IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

REPUBLICAN NATIONAL COMMITTEE
VS.   NO.   2024-22251
MONTGOMERY COUNTY BOARD OF COMMISSIONERS

COVER SHEET OF MOVING PARTY

Date of Filing September 30 2024   Moving Party FRANK DEAN; THOMAS DIBELLO; NEIL MAKHIJA; MONTGOMERY COUNTY BOARD OF COMMISSIONERS; MONTGOMERY COUNTY BOARD OF ELECTIONS; JAMILIA H WINDER

Counsel for Moving Party JOHN A MARLATT, Esq., ID: 210141; Joshua Wertheimer, Esq., ID: 332923

Counsel's email address: JOHN.MARLATT@MONTGOMERYCOUNTYPA.GOV

Document Filed (Specify) PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

If a motion to compel discovery, state the Court-ordered Discovery Deadline: 00/00/0000
(failure to complete this space will result in the motion being stricken)

CERTIFICATIONS - Check **ONLY** if appropriate:

_____ Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute. **(Required by Local Rule 208.2(e) on motions relating to discovery.)**

_____ Counsel for moving party certifies that the subject **civil motion** is **uncontested** by all parties involved in the case. (If checked, skip Rule to Show Cause section below.)

RULE TO SHOW CAUSE - Check **ONE** of the Choices Listed Below:

_____ Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing an **answer** in the form of a **written response** at the **Office of the Prothonotary** on or before the _____ day of _____ 20___

_____ Respondent is directed to show cause, in the form of a **written response**, why the attached Family Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the _____ day of _____ , 20___ at **1:00 p.m.** at **321 Swede Street, Norristown, PA.**

_____ Respondent is directed to file a **written response** in conformity with the Pennsylvania Rules of Civil Procedure.

_____ Rule Returnable at time of trial.

By: _____

Court Administrator

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA

REPUBLICAN NATIONAL COMMITTEE, *et al.*:	COURT OF COMMON PLEAS
Plaintiffs/Petitioners, :	MONTGOMERY COUNTY, PA
vs. :	Civil Action -- Law
:	Docket No. 2024-22251
MONTGOMERY COUNTY BOARD OF :	
COMMISSIONERS, *et al.*, :	
Defendants/Respondents. :	

O R D E R

AND NOW, this _____ day of _____, 2024, upon consideration of the Preliminary Objections of Montgomery County Board of Commissioners, Montgomery County Board of Elections, Jamila Winder, Neil Makhija, Thomas DiBello, and Frank Dean to Plaintiffs' Complaint, and Plaintiffs' response thereto, it is hereby ORDERED and DECREED that said Preliminary Objections are SUSTAINED. This action is hereby DISMISSED WITH PREJUDICE.

BY THE COURT:

_____
J.

TO: Plaintiffs
You are hereby notified to plead to the enclosed Preliminary Objections within twenty (20) days of service hereof or a default judgment may be entered against you.

/s/ John A. Marlatt
John A Marlatt, Esquire

Attorney for Defendants.

MONTGOMERY COUNTY SOLICITOR'S OFFICE
By: John A. Marlatt, Esquire/210141
By: Joshua C. Wertheimer, Esquire/332923
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REPUBLICAN NATIONAL COMMITTEE,*et al.* : **Plaintiffs/Petitioners,** **vs.** **MONTGOMERY COUNTY BOARD OF** **COMMISSIONERS,** *et al.,* **Defendants/Respondents.**	COURT OF COMMON PLEAS MONTGOMERY COUNTY, PA Civil Action -- Law Docket No. 2024-22251

PRELIMINARY OBJECTIONS OF RESPONDENTS MONTGOMERY COUNTY BOARD OF COMMISSIONERS, MONTGOMERY COUNTY BOARD OF ELECTIONS, JAMILA WINDER, NEIL MAKHIJA, THOMAS DIBELLO, AND FRANK DEAN TO THE COMPLAINT OF PETITIONERS REPUBLICAN NATIONAL COMMITTEE, MONTGOMERY COUNTY REPUBLICAN COMMITTEE, CHRISTIAN NASCIMENTO, AND DAVID MCCORMICK

Respondents Montgomery County Board of Commissioners, Montgomery County Board of Elections, Jamila Winder, Neil Makhija, Thomas DiBello, and Frank Dean (collectively, "Respondents"), through their undersigned counsel, hereby submit these preliminary objections to the complaint of petitioners Republic National Committee, Montgomery County Republican Committee, Christian Nascimento, and David McCormick (collectively, "Petitioners"). In support of these preliminary objections, the Respondents aver as follows:

1.   Petitioners have filed a meritless lawsuit that serves no purpose other than to delay the administration of the 2024 General Election and sow confusion and distrust in the voters of Montgomery County and the Commonwealth of Pennsylvania.

2.   In a preliminary injunction motion filed concurrently with their Complaint, Petitioners demand that this Court take the extraordinary step of *immediately and peremptorily halting Montgomery County's mail-in voting*[1] *process* for the 2024 general election—after it is already well underway.

3.   Even if Petitioners had asserted meritorious claims of the utmost gravity, such drastic injunctive relief could be issued only if it were absolutely necessary to avoid even greater harm.

4.   Fortunately, this Court need not consider the preliminary injunction motion because Petitioners' underlying claims are fatally flawed in multiple respects: Petitioners' claims for relief are moot; Petitioners lack standing; and their legal arguments are—as the Pennsylvania Department of State ("DOS") recently declared—"frivolous."[2] Accordingly, the Court should sustain the Board's Preliminary Objections and dismiss this lawsuit with prejudice.

Factual and Statutory Background[3]

5.   The Pennsylvania Election Code authorizes county boards of elections to purchase

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[1] Mail-in and absentee ballots are the two primary ways in which Pennsylvania voters can vote by mail. *See* 25 P.S. §§ 3146.1–3146.9 (absentee ballots); *id.* §§ 3150.11–3150.17 (mail-in ballots). In these preliminary objections, we refer to both as mail-in voting.

[2] *See* Katie Bernard, *A new RNC lawsuit would pause Montco mail voting and force a hand count of ballots already distributed*, Phila. Inquirer, Sept. 23, 2024, https://www.inquirer.com/politics/election/rnc-dave-mccormick-mail-ballot-lawsuit-20240923.html#loaded (attached as Exhibit G hereto) (statement by the Department of State that "[t]he lawsuit filed … against Montgomery County is frivolous, and Montgomery County's board of elections did everything required before printing ballots with the certified candidate list").

[3] Because Petitioners' claims rely on a misinterpretation of the statutory requirements and Pennsylvania Department of State guidance governing the testing of ballots and electronic

and utilize certain electronic voting systems. To be eligible for use in Pennsylvania elections, such a system must have been tested and certified by both the United States Election Assistance Commission and the Secretary of the Commonwealth of Pennsylvania. 25 P.S. § 3031.5; *Banfield v. Cortés*, 110 A.3d 155, 159–60 (Pa. 2015).

6.   Along with 12 other counties in the Commonwealth, Montgomery County uses the Dominion Democracy Suite 5.5A voting system,[4] which was certified for use in Pennsylvania on January 17, 2019.[5] That system includes central-scanner machines, which are used to scan and tabulate mail-in ballots returned to a central office of the Board of Elections; precinct scanners, which are deployed to each polling place and used to scan and tabulate ballots completed by electors who vote in person on Election Day; and ballot-marking devices, which are also deployed to each polling place and produce a marked ballot, based on voters' electronic selections, for voters who are unable or prefer not to hand-mark their ballots.[6]

7.   Petitioners' Complaint cites to Section 320(d) of the Pennsylvania Election Code,

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voting equipment, we begin with an overview of these requirements. This overview is based on the facts pleaded in the Complaint, the text of the Election Code itself, and publicly available documents authored by the Department of State. *See Bykowski v. Chesed, Co.*, 625 A.2d 1256, 1258 (Pa. Super. 1993) ("Since this motion is the equivalent to a demurrer, in considering it, the court should be guided by the same principles applicable to disposing of a preliminary objection in the nature of a demurrer. As such, the court has the right to take judicial notice of public documents.").

[4] *See* Pennsylvania Department of State, Map showing which counties use which electronic voting systems, https://www.arcgis.com/apps/dashboards/5d9bc0372e0f46ed9a010415935a18e9 (last visited Sept. 29, 2024).

[5] Commonwealth of Pennsylvania, Department of State, Report Concerning the Examination Results of Dominion Voting Systems Democracy Suite 5.5A with ImageCast X Ballot Marking Device (ICX-BMD), ImageCast Precinct Optical Scanner (ICP), ImageCast Central Station (ICC), and Democracy Suite EMS (EMS) (Jan. 17, 2019), https://www.pa.gov/content/dam/copapwp-pagov/en/dos/programs/voting-and-elections/voting-systems/certification/Dominion-Democracy-Suite-Final-Report-scanned-with-signature-020119.pdf (last visited Sept. 29, 2024).

[6] *See id.*

25 P.S. § 3031.10(d). That provision, which was enacted in 1980—long before the introduction of no-excuse mail-in voting in Act 77 of 2019—says nothing about mail-in ballots. It provides, in pertinent part, that:

> [o]n or before the fortieth day preceding any election, the county board of elections shall mail to the chairman of the county committee of each political party which shall be entitled under existing laws to participate in primary elections within the county, ... a written notice stating the times when and the place or places where preparation of the [electronic voting] system and its components for use in the several election districts in the county or municipality will be started. One representative of each such political party, ... shall be entitled to be present during the preparation of the voting system and its components and to see that they are properly prepared and are in proper condition and order for use

25 P.S. § 3031.10(d). As the Complaint notes, the "preparation" referred to in this provision is known as Logic and Accuracy testing ("L & A testing").

8.   Nothing in the Election Code prohibits county boards of elections from sending mail-in ballots to qualified electors before this testing is completed. To the contrary, the Election Code states that "[t]he county board of elections, upon receipt and approval of an application filed by a qualified elector ..., shall commence to deliver or mail official mail-in ballots *as soon as a ballot is certified and the ballots are available.*" 25 P.S. § 3150.15 (emphasis added); *see also id.* § 3146.5(b) (same for absentee ballots).

9.   The Pennsylvania Department of State has issued a directive regarding L & A testing that clarifies and supplements the requirements set forth in 25 P.S. § 3031.10(d). Pennsylvania Department of State, Directive on Logic & Accuracy Testing, Directive 1 of 2024 (Mar. 7, 2024), https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and elections/directives-and-guidance/2024-Directive-on-Logic-Accuracy-Testing-3.0.pdf (attached as Exhibit A) ("Directive").

10.   In addition to detailing L & A testing procedures, the Directive also sets out a separate set of procedures for testing "the printed [absentee and mail-in ballots] that will be issued

to voters" ("Ballot Acceptance Testing"). This Ballot Acceptance Testing is also detailed in a separate DOS publication. *See Department of State Election Administration Resource Ballot Building and Ballot Acceptance Testing (BAT)* at 13 (attached as Exhibit B). The Directive makes clear that county boards should complete this Ballot Acceptance Testing "*[p]rior to* beginning the structured L&A testing." Directive at 2. The purpose of the Ballot Acceptance Testing is "to confirm that the ballots are accurate and can be ready by the tabulating equipment once they are returned for counting." *Id.*

I. Preliminary Objection No. 1: Mootness[7]

11.   Respondents incorporate by reference the averments of paragraphs 1 through 10 above as if set forth in full.

12.   The crux of Petitioners' claims is that the Board has "violat[ed] the Election Code by distributing [mail-in] ballots without first completing the critical task of L&A testing, which," according to Petitioners, "ensures the integrity of the election" by identifying any errors in ballot format and layout that could cause ballot scanners to incorrectly "read" those mail-in ballots and therefore miscount them.[8] Complaint ¶¶ 21, 39.

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[7] Respondents have provided a brief affidavit from Respondent Dean, annexed as Exhibit E, intended solely to support Respondents' mootness objection; it is *not* intended to support Respondents' arguments in the nature of a demurrer, discussed below. The doctrine of mootness requires that "an actual case or controversy exist[] at all stages of the judicial or administrative process." *Kupershmidt v Wild Acres Lakes Prop. Owners' Ass'n*, 143 A.3d 1057, 1061 (Pa. Cmwlth. 2016) (internal quotation omitted). However, mootness can occur where "a subsequent change in circumstances has eliminated the controversy," which by its very nature cannot be determined from the allegations in the complaint alone. *Burke ex rel. Burke v. Indep. Blue Cross*, 103 A.3d 1267, 1271 (Pa. 2014).

[8] As discussed in greater detail below, this claim rests on a faulty premise: it is not L&A testing, but ballot acceptance testing, that evaluates whether any errors in the ballot's format and layout will prevent it from being accurately scanned. The County performed ballot acceptance testing prior to distributing any mail-in ballots. See Dean Affidavit, Exhibit E ¶ 2.

13.   But the County has now completed L & A testing of every single scanner that will be used on Election Day to scan mail-in ballots (a process that included scanning precisely the mail-in ballot layouts and formats that Petitioners seek to enjoin the Board from distributing to Montgomery County voters) and no errors in ballot format and layout were detected. *See* Dean Affidavit, Exhibit E ¶ 3. The eventuality that Petitioners seek to avert – the possibility that L & A testing will identify an error in ballot design that would cause mail-in ballots to be incorrectly counted – is now conclusively foreclosed, and this action is therefore moot.

14.   As the Commonwealth Court has explained, "[g]enerally, courts will dismiss a case as moot unless an actual case or controversy exists at all stages of the judicial or administrative process." *Kupershmidt v. Wild Acres Lakes Prop. Owners' Ass'n*, 143 A.3d 1057, 1061 (Pa. Cmwlth. 2016) (internal quotation omitted). A case can become moot where "a subsequent change in circumstances has eliminated the controversy so that the court lacks the ability to issue a meaningful order, that is, an order that can have any practical effect." *Burke ex rel. Burke v. Indep. Blue Cross*, 103 A.3d 1267, 1271 (Pa. 2014).

15.   That is precisely what has occurred here. Petitioners seek an order from this Court prohibiting the County from distributing additional mail-in ballots and directing the hand-counting of all mail-in ballots already distributed *just in case* an error in ballot formatting is discovered when the ballot scanners are tested. But since the initiation of this lawsuit, the County has completed L & A testing for all ballot scanners that will be used to scan mail-in ballots, and no errors were detected.[9] There is no longer any practical purpose to the judicial relief sought by Petitioners, and therefore this action should be dismissed as moot.

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[9] This lawsuit was actually moot before it was even filed because the Board had already completed Ballot Acceptance Testing. It is *that* testing which is designed to detect the sorts of errors that are the focus of Petitioners' Complaint, as discussed below. But even if one sets aside Petitioners' fundamental confusion about the different types of pre-election tests at issue, this

WHEREFORE, the Respondents Montgomery County Board of Commissioners, Montgomery County Board of Elections, Jamila Winder, Neil Makhija, Thomas DiBello, and Frank Dean request that this Court sustain their preliminary objections to the complaint and dismiss this action, with prejudice, because Petitioners' claims are moot.

II. Preliminary Objection No. 2: Standing

16.   Respondents incorporate by reference the averments of paragraphs 1 through 15 above as if set forth in full.

17.   Setting aside its mootness, this action must be dismissed because all Petitioners lack standing to pursue their claims and this action should be dismissed. *See* Pa. R.C.P. Rule 1028(a)(5). Because "[s]tanding is a justiciability concern, implicating a court's ability to adjudicate a matter," courts must address standing before proceeding to evaluate the merits of a plaintiff's claims. *See Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021) ("Accordingly, a court must resolve justiciability concerns as a threshold matter before addressing the merits of the case.").

18.   To establish standing, a plaintiff must "demonstrate he or she has been 'aggrieved' by the conduct he or she challenges," which courts evaluate by "examin[ing] whether the plaintiff's interest in the outcome of the lawsuit is substantial, direct, and immediate." *Id.* As the Supreme Court of Pennsylvania has explained, "[a]n interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; and it is immediate when the causal connection with the alleged harm is neither remote nor speculative." *Ball v. Chapman*, 289 A.3d 1, 19 (Pa. 2023) (internal citations and quotations omitted).

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lawsuit became moot no later than September 23, 2024, when the Board successfully completed the L & A testing of the equipment that will be used to scan and tabulate mail-in ballots.

