <p>10 response type that we would recommend using if there</p> <p>11 was a signature missing, we would recommend using the</p> <p>12 pending no signature code on the following page, page</p> <p>13 7.</p> <p>14 Q The one on page -- let's say you're in a</p> <p>15 county that doesn't offer cure, then the code on page</p> <p>16 7, which says that the county offers you the</p> <p>17 opportunity to fix your ballot, that wouldn't really</p> <p>18 be appropriate, right?</p> <p>19 A Correct.</p> <p>20 Q Okay. But the language in the pend other</p> <p>21 code, it just says, the county has noticed an error</p> <p>22 with your ballot envelopes, which means your ballot</p> <p>23 may not be counted. If you cannot fix the errors in</p> <p>24 time, you can go to the poll -- your polling place on</p> <p>25 election day and cast a provisional ballot, correct?</p>
<p>126</p> <p>1 Q Just one last set of questions here. If</p> <p>2 we go back to the SURE guidance, the March, 2024</p> <p>3 guidance --</p> <p>4 MR. BERARDINELLI: Object to the form.</p> <p>5 It's not guidance.</p> <p>6 THE WITNESS: The release notes.</p> <p>7 BY MR. BLACK:</p> <p>8 Q Point taken. If you take -- if you take a</p> <p>9 look at the release notes, Marks' 1, you were asked</p> <p>10 some questions a moment ago about cancel incorrect</p> <p>11 date code. You recall that?</p> <p>12 A Yes.</p> <p>13 Q If you look on page 6 and take a look at</p> <p>14 the pend-other code, you see that one?</p> <p>15 MR. BERARDINELLI: Sorry, 6, Martin?</p> <p>16 MR. BLACK: Yes.</p> <p>17 A Pend other?</p> <p>18 Q Yes.</p> <p>19 MR. BERARDINELLI: Give me one second</p> <p>20 please. Thank you.</p> <p>21 Q You see that code?</p> <p>22 A Yes.</p> <p>23 Q And the language associated with the email</p> <p>24 says, the county has noticed an error with your</p> <p>25 ballot envelopes, which means your ballot may not be</p>	<p>128</p> <p>1 A Correct.</p> <p>2 Q So that language in and of itself would be</p> <p>3 acceptable if a county wanted to use it to notify a</p> <p>4 voter who had delivered a ballot without a signature?</p> <p>5 MR. BERARDINELLI: Object to the form.</p> <p>6 MS. GALLAGHER: Objection.</p> <p>7 Q Not required, just acceptable.</p> <p>8 MR. BERARDINELLI: Are you talking curing</p> <p>9 county or non-curing county?</p> <p>10 MR. BLACK: I'm just asking him a question</p> <p>11 about this language. Curing, non-curing, whatever.</p> <p>12 In my example, it's a non-curing --</p> <p>13 MR. BERARDINELLI: Object to form.</p> <p>14 Because it's ambiguous given the different county --</p> <p>15 BY MR. BLACK:</p> <p>16 Q In a non-curing in a county, would this</p> <p>17 language be appropriate to send to a voter who would</p> <p>18 return to ballot without a signature or an incorrect</p> <p>19 date?</p> <p>20 MR. BERARDINELLI: Objection; form.</p> <p>21 Q Not required. Would it be --</p> <p>22 MR. BERARDINELLI: Says, fix the errors.</p> <p>23 MR. BLACK: You're being argumentative.</p> <p>24 You're interrupting my question.</p> <p>25 A I would -- I would not expect that a non-</p>

Transcript of Jonathan Marks
Conducted on July 23, 2024

33 (129 to 132)

