No. ___

IN THE

Supreme Court of the United States

JOSEPH B. SCARNATI III, PRESIDENT PRO TEMPORE, AND
JAKE CORMAN, MAJORITY LEADER OF THE PENNSYLVANIA SENATE,

Applicants,

v.

PENNSYLVANIA DEMOCRATIC PARTY, ET AL.,

Respondents.

On Application to Stay the Mandate of the Supreme Court of Pennsylvania

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EMERGENCY APPLICATION FOR A STAY PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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September 28, 2020

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT:

In the middle of an ongoing election, the Supreme Court of Pennsylvania has altered the rules of the election and extended the 2020 General Election beyond the "Time" established by the state legislature pursuant to Article I, Section IV of the U.S. Constitution. In doing so, the Supreme Court of Pennsylvania has violated federal law and the federal Constitution.

In *Pennsylvania Democratic Party v. Boockvar* the Supreme Court of Pennsylvania rewrote the state's law governing federal elections and violated the United States Constitution, sowing chaos into the electoral process mere weeks before the already intricate November General Election. The Supreme Court of Pennsylvania did this citing concerns over the effect of COVID-19 on the election, despite the fact that the Pennsylvania General Assembly already acted multiple times in ways that will reduce COVID-19's effect on the election. Furthermore, the Supreme Court of Pennsylvania's own special master found that COVID-19 is not likely to disrupt the November General Election ballot receipt deadline.

Nevertheless, the decision of the Supreme Court of Pennsylvania forces officials to count ballots received up to three days after Election Day even if they lack a legible postmark or any postmark at all. This is an open invitation to voters to cast their ballots *after* Election Day, thereby injecting chaos and the potential for gamesmanship into what was an orderly and secure schedule of clear, bright-line

deadlines. Pennsylvania's statutorily enacted and orderly election-related deadlines were the product of federal law, the Pennsylvania General Assembly's bi-partisan deliberations and negotiations, and duly enacted state laws. In a year where there is a very real possibility that the final presidential election result hinges on Pennsylvania, the new rules imposed by the decision of the Supreme Court of Pennsylvania (a body elected in partisan elections) could destroy the American public's confidence in the electoral system as a whole.

First, the decision of the Supreme Court of Pennsylvania violates federal law. Federal law establishes "the Tuesday next after the 1st Monday in November" as a single Federal Election Day. 2 U.S.C. § 7; *see also* 2 U.S.C. § 1; 3 U.S.C. § 1. Federal law mandates holding all elections for Congress and the Presidency on a single day throughout the Union. However, the Supreme Court of Pennsylvania's Order extends Election Day. It does so by forcing election officials to accept ballots received after election day even if these ballots lack a legible postmark.[1] This permits ballots to be both voted and counted after election day, extending the General Election past November 3, 2020. This clearly violates 2 U.S.C. §§ 1, 7 and 3 U.S.C. § 1.

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[1] In general, no party has presented clear evidence of whether the United States Postal Service will place legible postmarks on postage prepaid envelopes which Pennsylvania is using for voters to mail their ballots. *See Crossey, et al. v. Boockvar, et al*., No. 266 M.D. 2020 at 29 (Pa. Comm. Ct. Sept. 7, 2020) (Leavitt, P.J.), (App. C). As a result of an order from the Governor issued on July 31, 2020, Pennsylvania's ballots will be sent with pre-paid postage. There is no clear evidence that a legible postmark will be placed on these ballots. *See id*. In fact, there is evidence that postmarks that are placed on postage prepaid envelopes are not readable by the human eye and would require specific scanners and software to decode. *See id*. at 22-23.

Second, the Supreme Court of Pennsylvania's decision violates the Elections Clause, Article I, § 4, cl. 1 of the United States Constitution, by seizing the authority to set the times, places, and manner of federal elections from the state legislature. Although that court may have the final say on the substantive law of Pennsylvania, the Elections Clause of the United States Constitution vests the authority to regulate the times, places, and manner of federal elections directly with Pennsylvania's General Assembly, subject only to alteration by Congress, not the Supreme Court of Pennsylvania. U.S. Const. Art. I, § 4. The General Assembly has not delegated authority to alter these regulations to the Pennsylvania Judiciary, yet the Supreme Court of Pennsylvania's decision fundamentally changes the policy decisions inherent in the General Assembly's duly enacted election laws. That court substituted its will for the will of the General Assembly and this substitution usurps the authority vested in the General Assembly by the Elections Clause. U.S. Const. Art. I, § 4.

DECISIONS UNDER REVIEW

The September 17, 2020, decision of the Supreme Court of Pennsylvania, along with concurring and dissenting opinions, are reproduced at Appendix A. *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 Pa. LEXIS 4872 (Penn. Sept. 17, 2020) (App. A). The September 24, 2020, decision denying a stay of the Supreme Court of Pennsylvania's September 17, 2020, opinion and order, along with dissenting opinions, are reproduced at Appendix B. *Pennsylvania Democratic*

Party v. Boockvar, No. 133 MM 2020, 2020 Pa. LEXIS 5008 (Penn. Sept. 24, 2020) (denying application for stay pending appeal) (App. B).