19.   In this case, Petitioners have failed to allege an immediate interest in the outcome of this lawsuit, because the harm that they allege is far too speculative to support standing. Petitioners are concerned that an error in the ballot's layout or format *may* be discovered during the L & A testing of all of the County's ballot scanners, and that this error *may* lead to votes being miscounted to the detriment of Petitioner McCormick or to the candidates and voters represented by the Party Petitioners.[10] *See* Compl. ¶¶ 2-3, 5. In other words, Petitioners will not actually be injured unless the L & A testing does, in fact, reveal an error in the ballot design that prevents mail-in ballots from accurately being counted.[11]

20.   Not only is Petitioners' concern now moot—the successful completion of testing has shown that the risk of such errors is zero—the eventuality they feared was always very unlikely to occur. Mere speculation about the possibility of this occurrence does not (and never did) confer standing on Petitioners. *See Americans for Fair Treatment, Inc. v. Philadelphia Fed'n of Tchrs.*, 150 A.3d 528, 536 (Pa. Cmwlth. 2016) ("The mere possibility that future events might occur that could cause one of Plaintiff's teacher members to be [adversely] affected . . . is not sufficient to establish the direct and immediate interest required for standing.") Since future harm that is contingent on the occurrence of a future event – i.e., the discovery of an error in ballot design during logic and accuracy testing – is not a sufficiently immediate interest to confer standing, this action should be dismissed. *See Treski v. Kemper Nat. Ins. Companies*, 674 A.2d 1106, 1112 (Pa. Super. 1996) ("Appellants also lack standing to sue their own respective insurer in their individual capacities since the only injury they allege is a future contingent harm. . . . Until this contingency

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[10] Petitioners MCRC and Nascimento also allege that they have been harmed by being excluded from observing L&A testing. *See* Compl. ¶ 45. But this allegation is refuted by their own Complaint, which quotes two separate emails from Respondent Dean inviting them to observe the L & A testing. *See id.* ¶¶ 25, 28.

[11] As discussed above, L & A testing has already been conducted for all machines that will be used to scan mail-in ballots, and we now know for certain that no errors were discovered.

occurs, Appellants are not aggrieved parties and thus lack standing.").

21.   Because the harm alleged by Petitioners is too speculative to confer standing on any of the Petitioners, this action should be dismissed.

WHEREFORE, the Respondents Montgomery County Board of Commissioners, Montgomery County Board of Elections, Jamila Winder, Neil Makhija, Thomas DiBello, and Frank Dean request that this Court sustain their preliminary objections to the complaint and dismiss this action because all Petitioners lack standing.

III. <u>Preliminary Objection No. 3: Demurrer</u>

22.   Respondents incorporate by reference the averments of paragraphs 1 through 21 above as if set forth in full.

23.   Independently, the Complaint must be dismissed because its claims fail on the merits as a matter of law. *See* Pa. R.C.P. Rule 1028(a)(4). Petitioners grossly misinterpret the requirements on which they rely.

A. <u>Neither the Election Code Nor the DOS Directive Requires the Completion of L & A Testing Before Counties May Send Out Mail-in Ballots</u>

24.   The Election Code directly addresses the delivery of absentee and mail-in ballots. County boards "shall commence to deliver or mail official absentee ballots as soon as a ballot is certified and the ballots are available." 25 P.S. § 3146.5. Boards "shall [likewise] commence to deliver or mail official mail-in ballots as soon as a ballot is certified and the ballots are available." 25 P.S. § 3150.15. The prerequisites for delivering ballots as outlined in the Code require only that there be a certified ballot and that ballots are available to be delivered to voters.

25.   The Directive is also clear that L & A testing need not be completed prior to the distribution of mail-in ballots. The Directive specifically contemplates that ballots will be sent prior to the completion of L & A testing; it directs county boards to test absentee and mail-in

ballots *before* L & A testing occurs. "Prior to beginning the structured L&A testing, test the printed ballots that will be issued to voters to confirm that the ballots are accurate and can be read by the tabulating equipment once they are returned for counting." Directive at 2.[12] Petitioners do not allege – and cannot truthfully allege – that the Board failed to complete this Ballot Acceptance Testing before distributing mail-in ballots.

26. Lest there be any doubt about the meaning of the DOS Directive, the Department of State has publicly stated that Petitioners' "lawsuit is frivolous" and that "Montgomery County did everything required before sending its ballots."[13]

27. There has been no violation of the Pennsylvania Election Code or the Directive issued by the Department of State. Petitioners' claim is meritless.

B. Petitioners Misconstrue the 15-Day Requirement in the Directive

28. Undaunted, Petitioners insist that a single sentence from the Directive – which states that "County election boards must complete the certification [of completion of L & A testing] *at least fifteen (15) days prior to every election* held in their jurisdiction and must submit the certification electronically to the Department of State as prescribed by the Bureau of Elections" – means that county boards must submit the certification at least fifteen days *before they distribute any mail-in ballots.*[14] Directive at page 1 (emphasis added); *see also* Complaint ¶¶ 23, 39.

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[12] This is a practice also known as Ballot Acceptance Testing, or BAT, which is also outlined in guidance from DOS last updated in February of 2024, annexed as Exhibit B. The guidance states that testing allows county boards "to test that the definition mapping in your election management system is efficient and accurate. BAT is strongly recommended as a best practice. This process should be performed prior to issuing absentee or mail-in ballots to ensure the ballots are formatted, defined and mapping votes, correctly. BAT should also occur *before Logic & Accuracy testing*. BAT is not a substitute for Logic & Accuracy Testing." *See* Exhibit B at 2 (emphasis added).

[13] See Exhibits F and G.

[14] At one point in their papers, Petitioners also seem to allege that Respondents have violated the Election Code by not permitting Petitioners MCRC and Nascimento to observe L &

Petitioners' interpretation is not only plainly incorrect, it would lead to absurd results.

29. Petitioners' construction of this single sentence is viable only if the word "election," as used in this context, means something other than Election Day, which is the most natural reading of this sentence. If the Directive simply requires counties to certify to the completion of L & A testing at least 15 days prior to Election Day, the Complaint cannot allege any legal violation, since that deadline is far in the future. Although Petitioners do not articulate what precisely they believe "election" means, they apparently understand it to mean something like "the distribution of ballots to voters," so that the Board was required to complete L & A testing at least 15 days prior to beginning distribution of mail-in ballots.

30. But nowhere in Petitioner's Complaint or Memorandum of Law do they make *any* arguments – or cite any authority whatsoever – to defend their reading of this sentence, which is the heart of their case. In fact, Petitioners have plainly misconstrued the Directive.

1. **The Department of State Has Publicly Stated that Certification of L&A Testing Must Be Completed 15 Days Prior to Election Day, Not Prior to Ballot Distribution**

31. For proof that Petitioners have misinterpreted the Directive, the Court need look no further than the author of that directive, the Department of State itself. After this lawsuit was filed, Executive Deputy Secretary of State Mira Baylson publicly explained:

> Every county is required – under state law and under the Department of State's Directive on Logic and Accuracy Testing [*i.e.*, the Directive on which Petitioners rely] – to conduct logic and accuracy (L & A) testing on its voting system *before Election Day. The Election Code does not require that L & A testing be conducted before a county makes mail-in ballots available.*

A testing. Since the Complaint itself quotes two separate invitations to observe L & A testing extended to these Petitioners by Respondent Dean, *see supra* note 10, Petitioners apparently mean that these Petitioners were prevented from observing *timely* L & A testing. But the sole legal authority cited by Petitioners for the proposition that the County's L & A testing was untimely is the aforementioned single sentence from the Directive.

Baylson email, Exhibit F (emphasis added). As DOS's statement makes clear, its Directive requires counties to certify completion of L & A testing at least 15 days *before Election Day*, not 15 days before distributing ballots to voters. Petitioners are therefore in the awkward position of arguing that they understand better than DOS what DOS meant when it issued the Directive. A party in this unusual position should be expected to muster substantial arguments to support its interpretation. Petitioners have offered none.

2. Under Petitioners' Interpretation, the Directive Would Be Impossible to Implement.

32.   If DOS's own explanation of what its Directive means was not sufficient to refute Petitioners, Petitioners' interpretation also suffers from the flaw of being impossible to implement consistent with Pennsylvania law. Under the Election Code, counties *must* distribute ballots before completion of L & A testing, because the Election Code requires early ballot distribution to military and oversees voters.

33.   Under state law, counties are required to begin delivering or mailing absentee ballots to military and oversees voters "not later than seventy days prior to the day of the election." 25 P.S. § 3146.5(a). The Election Code clearly contemplates that this ballot distribution will occur prior to L & A testing, since it permits counties to wait until forty days before the election to issue notice of when L & A testing will occur. *See* 25 P.S. § 3031.10(d). If Petitioners were correct and the Directive required counties to complete L & A testing at least 15 days before beginning any ballot distribution, the Directive would directly conflict with the Election Code, which permits L & A testing to begin 30 days or more *after* ballots are distributed to military and overseas voters.

34.   Moreover, this year, when Election Day is November 5, the deadline for beginning ballot distribution to military and overseas voters was August 27, 2024, seventy days earlier. Under Petitioners' theory, counties were therefore required to complete L & A testing by August 12,

2024, at the latest, fifteen days before beginning to distribute ballots to military and overseas voters. But since the Pennsylvania Secretary of State certified the ballot for this year's General Election on September 16, 2024, *see* Compl. ¶ 27, and L & A testing requires a certified ballot,[15] no county could possibly complete – or even begin – L & A testing by Petitioners' deadline.

35.   Petitioners' reading of the Directive would render it impossible for any county to implement. For this reason, as well, Petitioners' interpretation must be rejected *Cf* 1 Pa C.S. § 1921 (when words of statute "are not explicit," legislative intent may be ascertained by considering, *inter alia*, "[t]he object to be attained" and "[t]he consequences of a particular interpretation"); *id.* § 1922 (in ascertaining intent of General Assembly in enactment of statute, court should presume "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable").

3. Petitioners' Interpretation of the Directive Would Require Depriving Voters of Mail-In Ballots for an Entire Month For No Rational Benefit.

36.   Another problem with Petitioners' construction of the Directive is that it would deprive voters of the opportunity to receive their mail-in ballots for approximately one month without any benefit to voters or to the administration of the election. Petitioners have offered no reason to believe that DOS intended this irrational outcome.

37.   As discussed earlier, Petitioners appear to conflate two different types of testing that is performed prior to each election: L & A testing, which is intended to ensure that each and every ballot scanner to be used on Election Day is functioning property, and Ballot Acceptance Testing, which is intended to ensure that that ballot is formatted and laid out properly Ballot

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[15] L & A testing requires testing that each and every machine to be used on Election Day is capable of processing the ballots that will be used; L & A accordingly cannot begin until the ballot has been finalized. *See, e.g.*, Exhibit A at page 5 ("Test decks should include all ballot sets and styles to be used in the election.")

Acceptance Testing should be performed prior to the distribution of mail-in ballots, because errors caught during Ballot Acceptance Testing could require that the ballot be redesigned. But any errors detected during L & A testing would almost certainly be errors with an individual scanner, which can be addressed simply by not using that scanner on Election Day. Once Ballot Acceptance Testing is completed and no errors are detected in the ballot's design, there is no benefit to delaying the distribution of ballots while each and every ballot scanner is checked, since any errors detected in that process are very unlikely to require changes to the ballot.

38.   The distinction between these two types of tests is reflected in the Directive itself.[16] The Directive is structured as a detailed, step-by-step guide to L & A testing. This description begins on page 3 of the Directive, which describes the requirement to provide public notice of L & A testing and goes on to list steps that must be taken to prepare for L & A testing. Before this, however, on page 2 of the directive, DOS describes a different type of test, conducted "[p]rior to beginning the structured L & A testing . . . to confirm that the ballots are accurate and can be read by the tabulating equipment once they are returned for counting." Directive at 2. This test is the Ballot Acceptance Testing, which is not part of L & A testing, as evidenced by the fact that the Directive anticipates that it will be performed before public notice of L & A testing is issued. *See id.* at 2–3.

39.   As the Directive states, it is the Ballot Acceptance Testing, rather than L & A testing, which checks to ensure there are no errors in ballot design. And it is the Ballot Acceptance Testing, rather than L & A testing, that should be completed before mail in ballots are distributed. Because L & A testing is intended to check each individual scanner rather than the ballot design, and any errors with individual machines detected by L & A testing are extremely unlikely to

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[16] Some of Petitioners' confusion may derive from the fact that DOS chose to include a description of Ballot Acceptance Testing in its directive on L & A testing.

require changes to the ballot, there is no rational benefit to denying voters their mail-in ballots while L & A testing is conducted. The injunctive relief Petitioners seek in this action would have the effect of delaying access to mail-in ballots purely for the sake of delaying access to mail-in ballots. That may well be Petitioners' goal, but it is no basis for invoking the equitable powers of this Court.

WHEREFORE, the Respondents Montgomery County Board of Commissioners, Montgomery County Board of Elections, Jamila Winder, Neil Makhija, Thomas DiBello, and Frank Dean request that this Court sustain their preliminary objections to the complaint and dismiss this action because the Complaint is legally insufficient.

Respectfully submitted,
MONTGOMERY COUNTY SOLICITOR'S OFFICE

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Dated: September 30, 2024

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REPUBLICAN NATIONAL COMMITTEE, *et al.*:   COURT OF COMMON PLEAS
        Plaintiffs,   MONTGOMERY COUNTY, PA
      vs.   :

                                          Civil Action -- Law
                                          Docket No. 2024-22251

MONTGOMERY COUNTY BOARD OF
COMMISSIONERS, *et al.*,
        Defendants.   :

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of September, 2024, he served a true

and correct copy of the Defendants' Preliminary Objections to Plaintiff's Complaint, via U.S. First

Class Mail, upon Counsel for Plaintiffs at the following address of record

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EXHIBIT A

pennsylvania
DEPARTMENT OF STATE

Directive on Logic & Accuracy Testing

Date: March 7, 2024

Directive 1 of 2024

Version: 3.0

TLP:CLEAR

Directive 1 of 2024

The following directive is issued March 7, 2024, by the Secretary of the Commonwealth of Pennsylvania pursuant to authority contained in Sections 201 and 1105- A of the Election Code, 25 P.S. §§ 2621, 3031.5.

Background

All counties in Pennsylvania must conduct pre-election logic and accuracy testing (L&A testing) prior to every election (primary, general, special, or municipal) that is conducted in their jurisdiction.

L&A testing is a series of pre-election steps intended to ensure that ballots, scanners, ballot-marking devices, and all components of a county's certified voting system are properly configured and in good working order prior to being used in an election. These steps must include every procedure that counties will use in the actual election

L&A testing promotes election integrity by:

1) Providing election officials an opportunity to identify and redress errors in election definition, ballot format, and layout, including, but not limited to, appropriate locations for folds on absentee/mail-in ballots, missing races, missing party identification, misspellings of candidate names, incorrectly worded ballot questions, and incorrect tabulation.

2) Exposing inadequate, incorrect, or faulty election supplies, such as incorrect paper stock and memory cards that have not been properly wiped of data and reformatted.

3) Demonstrating to political parties, candidates, the media, and voters that the county is prepared for the upcoming election and the voting equipment has been adequately tested, which promotes confidence in the integrity of Pennsylvania elections.

Following completion of L&A testing, each county election board shall certify to the Secretary when they have completed their L&A testing and shall identify the system configuration for the election. The certification shall be on a form prescribed and furnished by the Secretary, a copy of which is attached as Appendix A. County election boards must complete the certification at least **fifteen (15) days prior to every election** held in their jurisdiction and must submit the certification electronically to the Department of State as prescribed by the Bureau of Elections.

Summary of L&A Testing Goals

- Verify that all ballots are accurately defined, including:

  o All necessary contests (races) are properly programmed, including special elections, retention elections, and ballot questions.

  o Ballot styles are properly mapped to their respective precincts. A "ballot style" is a ballot's particular array of election contests and candidates, specific to each election precinct.

  o Candidate names are correctly spelled.

  o Contests and candidates are displayed in the required order.

  o The parties or political bodies of candidates are properly identified.

  o Names of all parties/independent political bodies are correctly spelled.

  o Audio files are present and properly configured for all candidates and ballot questions.

- Verify that all votes are aggregated and tabulated correctly, and that all accompanying hardware is in working order.