<p style="text-align: right;">129</p> <p>1 curing county would use any of the pending codes, but 2 I cannot say that it would be inappropriate if the 3 county's process is to replace a ballot under certain 4 circumstances. Again, and it is -- it's all going to 5 come down to what a -- the specific county's practice 6 is. So I -- I can't say that would be inappropriate. 7 I think our expectation when we introduce the pending 8 codes is that they would only be used by counties who 9 offered some variation of notice and cure. 10 Q And with respect to the cancel codes, it's 11 expected that those would be used for counties that 12 don't offer the opportunity to cure; is that right? 13 MR. BERARDINELLI: Object to the form. 14 A I think generally, yes. 15 MR. BLACK: Okay. Thank you. No further 16 questions. 17 MR. BERARDINELLI: I'm good. 18 THE VIDEOGRAPHER: Anything else for the 19 record? 20 MS. GALLAGHER: You done? 21 MS. MULLEN: I'm done. 22 MS. GALLAGHER: All right. No questions. 23 MR. BERARDINELLI: Thank you, Mr. Marks. 24 THE VIDEOGRAPHER: This marks the end of 25 the videotaped deposition of Jonathan Marks. We're</p>	<p style="text-align: right;">131</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, KYLAN BARRY, the officer Before whom the 3 foregoing proceedings were taken, do hereby certify 4 that any witness(es) in the foregoing proceedings 5 were fully sworn; that the proceedings were recorded 6 by me and thereafter reduced to typewriting by a 7 qualified transcriptionist; that said digital audio 8 recording of said proceedings are a true and accurate 9 record to the best of my knowledge, skills, and 10 ability; and that I am neither counsel for, related 11 to, nor employed by any of the parties to this case 12 and have no interest, financial or otherwise, in its 13 outcome. 14  15 _____ 16 KYLAN BARRY, 17 NOTARY PUBLIC FOR THE COMMONWEALTH OF PENNSYLVANIA 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">130</p> <p>1 going off the record. The time is 1:07. 2 (Off the record 1:07 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">132</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Robert Kreb, do hereby certify that 3 this transcript was prepared from the digital audio 4 recording of the foregoing proceeding; that said 5 transcript is a true and accurate record of 6 the proceedings to the best of my knowledge, skills, 7 and ability; and that I am neither counsel for, 8 related to, nor employed by any of the parties to 9 the case and have no interest, financial or 10 otherwise, in its outcome. 11 12  13 _____ 14 ROBERT KREB 15 7/24/2024 16 17 18 19 20 21 22 23 24 25</p>



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

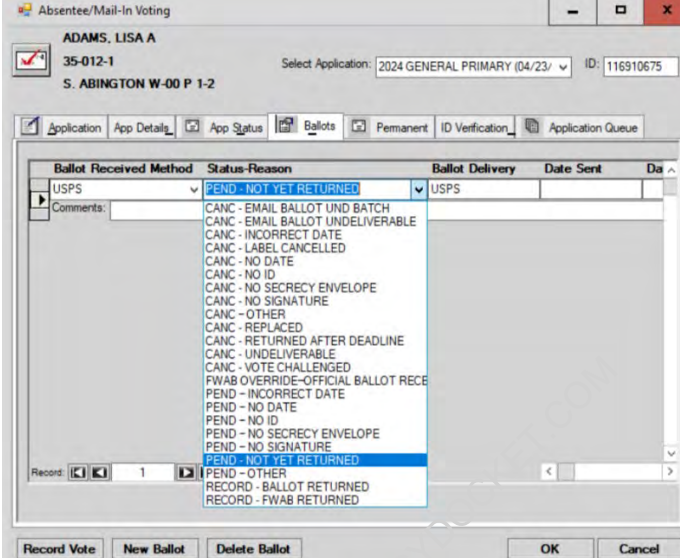


The response types are available in the following areas within the SURE VR system:

- **Record Mailings Screen**

- **Bulk Ballot Response Utility Screen**

- **Ballots** tab on the **Absentee/Mail-In Voting** screen



The screenshot shows the 'Absentee/Mail-In Voting' application window. At the top, it identifies the voter as ADAMS, LISA A, with application number 35-012-1 and address S. ABINGTON W-00 P 1-2. The 'Select Application' dropdown is set to '2024 GENERAL PRIMARY (04/23/)' and the ID is 116910675. The 'Ballots' tab is selected in the top navigation bar. Below the navigation bar, there is a table with columns: 'Ballot Received Method', 'Status-Reason', 'Ballot Delivery', and 'Date Sent'. The 'Status-Reason' dropdown menu is open, displaying a list of reasons including 'PEND - NOT YET RETURNED', 'PEND - OTHER', 'RECORD - BALLOT RETURNED', and 'RECORD - FWAB RETURNED'. At the bottom of the window, there are buttons for 'Record Vote', 'New Ballot', 'Delete Ballot', 'OK', and 'Cancel'.