BACKGROUND

On October 31, 2019, the Pennsylvania General Assembly passed, and the governor signed, a comprehensive bipartisan reform of the state's election laws well before the impact of COVID-19 was known. *See* 2019 (P.L. 552, No. 77) 2019 Pa. Legis Serv. Act 2019-77 (S.B. 421) (West). Among other reforms, this legislation made available for the first time no-excuse mail-in voting to every registered Pennsylvania voter. *See* 25 P.S. § 3150.11(b). It also included provisions moving the deadline to 8:00 p.m. on Election Day for the receipt of both absentee and mail-in ballots. *See* 25 P.S. § 3146.6(a); § 3150.16(a).[2] Five months later, the state legislature adopted additional amendments to Pennsylvania election law in response to the COVID-19 pandemic. *See* Act of Mar. 27, 2020, (P.L. 41, No. 12), 2020 Pa. Legis. Serv. Act 2020-12 (S.B. 422) (West). After all of these changes to state law, Pennsylvania offered its citizens two options for voting in 2020: Voters could either apply for and submit a mail-in ballot[3] before the 8:00 p.m. Election Day deadline, or they could vote in-person at their designated polling site on Election Day.

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[2] Prior to this statutory change, absentee ballots were due by 5 p.m. on the Friday *before* Election Day. *See Crossey, et al. v. Boockvar, et al.*, No. 266 M.D. 2020 at 35 (Pa. Comm. Ct. Sept. 7, 2020) (Leavitt, P.J.) (Report and Recommendation) (App. C). Pennsylvania has imposed a "received-by" deadline since 1964 and has never imposed a "mailed-by" deadline. *See id*. at 29-30.

[3] Unless otherwise noted, when this Application refers to mail-in ballots, it also includes absentee ballots.

A. *Crossey v. Boockvar.*

On April 22, 2020, a group of individual and organizational petitioners filed a Petition for Declaratory and Injunctive Relief in the Commonwealth Court of Pennsylvania against Secretary of the Commonwealth Kathy Boockvar with regard to voting procedures for Pennsylvania's June 2, 2020, primary election. *See Crossey et al. v. Boockvar*, No. 266 MD 2020 at 1 (Leavitt, P.J.) (Pa. Comm. Ct. Sept. 4, 2020) (Report and Recommendation) (attached as App. C). The Secretary challenged jurisdiction, and on June 17, 2020, the Commonwealth Court transferred jurisdiction to the Supreme Court of Pennsylvania. *Id.* at 2. The petitioners requested that the Supreme Court of Pennsylvania extend the 8:00 p.m. received-by deadline, require prepaid postage on mail-in ballots, and allow for the use of third-party assistance in collecting mail-in ballots. *Id.* at 3. The Supreme Court of Pennsylvania appointed President Judge Leavitt of the Commonwealth Court as special master over the case, and the special master held an evidentiary hearing in the matter on August 31, 2020. *Id.* at 4.

Based on the evidence presented at the August 31, 2020 hearing, the special master found that the Petitioners failed to meet their burden of showing that the statutory 8:00 p.m. received-by deadline was unconstitutional. *Id.* at 35. She also found that USPS performance in Pennsylvania exceeded the national average, and that issues with mail were unlikely to prevent voters from submitting their ballots on time. *Id.* at 35-36. Judge Leavitt further found that the Petitioners failed to adduce

"clear evidence" on whether "prepaid postage envelopes, which may be provided by the county boards of elections to voters for mailing their completed ballots, will be postmarked." *See id*. at 29. Ultimately, based on the available evidence, on September 7, 2020, the special master recommended that the Supreme Court of Pennsylvania deny the Petitioners' prayer for relief. *Id.* at 38.

B. *Pennsylvania Democratic Party v. Boockvar*.

On July 10, 2020, Petitioners below (Respondents here) commenced this action in the Commonwealth Court of Pennsylvania seeking a variety of changes to Pennsylvania voting procedures. Pls.' Pet. for Declaratory and Injunctive Relief. Petitioners sought injunctive relief that would, *inter alia*, suspend the statutory 8:00 p.m. received-by deadline on Election Day for ballots which were postmarked before that time, extend the deadline for receipt of ballots to one week after the elections, and afford numerous forms of relief on various others issues under Pennsylvania's election laws. *Id.* at ¶¶ 166, 178, and 187.[4]

Respondent Secretary of the Commonwealth filed an application for extraordinary relief under 42 Pa. C.S. § 726 in the Supreme Court of Pennsylvania, and the Court exercised extraordinary jurisdiction over the case on September 1, 2020, with two Justices dissenting from the order. The Court allowed one week for

[4] As to the number of other issues, Petitioners below were granted the relief sought on some of their causes of action, and denied relief on others. The only issue presented in this Stay application relates to the Election Day deadline matters.

parties and intervenors to submit supplemental briefing materials but did not schedule a hearing in the case or take any factual evidence.