- Verify that all voting system component configurations meet federal and state certification standards and conditions.

- Verify that the voting system software/firmware works as expected.

Testing of Absentee and Mail-in Ballots

Prior to beginning the structured L&A testing, test the printed ballots that will be issued to voters to confirm that the ballots are accurate and can be read by the tabulating equipment once they are returned for counting. Test these ballots on the equipment that will be used to centrally count mail ballots. If using a ballot-on-demand (BOD) printer to print mail ballots, test the functionality of the printer for all ballot styles.

1) Prepare the BOD printer following the manufacturer's procedures and load the required ballot definition files on the BOD printer. Print ballots of all ballot styles and sets that will be printed for election use.

2) If using pre-printed ballots or a mailing house, gather from the print vendor test ballots for all ballot styles to be used in the election.

3) Mark ballots of each ballot style and set type (absentee/mail-in) following the "tabulation test voting pattern" and scan them using both a central scanner and a precinct scanner.

4) A good way to test all of the ballots is to create an "all poll" media device for the scanners, which will permit all ballot styles for the election to be scanned.

5) Fold some ballots comparable to the manner in which absentee and mail-in ballots are received.

6) Scan the ballots on the central scanner following the exact same process that you will follow on Election Day.

7) Scan the ballots four (4) times on the precinct scanner, each time changing the direction in which the ballot is inserted into the scanner. The goal of this test is to ensure that all printed ballots can be read by the tabulator in all orientations

8) Once ballots are tested for absentee and mail-in voting, changes should not be made to a county's election definition. If the election definition is changed after testing is completed, ballots must be retested. If the election definition is changed after the county has distributed any absentee or mail-in ballots, when these ballots are returned the ballots will either need to be hand-counted or a ballot duplication team will need to transfer the voter's votes to a ballot that can be tabulated by the voting equipment. Follow the procedure outlined in section 1114-A of the Election Code, 25 P.S. § 3031.14, for creating a true duplicate copy of a damaged or defective ballot. When a ballot is duplicated, the county must maintain both the original and duplicate ballot and record an identical serial number on each.

Preparing for Full L&A Testing

Notice and Public Observation

Under Section 1110-A(d) of the Election Code, 25 P.S. § 3031.10(d), no later than forty (40) days before an election, the county election board must mail a written notice stating the date, time, and location when L&A testing will begin to:

- the chairman of each political party recognized to participate in a primary election within the county; and

- the chair or presiding officer of any citizens' organization which has registered its name and address at least fifty (50) days before such election.

Further, county boards should provide at least forty-eight (48) hours' notice to the public of the time and place of the test to provide the public an opportunity to attend. The public notice.

- may be placed in a newspaper or legal publication that has a countywide distribution;

- should outline the starting time and location of the testing; and

- need not include an ending time for the testing.

The preparation and testing of voting equipment must be open to the public to observe; however, such members of the public shall not in any manner interfere with the preparation and testing of the voting equipment units. To prevent any interference by the public when observing, the county may make reasonable rules and regulations concerning the conduct of those members of the public who wish to observe. These rules shall not prevent members of the public from fairly observing and should be published after public approval by the elections board subject to 25 P.S. § 2642(f).

Preparing for Testing

In addition to issuing notice, counties should do the following when preparing for L&A testing:

1) Review the Secretary's certification report for the county's voting system to ensure that the voting system components are being prepared to meet all conditions of the report that apply in the county's upcoming election.

2) Proofread all balloting materials. The Department recommends using more than one proofreader and proofreading at multiple stages. Proofread ALL ballot types, including Election Day ballots, absentee ballots, mail-in ballots, provisional ballots, bilingual or alternative language ballots, accessible (audio) ballots, federal ballots, partisan and non-partisan ballots, and emergency ballots.

3) Ensure that there are enough multi-partisan teams to conduct the testing. If the county needs to employ additional staff, the Department recommends employing precinct officials and not third-party vendor personnel.

4) Ensure a county election official is present to independently verify and attest to the testing results if a vendor will be participating in L&A testing.

5) Ensure the designated location has adequate space to conduct testing.

6) Complete an inventory, or manifest, of all devices to be used on Election Day, including backup equipment not directly assigned to a specific polling place. All component devices of the voting system must be tested during L&A testing

7) Prepare a task list detailing every action to be taken during the testing, following the instructions in this directive. Testing scenarios should mimic election activities as much as possible

Preparation of Test Decks and Testing Scenarios

Create a test deck for each ballot style and voting system component. These test ballots will be used to simulate Election Day activities during the testing process.

Test decks should consist of ballots voted with a pre-determined number of valid votes for each candidate, retention election, ballot question, and write-in position that appears on every ballot style that will be used in the upcoming election. Counties should consider the many types of scenarios that can occur during an election and replicate them using the test decks to ensure voting system logic and accuracy.

The Department strongly discourages relying solely on automated L&A testing or using only preprinted ballots provided by vendors. Manual entry of votes, using pre-audited ballots prepared by election officials, is the most effective way to identify potential errors and anomalies.

When preparing test decks, counties should ensure the following:

1) Test decks should include ballots printed via all printing options — including by the ballot printing or mail house vendor, from a BOD printer, and ballots generated from a ballot-marking device (BMD). The goal is to ensure that test deck ballots are printed under the exact same conditions as live ballots that will be provided to and voted by the voters.

2) The same paper stock should be used for testing that will be used for the election.

3) Test decks should include all ballot sets and styles to be used in the election (including, for example, Election Day ballots, absentee ballots, mail-in ballots, emergency ballots, provisional ballots, ballot on demand, ballot-marking devices, accessible ballots, non-partisan ballots, bilingual ballots, and federal ballots).

4) Test decks should encompass scenarios that include votes for all candidates, write-ins, retention elections, ballot questions, and candidates for special elections that are held concurrent with regularly scheduled elections.

5) Test decks should include ballots in all languages.

6) Test decks should encompass scenarios including votes for all ballot positions.

Additionally, test decks must include ballots that are intended to fail or trigger equipment warnings. The goal is to ensure that the voting system components will adequately flag or reject improperly marked ballots and that such ballots will not affect tabulation. Improperly marked ballots include ballots:

- with more votes than allowed for all contests;
- with more votes than allowed for randomly selected contests;
- with no votes for any contest;
- voted with ambiguous marks in the target area for all candidates (if applicable); and
- from an incorrect ballot set for the same precinct.

Tabulation Test Voting Variation

Preparing the test decks includes voting a pre-determined number of valid votes for each candidate, write-in position, and option on every ballot question and retention election to verify the voting system accurately tabulates votes. The county should use Microsoft Excel or other software to document the pre-determined votes, calculate the anticipated results, and compare them to the results produced by the voting system during testing.

The Department **strongly recommends** preparing test decks such that **each choice in each election contest is given a unique number of votes**. Write-in options should count as a choice, and for ballot questions and retention elections, "Yes" and "No" should count as different choices. For example, in an election contest involving three candidates and a write-in option, one choice should receive one vote, and the other choices should receive two votes, three votes, and four votes, respectively.

The county also should vary vote patterns across election contests. For example, where a ballot contains two ballot questions, each with "Yes" and "No" choices, the county should prepare the test deck such that one ballot question receives two "Yes" votes and one "No" vote, and the other ballot question receives one "Yes" vote and two "No" votes.

This is the best tabulating testing pattern that will make it easiest to identify errors or issues. Alternatively, counties may employ one of the following patterns:

- Incremental/decremental pattern: For each election contest, the county sets the highest vote total any choice may receive and then assigns votes to the remaining choices in that contest in an increasing or decreasing pattern. For example, in an election contest involving five candidates and a write-in option, the county could set the highest vote total at three and give the first choice three votes, and the other choices two votes, one vote, three votes, two votes, and one vote, respectively. This pattern should then be varied across election contests, so that results for contests with similar choices can easily be distinguished.

- Alternating pattern: For each election contest, the county sets the highest vote total any choice may receive and then assigns votes to the remaining choices in that contest in an alternating pattern. For example, in an election contest involving five candidates and a write-in option, the county could set the highest vote total at two and give the first choice two votes, and the other choices one vote, two votes, one vote, two votes, and one vote, respectively. This pattern should then be varied across election contests, so that results for contests with similar choices can easily be distinguished.

The county **must not** prepare test decks such that each choice in an election contest receives only a single vote, or all choices are not voted for at least once. *If the anticipated result is the same for each choice in an election contest, or for each election contest with similar choices, the county may be unable to confirm that the voting system is accurately tabulating votes*.

The county must repeat the same pattern when preparing test decks for each ballot set, as applicable.

Preparation of Media Device
Before data for an election can be placed on any memory card for an optical scan tabulator, central count scanner, or ballot-marking device, the data contained on the memory card from any previous election must be removed under the guidelines of the relevant voting system. Ensure that the media device has been fully formatted before using it for L&A testing.

1) Inspect all media devices and ensure that they are formatted, labeled, and numbered appropriately.

2) Label the media device with the name of the poll (e.g., precinct name, absentee, mail-in, provisional). It is a best practice to make the marking and labelling as evident as possible. For example, write the precinct name/number and device

name clearly. As a best practice, use different colored labels for primary and redundant (back-up) media devices.

3) Download the election information to the media devices according to the voting system manufacturer's instructions.

4) Create a media device for each precinct scanner or central scanner that will be used in the election.

Preparation of Voting Equipment

L&A testing must include testing every hardware component of the voting system, regardless of whether it will be deployed to a precinct or retained at the warehouse as a backup. Below is a list of items to be tested or verified during L&A testing for an election:

1) Ballot-marking devices

2) Precinct scanners

3) Central count scanners

4) Connected printers

5) Connected peripherals for ADA voting equipment

Prior to the testing, perform the following checks:

1) Inspect the physical condition of the equipment and locks and sealing mechanisms to ensure they are intact.

2) Power on the devices and validate that the certified software/firmware is installed.

3) Check the batteries in voting systems that use batteries as either the primary power source, or as backup to the primary power source.

4) Implement a process to ensure that all batteries are fully charged for Election Day.

5) Check the scanner heads on all precinct scanners.

6) Check the calibration of scanners.

7) Verify the calibration of any ballot-marking device screens and replace or repair as needed.

8) Verify the date and time settings on all voting systems.

9) Verify that all media devices are "zeroed out."

10) Verify that each device is labelled with its assigned precinct or polling place where it will be deployed and is accurately listed on your county's inventory or manifest list.

Conducting L&A Testing

All components being used for the election, including all ballot styles, precinct scanners, central count scanners, accessible devices, and any backup equipment being used, must be part of the L&A testing.

Administrative Steps

As described above in section 3.1, the county board of elections may establish reasonable rules and regulations for public observation of L&A testing. The board must also be available during the first day of preparation, at the beginning of the day or for the first hour of public observation, to explain the process and respond to questions. The following practices must be observed:

1) Administer an oath to those persons conducting the L&A tests who are not permanent elections staff.

2) Establish an area where the public can observe the process.

3) Allow only election officials and those conducting tests into the testing area.

4) Prohibit the photocopying of any testing reports or other materials.

5) Prohibit photographic and audio equipment, including cellphone cameras, from being used to record security seals or serial numbers. While the news media may report on the testing process, counties must ensure that security seals, serial numbers, locks, and other details concerning security measures are not recorded or displayed.

Ballot-Marking Device Testing

The functionality and accuracy of ballot-marking devices (BMDs) must be included in any pre-election testing protocols. A test deck must be created using a BMD based on the guidelines outlined in the "Preparation of Test Decks and Testing Scenarios" in this document. Once the BMD test deck is created, the ballots must be tested on a related scanner. It is also necessary to test the various devices available to voters with disabilities for use on Election Day, including audio voting features, tactile discernible

controls, and pneumatic switch attachments which can be operated orally or by vacuum pressure (AKA sip-and-puff devices).

Ballot-Marking Device Setup and Preparation

1) Set each voting system to be tested to "election mode" rather than "test mode."

2) Review and confirm that the prepared test decks contain all the applicable test cases suggested in the "Tabulation Test Voting Variation" section of this document. Print any "open polls" or zero tape report that can be printed from the BMD, and confirm that the expected contest order on the zero tape matches the contest order on the test ballots.

3) Perform all the actions that would take place on Election Day. The goal is to test all actions as they would occur on Election Day.

4) For each ballot style, mark and print ballots following the tabulation test voting variation on at least one BMD.

   a. Use touchscreen, audio ballot, Audio Tactile Interface (ATI) controller and any other assistive devices provided by the manufacturer.

   b. Use ballots in all languages used on Election Day.

   c. Use all the accessible features provided for the ballot: font, contrast, audio-only mode, etc.

   d. After printing each ballot, review the ballots produced by the BMD to ensure the printed ballots match the choices that were made on the BMD screen. Review the printed ballot to ensure that the contests are listed in the correct order; all the races, including retentions, show the candidate names; and ballot questions are identifiable. The printed ballot must allow the confirmation of each choice that was made on the BMD screen.

5) County election boards must test and prepare any BMDs intended to be used as backup devices. Since it is hard to predict where the device might be used, the best approach is to test at least two random ballot styles.

Test Closing Procedures

1) Perform end-of-day polling place activities as would be performed on Election Day.

2) Perform a review of marked and printed ballots to ensure that ballots are marked accurately as required by the test voting variations.

3) Gather prepared ballots for scanning.

4) After confirming that the marked ballots scan and generate expected results, prepare the machines for Election Day:

   a. Clear the data generated during testing.

   b. Ensure that the device has all supplies for printing ballots on Election Day.

   c. Lock and seal the devices.

   d. Shut the machines down.

5) Review the seals and locks once again and document the validation. The best practice is to have one person prepare the machine and then have one or two reviewers review the seals and locks.

6) Any discrepancies noted during the L&A testing must be evaluated in detail to identify the root cause of the problem.

7) If the problem is isolated to a specific machine, that machine must be marked and must not be used on Election Day.

8) Explain clearly to observers if any discrepancies are noted to ensure that everyone present completely understands the process and conclusions.

Precinct Scanners

Once a test desk and expected results have been validated, test decks are scanned by a bipartisan team of election officials or voting system operators on each voting system for which the ballot style is used. This test is used to check the accuracy of the ballot coding, the ability of the tabulators to accurately record votes marked on the ballots, and the ability of tabulators to accurately tally votes from all scanned ballots. Every scanner that will be used in the election must be tested.

Precinct Scanner Setup and Preparation

1) Set each device to be tested to "election mode" rather than "test mode."

2) Review and confirm that the prepared test decks contain all the applicable test cases suggested in the "tabulation test voting variation" section of this document.

3) Load each precinct scanner with the pre-labeled memory cards specific to each Election Day precinct.

4) Perform all the actions that would take place on Election Day. The goal is to test all actions as they would happen on Election Day.

5) Ensure that the precinct scanner is set for the correct election.

6) Open the polls and validate the accuracy of the information displayed on the screens and public counters.

7) Print zero reports and validate the reports. Check the date and time, precinct polling place details, election, and that contest totals are zero.

8) Once the polls are "open" and a zero tape is generated, the bipartisan team should sign the zero tape to identify the officials participating in the test for each precinct scanner.

Test Deck Scanning

1) The bipartisan team must then begin scanning the ballots on each voting system for which the given ballot style is valid.

2) The team should follow the ballot instructions while marking and processing ballots to ensure that the instructions are clear.

3) Scan ballots in all orientations, alternating between all four possible orientations.

4) The testing staff should scan at least one ballot using any feature intended to provide voting system access for persons with disabilities. They should also scan at least one ballot using each required language. While one team member scans ballots, the other team member should monitor the equipment to ensure that the scanner and ballot counter are functioning properly.

5) The team must review and confirm that all configured error messages display properly.

6) Once all ballots from the test deck have been scanned into an individual machine, the team must "close" the polls and run a totals report.

7) The team should compare the results reported by the voting system to the expected results, confirm the accuracy of or discrepancies in the results, and determine if the system has passed or failed the test. Any discrepancies indicating a failure must be investigated, resolved, and the system must then be re-tested.

8) If a test deck is run and the pre-determined vote count is different than the voting system's tabulated results, the test team should document the problem, and then compare the unique voting variation (test plan) with the test deck pattern to ensure that the test deck was made correctly and that all ballots were scanned

9) Any corrections to the test deck itself, or to the casting of the test deck, should be made, and the test deck should be re-run until two error-free test results are produced. If the tested voting system fails to produce two error-free results, the system should not be used in any election until the problem is resolved and a new round of pre-election testing is successfully completed.

