

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOSEPH D. HAMM, individually and as a candidate for the Pennsylvania State House of Representatives in the 84th Legislative District; MIKE KELLY, individually and as a candidate for the United States House of Representatives 16th District; BILLY ALLRED; CHAD HORNER; CAROLYN CONNOR; and JOAN HAUSER,

Petitioners,

v.

KATHY BOOCKVAR, in her official capacity as the Secretary of the Commonwealth of Pennsylvania,

Respondent,

DNC Services Corp. / Democratic National Committee,

Intervenor-Respondent.

ORIGINAL JURISDICTION

No. 600 MD 2020

INTERVENOR-RESPONDENT DNC SERVICES CORP. / DEMOCRATIC NATIONAL COMMITTEE'S RESPONSE IN OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	2
LEGAL STANDARD.....	3
ARGUMENT	4
I. Petitioners cannot demonstrate any harm absent their requested relief.....	4
A. Petitioners lack standing.	4
B. Petitioners have not identified an irreparable injury.....	8
II. Petitioners have not shown a clear right to relief.....	10
A. Petitioners badly mischaracterize the Pennsylvania Supreme Court’s interpretation of the Election Code.....	10
B. Petitioners fail to show Section 3146.8 prohibits the activities they seek to enjoin.	12
III. The requested injunction would cause far greater harm than it would prevent.....	13
CONCLUSION.....	14

INTRODUCTION

This Court ordered Petitioners in this matter to file, by 1:00 p.m. on November 5, a brief in support of their application for preliminary injunctive relief. Instead, Petitioners filed a copy of a brief their counsel filed in a separate federal lawsuit involving substantially different issues from those before this Court. *See Barnette et al. v. Lawrence et al.*, No. 2:20-cv-5477, ECF No. 32 (E.D. Pa. Nov. 5, 2020). *Barnette* involves a single claim of violation of the Fourteenth Amendment to the United States Constitution. *See Barnette et al. v. Lawrence et al.*, No. 2:20-cv-5477, ECF No. 1 (E.D. Pa. Nov. 3, 2020).¹ This action asserts a violation of the Pennsylvania Election Code. The arguments included in Petitioners' filing are completely irrelevant to this action.

In any event, Petitioners are not entitled to the extraordinary relief of a preliminary injunction for several reasons. First, Petitioners lack standing and cannot prove any irreparable injury. Second, the only Respondent named in this action, the Secretary of the Commonwealth, cannot provide Petitioners the relief they seek. Third, Petitioners unjustifiably delayed in bringing this action. Fourth, Petitioners have failed to show a clear right to relief based on the Pennsylvania Supreme Court's decision in *In re November 3, 2020 General Election*, 149 MM 2020, 2020 WL

¹ Notably, the plaintiffs in *Barnette* have withdrawn their motion for a temporary restraining order due to the hearing scheduled in this case. *See Barnette et al. v. Lawrence et al.*, No. 2:20-cv-5477, ECF No. 35 (E.D. Pa. Nov. 5, 2020).

6252803 (Pa. Oct. 23, 2020), or Section 3146.8 of the Pennsylvania Election Code. And fifth, the relief sought here would cause enormous harm to the public by disenfranchising eligible voters who scrupulously defended their fundamental right to vote. Petitioners' application should be denied.

BACKGROUND

On October 21, 2020, the Secretary of the Commonwealth of Pennsylvania (the "Secretary") issued guidance stating that county boards may and should allow an eligible voter whose "mail-in or absentee ballot was rejected for a reason unrelated to the voter's qualifications" to cast a provisional ballot prior to the deadline for doing so. *See* Ex. 1 (copy of October 21, 2020 guidance). Like all other ballots, provisional ballots may not be completed after the close of polls on Election Day. Because the pre-canvass meeting does not begin until "seven o'clock A.M. on election day," 25 P.S. § 3146.8(g)(1.1), the only way eligible voters can be notified that their mail-in or absentee ballot has been rejected in time to cast a provisional ballot is for county boards to identify those voters as their ballots are rejected in real time.