On September 17, 2020, the Supreme Court of Pennsylvania, without presentation of any factual evidence, granted partial relief to Petitioners and extended the statutory received-by deadline by three additional days after Election Day, until 5:00 p.m. on Friday, November 6, 2020. *Pa. Democratic Party v. Boockvar*, 2020 Pa. LEXIS 4872 at *89 (Sept. 17, 2020). The court even went further than Petitioners' requested relief by establishing a presumption that a mail-in ballot lacking any postmark or other proof of mailing was mailed before Election Day "unless a preponderance of the evidence demonstrates" otherwise. *Id.*

The Supreme Court of Pennsylvania's decision overrides duly enacted provisions of Pennsylvania election law mere weeks before a general election that is expected to feature record voter turnout. Voting by mail has already begun in Pennsylvania, and this decision changes the rules midstream less than fifty days before Election Day. The Pennsylvania General Assembly acted to expand eligibility for mail-in voting even before the onset of the COVID-19 pandemic and made additional changes in March 2020 to ensure safe voting procedures. The Supreme Court has not only overridden the constitutionally delegated authority of the state legislature over election law, but it has also mandated the counting of mail-in ballots, which bear no evidence that they were cast on or before Election Day at all. This requirement will cause unnecessary chaos in election administration and violate

federal law in an election that already poses new pandemic-related challenges that the state has worked diligently to address.

On September 22, 2020 Applicants filed an Application for Stay of the Supreme Court of Pennsylvania's September 17, 2020, decision. App. D. The Supreme Court of Pennsylvania denied that Application on September 24, 2020, over the dissent of Justice Mundy, who stated that it would be reasonable for this Court to determine that the Supreme Court of Pennsylvania's decision to presume ballots lacking a postmark are cast timely "fundamentally alters the nature of the election." *See* App. B (citing *Republican Nat'l Comm. v. Democratic Nat'l Comm*., 140 S. Ct. 1205, 1207 (2020)).

REASONS FOR GRANTING THE APPLICATION

To obtain a stay pending appeal, an applicant must show (1) a reasonable probability that the Court will consider the case on the merits; (2) a fair prospect that a majority of the Court will vote to reverse the decision below; and (3) a likelihood that irreparable harm will result from the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

Those factors are satisfied here. First, this Court has specifically identified the federal questions in this case as meriting review, and has reviewed similar challenges in the past. The federal questions in this case are: (A) whether a court's decision permitting voting after Election Day creates multiple Election Days in contravention

of federal law; and (B) under what circumstances a state court improperly intrudes on authority allocated to the state legislature by the Elections Clause.

Second, there is more than a fair prospect that a majority of the Court will vote to reverse the decision of the Supreme Court of Pennsylvania because it violates federal law and the United States Constitution. The decision of the Supreme Court of Pennsylvania violates federal law establishing "the Tuesday next after the 1st Monday in November" as a single Federal Election Day, which falls on November 3rd this year. 2 U.S.C. § 7; *see also* 2 U.S.C. § 1; 3 U.S.C. § 1. These provisions mandate holding all elections for Congress and the Presidency on a single day throughout the Union. However, Footnote 26 and page 63 of the Supreme Court of Pennsylvania's Slip Opinion extend Election Day past November 3, 2020. It does this by forcing election officials to accept ballots received after election day even if these ballots lack a legible postmark. This permits ballots to be both voted and counted after election day, extending the General Election past November 3, 2020. This clearly violates 2 U.S.C. § 7.

The decision also violates the Elections Clause, Article I, § 4, cl. 1 of the United States Constitution by seizing control of setting the times, places, and manner of federal elections from the state legislature. Although the Supreme Court of Pennsylvania may have the final say on the substantive law of Pennsylvania, the Elections Clause is a direct delegation of authority to regulate the times, places, and manner, of federal elections to Pennsylvania's General Assembly, subject only to alteration by Congress, not the Supreme Court of Pennsylvania. U.S. Const. Art. I, §

4. The General Assembly has not delegated authority to alter these regulations to the Pennsylvania Judiciary, yet this Court's decision fundamentally changes the policy decisions inherent in the General Assembly's duly enacted election laws. This Court has substituted its will for the will of the General Assembly, and this substitution usurps the authority vested in the General Assembly by the Elections Clause. U.S. Const. Art. I, § 4.

Third, the irreparable harm in this case is immediate and palpable: The Supreme Court of Pennsylvania's decision blatantly usurps the power of the Pennsylvania General Assembly and inflicts confusion and chaos on the Commonwealth's upcoming federal elections. Without a stay from this Court, elections will not proceed under duly enacted election laws even if (as is likely) the Court grants a petition for writ of certiorari and reverses or vacates the decision below.