10) The pre-election test results reports should be signed by the test team and placed in secure storage for any record retention periods the jurisdiction may require. After all voting systems for which each ballot style is valid have been tested, the test deck should be similarly stored with all corresponding reports, audit trails and log sheets.

11) The test should be documented by the testing team on a log created specifically for this purpose. The log shall include:

   a. The date the test was executed,

   b. The names of the persons who performed the test and recorded the results,

   c. The serial number of the machine on which the test was executed,

   d. The machine's protective counter number as it appeared both at the beginning and conclusion of testing,

   e. The name or description of the test performed,

   f. The version number of the software tested,

   g. The test result – either "pass" if the results match the expected results exactly, or "fail" if there is even one discrepancy.

12) Jurisdictions must test and prepare any scanning devices intended to be used as backup devices. Since it is hard to predict where the device could be used, the best approach is to test two random ballot styles.

Test Closing Procedures
1) Perform end-of-day polling place activities as would be performed on Election Day.

2) Gather media including redundant (back-up) media if applicable, with results, upload to the election management system, and generate the consolidated result reports. It is a good practice to use redundant media on Election Day whenever possible. Ensure that the redundant media is also included in testing.

3) Document testing results as you would the official results.

4) Retain and seal all pre-election testing materials.

5) Prepare machines for Election Day use:

   a. Clear totals.

   b. Clear the results on the tabulator.

   c. Insert new printing tapes.

   d. Lock and seal the devices.

   e. Shut the machine down.

6) Review the seals and locks once again and document the validation. The best practice is to have one person prepare the machine and then have one or two reviewers review the seals and locks.

Any discrepancies noted during the L&A testing must be evaluated in detail to identify the root cause of the problem.

1) If the problem is isolated to a specific machine, that machine must be marked and must not be used on Election Day.

2) Explain clearly to observers if any discrepancies are noted.

Central Count Scanners

Test central scanners used at the election office. Jurisdictions using precinct and central scanners can re-scan the ballots used for precinct scanner testing on central scanners to test the central scanners.

Central Count Scanner Setup and Preparation

1) Set each voting machine to be tested to "election mode" rather than "test mode."

2) Review and confirm that the prepared test decks contain all the applicable test cases suggested in the "tabulation test voting variation" section of this document.

3) Load each central scanner with the pre-labeled memory cards and prepare them for scanning as you would on Election Day.

4) Perform all the actions that would happen at the beginning of the central scanner use on election night.

   a. Be sure the tabulator is set for the correct election.

   b. Open the polls and validate the accuracy of the information displayed on the screens.

   c. Print zero reports and validate the reports, including checking the date and time, precinct polling place details, election, and that contest totals are zero.

5) Once the polls are "open" and a zero report is generated, the bipartisan team should validate and confirm that all contests and candidates have zero votes recorded for each central scanner.

Test Deck Scanning

1) The bipartisan team must then begin scanning the ballots on each central scanner in exactly the same manner as on Election Day.

2) Batch ballots as you would on Election Day and prepare them for scanning. Reuse the same ballots marked for precinct scanner testing.

3) Fold several marked absentee/mail-in ballots to ensure that the folds do not interfere with the scanning.

4) Once all ballots from the test deck have been scanned into an individual machine, the team must "close" the polls and run a totals report.

5) The team should compare the results reported by the voting system to the expected results, confirm the accuracy of or discrepancies in the results, and determine if the system has passed or failed the test. Any discrepancies indicating a failure must be investigated, resolved, and the system must then be re-tested.

6) If a test deck is run and the pre-determined vote count is different than the voting system's tabulated results, the test team should document the problem, and then compare the unique voting variation (test plan) with the test deck pattern to ensure that the test deck was made correctly and that all ballots were scanned.

7) Any corrections to the test deck itself, or to the casting of the test deck, should be made, and the test deck should be re-run until two error-free test results are produced. If the tested voting system fails to produce two error-free results, the system should not be used in any election until the problem is resolved and a new round of pre-election testing is successfully completed.

8) The pre-election test results reports should be signed by the test team and placed in secure storage for any record retention periods the jurisdiction may require. After all voting systems for which a particular ballot style is valid have been tested, the test deck should be similarly stored with all corresponding reports, audit trails and log sheets.

9) The test should be documented by the testing team on a log created specifically for this purpose. The log shall include, but is not limited to:

   a. The date the test was executed,

   b. The names of the persons who performed the test and recorded the results,

   c. The serial number of the machine on which the test was executed,

   d. The machine's protective counter number as it appeared both at the beginning and conclusion of testing,

   e. The name or description of the test performed,

   f. The version number of the software under test,

   g. The test result – either "pass" if the results match the expected results exactly, or "fail" if there is even one discrepancy.

Test Closing Procedures

   1) Perform the end-of-central scanning activities as on Election Day.

   2) Gather media, including redundant (back-up) media if applicable, with results, upload to the election management system, and generate consolidated result reports. It is a good practice to use redundant media on Election Day whenever possible. Ensure that the redundant media is also included in testing.

   3) Document the testing results as you would the official results.

   4) Retain and seal all pre-election testing materials.

   5) Prepare machines for Election Day use:

a. Clear totals.

b. Clear the results on the tabulator.

c. Insert new printing tapes.

d. Shut the machine down.

e. Lock and seal the devices.

6) Review the seals and locks once again and document the validation.

Any discrepancies noted during the L&A testing must be evaluated in detail to identify the root cause of the problem. If the problem is isolated to a specific machine, that machine must be marked and must not be used on Election Day.

1) Explain clearly to observers if any discrepancies are noted to ensure that everyone present completely understands the process and conclusion.

2) Ensure that there is a mix of all types of ballots used by the jurisdiction for the election.

Hybrid Ballot-Marking Device

Hybrid devices must be tested for both the ballot-marking device functionality and the scanning and tabulation functionality. Counties using hybrid devices must follow the below guidelines for performing L&A testing.

Hybrid Ballot-Marking Device Setup and Preparation

1) Set each voting machine to be tested to "election mode" rather than "test mode."

2) Review and confirm that the prepared test decks contain all the applicable test cases suggested in the "tabulation test voting variation" section of this document.

3) Load each device with the pre-labeled memory cards specific to each Election Day precinct.

4) Perform all the actions that would take place on Election Day. The goal is to test all actions as they would happen on Election Day.

5) Be sure the tabulator is set for the correct election.

6) Open the polls and validate the accuracy of the content displayed on screens and public counters.

7) Print zero reports and validate the reports. Check the date and time, precinct polling place details, election, and that contest totals are zero.

8) Once the polls are "open" and a zero tape is generated, the bipartisan team should sign the zero tape to identify the officials participating in the test for each precinct scanner.

Test Deck Marking and Scanning

1) The bipartisan team must then begin marking and scanning the ballots on each voting system for which a given ballot style is valid.

2) The team should follow the ballot instructions while marking and processing ballots to ensure that the instructions are clear.

3) The testing should include marking of at least one ballot using any feature intended to provide voting system access for persons with disabilities. While one team member is marking and casting ballots, the other team member should monitor the equipment to ensure that it is functioning properly.

4) After printing each ballot, review the ballots produced by the BMD to ensure the printed ballots match the choices that were made on the BMD screen. Review the printed ballot to ensure that the contests are listed in the correct order; all the races, including retention races, show the candidate names; and ballot questions are identifiable before casting the ballot.

5) The team must review and confirm that all configured error messages display properly.

6) Once all ballots from the test deck have been voted into an individual machine, the team must "close" the polls and run a totals report.

7) The team should compare the results reported by the voting system to the expected results, confirm the accuracy of and any discrepancies in the results, and determine if the system has passed or failed the test. Any discrepancies indicating a failure must be investigated, resolved, and the system must then be re-tested.

8) If a test deck is run and the pre-determined vote count is different than the voting system's tabulated results, the test team should document the problem, and then compare the unique voting variation (test plan) with the test deck pattern to ensure that the test deck was made correctly and that all ballots were scanned.

9) Any corrections to the test deck itself, or to the casting of the test deck, should be made and the test deck should be re-run until two error-free test results are produced. If the tested voting system fails to produce two error-free results, the system should not be used in any election until the problem is resolved and a new round of pre-election testing is successfully completed.

10) The pre-election test results reports should be signed by the test team and placed in secure storage for any record retention periods the jurisdiction may require. After all voting systems for which a given ballot style is valid have been tested, the test deck should be similarly stored with all corresponding reports, audit trails and log sheets.

11) The test should be documented by the testing team on a log created specifically for this purpose. The log shall include, but is not limited to:

   a. The date the test was executed,

   b. The names of the persons who performed the test and recorded the results,

   c. The serial number of the machine on which the test was executed,

   d. The machine's protective counter number as it appeared both at the beginning and conclusion of testing,

   e. The name or description of the test performed,

   f. The version number of the software under test,

   g. The test result – either "pass" if the results match the expected results exactly or "fail" if there is even one discrepancy.

12) Jurisdictions must test and prepare any hybrid devices intended to be used as backup devices. Since it is hard to predict where the device could be used, the best approach is to test two random ballot styles. Scan ballots following the tabulation test voting pattern.

Test Closing Procedures

1) Perform the end-of-day polling place activities as on Election Day.

2) Gather media (including redundant media if applicable) with results, upload to the election management system and generate consolidated result reports. It is a good practice to use redundant media on Election Day whenever possible. Ensure that the redundant media is also included in testing.

3) Document testing results as you would the official results.

4) Retain and seal all pre-election testing materials

5) Prepare the machines for Election Day use:

   a. Clear totals.

   b. Clear the results on the tabulator.

   c. Insert new printing tapes.

   d. Shut the machines down.

   e. Lock and seal the devices.

6) Review the seals and locks once again and document the validation. The best practice is to have one person prepare the machine and then have one or two reviewers review the seals and locks.

Any discrepancies noted during the L&A testing must be evaluated in detail to identify the root cause of the problem.

1) If the problem is isolated to a specific machine, that machine must be marked and must not be used on Election Day.

2) Explain clearly to observers if any discrepancies are noted to ensure that everyone present completely understands the process and conclusion.

3) Ensure that there is a mix of all types of ballots used by the jurisdiction for the election.

Vote Tabulation Software Check

Test the result tabulation software by loading and generating summary reports of all test votes.

1) Gather all the media used for vote capture from precinct scanners/hybrid devices and central scanners (including redundant media if applicable) with results, upload to the election management system, generate the consolidated result reports, and compare them to the expected results.

2) It is a good practice to use redundant media on Election Day whenever possible. Ensure that the redundant media is also included in testing. Document testing results as you would the official results.

3) Check the audit log or cast vote records associated with individual ballots of every unique ballot design to confirm that functionality of each contest and candidate is correct This can also be done by sending the ballots to adjudication and reviewing them there.

Election Night Reporting (ENR)

1) Generate the ENR files for reporting to the Department of State and publishing to your county's website.

2) Ensure that the counting groups on the reports are configured in accordance with the Pennsylvania Election Results Reporting and Ballot Definition Directive.

3) Ensure that contests are listed in the correct order, candidate names are spelled correctly, and the report segments are correct on each report type. For example, ensure that a precinct level report is showing the results from each precinct accurately.

4) Test the ENR file submission process and, if the timeline for testing the Department of State ENR does not align with the county L&A testing timeline, safely store the extract files for use during the assigned testing window. Counties must submit multiple files during the ENR file submission testing to ensure that all the candidates' vote totals by reporting group and turnout information are validated on the Department of State website.

Electronic Poll Books (EPBs)

The county board of elections must test EPBs being used at the polling place as part of the L&A testing.

1) Load the required voter data onto the EPBs and ensure that the configuration meets the approval conditions from the Secretary of the Commonwealth.

2) Ensure the accuracy of the voter data on each device.

3) Test all Election Day check-in activity workflows on all the devices.

4) Print any reports as you would do on election night and validate the results.

5) Test any check-in activity workflows that would take place on Election Day – e.g., regular check-in, ID verification, absentee/mail-in voter, provisional voter, etc.

6) Test the ballot-spoiling procedures if the EPB is being used to track the number of ballots spoiled.

7) Test the connectivity between two devices assigned to a polling place and ensure that check-in data is synced between the devices.

8) Prepare electronic poll books for Election Day use:

   a. Clear test data.

   b. Lock and seal the devices.

9) Review the seals and locks once again and document the validation. The best practice is to have one person prepare the machine and then have one or two reviewers review the seals and locks.

Post-Election Verification Testing for Central Tabulation Equipment

1) Central tabulation equipment requires additional post-election verification testing prior to finalizing the election results. At the conclusion of the central tabulation of ballots and prior to the completion of the official canvass, the central scanner(s) must pass the same test using the same test deck(s) used during the pre-election testing.

2) To ensure that test deck ballots are not inadvertently intermingled with election ballots, L&A testing ballots must be labeled, bundled together, and kept separately from other election records. Counties can follow the best practice of labeling the L&A ballots with appropriate notation on each ballot while marking contests for testing. For example, write "LA1" on the first L&A ballot in an area not interfering with the barcode.

Maintaining L&A Testing Results

All documentation, test decks, and any test data including, but not limited to, copies of ballot programming used for required maintenance tests, shall be maintained in secure locked storage in accordance with the requisite records retention schedule. Gather all reports and ballots as you would for official elections and file them along with the test deck used. Note any corrections and explanations and retain and seal all artifacts from pre-election testing.

The Department recommends maintaining a file for the life cycle of each voting machine component, starting with acceptance testing when you purchase the equipment. Document important events that take place during the voting machine life cycle including, but not limited to, acceptance testing, trusted build validation, upgrade acceptance testing, each election L&A testing, and election use. The document must provide a complete history of the voting machine components.

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Directive on Logic & Accuracy Testing

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Version	Date	Description
1.0		Initial document release
2.0	9.25.2023	Addition of central scan post-election verification testing
3.0	3.07.2024	Removal of functionality deck testing and expanded certification form

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
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CERTIFICATION OF LOGIC AND ACCURACY TESTING

County name: _____   Election date: _____

Number of precincts participating in election: _____

Voting system vendor:_____

Voting system name and version:_____

Primary system configuration: ☐ hand-marked paper ballots   ☐ ballot-marking devices

I do hereby certify that _____County has completed pre-election logic and accuracy testing for all its electronic voting system components pursuant to the Directive on Logic and Accuracy Testing on (date)_____.

During the test process, a predetermined test deck was prepared, and ballots were marked and tabulated. The results reported by the voting system matched the expected results, and the testing included all equipment to be used for the election, including backup devices.

The testing included the following:

Component	Details	Completed?
Test Deck • The test deck included absentee, mail-in, Election Day, and provisional ballots (ballot sets) for each precinct (ballot styles). • The test deck included ballots produced on all vendor and county BOD printers and BMDs.	Test pattern used in the test deck: Recommended (unique totals) ☐ Incremental/Decremental ☐ Alternating ☐	Yes ☐ No ☐
Notice • The county board timely notified the chair of each recognized political party.	Notice was sent to the chairman of each recognized political party on _____.	Yes ☐ No ☐
• The county board timely notified each registered citizens' organization.	Notice was sent to the chair or presiding officer of each registered citizens' organization on _____.	Yes ☐ No ☐ N/A ☐
• The county board provided at least 48 hours' notice to the public.	The county board provided public notice on _____.	Yes ☐ No ☐
Ballot-Marking Devices (BMDs) and Backup BMDs • Each BMD was tested to ensure functionality for each feature. • Printed ballots matched candidate selections on screen. • Ballots created by BMD were included in the test deck to enable testing of precinct scanners. • Hybrid BMDs accurately tabulated results.	Standard BMDs ☐ Hybrid BMDs ☐ # of BMDs to be deployed: _____ # of BMDs tested: _____ # of backup BMDs in reserve: _____ # of Backup BMDs tested:	Yes ☐ No ☐

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Precinct Scanners and Backup Scanners		
- Test deck was scanned into each precinct scanner that will be deployed. - Ballots were accepted and rejected appropriately. - Ballots produced the expected results.	# of scanners to be deployed: _____ # of scanners tested: _____ # of backup scanners in reserve: _____ # of backup scanners tested: _____	Yes ☐ No ☐ N/A ☐
Central Count Scanners and Backup Scanners		
- Test deck was scanned into each Central Count Scanner that will be used. - Ballots were accepted and rejected appropriately - Ballots produced the expected results.	# of scanners to be deployed: _____ # of scanners tested: _____ # of backup scanners in reserve: _____ # of backup scanners tested: _____	Yes ☐ No ☐

_____ _____ _____
Signature of Chief Clerk   Name of Chief Clerk   Date
or Authorized Representative   or Authorized Representative

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EXHIBIT B

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Department of State
Election Administration Resource
Ballot Building and Ballot Acceptance Testing (BAT)

DISCLAIMER: This Election Administration Resource ("EAR") is offered as for general informational and educational purposes only.