Despite the fact that the Secretary disseminated her provisional-ballot guidance two weeks ago, Petitioners waited until just hours before the closing of polls on Election Day to bring this lawsuit challenging that guidance. *See* Petition. Petitioners' action asserts, incorrectly, that 25 P.S. § 3146.8(g)(1.1) prohibits

counties from (1) disclosing identifying information about voters whose absentee and mail-in ballots have been rejected and (2) allowing mail-in voters whose ballots have been rejected to cast a timely provisional ballot. Their Application for Preliminary Injunction asks this Court to order the Secretary to prohibit county boards of elections from doing either.

LEGAL STANDARD

“Three criteria have been established for granting of a preliminary injunction, which, as a harsh and extraordinary remedy, is to be granted only when and if each [of the following] criteria has been fully and completely established”: (1) “the preliminary injunction must be necessary to prevent immediate and irreparable harm which could not be compensated for by damages,” (2) “greater injury would result from the denial of the preliminary injunction than from the granting of it,” and (3) “it would operate to restore the parties to the status quo as it existed prior to the alleged wrongful conduct.” *Comm. of Seventy v. Albert*, 381 A.2d 188, 189 (Pa. Cmwlth. 1977). The Pennsylvania Supreme Court has set significant limitations on a court’s ability to issue a preliminary injunction. For example, a preliminary injunction “should *never* be awarded except when the rights of the plaintiff are clear.” *New Castle Orthopedic Assoc. v. Burns*, 392 A.2d 1383, 1385 (Pa. 1978) (emphasis added) (quoting *Herman v. Dixon*, 141 A.2d 576, 577 (Pa. 1958)). And courts must also consider the public interest: “where an adverse effect upon the public interest

will result from granting a preliminary injunction, it should not be granted.” *Sch. Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass’n*, 667 A.2d 5, 7 (Pa. 1995) (quoting *Philadelphia v. District Council 33*, 535 A.2d 231 (Pa. Cmwlth. 1987), *aff’d* 598 A.2d 256 (Pa. 1991)).

ARGUMENT

I. Petitioners cannot demonstrate any harm absent their requested relief.

Petitioners have not satisfied, and cannot satisfy, their “most important” requirement: that the relief they seek, if granted, would prevent them from experiencing irreparable harm. *New Castle Orthopedic Assocs.*, 392 A.2d at 1385. Indeed, because they fail to allege *any* cognizable injury, let alone one that could be redressed by their requested relief, they lack standing to even bring this case. And even if they had standing, their unjustified delay in filing suit militates against a finding of irreparable harm.

A. Petitioners lack standing.

As an initial matter, Petitioners lack standing. To invoke this Court’s powers, Petitioners must have a “substantial, direct, and immediate interest in the matter.” *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016). But Petitioners make no attempt to explain how the procedures they challenge have injured, or will injure, them. The only relevant statement in their filings is the conclusory assertion that Petitioners “would suffer” a “substantial injury and immediate irreparable harm . . . if

Respondent is permitted to violate the laws of the Commonwealth of Pennsylvania.” Petition at 5. But a claim resting solely on the ground that “the law . . . has not been followed” is “precisely the kind of undifferentiated, generalized grievance about the conduct of government” that cannot give rise to a cognizable injury. *Lance v. Coffman*, 549 U.S. 437, 442 (2007).² In Pennsylvania, “it is hornbook law that a person whose interest is common to that of the public generally . . . lacks standing to attack the validity” of state action. *Mixon v. Commonwealth*, 759 A.2d 442, 452 (Pa. Cmwlth. 2000). As a result, a “generalized interest[] in the conduct of government common to the general citizenry” fails to “satisfy the requirements of standing.” *Markham*, 136 A.3d at 140.

Petitioners’ status as candidates and voters do not resolve this defect. Petitioners Hamm and Kelly appear as candidates for the Pennsylvania State House of Representatives and the U.S. House of Representatives, but they make no allegation that allowing voters to cast provisional ballots after their mail-in and absentee ballots are rejected harms their political prospects or any other interest they may hold as candidates. And none of the individual voters suggest that their mail-in or absentee ballots were rejected—or that they even voted by mail—nor do they

² The Pennsylvania Supreme Court has explained that “federal decisions on standing” are “helpful” to Pennsylvania courts in determining whether the parties before them claim a cognizable injury. *Fumo v. City of Philadelphia*, 972 A.2d 487, 500 n.6 (Pa. 2009).

allege that their right to vote has been abridged in any way. Thus, the implication of their barebones allegations is that they have been injured simply by residing in a county that does not take additional steps to notify voters of defects—an argument that entirely disregards the irreparable harm requirement and turns long-held principles of standing on their head.