For these reasons, Petitioners respectfully request that this Court stay the portions of the Pennsylvania's Supreme Court decision: (1) forcing election officials to accept ballots received after election day to be counted even if they lack a legible postmark; and (2) extending the absentee and mail-in ballot deadline past Election Day, pending the disposition of Petitioners' forthcoming petition for writ of certiorari to the Court.

I. THE SUPREME COURT OF PENNSYLVANIA'S RULING VIOLATES FEDERAL LAW MANDATING ONE FEDERAL ELECTION DAY.

There is more than a reasonable probability that the Court will consider the case on the merits and at least a fair prospect that a majority of the Court will vote to reverse the decision of the Supreme Court of Pennsylvania below because it violates federal law requiring one election day be held on the Tuesday following the first Monday in November.

A. Federal Law Establishes One Day For The Election.

The Elections Clause provides Congress (along with state legislatures) with the authority to make laws prescribing "[t]he times, places and manner of holding elections for senators and representatives . . . ." U.S. Const. art. I, § 4, cl. 1. Consistent with the authority vested by the Elections Clause, in 1872 Congress established a national uniform election day for choosing members of the House of Representatives mandating that "[t]he Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter." 2 U.S.C. § 7.

Likewise, Congress has set the same date for the selection of presidential electors: "The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President." 3 U.S.C. § 1; *see also*

U.S. Const. art. II, § 1, cl. 4 ("The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States."). Upon ratification of the Seventeenth Amendment, Congress adopted a similar provision respecting the election of United States Senators. *See* 2 U.S.C. § 1; *see also Foster v. Love*, 522 U.S. 67, 69-70 (1997). Together these provisions "mandate[] holding all elections for Congress and the Presidency on a single day throughout the Union." *Id*.

Although these statutes clearly establish one uniform "Federal Election Day" throughout the nation, the omission of a definition of the term "election" has led the Court to comment on the opacity of the statutory language at issue in this case, particularly regarding the precise acts that the statutes require a State to perform on that day. *Foster*, 522 U.S. at 72. Accordingly, courts have turned to the statutes' legislative history for guidance. *See Blum v. Stenson*, 465 U.S. 886, 896 (1984)).

By establishing one uniform date for holding federal elections, Congress sought "to remedy more than one evil arising from the election of members of Congress occurring at different times in the different states." *Ex Parte Yarbrough*, 110 U.S. 651, 661 (1884). Specifically, a review of the legislative history of these provisions demonstrates that Congress wanted to, *inter alia*, prevent States that voted early from unduly influencing those voting later and to combat fraud by minimizing the opportunity for voters to cast ballots in more than one election. *Love v. Foster*, 90 F.3d 1026, 1029 (5th Cir. 1996); *Busbee v. Smith*, 549 F. Supp. 494, 524 (D.D.C. 1982) (three-judge court), *aff'd*, 459 U.S. 1166 (1983). These objectives reflect the

importance voting played in the political debates of the Reconstruction era. *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1172 (9th Cir. 2001) (placing congressional debates over enactment of 2 U.S.C. § 7 and allowing voting over multiple days in their historical context).

In advancing these rationales, proponents expressed their understanding of what establishing a national uniform federal election day meant. Representative Butler of Massachusetts, who authored the 1872 law, articulated his aim in sponsoring the legislation:

> The object of this amendment is to provide a uniform time of electing Representatives in Congress . . . . But on account of the facility for colonization and repeating among the large central States, New York holding its election in November, and Ohio, Pennsylvania, and Indiana holding their elections in October, the privilege is allowed the border States, if any man is so disposed, of throwing voters across from one into the other. *I think it will be fair for everybody that on the day when one votes all should vote, and that the whole question should be decided then*.

Cong. Globe, 42d Cong., 2d Sess. 112 (1871) (emphasis added). Representative Butler further elaborated:

> Unless we do fix some time at which, as a rule, Representatives shall be elected, it will be in the power of each State to fix upon a different day, *and we may have a canvass going on all over the Union at different times. It gives some states undue advantage. It gives some parties undue advantage*.

Cong. Globe, 42d Cong., 2d Sess. 141 (1871) (emphasis added).

In congressional debate over establishing a single national election day, the Senate even defeated an amendment that would have permitted voting for

Representatives over multiple days in states that conducted elections for their own officers on more than one day. Cong. Globe, 42d Cong., 2d Sess. 676-77 (1871).