By providing this EAR to counties, the Department of State does not intend the material herein to serve as legal advice. Nothing in this EAR is intended to replace the professional advice from their county solicitor, who is designated as counsel to the county board of elections pursuant to Section 306 of the Pennsylvania Election Code (25 P.S. § 2646). Counties reading this EAR should contact their county solicitor to obtain advice with respect to any particular legal matter. Only your legal counsel can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation.

Background
Under the Pennsylvania Election Code counties are responsible for accurately printing and securely storing all ballots.[1]

This EAR is designed to assist Pennsylvania County Election Officials as they create their ballots, program their voting equipment, and test both the ballots and voting equipment. This EAR references statutory provisions where relevant, and supplements those references with additional information and best practices to assist counties in preparing their ballots, such as those factors that each county needs to consider when making decisions regarding their ballots.

Important Resources

You may need the following when making your ballot:

- Pennsylvania Election Code, Act of June 3,1937 (P.L. 1333, No. 320) (as amended) (the "Election Code") (found at 25 P.S. § 2600 et seq.)
- Official Department of State Guidance & Directives[2] A non-exhaustive list of the most relevant documents include:
  - Election Results Reporting and Ballot Definition Directive
  - Directive Concerning the Form of Absentee and Mail-In Ballot Materials

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[1] Sections 1001, 1009 and 1011 of the Election Code, 25 P.S. §§ 2961, 2969, 2971.
[2] https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Pages/Election-Directive-and-Guidance.aspx.

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  o Directive on Logic & Accuracy Testing
- Secretary's Certification of Offices to be Elected at the Primary pursuant to Section 902 of the Election Code[3]
- Secretary's official candidate list pursuant to Section 916 of the Election Code[4]
- The Department's ballot proofing materials and checklist for your specific election.

Laying a Solid Foundation

Counties are responsible for knowing which congressional, senatorial and legislative districts are within their boundaries and how those districts align with their precincts.

Spreadsheet of Offices Encompassing Each Voting District
While many aspects of ballot building are deadline driven, county staff can create tools to assist with ballot building in advance. A spreadsheet or list noting, for each precinct, the congressional district, state senatorial district, state legislative district, and municipality in which the precinct is located can be particularly valuable. It is also helpful to include the precinct code, municipality district (if so divided), school district and magisterial district judge district on this spreadsheet

- Keep in mind that the document will need to be updated whenever redistricting occurs.
- In most instances, voters in an election district/precinct will all vote for the same offices. Some counties have precincts that cross congressional, senatorial or legislative district lines, which means that not all of the residents in that precinct vote for the same district offices. We refer to those as "split precincts."
- You can reference the maps on vote.pa.gov/pages/pennsylvania-redistricting.aspx. or pull the Precinct Split Listing report from SURE to help you build this list.

It is also helpful to keep a listing of elected offices, term length, and election year so that you have a starting point, especially in municipal election years. Your county parties are required to send their bylaws each year, which will help you determine how many committee positions should appear on the Primary ballot in even-numbered election years.

Different Ballot Types and Amounts Required for Testing

There are few different kinds of ballots that need to be made for each election. These include differences based on "ballot set" (how the ballot is voted or cast) and "ballot style" (what offices are included in each ballot).

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[3] Section 902 of the Election Code, 25 P.S. § 2862.
[4] Section 916 of the Election Code, 25 P.S. § 2876.

Ballot Sets

The term "ballot set" refers to the modality of voting: Absentee, Mail-In, In Person (Election Day), or Provisional.

The different ballot sets must be clearly labeled and contain distinct features to ensure that your Election Management System can properly differentiate between the different ballot sets. These features also ensure that scanners can be set up to accept single types of ballots. This enables counties to perform post-election reconciliation.

For example, scanners deployed at a polling location should not be able to accept absentee, mail-in or provisional ballots because those ballot sets are not to be tabulated at the precinct.

Ballot Style

The term "ballot style" refers to the same grouping of candidates for a particular precinct's ballot. Each ballot should have the precinct clearly identified at the top, and the Pennsylvania Election Code shows the form of the ballot for both the primary and general elections.[5]

Factors impacting the number of ballot styles:

- In a General Election, at minimum, you will have the same number of ballot styles as you have precincts in your county.

- In a Primary Election, at minimum you will have double the number of ballot styles as you have precincts: A ballot style for each party which nominates candidates at primaries (generally, Democrat and Republican).
- The total number of ballot styles should account for ballots translated in other languages.

- If you have ballot questions/referenda or a special election on the same day as a primary, you will need a separate ballot style for non-partisan voters (i.e., voters who are not registered as D or R) that includes these races.
- Split precincts may necessitate creating additional styles.

- If your county prints ballots for federal voters, that is an additional ballot style to account for.

Combine the list of precincts and districts with the list of offices that need to appear on the ballot. This will give you the framework for your ballots and make it easier to build or proof them once the candidate list is finalized.

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[5] *See* Sections 1002 and 1003 of the Election Code, 25 P.S. §§ 2962-2963.

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Determining What Offices or Questions Need to Go on The Ballot

Offices to Be Elected

Generally, offices are determined by terms ending at the end of that calendar year or ending in January of the following year.

There are instances where partial terms are required to appear on the ballot.

A listing of the offices the Department of State manages can be found in the Appendix of this guide. In brief:

- During even-numbered years, when federal offices are on the ballot, the Department of State will provide all of the necessary information for Federal and Statewide offices.
  - o In Presidential Election years, this includes partisan delegates and electors.
  - o In Gubernatorial Election years, partisan committee people are on the primary ballot. The state manages state-level committee offices and the county manages county level. The terms of offices are outlined in the bylaws of the state or county party committee.
- During odd numbered years, when municipal offices are on the ballot ("Municipal Election years"), the Department of State oversees elections for only a few state-level offices. The majority of offices on the ballot are municipal and county-level and their elections are overseen by the county.

These offices are discussed further below.

Federal Offices

The listing for nationwide or federal offices will be furnished by the Pennsylvania Department of State. These offices must appear on the ballots distributed to voters with Federal Voting status.

Offices include:

- President of the United States
- United States Senator
- Representative in Congress (by district)

"Statewide" or "State-level" Offices

The listing for statewide and state-level offices also come from the PA Department of State and are distributed after the casting of lots for ballot position.

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Offices include:

- Governor
- Lieutenant Governor
- Attorney General
- Auditor General
- State Treasurer
- Senator in the General Assembly (by district)
- Representative in the General Assembly (by district)
- Justice of the Pennsylvania Supreme Court
- Judge of the Pennsylvania Superior Court
- Judge of the Pennsylvania Commonwealth Court
- Judge of the Court of Common Pleas (by district)
- Judge of the Municipal Court (Philadelphia only)

Party Offices
The listing for state and national party offices also come from the PA Department of State

- Delegate to the National Convention
- Alternate Delegate to the National Convention
- State Committee

County and municipal offices
Countywide offices, municipal offices, school administration and precinct level offices are managed by each individual county. These candidates file their petitions directly with the county. County officials maintain the listing and hold the casting of lots for ballot position.

Municipalities and party officials have a responsibility under the Election Code to report the number of vacancies to the county board of elections thirteen weeks before the primary election.

Counties must work with their municipalities and school district administration(s) to determine vacancies in addition to offices with terms that are ending. Counties must develop a system of outreach and response tracking so that the offices and quantities of positions are accurate.

Ballot Questions/Referenda
There are times when the law requires that electors vote directly on an issue instead of just voting on who will represent them to decide issues. These ballot questions

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(sometimes referred to as "referenda") appear on the ballot in the form of a question that requests a "yes" or "no" response.

There are several situations where referenda may appear:

- Amendments to the Pennsylvania Constitution
- Other statewide questions
- Local questions
- Questions to retain certain elected judges for an additional term (on a separate ballot or in a separate column from other elections/questions)

Ballot questions, or referenda, can be on any ballot as long as the filing entity files appropriately. This means that ballot questions to be decided during a primary election must be on the ballot for each political party and presented to non-affiliated voters.

The PA Department of Community and Economic Development offers a helpful guide on handling referenda at the local level: Referendum Handbook (pa.gov).[6] Consult with your solicitor if any referenda discussions arise.

Retention of Judges
Under the Pennsylvania Constitution, before a judge's term expires, that judge may file a declaration to seek retention for an additional term. If a judge files the required declaration, their name is to be placed on the ballot in a municipal election. Retention questions are to be placed either on a separate ballot or in a separate column from the election of other offices.[7]

Proofreading Your Office & Candidate Listing
The Department maintains a ballot-proofing checklist that counties can use as an example to build their own for proofing. See Appendix A.

The below is a non-exhaustive list of items for which the county should review the ballot, and the related statutory provision to guide that review:

- Are all of the relevant contests listed?
- Are contests listed in the correct order?
- Is the "vote for not more than" quantity correct for each contest? (25 P.S. § 2962(b) § 2963)

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[6] https://dced.pa.gov/download/referendum-handbook/?wpdmdl=58456&refresh=65c66524029b11707500836&ind=1568393417167&filename=ReferendumHandbook_2019.pdf.
[7] Pa. Cons. Art. V, § 15(b).

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- Are contest names spelled/titled correctly?

- Are districts paired correctly?

  o Have you paired senatorial district & legislative district contests correctly? (Double check using your map or the Precinct Split Report)

- Are candidates in the correct districts?

- Are candidates affiliated with the correct party? (25 P.S. §§ 2962(b) & 2963)
- Are candidates listed in the correct order?
- Are candidates names spelled correctly?

- Are you consistently capitalizing words?

- Honorifics are not included in candidate names? (Dr., Esq., RN, etc.)
- For a primary: Is candidate residency expressed correctly?
  o For statewide offices or offices with districts that encompass more than one county, you must list each candidate's county of residence.
    o For offices with districts wholly contained within a county, you must list the candidate's municipality or ward of residence
    ▪ Except for delegates/alternate delegates to National Party Convention – no residence should be listed.
- Have you listed all candidates for this office, including any candidates which filed nomination petitions/papers in neighboring counties?

- Are provisional ballots visually distinguishable from the Election Day ballot?
- Is the number of write-in spaces correct, meaning one space for each vote that an elector can make for that office?[8]

General Form of the Ballot

Secrecy of the Ballot
Under the Pennsylvania Constitution, voters are entitled to secretly cast their ballot. Counties must be mindful of this when creating their ballots and working with a print or voting system vendor. No ballot can be counted if the voter's identity can be discerned through the ballot itself. 25 P.S. § 3063(a).

General Form of Ballot
The general form of your ballot should comply with 25 P.S. § 2962 (primary ballot) and 25 P.S. § 2963 (general, special and municipal election)

- Title and headings
  o Official [Primary] Ballot of _____ Party For [Name of] County

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[8] For example, if the office is one where the voter may select two candidates, there must be two write-in spaces.

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- o Date of the Election
- o Instructions
- Back side of the ballot
  - o Heading – "Official Ballot"
  - o Signatures of the Board of Elections

Absentee and Mail-In Ballots

Absentee and mail-in ballots require specific instructions. Refer to 25 P.S. § 3146.3 (absentee ballots) and 25 P.S. § 3150.13 (mail-in ballots) for the form of those instructions.

Listing Offices on the Ballot

Determining Ballot Position

Office Order

For offices that file their petitions with the Department of State, the Department will provide the order that the offices should appear in on the ballot.

- The party-related offices (Committeeperson, Delegate) that appear on Primary ballots always appear at the bottom of the ballot. (25 P.S. § 2964.1)
- The order of constitutional amendments and ballot questions is specified by 25 P.S. § 2963(g)
- *[This guide will be updated to cover ballot order for municipal offices.]*

The recommended listing of elected offices will assist you in knowing what will be up for election in the coming cycle.

Indicating how many candidates are to be voted on for each office
The number of candidates a voter can select in a race is determined individually – there isn't a "one size fits all" rule. Vacancies may also arise which increase the number of candidates who may be elected to that office, aside from the typical cycle by election terms.

- o 25 P.S. § 2962 specifies language to be used in the instructions to the voter: "Vote for not more than ____"
- o For offices which are elected at the district-level, you must include the district number/designation with the name of the office.

You should be aware that for some offices, the number of candidates a voter can vote for, and the number ultimately elected, are not the same. For example, in county commissioner elections, voters may vote for only two candidates, but the top three

voter-getters win election.[9] You should consult your county solicitor with any questions about how many candidates a voter may select for any given race.

Adding Candidates to the Ballot
After listing the offices, you need to list each candidate.

Candidate Information

- **Name.** The name of the candidate should be as it has been specified by the candidate on the candidate's nomination petition or papers.
    o Do not include any honorifics (e.g., Dr., Esq.)

- **Residence (primaries only):** Where an office is to be voted on by more than one county, you must list the candidate's county of residence. Where an office is to be voted on only within a county, you must include the municipality or ward of residence. 25 P.S. § 2962(b). This does not apply to the office of President of the United States and delegate or alternate delegate to a national party convention.

- **Party affiliation (general, municipal, and special):** For elections other than primaries, you must like the party affiliation of the candidate.

Candidate Order
Candidates must be listed in a specific order.

- For primaries, the order is determined by a casting of lots (ballot position lottery) per 25 P.S. § 2875. The ballot position lottery is facilitated by the Department or the county, depending on where nomination papers and petitions are filed for that office.

- For general elections, the order is determined by 25 P.S. § 2963(b).
    o The candidate representing the party receiving the highest number of votes in the last gubernatorial election goes first.
    o For parties that did not participate in the last gubernatorial election, list candidates in alphabetical order by party.
    o For contests in which two or more candidates are to be voted for, candidates within the same party should be listed together, starting with the candidate that received the highest number of votes in the primary.

Department's Certification of Candidate List
At least 50 days before a primary election (and 70 days before a November election), the Department is required to provide counties with a list of candidates who filed a nomination petition "and who are not known to have withdrawn or been

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[9] 16 P.S. § 501(a).

disqualified."[10] **This is not an official, final list of candidates, and the list may change as the courts resolve objection matters.** The Department's practice has been to provide an updated list daily if there are changes.

The Department will provide an official list,[11] although there is no deadline.

The Department recommends that you wait to receive the final, official list before finalizing your ballot. If you are working with a print vendor, you should discuss when they must have your finalized ballot to begin printing.

Write-In Candidates

Counties also need to include the same number of spaces for voters to write in a candidate as there are votes to cast for that office.

For example, if the contest specifies "vote for not more than three" then there must be space to write in three candidates.

Determining the Size of the Ballot

Consult with your voting machine vendor about the paper sizing options that are most compatible with your machines.

The number of contests and candidates on the ballot will impact how long the ballot is.

Take the following into consideration when determining how long your ballot will be:

- Number of pages
- Number & Placement of folds for absentee & mail-in
  - More folds = longer canvassing time
  - Folds can interfere with the scanner's ability to read timing marks
- Size of the mailing envelope
- Cost of postage if over a certain weight limit
- If using mail opening equipment (e.g., OPEX extractors) you need to account for 1/4 inch space on all side of the ballot inside the envelope to avoid accidentally cutting ballots
- Paper supply on hand/available
- Size of envelopes/bags/pouches/boxes etc. that will hold ballots during transport to/from secure locations
  - Size of the tray on your BMD printer
  - Size of the font and increased use of any accessible devices that assist with font size

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[10] Section 1305.1 of the Election Code, 25 P.S. § 3146.5a
[11] Section 916 of the Election Code, 25 P.S. § 2876.

Some printing equipment is not able to print paper that is 17 inches long using a duplex setting, which adds print time and the possibility for human error. Check with your vendor or the settings on your equipment if you choose a 17-inch ballot.

Proofreading Your Ballot Proofs

Proofreading ballots is of critical importance, as ballots must be accurately printed by the County Board of Elections.