To the extent the voter Petitioners imply they are injured due to other eligible Pennsylvanians’ participation in this election, that is also simply a generalized grievance. Any voter could make this claim in any election. When voters simply seek “relief that no more directly and tangibly benefits [them] than it does” any other voter, they lack standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 574 (1992); *Mixon*, 759 A.2d at 452; *see also Martel v. Condos*, --- F. Supp. 3d ---, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020) (explaining “[i]f every voter suffers the same incremental dilution of the franchise” caused by the participation of certain voters, “then these voters have experienced a generalized injury”).³

Furthermore, even if Petitioners could assert a concrete injury, their claims are neither traceable to the Secretary nor redressable by their requested relief. *See*

³ *See also Donald J. Trump for President, Inc. v. Way*, Civil Action No. 20-10753 (MAS) (ZNQ), 2020 WL 6204477, at *6 (D.N.J. Oct. 22, 2020); *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015).

Lujan, 504 U.S. at 560-61 (requiring such showings to establish standing); *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005) (explaining a party unable to show “a causal connection between the harm and the violation of law” lacks standing). The only Respondent in this action, the Secretary of the Commonwealth, cannot provide Petitioners the relief they seek. The Application asks this Court to prohibit the Secretary from (1) “permitting invalidly submitted absentee and mail-in ballots to be ‘cured’ by the submission of provision[al] ballots” or (2) “disclosing identifying information about voters who have submitted” absentee and mail-in ballots that were rejected during the pre-canvass. Application at 4. This request ignores the fact that it is not the Secretary, but instead county boards of elections, who make these decisions. Petitioners utterly fail to explain how the Secretary has the power to prohibit counties from taking these actions.

Indeed, Petitioners’ own allegations indicate the Secretary has no compulsory power in this context. Despite that the Secretary issued guidance to counties stating that they “*should* provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected,” Petitioners allege that at least eight counties chose not to do so. Petition ¶ 17, Ex. A. Thus, not only have Petitioners failed to demonstrate the Secretary has a compulsory power to prohibit counties from taking the actions Petitioners oppose, their

allegations demonstrate that the Secretary lacks such power. As a result, the injunction Petitioners seek would do nothing to prevent the injuries they claim. This is fatal to their request for a preliminary injunction. *Justice v. Kuhnappel*, 985 F. Supp. 2d 334, 337 (E.D.N.Y. 2013) (denying preliminary injunction because plaintiff failed to demonstrate her injury could be “redressed by a favorable decision by this Court”).

B. Petitioners have not identified an irreparable injury

For these same reasons, Petitioners have not, and cannot, establish entitlement to injunctive relief. A preliminary injunction is appropriate only where the movant will be irreparably harmed absent relief. *New Castle Orthopedic Assocs.*, 392 A.2d at 1385. Not only do Petitioners fail to allege any injury redressable by this Court, their inexplicable delay also illustrates that they are not actually at any risk of irreparable harm. “[I]n election law cases as elsewhere,” “a party requesting a preliminary injunction must generally show reasonable diligence.” *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018); *see also GTE Corp. v. Williams*, 731 F.2d 676, 679 (10th Cir. 1984) (“By sleeping on its rights a plaintiff demonstrates the lack of need for speedy action.” (quoting *Gillette Co. v. Ed Pinaud, Inc.*, 178 F.Supp. 618, 622 (S.D.N.Y. 1959))).

By their own allegations, Petitioners could have brought this action weeks ago, when the Secretary publicly issued her guidance indicating that voters whose

absentee or mail-in ballots are rejected during the pre-canvass meeting may submit a provisional ballot by the deadline. Ex. 1. In addition to issuing that guidance, the Secretary posted on her website clear language instructing voters that they may submit a provisional ballot if they “returned a completed absentee or mail-in ballot that was rejected by the county board of elections and [the voter] believe[s] [she] is eligible to vote.”⁴ Voters relied on that guidance. Yet, Petitioners waited until *less than two hours before polls closed on Election Day* to ask this Court to intervene.