This emergency application and the forthcoming petition for writ of certiorari are not the first time this Court has been asked to consider violations of the federal laws setting a single federal election day. 2 U.S.C. §§ 1, 7; 3 U.S.C. § 1. In *Foster v. Love*, the Court considered whether Louisiana's "open primary" statute conflicted with federal election statutes. 522 U.S. 67, 68 (1997). Under Louisiana law, an open primary was held for congressional offices in October. *Id*. All candidates, regardless of party, appeared on the same ballot. *Id*. If any candidate received a majority of votes in the primary, he or she was considered "elected" without any further action on federal election day. *Id*. The Court held that Louisiana's open primary system conflicted with federal election statutes because the "final selection" of candidates could be "concluded as a matter of law before the federal election day, with no act in law or in fact to take place on the date chosen by Congress . . ." *Id*. at 72. *Foster* is instructive on the meaning of "election" under 2 U.S.C. § 7. 522 U.S. at 68. The Court observed that:

> When the federal statutes speak of "the election" of a Senator or Representative, they plainly refer to *the combined actions of voters and officials meant to make a final selection of an officeholder . . . . See* N. Webster, An American Dictionary of the English Language 433 (C. Goodrich & N. Porter eds. 1869) (defining "election" as 'the act of choosing a person to fill an office'). By establishing a particular day as 'the day' on which these actions must take place, the statutes simply regulate the time of the election, a matter on which the Constitution explicitly gives Congress the final say.

Id. at 71-72 (emphasis added). This Court declined to identify these combined acts of voters and officials. *Id*. at 72. *But see Lamone v. Capozzi*, 396 Md. 53, 83-84 (Md. 2006) ("The Constitution contemplates an election in terms of the voter, not in terms of the election process. Moreover . . . there is no dispute that the 'combined actions' must occur, *that voting must end*, on federal election day." (emphasis added)) (interpreting 2 U.S.C. § 7, *Foster*, 522 U.S. 67, and Maryland Law). *See also Fladell v. Elections Canvassing Comm'n of Fla*., CL 00-10965 AB, CL 00-10970 AB, CL 00-10988 AB, CL 00-10992 AB, CL 00-11000 AB, 2000 Fla. Cir. LEXIS 768, *6-*17 (Fla. 15th Jud. Cir. 2000) ("[T]he Constitution of the United States . . . require[s] that Presidential 'electors' be elected on the *same day* throughout the United States. (emphasis added)).

B. The Supreme Court Of Pennsylvania's Ruling Allows For The Counting Of Ballots After Election Day In Violation Of Federal Law.

The decision of the Supreme Court of Pennsylvania in this case provides for a three-day extension of the federal election in contravention of federal law. Specifically, the decision forces election officials to accept ballots received by them after election day even if the ballots "lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible." Slip Op. at 37, n. 26. *See also id*. at 63. This enables votes cast after election day to be counted if no legible postmark is placed on the envelope. This creates a scenario where votes can and will be cast and counted on days after Election Day.

The casting and counting of ballots unquestionably constitutes an "election" under federal law. *See Foster*, 522 U.S. 67. As the Court enunciated in *Foster*, the word "election" under the federal statutes "plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder . . . ." 522 U.S. at 71-72 (citing N. Webster, An American Dictionary of the English Language 433 (C. Goodrich & N. Porter eds. 1869) (defining "election" as 'the act of choosing a person to fill an office')). In post-election voting, voters cast ballots and those ballots are then counted by election officials on a day other than Election Day. Since a true and final determination of officeholders cannot be made until these votes are counted, *see* Slip Op. at 37, n. 26, 63, post-election voting necessarily constitutes the "combined actions of voters and officials meant to make a final selection of an officeholder . . . ." *Foster*, 522 U.S. at 71-72.

Accordingly, the Supreme Court of Pennsylvania's decision necessarily creates multiple federal election days, including after Election Day, and raises the same concerns of fraud, undue advantage, and non-uniformity which led to the creation of a Federal Election Day. *See* Cong. Globe, 42d Cong., 2d Sess. 112 (1871); Cong. Globe, 42d Cong., 2d Sess. 141 (1871); *see also Ex Parte Yarbrough*, 110 U.S. at 661; *Love*, 90 F.3d at 1029; *Busbee*, 549 F. Supp. at 524.

C. Early Voting Is Distinct From Voting After Election Day.

The Supreme Court of Pennsylvania's sanctioning of post-election voting is substantially different from decisions that allow early voting. In those cases, early

voting conducted prior to Election Day was legal because "the final selection [of candidates] is not made before the federal election day." *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000). *See also Millsaps v. Thompson*, 259 F.3d 535, 545-46 (5th Cir. 2001); *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d at 1175-76. This is because the word "election" in 2 U.S.C. § 7, as interpreted by the United States Supreme Court, means "the combined actions of voters and officials meant to make a final selection of an office holder." *Foster*, 522 U.S. at 71.