- Refer to the Department of State's Ballot Certification Memo and Proofreading Checklist for additional tips on proofreading.

Strategies for Proofreading

It can be helpful to review a physical, printed copy if possible and have multiple people in the office assisting.

The person responsible for creating the ballot should not be the only person to proof the ballot; overfamiliarity can lead to subtle oversights. Utilizing individuals who have not seen the ballot before will help mitigate this issue.

If possible, have different people review for different issues. For example, one person reviews for the spelling of candidate names, one person reviews for number of candidates to vote for etc.

Utilize a proofing checklist with multiple people signing off.

Building the Election Database

Once your districts, precincts, offices and candidate lists are aligned; it is time to build the election database or election project in your election management system.

When you build your election database, you program the logic that establishes which combinations of voter choices are valid or invalid on a given ballot, which in turn, determines how the vote choices are totaled.

- While some counties contract with their vendor to perform the programming, counties are ultimately responsible for ensuring that their databases are programmed accurately.
- Whether you program your database/project in house or utilize your vendor, work ahead of time to understand the process and materials needed Some of the things you may need are:
    - a listing of your precincts & precinct codes,
    - the corresponding offices that should be appearing on the ballot,
    - the candidate list,
    - the names of the ballot sets, and

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   o   the number and types of machines you intend to deploy.

Preparing Your Voting System Equipment for Testing

You should prepare an inventory of all voting system equipment that you will use for testing and Election Day.

Your list of equipment should include.

- one "all polls" central count scanner in the election day counting group used solely for Ballot Acceptance Testing ("BAT") This central BAT-only scanner must be set aside after testing, and not used in any precinct for that election.

- at least one "all polls" central count scanner in the Absentee/Mail-in counting group

- at least one "all polls" central count scanner in the Provisional counting group

- one "all polls" precinct scanner in the Election Day counting group used solely for BAT testing

- one BMD capable of creating Election Day ballots for all Precincts used solely for BAT testing

- A number of precinct scanners in the Election Day counting group for each voting precinct as specified by the county.

- A number of Ballot Marking Devices in the Election Day counting group for each voting precinct as specified by the county.

Equipment should be programmed to perform specific tasks, which means that different program files should be created based on the function of the equipment:

Polling Location Equipment (Election Day Ballot Set):
Equipment that is going to be deployed at a precinct should only be programmed to create & scan Election Day ballots for that specific precinct. Provisional, Mail-In and Absentee ballots cannot be voted at the precinct and the equipment should be set up in a way that does not enable them to be scanned at the precinct.

The scanning device in the precinct and/or the ballot marking device should alert the voter to overvotes (25 P.S. § 3031.7) or a blank ballot; and allow the voter to review their selections prior to printing the ballot

Central Scan (Absentee & Mail-In Ballot Sets):
The scanners used at central scan on Election Day should be programmed to only accept absentee, federal and mail-in ballots.

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Central Scan (Provisional Ballot Set):
The scanner used to scan Provisional Ballots should be programmed to only accept Provisional Ballots.

Central Scan (Additional Considerations)
You will also need to create the appropriate files if you plan to use your Ballot Marking Devices to:

- Re-create any damaged absentee, mail in, or provisional ballots
- Create partial credit provisional ballots
- Re-create special write-In ballots

Reporting Groups:
You will also need to specify the counting groups, which define how the system will group the results tabulated from the different ballot sets. The Department of State has certain requirements for counties' reporting of election results. These requirements are set out in the Department's Pennsylvania Election Results Reporting and Ballot Definition Directive.[12]

The Department of State requires the use of the following counting groups:

- **Election Day**: results of all ballots from the Election Day ballot set
- **Mail**: results of all ballots from the Absentee and Mail-in ballot sets
- **Provisional**: results of all ballots from the provisional ballot set

Your Election Management software has the ability to program tabulators to assist you with BAT. Most of the tabulators in the database that we must use for BAT are the same ones that you will use during a real election.

You or the voting system vendor should have the ability to program both a high-speed scanner and a precinct scanner to tabulate all ballot styles from all precincts for a counting group– this is referred to as an "All Polls" setting. The "All Polls" program should not prevent overvotes or undervotes from scanning.

Ballot Acceptance Testing (BAT)
Ballot Acceptance Testing (BAT) allows you to test that the definition mapping in your election management system is efficient and accurate. BAT is strongly recommended as a best practice. This process should be performed prior to issuing absentee or mail-in ballots to ensure the ballots are formatted, defined and mapping votes, correctly.

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[12]https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/
PADOS_Directive_BallotDefinitionandReportingRequirements_TLPWhite_1.1.pdf

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Ballot Acceptance Testing should also occur before Logic & Accuracy Testing. BAT is not a substitute for Logic & Accuracy Testing.

Creating a Test Deck
A set of ballots should be created to replicate every possible scenario. This is referred to as a "test deck".

- The test deck should be marked in a way to clearly indicate that it is a test deck.
- The test deck should include all ballot style for each ballot set and style.

The test deck is meant to replicate the exact same conditions as the live ballots that are provided to and voted by voters. The same paper stock that is used for the election ballots should be used for the test ballots. Fold some ballots comparable to the manner in which absentee and mail-in ballots are sent.

Each ballot set should have all the decks for each ballot style kept together; all absentee with absentee for example, not all Horsham Township styles with the other Horsham Township sets. It is critical to organize them this way for the ballot acceptance testing.

The ballots in the test deck should be printed using all of the same equipment that will be used to create the ballots voters will use:

- Any printer/press the vendor intends to use to fulfill the order
- Ballots from any ballot-on-demand printers used in the office should also be included
- Your in-house ballot printer is formatted to print at the proper scale.
- ballot marking devices

When creating ballots on the ballot marking device, we recommend:

- Testing BMD for each ballot style to ensure each activation code works properly.
- Confirming that contests and candidates appear in the correct order and all names and party affiliations are spelled correctly.
- Audio files are present and properly configured for all candidates and ballot questions.
- Names of all parties/independent political bodies are correctly spelled.
- Each ballot set and each ballot style can be activated on the BMD.
- Each ADA compliant accessory is functioning properly.

The ballots should be marked in a way to account for every combination of votes, including ones that the system is programmed to alert to:

- A ballot with more votes than allowed for all contests
- A ballot with more votes than allowed for randomly selected contests

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- A ballot with no votes for any contest
- A ballot voted with ambiguous marks in the target area for all candidates (if applicable)
- A ballot from an incorrect ballot set for the same precinct.

The Department of State strongly recommends hand marking ballots over ordering pre-printed completed ballots.

Test Deck Pattern
Recommended Pattern:

Unique Totals: A test deck where each choice in a contest will get a different number of votes.

- If there is a contest containing 4 choices, choice 1 will have one vote, choice 2 will have 2 votes, choice 3 will have 3 votes, and choice 4 will have 4 votes. The write-in option must be considered as a choice.
- In case of ballot questions "Yes" and "No" must be considered as different choices. If there are multiple ballot questions on the ballot, it is advisable to have different votes for each question's "Yes" and "No" choices.
- The same pattern above must be repeated for each ballot set, if applicable.

The Department strongly recommends this pattern.

Alternative Patterns:

Alternating Pattern: A test deck where the maximum vote any choice in a contest receives is set and then the pattern is repeated within the contest.

- For example, if the maximum vote is set to 2 and the contest contains 4 choices, then each choice in the contest will get votes in a 1-2-1-2 pattern. The write-in option must be considered as a choice.

Incremental/Decremental Pattern: A test deck where the maximum vote any choice in a contest receives is set, and then increases or decreases as a pattern repeated within the contest.

- For example, if the maximum vote is set to 3 and the contest contains 4 choices, then each choice in the contest will get votes in a 3-2-1-3-2-1 pattern. The write-in option must be considered as a choice.

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Unacceptable Patterns:

It is not recommended to use voting variations that all have a single vote for each candidate or do not vote for all positions on the ballot at least once. If the expected outcome is the same for each candidate, the operator will not be able to confirm that votes are being assigned accurately.

We do not recommend test decks with a single vote for each candidate as it is difficult to identify that votes are being attributed to the correct candidate. This method would require further review of the audit log or CVR.

Performing BAT

After the test deck has been prepared, follow the vendor's instructional manual to program a central count scanner for absentee & mail – in ballots, a precinct scanner, and a scanner you intend to use for provisional ballots to accept all ballot sets for BAT. This will permit all ballot styles for the election to be scanned, enabling you to test the definition mapping for each contest on each ballot set efficiently.

Utilize the "All Poll" scanners that you've programmed to check for the following:

- Each ballot was accepted appropriately by the scanner.

- The reports produced the expected results numerically.

- The results for individual precincts are reflecting accurately on the reporting. (*i.e.*, Horsham Township's results appear under "Horsham Township" in a precinct-level report

- Candidate names are accurately spelled on results reporting.

- Contests and candidates are displayed in the required order on results reporting.

- The parties or political bodies of candidates are properly identified.

- Ballot sets are showing on the reporting correctly in the required counting groups:
  - Election Day
  - Absentee/Mail-In
  - Provisional

- Verify that all votes are aggregated and tabulated correctly, and that all accompanying hardware is in working order.

- When ballot batches are moved into adjudication, the system is accurately identifying overvotes, undervotes and ambiguous marks.

- View the audit log and confirm that votes are being awarded to the proper candidate.

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If the ballot acceptance testing did not produce the expected results, **it is critical that you identify and correct the issue in the election database before finalizing and printing ballots**. The system should be re-tested until the expected results are produced twice.

Accepting and Finalizing Ballots

Once Database Acceptance Testing is complete and the results are satisfactory, **you should not make changes** to the election database, ballot labels, definition or mapping.

If you update the election definition after you print ballots, your scanners may not be able to tabulate those ballots, or they may tabulate those ballots improperly.

- It is best practice to start over with new ballots to avoid any incompatibility issues between your ballots and the database. Your scanners may not tabulate incompatible ballots properly   or at all.

- If you need to change the election definition after the county has distributed any absentee or mail-in ballots, you will need to consult with your election board and solicitor to develop a plan of action to remedy the issue.

- Solutions may include:

  o Issuing new ballots to impacted voters who have not voted (provided there is sufficient time for voters to return the new ballots)

  o Hand-counting voted ballots that cannot be tabulated by the scanner

  o Duplicating voted ballots that cannot be tabulated by the scanner onto ballots that can.

    ▪ Section 1114-A(b)(3) of the Election Code, 25 P.S. § 3031.14(b)(3), prescribes the manner for creating and storing duplicated ballots

    ▪ Follow your county's procedure for creating a true duplicate copy of a damaged or defective ballot.

Determining How Many Ballots to Order

You will need to order both sample ballots and official ballots that can be voted.

Sample Ballots
- No later than the Thursday before each election, sample/specimen ballots should be publicly available in the election office and posted to the county website.[13]

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[13] Section 1008 of the Election Code, 25 P.S. § 2968.

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- Candidates can also request to have 3 sample ballots printed for the entire district. These must be provided free of charge and be available for delivery on the Thursday before each primary.[14]
- Party chairs can also request two sample ballots for each district to be delivered on the Thursday before a November Election.
- Sample ballots should be either watermarked to indicate that they are sample ballots or be missing timing marks so that they cannot be mistakenly scanned

Election Day Ballots

Counties must supply polling locations with the proper amount of balloting materials – either preprinted paper ballots for voters to mark by hand or paper for use with ballot marking devices:

The Election Code establishes minimum requirements for Election Day ballots that counties must provide to polling locations.[15] (For counties with ballot marking devices/hybrid devices, this provision can be interpreted to prescribe a requirement for the blank paper stock used to create a paper record of votes for these devices.)

In Primary Elections:
At MINIMUM 50% of the registered voters in each precinct for Election Day Ballots– minus the number of mail-in/absentee ballots requested

In November Elections:
At MINIMUM 100% of the registered voters in each precinct for Election Day Ballots minus the number of mail-in/absentee ballots requested from total

Counties must plan to have adequate supply of ballots and paper to be used for provisional ballots and in emergency situations (such as issues with ballot marking devices). The Department's Directive Concerning the Use, Implementation and Operation of Electronic Voting Systems by the County Boards of Elections provides important guidelines for preparing for emergencies when using ballot marking devices.

- Provisional ballots on hand at the polling place: recommended 20% of registered voters for each precinct, at minimum)
- Pre-printed emergency ballots for counties with ballot marking devices on hand at the polling place (recommended 20% of registered voters for each precinct)
- Pre-printed emergency ballots for counties with ballot marking devices to supplement polling places
- Additional ballot paper stock for ballot marking devices

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[14] Id.
[15] Section 1007 of the Election Code, 25 P.S. § 2967.

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Counties can subtract the amount of absentee and mail-in ballot requests from their registration totals when calculating the number of Election Day ballots to order.

Counties that utilize pre-printed paper ballots for voters to mark by hand should supply an appropriate amount of paper for use with the ballot marking device.

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Glossary of Terms:

Ballot Set: A ballot set is a ballot used for a specific method of voting (i.e., Election Day ballot, absentee ballot, mail-in ballot, provisional ballot, emergency ballot).

Ballot Style: A ballot with a specific set of contests and candidates for a particular precinct. Ballot styles vary based on which combination of contests and which party affiliation (in primary elections), that voters are eligible to participate in. Ballot style varies based on the contests voters are eligible to vote on and, during primary elections, their party affiliation.

Split Precinct: An established voting district that contains multiple legislative districts.

Test Deck: A set of marked ballots used to determine if the voting system was programmed correctly for the upcoming election.

Ballot Marking Device: A piece of voting equipment that enables the voter to make their candidate selections and print a ballot that shows those selections. The voter can then review the ballot to verify their selections before it is inserted it into a scanner for tabulation. It is also an ADA Accessible device that enables the voter to make their selections using a touchscreen, paddle controller, sip & breath controller.

Hand Marked Paper Ballot: These ballots are printed ahead of the election and the voter must darken/fill in an oval using a writing utensil to select candidates.

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Quick Statutory References

Election Code section	Citation	Title
903	25 P.S. § 2863	Offices for which candidates are to be nominated to be ascertained
904	25 P.S. § 2864	Municipal clerks and party chairmen to furnish information as to offices to be filled
915	25 P.S. § 2875	Casting of lots for position of names upon the primary ballots or ballot labels; notice to candidates
915	25 P.S. § 2875	Casting of lots for position names upon the primary ballot or ballot labels; notice to candidates
916	25 P.S. § 2876	Secretary of the Commonwealth to furnish county boards with list of candidates; candidates to be notified
1001	25 P.S. § 2961	Official Ballots to be Used
1002	25 P.S. § 2962	Form of official primary ballot
1003	25 P.S. § 2963	Form of official election ballot
1004	25 P.S. § 2964	Form of ballots; printing ballots
1004.1	25 P.S. § 2964.1	Placement of certain candidates on ballots and voting machines

1005	25 P.S. § 2965	Candidates with similar surnames; occupation to be printed
1006	25 P.S. § 2966	Names of substituted candidates to be printed on ballots
1007	25 P.S. § 2967	Number of ballots to be printed; specimen ballots
1008	25 P.S. § 2968	Forms of ballots on file and open to public inspection; ballots and diagrams to be furnished to candidates and parties
1009	25 P.S. § 2969	County boards to cause ballots to be accurately printed
1010	25 P.S. § 2970	Correction of mistakes appearing on the ballot
1011	25 P.S. § 2971	Record of ballots to be kept
1305.1	25 P.S. § 3146.5a	Notice to county board of elections

Appendix A

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Office & Candidate Lists Managed by the Department of State

President of the United States

Vice President of the United States

United States Senator

Attorney General

Auditor General

State Treasurer

Representative in Congress

Senator in the General Assembly

Representative in the General Assembly

Governor

Lieutenant Governor

Justice of the Supreme Court

Judge of the Superior Court

Judge of the Commonwealth Court

Judge of the Common Pleas Court

Retention of Judges

Party Delegates & Alternate Delegates to National Conventions

State Committee Positions

Election: 2024 Primary Election Ballot Review Checklist

Date

Name of Reviewer:

County	
Precinct	
Party	

General Requirements	English	Spanish	Chinese	Comments
All precinct names are listed.				
All precinct names are spelled correctly.				
All precinct names are expressed in a uniform manner.				
Each precinct code is matched to the precinct name correctly.				
District names are titled correctly.				
District names are expressed in a uniform manner.				
Precincts have the correct districts listed.				