If Petitioners had brought suit prior to the election, this Court could have addressed Petitioners’ claims without the emergency circumstances in which we now find ourselves. These circumstances are precisely why courts require parties to challenge election practices *prior* to an election rather than during or, worse yet, as here, effectively after the election. *E.g., Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973). Parties may not “lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.” *Id.* (internal quotation marks omitted). Now that Election Day is over, intervention by this Court likely will cause voters to feel, justifiably, that the rules have been changed at the end of the game. Petitioners fail even to attempt to explain this delay. As a result, the requested preliminary injunction should be denied.

⁴ See Pa. Sec’y of Commonwealth, Voting by Provisional Ballot, <https://www.votespa.com/Voting-in-PA/Pages/Voting-by-Provisional-Ballot.aspx>.

II. Petitioners have not shown a clear right to relief.

Petitioners have not shown a clear right to relief, either under the Pennsylvania Supreme Court's recent decision in *November 3, 2020 General Election* or under Section 3146.8 of the Pennsylvania Election Code. This failure, too, dooms their request for preliminary injunctive relief. *See New Castle Orthopedic Assoc.*, 392 A.2d at 1385 (noting that injunctive relief “should *never* be awarded except when the rights of the plaintiff are clear” (emphasis added) (quoting *Herman*, 141 A.2d at 577)).

A. Petitioners badly mischaracterize the Pennsylvania Supreme Court's interpretation of the Election Code.

Petitioners rely on *November 3, 2020 General Election* for the proposition that absentee or mail-in voters may not submit timely provisional ballots after their mail-in or absentee ballot is rejected during the pre-canvass meeting. *See Application* at 3. But that case says no such thing. *November 3, 2020 General Election* addressed the question of whether county boards must reject absentee or mail-in ballots due to alleged or perceived signature mismatches. 2020 WL 6252803, at *1. As part of that inquiry, the Court recognized that “unlike for in-person voting, there is no provision in the Code which *requires* a voter to be notified that his signature has been challenged during the canvassing process; hence, a voter whose ballot is rejected during canvassing because of a perceived signature mismatch has no opportunity to respond to the challenge and have his ballot counted.” *Id.* at *8

(emphasis added). The Court said nothing about whether county boards are *permitted* to do so. Thus, all *November 3, 2020 General Election* recognizes is that the Election Code does not impose a duty on county boards of elections to notify voters of a signature defect. *See also Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *20 (Pa. Sept. 17, 2020) (concluding “that the Boards are not required to implement a ‘notice and opportunity to cure’ procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly”). It does not suggest that voters are prohibited from casting a timely provisional ballot after learning that their ballots were rejected during the pre-canvass meeting.

Far from adopting that alarming proposition, *November 3, 2020 General Election*, if anything, rejects it. The Court expressly recognized the risk of disenfranchisement Petitioners’ draconian rule would impose. In discussing a federal court’s recent interpretation of the Election Code, the Court noted its concern that, if signature comparisons were required for mail-in and absentee ballots, it “would create a risk that voters would be disenfranchised, given that mail-in and absentee ballots are kept securely stored until election day when the pre-canvassing process begins, and the Election Code contains no requirement that voters whose ballots are deemed inadequately verified be apprised of this fact.” *Id.* at *6 (discussing *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at

*56–57 (W.D. Pa. Oct. 10, 2020)). Petitioners’ requested relief would turn that risk into a certainty.

B. Petitioners fail to show Section 3146.8 prohibits the activities they seek to enjoin.

Petitioners’ argument also turns on a fundamentally flawed interpretation of Section 3146.8, which does not create the rule that Petitioners now ask this Court to enforce against eligible Pennsylvania voters. Instead, the relevant part of the statute simply provides that “[n]o person observing, attending or participating in a pre-canvass meeting may disclose the *results* of any portion of any pre-canvass meeting prior to the close of the polls.” 25 P.S. § 3146.8(g)(1.1) (emphasis added). The purpose of statutory interpretation is “to ascertain and effectuate the intention of the General Assembly,” 1 Pa. C.S. § 1921(a), and the “best indication” of that intent “is the language used in the statute.” *Comm’r, Office of Admin. v. Pa. Labor Rels. Bd.*, 916 A.2d 541, 547–48 (Pa. 2007); *see also* 1 Pa. C.S. § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded[.]”).