The Supreme Court of Pennsylvania's decision, which permits voting after Election Day, is clearly distinguishable from early voting cases because voting after election day is a combined action of voters and officials that makes a final selection of an office holder. *See Foster*, 522 U.S. at 71. In early voting, voters cast votes prior to Election Day, but, in contrast to the post-election voting in this case, those votes are not counted immediately. Rather, election officials hold the ballots of early voters until the close of all polling places on Election Day, then record the early votes along with absentee votes. *See, e.g., Millsaps v. Thompson*, 259 F.3d at 537. Here, under the Supreme Court of Pennsylvania's decision, individuals are able to vote and have those votes counted by election officials after Election Day. *See Foster*, 522 U.S. at 71. Because a final selection of an office holder cannot be made until all votes are counted, post-election voting necessarily requires a final selection on a day other than Election Day. This creates multiple election days in violation of 2 U.S.C. § 7, 2 U.S.C. § 1, and 3 U.S.C. § 1.

Accordingly, there is more than a "reasonable probability" that this Court will grant the forthcoming petition for writ of certiorari and at least a "fair prospect" that this Court will reverse the Supreme Court of Pennsylvania's decision. *See Hollingsworth*, 558 U.S. at 190.

II. THE SUPREME COURT OF PENNSYLVANIA VIOLATED ARTICLE I, SECTION 4 OF THE U.S. CONSTITUTION WHEN IT ALTERED THE BALLOT RECEIPT DEADLINE.

There is also more than a reasonable probability that this Court will consider the case on the merits and at least a fair prospect that a majority of the Court will vote to reverse the decision of the Supreme Court of Pennsylvania below because it violates the Elections Clause of the United States Constitution. *See* Const. art. I, § 4, cl. 1. The Elections Clause provides that "[t]he times, places and manner of holding elections for senators and representatives, shall be prescribed in each State by *the legislature thereof*; but the Congress may at any time by law make or alter such regulations, except as to the places of chusing Senators." U.S. Const. art. I, § 4, cl. 1 (emphasis added). The Elections Clause commits power to regulate congressional elections only to "the legislature" of each state and to "Congress." *Id*.

A. The Elections Clause: Article I, Section 4.

The Constitution does not delegate any authority regarding the time, place and manner of elections to state courts. In fact, the Clause specifically excludes them. The principle that state courts are not delegated any Elections Clause authority is plain from the provision's text. The word "legislature" was "not one 'of uncertain meaning

when incorporated into the Constitution.'" *Smiley v. Holm*, 285 U.S. 355, 365 (1932) (quoting *Hawke v. Smith*, 253 U.S. 221, 227 (1920)). The term "legislature" necessarily differentiates between that body and the "State" of which it is only a subpart. By empowering one body of the state to prescribe election rules, the Constitution impliedly denies it to others.

Aside from its plain language, the Elections Clause denies authority to state judiciaries through several contextual reference points. For example, the power to regulate federal elections is incidental to the Constitution's establishment of a federal government; it is not an inherent state power. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 806 (1995); *Cook v. Gralike*, 531 U.S. 510, 522 (2001). Thus, it "had to be delegated to, rather than reserved by, the states." *Cook*, 531 U.S. at 522 (quotations omitted). Because the delegation necessarily confines the scope of power, the term "legislature" is "a limitation upon the state in respect of any attempt to circumscribe the legislative power" over federal elections. *McPherson v. Blacker*, 146 U.S. 1, 25 (1892).

Further, in referencing the "Times, Places and Manner" of elections, the Elections Clause plainly references what English Parliamentary law called "methods of proceeding" as to the "time and place of election" to the House of Commons. *See* 1 William Blackstone, *Commentaries on the Laws of England* (1765-1769) *158-59, *170-74. Those "time and place" "methods" were in turn completely within parliamentary control, beyond the reach of "the Common Law" and "the Judges." George Petyt, Lex Parliamentaria, 9, 36-37, 70, 74-75, 80 (1690); 1 William

Blackstone, *Commentaries*, *146-47. By delegating the procedures of congressional elections to legislative bodies, the Elections Clause carried forward that English law tradition of maintaining legislative control, and excluding judicial control, over such matters.

Another contextual reference point for the Elections Clause comes from the framing debates and early commentaries. Though all concerned parties appreciated that state legislatures might abuse their authority over election rules, none of them even proposed that other branches of state government may exercise a check on such abuse. Instead, they viewed Congress as the *exclusive* check. *See* The Federalist No. 59 (Alexander Hamilton) (1788). That check, expressed directly in the Constitution's text, parallels the judicial-type functions Congress performs in other quintessentially legislative affairs, as described in adjacent constitutional provisions. *See, e.g.*, U.S. Const. art. I, §§ 2-5. It was furthermore assumed that even Congress would exercise its prerogative to override state legislatures' regulations only "from an extreme necessity, or a very urgent exigency." 1 J. Story, Commentaries on the Constitution of the United States § 820 (3d ed. 1858). This was because the power "will be so desirable a boon" in the "possession" of "the state legislatures" that "the exercise of power" in Congress would (it was thought) be highly unpopular. *Id*. That state courts might deprive state legislatures of this "desirable . . . boon" in their "possession" was beyond belief. *Id*.