Additional Remarks:

Election: 2024 Primary Election Office Listing Review Checklist

Date	

Name of Reviewer:

County	
Precinct	
Party	

General Requirements	English	Spanish	Chinese	Comments
Are all relevant contests listed?				
President of the United States				
Attorney General				
Auditor General				
State Treasurer				
Representative in Congress - {X} District				
Senator in the General Assembly - {X} District				
Representative in the General Assembly - {X} District				
Delegate to the Democratic National Convention - {X} Congressional District				
Delegate to the Republican National Convention - {X} Congressional District				
Alternate Delegate to the Republican National Convention - {X} Congressional District				
Are there any other offices that should be added for your specific county?				
Are the contests listed in the correct order (as noted above)?				
Are the contest names titled as noted above?				
Are the contest names spelled correctly?				
Are the districts and contest names paired correctly?				

The language "vote for not more than" is used.			
President of the United States - vote for not more than one.			
Attorney General - vote for not more than one.			
Auditor General - vote for not more than one.			
State Treasurer - vote for not more than one.			
Representative in Congress - {X} District - vote for not more than one.			
Senator in the General Assembly {X} District - vote for not more than one.			
Representative in the General Assembly - {X} District - vote for not more than one.			
Delegate to the Democratic National Convention - {X} Congressional District - vote for not more than {X}			
Delegate to the Republican National Convention - {X} Congressional District - vote for not more than {X}			
Alternate Delegate to the Republican National Convention - {X} Congressional District - vote for not more than {X}			
All local offices have been checked for appropriate "vote for" quantity.			
Is capitalization and punctuation consistent in office titles?			
Are ballot questions listed appropriately?			
Does ballot question (s) language match the approved language?			

Additional Remarks:

Election: 2024 Primary Election Candidate List Review Checklist

	Date	

Name of Reviewer:

County	
Precinct	
Party	

General Requirements	English	Spanish	Chinese	Comments
Are all candidates included?				
Are candidates paired with the correct office?				
Are candidates paired with the correct party?				
Are candidates listed in the correct order as determined by the casting of lots or ballot position lottery?				
Are candidate names spelled correctly?				
Have all honorifics been removed?				
Are candidate names consistent in capitalization?				
Have you identified the county or municipality of residence appropriately?				
Are the residential identifiers spelled correctly?				
If using punctuation, is it gramatically correct?				

Additional Remarks:

Election: 2024 Primary Election Ballot Review Checklist

Date	

Name of Reviewer:

County	
Precinct	
Party	

Statutory and General Requirements	English			Spanish			Chinese			Comments
	Proof	Markup	Proof	Proof	Markup	Proof	Proof	Markup	Proof	
Ballot contains the name of the county; the election district and/or ward and division number.										
Ballot contains the correct election type "Primary Election"										
Ballot contains the date of the election. (Month, day & year)										
Ballot is identified as in-person, mail, absentee, or provisional (if county is sending one ballot and confirmed they are using hand stampers to differentiate)										
If a Primary, is the ballot properly identified as either Democratic, Republican, or Non-Partisan? See Guidance for Primary Ballot for details. Ensure spelling is correct.										
All Parties are spelled out and spelled correctly.										
All offices, and ballot questions are represented on the ballot. (Verify using official candidate list, county ballot certification, and vacancy list.)										

All contests are in the correct order: (*Refer to the List of Office Titles & Ballot Candidate Information*)

President of the United States												
Attorney General												
Auditor General												
State Treasurer												
Representative In Congress - {X} District												
Senator in the General Assembly - {X} District												
Representative in the General Assembly - {X} District												
Delegate to the Democratic National Convention - {X} Congressional District												
Delegate to the Republican National Convention - {X} Congressional District												
Alternate Delegate to the Republican National Convention - {X} Congressional District												
Are contest names spelled correctly?												
Are contest and district names paired correctly?												
All candidates are in the correct ballot order.												
All candidate names are correctly spelled?												
Please note: Candidate's last name must appear on one line.												

All candidates have either county or municipality of residence. *(Refer to List of Office Titles & Ballot Candidate Information)*										
Ballot contains correct office title information:										
• Office titles are correctly spelled										
• District-level office titles include the correct district no.										
Office titles include correct number of vacancies to be filled. (Vote for one; vote for not more than _____) *(Refer to Vacancy Chart & Candidate List)*										
Each office contains the appropriate number of write-in spaces. For example, a vote for one contest has one write-in space, vote for no more than two has two write-in spaces, etc. *(Refer to Vacancy Chart & Candidate List)*										
To the right of each candidate's name is a block, oval or other appropriate "target area" whereby the voter can select his/her choices.										
Ballot includes signatures of the Board of Elections. *(Not Typed Names)*										
Do Absentee and Mail in Ballots include warning labels?										
WARNING: If you receive an absentee or mail-in ballot and return your voted ballot by the deadline, you may not vote at your polling place on election day. If you are unable to return your voted absentee or mail-in ballot by the deadline, you may only vote a provisional ballot at your polling place on election day, unless you surrender your absentee or mail-in ballot and envelope to the judge of elections to be voided to vote by regular ballot. *It is ok if the warning is on In-Person and Provisional Ballots)*										

General Proofreading	English			Spanish			Chinese			Comments
	Poll	MaAbl	Prov	Poll	MaAbl	Prov	Poll	MaAbl	Prov	
Are all candidates included on the ballot?										
Are candidates paired with the correct party ballot? (primary only)										
Are candidates paired with the correct office?										
Are candidate names in consistent type (i.e., Sentence case or ALL CAPS)? Double check names with multiple capitals, such as DelName, McName, and O'Name										
If punctuation is used, is it grammatically correct? • Norman O. Smith, Jr. not Norman O. Smith Jr. • Andrew Williams II not Andrew Williams, II Note that there should be no other additions to a name; Prefix, such as Mr., Mrs., Ms., and titles, such as Dr. Esq., M.D., Ph.D., are not permitted.										
Is the county or municipality of residence listed appropriately?										
Do the office titles and instructions language match those in the Glossary of Preferred Ballot Terms (Multilingual) provided for proofing)?										

Instructions and Usability	English			Spanish			Chinese			Comments
	P o l l	M a b l e	P r o v	P o l l	M a b l e	P r o v	P o l l	M a b l e	P r o v	
Are the contents of the entire ballot readable? (*The recommended font is 12 pt. The statutory requirement is at least 8 pt.*)										
Are the general instructions clear about what the voter is being asked to do in order to properly cast his/her votes?										
Are there instructions to vote both sides of the ballot (if applicable)?										
Do the write-in instructions warn the voter not to write in the name of a candidate whose name appears on the ballot for that office?										
Do the instructions tell the voter what to do if he/she has made a mistake?										
Are the instructions for each individual office clear?										
Is the beginning and end of each office clearly defined?										
In the case of ballot screens for electronic voting systems, does the ballot contain a review screen?										
In the case of ballot screens for electronic voting systems, does the ballot contain clear instructions on what the voter must do to cast the ballot after the voter has reviewed their choices?										

Additional Remarks:

Election: 2024 Primary Election Ballot Acceptance Testing Checklist

	Date	

County		
Precinct		
Party		

Name of Reviewer:

Ballot Marking Devices	English			Spanish			Chinese			General		Comments
Baseline Functionality												
BMD generates a zero report at outset of testing (if applicable).												
BMD's have been formatted and have the current election loaded.												
BMD touchscreen is accurately responsive to touch and recalibrated and retested until satisfactory otherwise												
Audio-Tactile Interface has all buttons working correctly, and audio is properly heard through the headset.												
Accessible font and contrast features are functional.												
Audio only mode is functioning as intended.												
BMD Settings and ballot access available through pollworker and voter cards/keys working as intended.												
Appearance and Logic												
All contests and candidates have uniform templating and styling for ballot content for all ballot styles.												
All contests and candidates have uniform templating and styling for all review templates for all ballot styles.												
All election day contests and candidates have been reviewed for present and correct audio for all ballot styles.												
All candidates are able to be selected on touchscreen and deselected for all ballot styles.												
Voter cannot select more candidates than the maximum number specified in the "vote for". For example, if the contest instructs voters to vote for not more than two; it will not allow the selection of three candidates for that contest.												
Screen and audio templating for all available languages present and working as intended for all ballot styles.												

Voting										
Screen contest order matches official ballot contest order for all ballot styles.										
The ballot contains a review screen.										
The ballot contains clear instructions on what the voter must do to cast the ballot after the voter has reviewed their choices.										
All contests and candidates have uniform templating and styling for all printed ballot content for all ballot styles.										
Ballots can be created using ATI.										
Ballots were created using the touchscreen.										
Ballots are printed with the expected formatting and on the expected paper size.										
Tabulation										
All target areas correspond to correct contests and candidates(check in adjudication or cast vote records) for all BMD ballot styles										
Results are aggregated across precincts correctly										
Results are aggregated across counting groups correctly.										
Results reporting templates match ballot order and can be matched to contests.										
Results reporting has correct contest titles.										

Precinct Scanners	English			Spanish			Chinese			General		Comments
	Poll	Mail Abs	Prov	Poll	Mail Abs	Prov	Poll	Mail Abs	Prov	Yes	No	
Baseline Functionality												
Created all polls precinct scanner.												
Precinct scanner is able to load election data from removable media.												
Zero tape and results tape display Election Name, Precinct and Machine Name correctly.												
Voting												
Team has scanned complete Election Day test deck including all ballot styles.												
Precinct scanner reacts correctly to blank ballots.												
Precinct scanner reacts correctly to ambiguously marked ballots.												
Precinct scanner reacts correctly to overvoted ballots.												
Precinct scanner reacts correctly to undervoted ballots.												
Precinct scanner will not scan/rejects ballots from the wrong set (provisional, absentee, mail-in)												
Precinct scanner diverts ballots with write-in votes in expected manner (if applicable).												
Precinct scanner is only able to accept Election Day Ballots.												
Ballots have been scanned in all orientations to test capability of precinct scanners.												

Closing Up and Tabulation			
Results tape prints the correct number of copies and displays Election Name, Precinct, and Machine Name correctly			
Polls have been closed and results able to be imported into tally with removable media			
Results report printed and corroborated against expected ballot order and test deck results			
Cast vote records for ballots of all ballot styles match marked pattern on ballots.			
Precinct Scanner has been powered down			
All test deck ballots have been removed from the ballot storage compartment.			
All test deck ballots are kept in an orderly fashion for later review.			

Central Count Scanners

	English			Spanish			Chinese			General		Comments
	Poll	Mail Abs	Prov	Poll	Mail Abs	Prov	Pct	Mail Abs	Prov	Yes	No	
Setup												
Central Count Scanner created for Provisional, Absentee, and Mail-in ballot sets.												
Replace worn down mechanical parts such as rollers.												
Clean scanning surfaces with microfiber cloth.												
Ballots have been folded in the same manner as ballots that will be mailed to voters.												
Set results output to proper directory or prepare removable media for transfer to EMS.												
Scanning												
Test Deck Ballots are able to be scanned in any orientation.												
Scanners are able to accept test deck ballots from all precincts.												
Each scanner is able to accept test deck ballots from only the associated ballot set.												
Tabulation												
Summary and Precinct-Level results match expected test pattern												
Cast vote records for ballots of all ballot styles match marked pattern on ballots.												
Precinct level reporting working as intended												
Summary level reporting working as intended												
Results files sent to adjudication and reviewed.												

Additional Remarks:

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####

Version	Date	Description
1.0	February 20, 2024	Initial release

EXHIBIT C

Hetzel, Seanne

From:	Dean, Francis <Francis.Dean@montgomerycountypa.gov>
Sent:	Tuesday, September 17, 2024 9:53 AM
To:	lprocz@2024victory.com; Ford, Timothy J.; Jason E Salus; Christopher Thomas; Giana DePaul; Christian Nascimento
Subject:	Logic and Accuracy Testing

Good morning,

Having received a certified ballot listing from the Department of State, Montgomery County is prepared to begin Logic and Accuracy testing for the 2024 General Election. L&A will begin at 7am this Thursday 9/19 at our Voter Services Warehouse (1006 W. Washington Street, Norristown, PA 19401) and continue on weekdays until 3pm.

One member of your organization is permitted to attend and observe at a time. Video recording and photography are not permitted.

If you have any questions during L&A, please do not interrupt the technicians while they are working. Instead, please submit your questions directly to me and I or another member of my staff will get you an answer as soon as possible.

Very truly yours,
Francis Dean

Hetzel, Seanne

From:	Dean, Francis <Francis.Dean@montgomerycountypa.gov>
Sent:	Monday, September 30, 2024 1:44 PM
To:	Marlatt, John
Subject:	FW: Logic and Accuracy Testing

Francis Dean
Director of Elections
Voters Services

P: (610) 278-3280

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Dean, Francis
Sent: Wednesday, September 18, 2024 4:33 PM
To: 'lprocz@2024victory.com' <lprocz@2024victory.com>; 'Ford, Timothy J.' <tford@dilworthlaw.com>; 'Jason E Salus' <jsalus@mcdems.org>; 'Christopher Thomas' <christhomas@mcdems.org>; 'Giana DePaul' <giana@montgomerycountygop.com>; 'Christian Nascimento' <christian@montgomerycountygop.com>
Subject: RE: Logic and Accuracy Testing

Good evening,

Please be advised that L&A will **not** begin tomorrow morning at 7am. Instead we will begin L&A at 7am on 9/23 at the Voter's Warehouse located at 1006 West Washington Street, Norristown, PA 19401.

Very truly yours,
Francis Dean

From: Dean, Francis
Sent: Tuesday, September 17, 2024 9:53 AM
To: lprocz@2024victory.com; Ford, Timothy J. <tford@dilworthlaw.com>; Jason E Salus <jsalus@mcdems.org>; Christopher Thomas <christhomas@mcdems.org>; Giana DePaul <giana@montgomerycountygop.com>; Christian Nascimento <christian@montgomerycountygop.com>
Subject: Logic and Accuracy Testing

Good morning,

1

Having received a certified ballot listing from the Department of State, Montgomery County is prepared to begin Logic and Accuracy testing for the 2024 General Election. L&A will begin at 7am this Thursday 9/19 at our Voter Services Warehouse (1006 W. Washington Street, Norristown, PA 19401) and continue on weekdays until 3pm.

One member of your organization is permitted to attend and observe at a time. Video recording and photography are not permitted.

If you have any questions during L&A, please do not interrupt the technicians while they are working. Instead, please submit your questions directly to me and I or another member of my staff will get you an answer as soon as possible.

Very truly yours,
Francis Dean

Hetzel, Seanne

From: Dean, Francis <Francis.Dean@montgomerycountypa.gov>
Sent: Friday, September 20, 2024 9:56 PM
To: lprocz@2024victory.com; Ford, Timothy J.; Jason E Salus; Christopher Thomas; Giana DePaul; Christian Nascimento
Subject: Re: Logic and Accuracy Testing

Good evening,

Please be advised that we will be conducting the public demonstration of our logic and accuracy testing on our central scanning and tabulation equipment for the mail-in and absentee canvass on Monday 9/23 at 8am in the Dekalb Center Norristown facility located at 1430 Dekalb Street, Norristown, Pa 19401.

Thanks!

Frank

Sent from my mobile device

From: Dean, Francis
Sent: Wednesday, September 18, 2024 4:33:12 PM
To: lprocz@2024victory.com <lprocz@2024victory.com>; Ford, Timothy J. <tford@dilworthlaw.com>; Jason E Salus <jsalus@mcdems.org>; Christopher Thomas <christhomas@mcdems.org>; Giana DePaul <giana@montgomerycountygop.com>; Christian Nascimento <christian@montgomerycountygop.com>
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Sent: Tuesday, September 17, 2024 9:53 AM
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Subject: Logic and Accuracy Testing

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One member of your organization is permitted to attend and observe at a time. Video recording and photography are not permitted.