Here, the text of Section 3146.8(g)(1.1) makes no mention of voter-identifying information or provisional ballots, much less any language that could reasonably be understood to either prohibit counties from disclosing limited identifying information about voters whose absentee or mail-in ballots are rejected or prevent voters from casting provisional ballots under such circumstances. Thus,

it does not entitle Petitioners to the relief they seek, and Petitioners certainly have not carried their burden of showing a “clear” right to relief under the statute. *See New Castle Orthopedic Assoc.*, 392 A.2d at 1385. As such, Petitioners’ request for preliminary injunctive relief should be denied.

III. The requested injunction would cause far greater harm than it would prevent.

The preliminary injunction should be denied on the independent ground that “greater harm [would be] worked by the issuance of this injunction than would result from its denial.” *New Castle Orthopedic Assocs.*, 392 A.2d at 1385. Petitioners’ requested preliminary injunction would prevent thousands of eligible voters from participating in this year’s election despite submitting timely and defect-free provisional ballots. Petitioners do not assert that any single one of these voters are ineligible to vote or have engaged in any sort of fraud. And while these voters’ mail-in ballots may have been technically defective, they took swift action—*in a matter of hours*—to ensure they could exercise their fundamental right to vote. *See United States v. Mosley*, 238 U.S. 383, 386 (1915) (describing as “unquestionable” that the right to vote involves not just “the right to put a ballot in a box,” but also “the right to have one’s vote counted”). Denying these voters the opportunity to have their votes counted would be profoundly inequitable.

For this reason, the requested preliminary injunction would significantly harm the public interest. “The public interest . . . favors permitting as many qualified

voters to vote as possible.” *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012); *see also, e.g., Pennsylvania Democratic Party*, No. 133 MM 2020, 2020 WL 5554644, at *5 (Pa. Sept. 17, 2020) (“[T]he Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice.”) (quoting *Perles*, 213 A.2d at 783–84). Because the injunction that Petitioners request would prevent a significant number of voters with unquestioned eligibility from participating in this election, it would have a dramatically “adverse effect upon the public interest.” *Sch. Dist. of Wilkinsburg*, 667 A.2d at 7. As a result, “it should not be granted.” *Id.*

CONCLUSION

Petitioners fail to prove an irreparable harm that would be prevented by the preliminary injunction they seek, their claims lack merit, and the requested injunctive relief would cause more harm to the public interest than it would prevent. Petitioners’ Application for a preliminary injunction should be denied.

Dated: November 6, 2020

Respectfully submitted,

Marc E. Elias*
Uzoma N. Nkwonta*
Daniel C. Osher*
Courtney A. Elgart*
Joel J. Ramirez*
Perkins Coie LLP
700 Thirteenth St., N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-9959
melias@perkinscoie.com
unkwonta@perkinscoie.com
dosher@perkinscoie.com
celgart@perkinscoie.com
jramirez@perkinscoie.com

Laura Hill*
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, W.A. 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000
lhill@perkinscoie.com

* Admitted *Pro Hac Vice*

/s/ Edward Rogers
Edward Rogers
Terence M. Grugan
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: (215) 665-8500
Facsimile: (215) 864-8999
RogersE@ballardspahr.com
GruganT@ballardspahr.com

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Edward Rogers
Edward Rogers

Exhibit 1



Pennsylvania Provisional Voting Guidance

Date: October 21, 2020

Version: 1.1

Scope

1	Background	2
1.1	Provisional Voting Reasons	2
1.2	Absentee and Mail-in Voting.....	3
2	Process for the Voter	3
3	Process for Poll Workers	4
4	Process For County Elections Officials	4

1 BACKGROUND

This revised guidance addresses the issuance, voting and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA).¹ Provisional ballot amendments included in Act 77 of 2019 went into effect for the 2020 Primary election. Provisional ballot amendments included in Act 12 of 2020 go into effect for the first time on November 3, 2020.

Generally, if a voter is not eligible to be issued a regular ballot, that voter shall be entitled to vote provisionally at the polling place. Provisional ballots may be issued at the polling place until the close of polls on election day absent a court order extending voting hours.