While the authority to regulate congressional elections is conferred by the federal Constitution on the state legislatures via the Elections Clause, the states also retain their own plenary power to regulate state elections. *See Tex. Democratic Party*

v. Abbott, 961 F.3d 389 at 29, 407-408 (5th Cir. 2020); *Tashjian v. Republican Party*, 479 U.S. 208, 217 (1986). In either event, the power to regulate and administer elections is committed to "Congress and state legislatures—not courts." *Coalition v. Raffensperger*, No. 1:20-cv-1677-TCB, 2020 U.S. Dist. LEXIS 86996 at *8-9 (N.D. Ga. May 14, 2020); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) ("The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.").

A final point of reference for the Elections Clause comes from its sister provision found in U.S. Const. art. I, § 1, cl. 2 (the "Electors Clause"). The Electors Clause particularly "convey[s] the broadest power of determination" and "leaves it to the legislature exclusively to define the method" of appointment of electors. *McPherson v. Blacker*, 146 U.S. 1, 27 (1892). "Thus, the text of the election law itself, and not just its interpretation by the courts of the States, takes on independent significance." *Bush v. Gore*, 531 U.S. 98, 112–13 (2000) (Rehnquist, J., concurring). "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question," including when such departure is carried out by the state judiciary. *Id.* at 113. "[W]ith respect to a Presidential election," state courts must be "mindful of the legislature's role under Article II in choosing the manner of appointing electors." *Id.* at 114.

Therefore, the plain language, context, and history of the Elections Clause clearly demonstrate that the Legislature has the primary authority to regulate elections checked only by the United States Congress.

B. Pennsylvania's General Assembly Has Exercised This Power To Establish Ballot Receipt Deadlines For Mail-In Ballots.

Prior to 2019, Pennsylvania's General Assembly permitted mail-in ballots to be counted only if they were received by election officials by 5 p.m. on the Friday before Election Day. *See* 2019 (P.L. 552, No. 77) 2019 Pa. Legis Serv. Act 2019-77 (S.B. 421) (West). In late 2019, the Pennsylvania General Assembly with bipartisan support passed, and Governor Wolf signed, a comprehensive bipartisan reform of the state's election laws. *See id*. Among other reforms, SB 421 included provisions setting a deadline of 8:00 p.m. on Election Day for the receipt of absentee and mail-in ballots. *See* 25 P.S. § 3146.6(a); § 3150.16(a). This lengthened the vote-by-mail period by more than four days.

In March 2020, the state legislature further amended Pennsylvania election law in response to the COVID-19 pandemic. *See* Act of Mar. 27, 2020, (P.L. 41, No. 12), 2020 Pa. Legis. Serv. Act 2020-12 (S.B. 422) (West). These amendments included postponing the day of Pennsylvania's Primary Election from April to June and passing funding measures to make in-person voting safer. *Id*. Importantly, this bi-partisan group of legislators and Governor Wolf—a Democrat—did not agree to extend the ballot receipt deadline.

Indeed, just this past month leaders of the Pennsylvania General Assembly drafted proposed legislation that would, among other things, alter deadlines for voters to request a mail-in ballot to 15 days before Election Day and expand vote-by-mail options. SB 10 (Aug. 24, 2020) (available at https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2019&sessInd=0&billBody=S&billTyp=B&billNbr=0010&pn=1898; HB 2626 (Sept. 1, 2020) (available at https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2019&sessInd=0&billBody=H&billTyp=B&billNbr=2626&pn=4335. However, that legislation does not propose to extend the vote-by-mail receipt deadline, clearly signaling the General Assembly's policy determination to not extend the vote-by-mail receipt deadline past Election Day. *Id*. The General Assembly's deliberations and negotiations with the Executive Branch have not resulted in an extension of its ballot receipt deadline. The Supreme Court of Pennsylvania cannot usurp the General Assembly's authority and unilaterally extend the deadline following a 'parallel path' to bypass the Constitutional and state legislative process.

C. The Supreme Court Of Pennsylvania Does Not Possess Legislative Power Pursuant To The Elections Clause.

The Supreme Court of Pennsylvania does not exercise a legislative function when it decides cases because "the duty of courts is to interpret laws, not to make them." *Watson v. Witkin*, 22 A.2d 17, 23 (Pa. 1941). And, contrary to what that court implied in its Opinion, the General Assembly has never delegated its authority to regulate elections in a blanket manner to the judiciary. *Cf*. Slip Op. at 35 (citing 25

P.S. § 3046; *In re General Election-1985*, 531 A.2d at 836, 839 (1987)). The Supreme Court of Pennsylvania therefore has no authority to alter the General Assembly's duly enacted prescriptions for federal elections and doing so violated Article I, Section 4 of the Constitution.