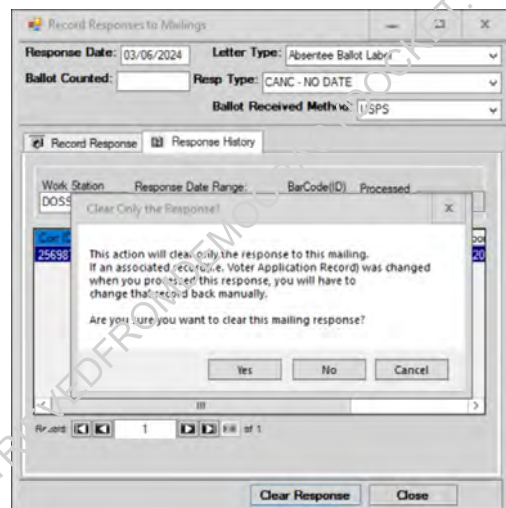
Please Note: Although changes were made to include the new response types under the **Ballots** tab of the **Absentee/Mail-In Voting** screen, the Department of State strongly recommends if a Status Reason update is needed, that the change should be made by utilizing the **Record Mailings** or **Bulk 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.



	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.



	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.
PEND – 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.



	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].



	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



****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.

The screenshot shows the 'Voter Applications' window with an 'Invalid Scan' error dialog box. The error message reads: 'TIF format file not exists in Z:\windows\temp'. The background window has a 'New' button and tabs for 'Application', 'App Status', 'Correspondence', and 'HAVA Checks'. The form fields include: Source (dropdown), Last Name, Suffix, First Name, House #, Dir, Street Name, Address Line 2, Mail Addr Line 1, Birth Date, SSN, Drivers Lic, Email Address, App Date (03/11/2024), Reg Date, Assistance, and Voter Number. There are also buttons for 'Approve App', 'Process App', 'Delete App', 'OK', and 'Cancel'. A watermark 'DEMOCRACY DOCKET' is visible across the center of the image.



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:

RETRIEVEDFROMDEMOCRACYDOCKET.COM



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.



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.



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) 963-8727)，或造訪 www.vote.pa.gov/county 以獲取更多資訊。

欄說明：

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。



DEPARTMENT OF STATEEnglishEspañol繁體中文HOMEOTHER 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
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.



Changes to SURE VR and PA Voter Services as of August 23, 2024

The following information outlines the additions and changes which will be deployed after the close of business on August 23, 2024, as part of the Build 24.8. 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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TFP: AMBER+STRICT

Department of State
Statewide Uniform Registry of Electors (SURE) Project
County Release Notes Build 24.8
August 23, 2024

RETRIEVEDFROMDEMOCRACYDOCKET.COM



TFP: AMBER+STRICT

Department of State
Statewide Uniform Registry of Electors (SURE) Project
County Release Notes Build 24.8
August 23, 2024

RETRIEVEDFROMDEMOCRACYDOCKET.COM



TFP: AMBER+STRICT

Department of State
Statewide Uniform Registry of Electors (SURE) Project
County Release Notes Build 24.8
August 23, 2024

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TFP: AMBER+STRICT

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Ballot Email Language Changes

Based on county feedback and recommendations, the text in the 2nd paragraph of the 'Your Ballot Has Been Received' and 'Your Ballot Status Has Changed' emails generated by the system based on 'Ballot Status Reason' have been modified. The table below lists each ballot 'Response Type' type that can be used when recording responses for returned absentee and mail-in ballots with the associated modified email language. This updated verbiage will also display in the online **Election Ballot Status** tracker which will be discussed later in this document. Emails will only be sent to those voters who have provided a valid email address on their ballot application.