1

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Very truly yours,
Francis Dean

Times Herald, The

Publication Name:
Times Herald, The

Publication URL:

Publication City and State:
Norristown, PA

Publication County:
Montgomery

Notice Popular Keyword Category:

Notice Keywords:
board of elections

Notice Authentication Number:
**202409301201220980814
3322381333**

Notice URL:

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Notice Publish Date:
Saturday, September 21, 2024

Notice Content

It is hereby noticed that the Montgomery County Board of Elections will conduct Logic and Accuracy testing on the central automatic tabulating equipment used for the tabulation of mail-in and absentee ballots cast in the November 5, 2024 General Election to ascertain that they will accurately count the votes cast for all offices and questions on the ballot. This will occur in the mail-in and absentee ballot canvass room at Dekalb Center Norristown, 1430 Dekalb Street, Norristown, Pennsylvania 19401 on Monday September 23, 2024 at 8:00 a.m.. NTH Sept 20, 21, 22- 1a

Back

Times Herald, The

Publication Name:
Times Herald, The

Publication URL:

Publication City and State:
Norristown, PA

Publication County:
Montgomery

Notice Popular Keyword Category:

Notice Keywords:
board of elections

Notice Authentication Number:
**202409301159395675104
3322381333**

Notice URL:

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Notice Publish Date:
Sunday, September 22, 2024

Notice Content

It is hereby noticed that the Montgomery County Board of Elections will conduct Logic and Accuracy testing on the central automatic tabulating equipment used for the tabulation of mail-in and absentee ballots cast in the November 5, 2024 General Election to ascertain that they will accurately count the votes cast for all offices and questions on the ballot. This will occur in the mail-in and absentee ballot canvass room at Dekalb Center Norristown, 1430 Dekalb Street, Norristown, Pennsylvania 19401 on Monday September 23, 2024 at 8:00 a.m.. NTH Sept 20, 21, 22- 1a

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EXHIBIT D

LAW OFFICES OF LINDA A. KERNS, LLC

1420 LOCUST STREET
SUITE 200
PHILADELPHIA, PA 19102

(PA TEL) 215.731.1400
(FAX) 215.701.4154
WWW.LINDAKERNSLAW.COM

LINDA A. KERNS (PA, NJ, LLM IN TAXATION)

September 18, 2024

Via Email to commissioners@montgomerycountypa.gov
And Facsimile to 610-278-5943 and 610-292-4527

Neil K Makhija, Chair
Jamila H. Winder, Vice Chair
Thomas DiBello, Commissioner
Montgomery County Board of
Commissioners

Frank Dean
Director of Elections
425 Swede Street, Suite 602
PO Box 311
Norristown, PA 19404

Re: **Logic and Accuracy Testing**

Dear Commissioners and Director of Elections Dean:

As the Republican National Committee's Pennsylvania's Election Integrity Counsel, I write concerning the commencement of mail and absentee ballot voting in Montgomery County yesterday without statutorily required Logic and Accuracy Testing pursuant to 25 P.S. §3031.10(d) and in defiance of the March 7, 2024 Directive[1] on Logic & Accuracy Testing from the Pennsylvania Secretary of State, including the notice requirements.

The Secretary's Directive notes that counties "**must** conduct pre-election logic and accuracy testing." It defines such testing as "a series of pre-election steps intended to ensure that ballots, scanners, ballot-marking devices, and all components of a county's certified voting system are properly configured and in good working order *prior to being used* in an election." [emphasis added].

The Republican National Committee demands the following:

(1) Montgomery County Election Officials immediately cease the distribution of all mail and absentee ballots until the satisfactory completion of all mandated testing.

---

[1] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2024-Directive-on-Logic-Accuracy-Testing-3.0.pdf

Republican National Committee 1

(2) Any and all mail and absentee ballots distributed thus far must be immediately segregated upon return so that arrangements can be made to count these ballots by hand.

The Republican National Committee seeks a free and fair election for all voters in this Commonwealth. Montgomery County's defiance of mandatory testing undermines confidence and trust in the integrity of the election. Our proposed remedy—to segregate and count by hand the affected ballots—protects the rights of voters who, through no fault of their own, received ballots that the county distributed in violation of law.

We have already lodged a complaint with the Montgomery County Election Tip Line (610-292-2024) established by District Attorney Kevin Steele, as he publicly disavowed "anyone thinking about disrupting this election in any way…"

I look forward to confirmation that Montgomery County Election officials will immediately comply with the requested relief of cessation of voting prior to completed Logic and Accuracy testing and segregation of ballots already distributed in defiance of the law. Innocent voters should not be harmed due to the apparent eagerness of Commissioner Makhija to be the "first 2024 General Election ballot in the Commonwealth of Pennsylvania!!" according to his post on X today.

We will pursue all legal remedies available if your office does not act immediately to protect the integrity of the election.

Very truly yours,

LINDA A. KERNS
Pennsylvania Election Integrity Counsel
Republican National Committee

EXHIBIT E

MONTGOMERY COUNTY SOLICITOR'S OFFICE   Attorneys for Defendants
By: John A. Marlatt, Esquire/210141
By: Joshua Wertheimer, Esquire/332923
One Montgomery Plaza, Suite 800
P.O. Box 311
Norristown, PA 19404-0311
(610) 278-3033

<table>
<tr><td>

REPUBLICAN NATIONAL COMMITTEE, *et al.*
Plaintiffs,

vs.

MONTGOMERY COUNTY BOARD OF
COMMISSIONERS, *et al.,*
Defendants.

</td><td>

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COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PA

Civil Action -- Law
Docket No. 2024-22251

</td></tr>
</table>

DECLARATION OF MONTGOMERY COUNTY DIRECTOR OF ELECTIONS FRANCIS DEAN
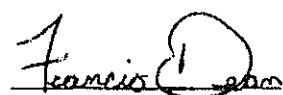
Frank Dean, solemnly declares under penalty of perjury under the laws of the Commonwealth of

Pennsylvania as follows:

1. My name is Francis Dean. I currently serve as the Director of Montgomery County Voter

    Services. I am over eighteen (18) years of age and under no legal disability. Montgomery

    County is named as a Defendant in this lawsuit, and I am authorized to speak on its

    behalf and to submit this Declaration on behalf of the County Commissioners in their

    capacity as the Montgomery County Board of Elections.

Conduct of Ballot Acceptance Testing and Ballot Accuracy Testing

2. Ballot Acceptance Testing of mail-in and absentee ballots for the November 5, 2024

    General Election in Montgomery County was successfully completed prior to any mail-in

    or absentee ballot being made available to the public. No errors were detected as a result

    of the Ballot Acceptance Testing.

3. Mail-in and absentee ballots were not sent out in the mail to those who had applied until Logic and Accuracy testing for the central tabulation scanners used to conduct the canvass for the mail-in and absentee ballots that will be used in the November 5, 2024 General Election was completed.

4. Logic and Accuracy testing for the central tabulation scanners used to conduct the canvass for the mail-in and absentee ballots that will be used in the November 5, 2024 General Election was completed on September 23, 2024. No errors were detected as a result of the Logic and Accuracy Testing.

Francis Dean
Director of Voter Services
Montgomery County

2

EXHIBIT F

Hetzel, Seanne

From:	Neil Makhija <Neil.Makhija@montgomerycountypa.gov>
Sent:	Wednesday, September 25, 2024 1:19 PM
To:	Alt, Megan; Jamila H. Winder; Soltysiak, Lee; Marlatt, John; Field, Benjamin; Dean, Francis; Charles, Sarah; Spisak-Mosher Esq, Thomas; Williams, Tamra; Tyrrell, Rebecca; Trombetta, Judy; Hart, Rhea
Subject:	DOS statement re lawsuit

Please see below and provide with all related inquiries

Begin forwarded message:

> **From:** "Baylson, Mira" <mbaylson@pa.gov>
> **Date:** September 25, 2024 at 1:16:50 PM EDT
> **To:** Neil Makhija <Neil.Makhija@montgomerycountypa.gov>
>
> CAUTION: This is an external message. Please think before you click on links or attachments and report suspicious emails by using the report message button.
>
> The lawsuit filed Friday against Montgomery County is frivolous, and Montgomery County's board of elections did everything required before printing ballots with the certified candidate list.
>
> Every county is required – under state law and under the Department of State's Directive on Logic and Accuracy Testing<https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.pa.gov%2Fcontent%2Fdam%2Fcopapwp-pagov%2Fen%2Fdos%2Fresources%2Fvoting-and-elections%2Fdirectives-and-guidance%2F2024-Directive-on-Logic-Accuracy-Testing-3.0.pdf&data=05%7C02%7CNeil.Makhija%40montgomerycountypa.gov%7C978a497599a74f63689308dcdd85d631%7Cabb524ec6a274c8195ccb75c7c96ad9c%7C0%7C0%7C638628881410l952342%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=mXF5Z6Jp53GKWvKsQgCNGYrev8sI6IhsWonHjSrfo8U%3D&reserved=0> – to conduct logic and accuracy (L&A) testing on its voting system before Election Day.
>
> The Election Code does not require that L&A testing of voting systems be conducted before a county makes mail ballots available. Counties must certify to DOS at least 15 days before an election that they have successfully completed the testing.
>
> Pennsylvania's elections are free, fair, safe, and secure because of the many safeguards – such as L&A testing – that surround our voting processes and systems before, during, and after Election Day.

1

Neil Makhija

Montgomery County Commissioner
Chair, Board of Elections

P: (610) 278-3026
C: (215) 377-8000

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2

EXHIBIT G

The Philadelphia Inquirer

POLITICS > ELECTION

A new RNC lawsuit would pause Montco mail voting and force a hand count of ballots already distributed

Republican Senate candidate Dave McCormick joined the RNC in a lawsuit that seeks to pause mail voting in Montgomery County and force hand counting of some ballots.
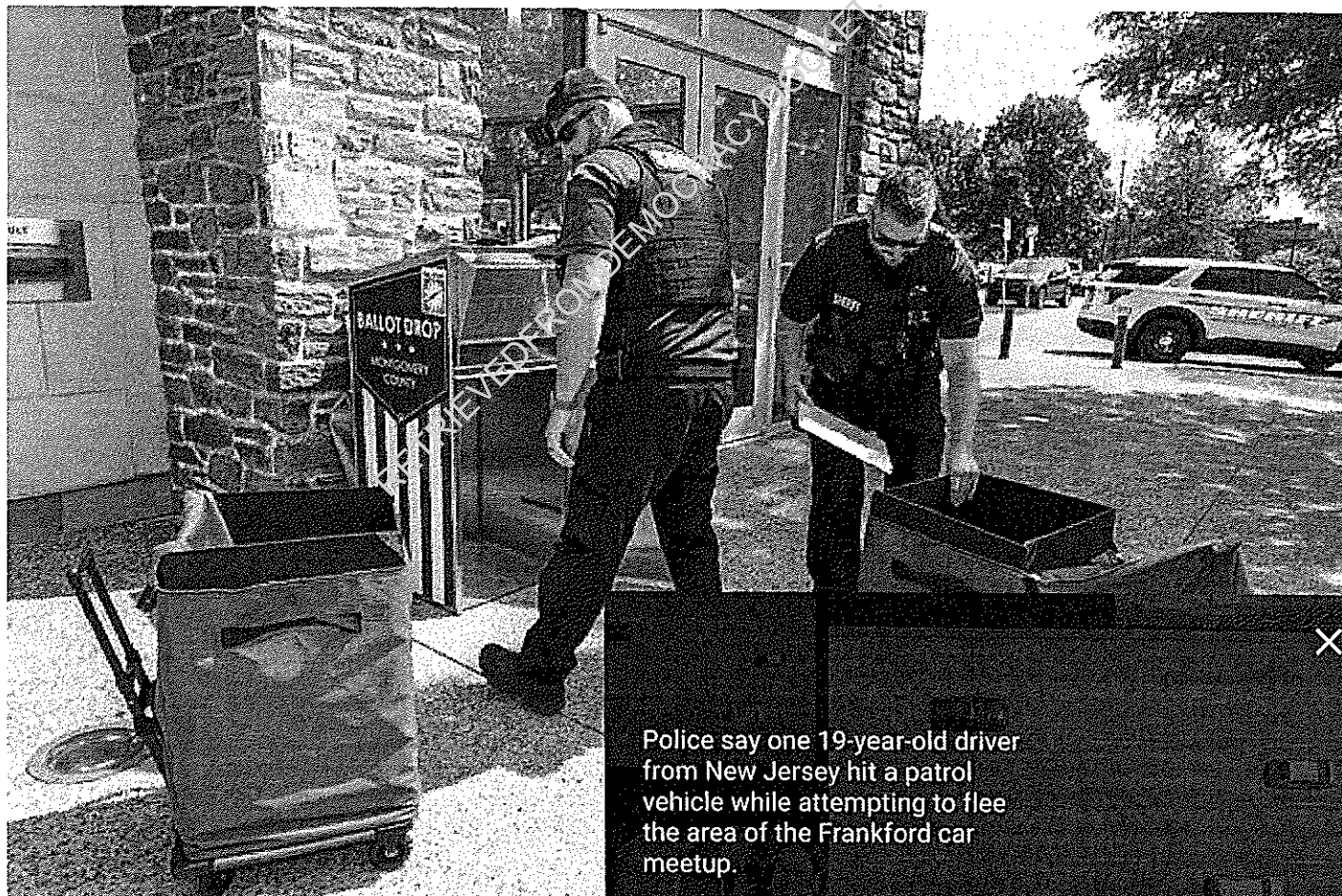
Montgomery County sheriff's deputies pick up ma[...]
2023.
Steven M. Falk / Steven M. Falk / Staff Photogra[...]

Police say one 19-year-old driver from New Jersey hit a patrol vehicle while attempting to flee the area of the Frankford car meetup.

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by Katie Bernard
Published Sept. 23, 2024, 12:35 p.m. ET

○━ This is an exclusive article only for paid subscribers.
Thank you for your subscription - this article is possible because of subscribers like you.

The Republican National Committee and U.S. Senate candidate Dave McCormick are suing to temporarily stop Montgomery County from distributing and collecting mail ballots.

The suit, which was filed Friday, also demands that the county hand count all mail ballots that have already been distributed, a process that could add several days to the vote counting process in November.

In a statement Monday, the Department of State, which issued the Pennsylvania directives the RNC cites in its complaint, called the lawsuit frivolous and said Montgomery County did everything required before sending its ballots.

Montgomery County was the first in the Philadelphia area to begin distributing mail ballots when the county electio
ballots were available, just one day .
certified the candidates on Novemb

Read More

In a lawsuit filed in the Montgomery County Court of Common Pleas alongside local Republicans, the RNC argued that the county's quick start to mail voting violated Pennsylvania election law because ballots were distributed before the county began state-mandated logic and accuracy testing on election systems.

That testing is required before an election begins. By sending ballots before that testing, the RNC argued, Montgomery County began the general election.

"Remarkably, Defendants were aware that the L&A testing had not been completed on September 17, 2024 and public stated it would not commence until September 19, 2024," the lawsuit said.

As a result, the RNC wants a Montg
from distributing ballots until the t
and hand count any mail ballots tha

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However, the Department of State said the testing the RNC is referring to must be done 15 days before Election Day, not before ballots are printed and sent.

"The lawsuit filed Friday against Montgomery County is frivolous, and Montgomery County's board of elections did everything required before printing ballots with the certified candidate list," Geoff Morrow, a spokesperson for the department, said. "Pennsylvania's elections are free, fair, safe, and secure because of the many safeguards — such as L&A testing — that surround our voting processes and systems before, during, and after Election Day."

Montgomery County has become a key Democratic stronghold in recent years that helped swing the state to President Joe Biden in 2020. Turnout in the county could play a major role in de
presidential and Senate contests.

A spokesperson for Montgomery Cc
leveled "baseless assertions" in bot

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"Montgomery County is fully complying with the Pennsylvania Election Code and Department of State directives. The 115,000 Montgomery County voters who have requested mail-in ballots already will receive those ballots soon," said Megan Alt, a spokesperson for Montgomery County.

Montgomery County solicitor Ben Field said in a Friday letter that the RNC was conflating rules around preparation of ballots and testing of election equipment. All testing required to prepare and distribute ballots, Field said, occurred prior to sending the ballots.

Alt said Montgomery County had completed the required ballot acceptance testing and logic and accuracy testing on the scanners used on mail ballots prior to mailing ballots.

If the RNC's lawsuit is successful it
process in Pennsylvania's third larg

Montgomery County officials said l
115,000 mail ballots beginning last
have to be hand counted, a process
counting.

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In April, the county was slow to distribute mail ballots and county officials have said they worked diligently to resolve those issues, becoming one of the fastest counties to distribute ballots ahead of the general election.

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Republican lawsuit seeks to stop mail ballots in Montgomery County

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