1.1 PROVISIONAL VOTING REASONS

A voter may be issued a provisional ballot for the reasons below:

- Voter’s name was not in the poll book or supplemental poll book
 - For example, the voter reported to the wrong precinct; or
 - The voter did not report a recent change in residence to the county election office
- Voter is required to show ID, but cannot show ID
- Voter eligibility was challenged by an election official
- Voter was issued but did not successfully vote an absentee or mail-in ballot and ballot was not surrendered at the polling place to be spoiled
- Voter returned a completed absentee or mail-in ballot that was rejected by the county board of elections and the voter believes they are eligible to vote
- Special court order with respect to the voter’s status
- Special court order related to extending the hours of voting
- Voter claims they are registered in a political party with which they are not affiliated (for primary elections only)

¹ 52 U.S.C. § 21082.

1.2 ABSENTEE AND MAIL-IN VOTING

If the pollbook shows the voter has timely returned and voted their absentee or mail-in ballot, they are not eligible to vote by regular ballot at the polling place. These voters are not eligible to vote on the voting equipment but may vote provisionally if they believe they have not already voted and are eligible to vote. Voters who have requested an absentee ballot or mail-in ballot and are not shown on the district register as having voted the ballot and who appear on Election Day to vote can only vote provisionally at the polling place, unless they surrender their ballot and outer return envelope to be spoiled and sign the required declaration before the judge of elections.

2 PROCESS FOR THE VOTER

- Voters are entitled to a provisional ballot when their eligibility to vote is uncertain.
 - A voter's eligibility is uncertain if his/her voter record cannot be located in the poll book or supplemental poll book.
 - A voter's eligibility to vote is uncertain if he/she has been issued a mail-in or absentee ballot and are not shown as having voted the ballot or do not remit the ballot and outer return envelope to be spoiled at the polling place.
- If a voter requested an absentee or mail-in ballot for the upcoming election and appears to vote at the polling place, they may only vote by provisional ballot at the polling place, unless they surrender the ballot and outer return envelope to be spoiled and sign a declaration before the judge of elections.
- If a voter has returned and successfully voted their absentee or mail-in ballot by the ballot return deadline, their vote is considered final for that election. This means they should not go to a polling place to vote. *Refer to Section 3 for guidance on processing voters whose record indicates that they have returned their ballot.*
- If a voter returned an absentee or mail-in ballot but the ballot was rejected by county election officials, and the voter believes they are eligible to vote in person, the voter may cast a provisional ballot on Election Day.
- For a voter to be issued a provisional ballot, the following must occur:
 - Before a voter can receive the ballot, they must complete the sections on the provisional envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials.
 - After a voter receives and marks their provisional ballot, they must seal their ballot in the secrecy envelope and then place the secrecy envelope in the provisional ballot envelope.
 - Finally, the voter must fill out the Voter Signature section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector. The Judge of Elections and the Minority Inspector will then sign and date the envelope after noting the reason for the provisional ballot.
- County election officials must review provisional ballots within 7 days of the election and decide if they should be fully counted, partially counted, or not counted.
 - Fully counted – all contests on the ballot are counted.
 - Partially counted – some contests, but not all contests on the ballot are counted.
 - Not counted – No contests on the ballot are counted.
- Voters can check the status of their provisional ballot after the election by calling the county board of elections, checking the PA Voter Services website, or calling the PA Department of

State. *Note: The online provisional ballot search will only return results for the active election and cannot be used to search provisional ballots from previous elections.* Voters will need to provide their provisional ballot number or their full name and date of birth to check the status of their provisional ballots.

- Voters can find the phone number for their county election office online at www.votespa.com/county.
- The website for PA Voter Services is www.votespa.com/provisional.
- The phone number for the PA Department of State is 1-877-VOTESPA (1-877-868-3772), option 6.