Response Type	Email text in 2nd Paragraph and Election Ballot Status Tracker
PEND - OTHER	<p>The county has noticed one or more errors with your ballot envelopes, which means your ballot may not be counted. Your county offers you the opportunity to address errors on your ballot envelopes, and you should go to https://www.vote.pa.gov/Resources/Pages/Contact-Your-Election-Officials.aspx to find your county's contact information.</p> <p>If you cannot address the error in time, you can go to your polling place on election day and cast a provisional ballot.</p>
PEND - INCORRECT DATE	<p>The county has noticed that you did not correctly date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to address this error, and you should go to https://www.vote.pa.gov/Resources/Pages/Contact-Your-Election-Officials.aspx to find your county's contact information.</p> <p>If you cannot address this error 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 address this error, and you should go to https://www.vote.pa.gov/Resources/Pages/Contact-Your-Election-Officials.aspx to find your county's contact information.</p> <p>If you cannot address this error 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 address this error, and you should go to https://www.vote.pa.gov/Resources/Pages/Contact-Your-Election-Officials.aspx to find your county's contact information.</p> <p>If you cannot address this error 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 address this error, and you should go to https://www.vote.pa.gov/Resources/Pages/Contact-Your-Election-Officials.aspx to find your county's contact information.</p> <p>If you cannot address this error in time, you can go to your polling place on election day and cast a provisional ballot.</p>
CANC - INCORRECT DATE	<p>Your ballot may not be counted because you did not correctly date your ballot return envelope. If you receive this email on or before election day, you can go to your polling place on election day before 8 p.m. and request a provisional ballot.</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 provide valid identifying information to your county election official. You can find more information on the necessary ID here: https://www.pa.gov/content/dam/copapwp-pagov/en/vote/resources/documents-and-forms/DOS_Identification_for_mail_voting.pdf.</p>
CANC - NO DATE	<p>Your ballot may not be counted because you did not date your ballot return envelope. If you receive this email on or before election day, you can go to your polling place on election day before 8 p.m. and request a provisional ballot.</p>
CANC - NO	<p>Your ballot will not be counted because you did not provide</p>



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ID	proof of identification in time.
CANC - NO SECRECY ENVELOPE	Your ballot may not be counted because 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.". If you receive this email on or before election day, you can go to your polling place on election day before 8 p.m. and request a provisional ballot.
CANC - NO SIGNATURE	Your ballot may not be counted because you did not sign your ballot return envelope. If you receive this email on or before election day, you can go to your polling place on election day before 8 p.m. and request a provisional ballot.
CANC - OTHER	The county has identified one or more errors that prevents your ballot from being counted. If you receive this email on or before election day, you can go to your polling place on election day before 8 p.m. and request a provisional ballot.



Sample Emails:

The 'Your Ballot Has Been Received' email will automatically generate when the RECORD – BALLOT RETURNED status code is recorded in SURE VR. Every mail ballot voter who included an email with their application and who returns their ballot will receive the updated email below.

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, you can click here:

<https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

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!



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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. ******

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 language will be the same as the associate 'Response Type' listed 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.

[REFER TO TABLE FOR SPECIFIC 2ND PARAGRAPH LANGUAGE]

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.******



PA VOTER SERVICES

Election Ballot Status Tracker Messaging Modifications

As mentioned above, the PA Voter Services Election Ballot Status tracker will display the updated language as provided to voters in the second paragraph of the 'Your Ballot Status Has Changed' email as described above.

The sample below displays the updated messaging associated to the 'PEND - INCORRECT DATE' ballot status.

Your Ballot Status Result(s)						
Ballot Type	Election	Application Received	Application Processed	Ballot Mailed On	Ballot Received	Status
Absentee	2024 GENERAL ELECTION	08/12/2024	08/12/2024		08/12/2024	PEND - INCORRECT DATE
The county has noticed that you did not correctly date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to address this error, and you should go to Vote.pa.gov/Election-Officials to find your county's contact information. If you cannot address this error in time, 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.						
If you have any questions about the status of your ballot, please contact DELAWARE County at (610) 891-4659 or visit www.vote.pa.gov/county for more information.						

The tracker and all columns will continue to appear in English, Spanish, and Traditional Chinese based on the selection made by the voter.