3 PROCESS FOR POLL WORKERS

- County election officials must ensure that poll workers are familiar with provisional voting rules.
- A county election official or poll worker must inform voters that they have a right to use a provisional ballot when they are entitled to receive one.
- Before a provisional ballot is issued, the Voter Information, Voter Affidavit for Provisional Ballot, and Current Address sections on the provisional ballot envelope must be completed by the voter.
- If a voter requested an absentee or mail-in ballot and did **not** successfully return and cast the ballot, his/her name will be found in section 1 of the poll book, and the signature line will say either **Remit Absentee Ballot or Vote Provisionally** or **Remit Mail-in Ballot or Vote Provisionally**. This advises the poll worker that there are two circumstances that may apply if one of these voters appear on Election Day.
 - If the voter has their ballot and outer envelope with them, the poll worker shall permit the voter to surrender their ballot and envelope and sign the Elector's Declaration to Surrender their Mail Ballot form. After the voter does this, the poll worker shall allow the voter to vote by regular ballot same as any voter.
 - If the voter is designated in the pollbook as having been issued an absentee or mail-in ballot but does not have the ballot and outer envelope with them, the voter may only vote by provisional ballot, and the poll worker shall offer him/her this option.
- If a voter was issued an absentee or mail-in ballot and returned and successfully voted their ballot, their name will be found in section 2 of the poll book, and the signature line will say either **Absentee – Ballot Cast/Not Eligible** or **Mail-in – Ballot Cast/Not Eligible**. Their vote is considered final at this point.
 - If the voter believes that he/she has not returned or cast the ballot successfully or otherwise contests his/her ballot status, the poll worker shall provide the voter a provisional ballot.
- If polling place hours are extended beyond 8:00 p.m. by court order on election day, all ballots shall be cast via provisional ballot only after 8 pm.

4 PROCESS FOR COUNTY ELECTIONS OFFICIALS

- It is recommended counties notify parties and the public a week in advance of the date that election officials will meet to examine and reconcile provisional ballots during the post-election

official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act, 65 Pa.C.S. 701, et seq., for public meetings.

- When determining whether to count a provisional ballot, the county board of elections must reconcile provisional ballots with ballots cast in person on election day and with returned absentee and mail-in ballots. If a voter cast an election day ballot or voted an absentee or mail-in ballot, the provisional ballot shall not be counted.
- A county board of elections can only approve a provisional ballot for counting if the voter is qualified and eligible to vote for the election.
- When researching provisional ballots during the canvassing period, the county election staff should enter the voter’s provisional voting information from the provisional envelope into the SURE system to maintain an accounting of the number of provisional ballots issued for the election.
- The county board of elections must review and make a determination on the disposition of each provisional ballot within 7 days of the election.
- If a provisional ballot is challenged during the canvass, the county board must schedule a hearing within 7 days of the challenge to consider the challenge and determine the disposition of the ballot. Additionally, notice shall be given where possible to the challenged provisional voter and to the attorney, watcher or candidate who made the challenge.
- During the official canvass, the County Board of Elections must determine, for each provisional ballot, whether:
 - The provisional ballot is invalid because the voter successfully cast another ballot;
 - The provisional ballot should be counted in full;
 - The provisional ballot should be rejected and the reason(s) for the rejection; or
 - The provisional ballot should be partially counted and the reason(s) for the partial counting.
- If a voter’s mail-in or absentee ballot was rejected for a reason unrelated to the voter’s qualifications and the voter casts a provisional ballot and meets other provisional ballot requirements, the provisional ballot shall be counted if the county determines that the voter is eligible to vote.
- Counties are prohibited from counting a provisional ballot from another county.

###

Version History:

Version	Date	Description
1.0	3.5.2020	Initial document release
1.1	10.21.2020	Updated per Act 12 of 2020

Elector's Declaration to Surrender Their Mail Ballot

For the Voter:

I hereby declare that I am a qualified registered elector who was issued an absentee or mail-in ballot for this election, but that I have not mailed or cast an absentee or mail-in ballot in this election. Instead, I am hereby remitting my absentee or mail-in ballot and its declaration envelope to the judge of elections at my polling place to be spoiled. I request that my absentee or mail-in ballot be voided, and that I be permitted to sign the poll book and vote a regular ballot.

I verify that the statements made in this declaration are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the criminal penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(Today's Date)

(Printed Name of Elector)

(Signature of Elector)

(Address of Elector)

For Election Officials Only:

I hereby declare I have received the voter's ballot and envelope containing the voter's declaration from the voter and I am spoiling it and permitting the voter to sign the poll book and vote a regular ballot.

(Printed Name of Judge of Elections)

(Judge of Elections Signature)

(Precinct)

Instructions after completion: This form should be attached to the voter's surrendered balloting material and returned in the [container] [bag] designated for spoiled ballots. Do not forget to check the "**BALLOT REMITTED?**" option next to the voter's name in the poll book.