Moreover, the fact that the Supreme Court of Pennsylvania ruled solely on Pennsylvania substantive law does not save it from violating federal law or the Elections Clause. This frustrates the Elections Clause's express delegation of authority to "the legislature" because an alleged conflict between the state constitution's policy and the state legislature's policy requires the state courts to pick one policy over another. This would instigate a battle between the state's courts and its legislature, and the Elections Clause plainly sides with "the legislature" in that dispute.

A state court's enforcement of constitutional policy prescriptions results in court-made policy superseding legislative policy. Inferences courts draw from constitutional rules may be remote and tenuous, whereas an actual enacted policy undoubtedly reflects the choices of "the legislature." Accordingly, this Court has never held that state constitutional provisions purporting to set time, place, or manner rules or policy limitations on those rules can nullify contrary acts of a legislature pursuant to their authority under the Elections Clause. Indeed, many state courts, including the Supreme Court of Pennsylvania, have concluded that a state constitution may not "impose a restraint upon the power of prescribing the manner of holding [federal] elections." *Chase v. Miller*, 41 Pa. 403, 409 (1862); *In re Plurality*

Elections, 8 A. 881, 882 (R.I. 1887). *See also In re Op. of Justices*, 45 N.H. 595, 601-07 (N.H. 1864); *Wood v. State*, 142 So. 747, 755 (Miss. 1932) (concurring opinion); Thomas Cooley et al., Treatise On The Constitutional Limitation Which Rest Upon The Legislative Power Of The State Of The American Union 903 & n.1 (1903).

D. The Supreme Court of Pennsylvania's Extension Of The Ballot Receipt Deadline Violates The Elections Clause.

Pennsylvania's period for absentee and mail-in ballot submission is unquestionably a regulation of the times, places, or manner of elections[5] because it regulates the time during which absentee and mail-in ballots may be submitted to elections officials. *See* 25 P.S. § 3150.16(c).[6] This deadline is a quintessential example of the General Assembly exercising the authority that is directly delegated to it under the Elections Clause. *See Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 822-23 (2015) (citing voter registration deadlines, absentee voting deadlines, and vote counting laws as instances of time, place, or manner regulations under Elections Clause). Pennsylvania's Supreme Court recognizes the constitutional authority of Pennsylvania's General Assembly too. *See also In re Nomination of Driscoll*, 847 A.2d 44, 45 n.1 (Pa. 2004) (recognizing that a candidate for federal office

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[5] U.S. Const. Art. I, § 4.

[6] Previously, Pennsylvania required that absentee ballots be received by the Friday before the election. The General Assembly changed that in the fall of 2019. *See* Act 77. 2019 Pa. Legis Serv. Act 2019-77 (S.B. 421) (West) App. E. The legislature also made changes again to Pennsylvania's election code in March of 2020 as the legislature considered the impact of COVID on the primary. ACT 12. 2020 Pa. Legis. Serv. Act 2020-12 (S.B. 422) (West) App. F. No further change in the receipt deadline was included in that legislation.

must "abide by the election procedures in the Pennsylvania Election Code" because, unless altered by Congress, Pennsylvania's General Assembly prescribes the times, places and manner of holding Elections for Senators and Representatives); *In re Guzzardi*, 99 A.3d 381, 385-86 (Pa. 2014) (stating that the legislature enacts election related deadlines for the orderly, efficient, and fair proceedings of elections as well as creating much needed stability). This federal constitutional delegation of authority provides state legislatures with "a wide discretion in the formulation of a system for the choice by the people of representatives in Congress." *In re Nomination of Driscoll*, 847 A.2d at 45 n.1.

The Supreme Court of Pennsylvania was "not asked to interpret the statutory language establishing the received-by deadline for mail-in ballots" because even in its own words "*there is no ambiguity regarding the deadline set by the General Assembly* . . . ." Slip Op. at 32 (emphasis added). Moreover, the Supreme Court of Pennsylvania was "not asked to declare the language facially unconstitutional as *there is nothing constitutionally infirm* about a deadline of 8:00 p.m. on Election Day for the receipt of ballots." *Id*. (emphasis added). The Supreme Court of Pennsylvania instead was asked to replace the General Assembly's policy judgments with its own.[7] It obliged.

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[7] The Supreme Court of Pennsylvania said as much in its opinion. *See* Slip Op. at 32-33. *See also id*. ("The parties, instead, question whether the application of the statutory language to the facts of the current unprecedented situation results in an as-applied infringement of electors' right to vote.").

Voters can vote in person on Election Day. Voters can request and cast their mail-in ballot beginning 50 days before an election. 25 P.S. §3150.12a. Voters can choose to wait a week before Election Day to request their ballot. *Crossey*, slip op. at 35. Voters can send their ballot via overnight mail or deliver their ballot to the county election office. *See id*. at 35-36. This is not a case where the right to vote is illusory. In fact, in a parallel case where the Supreme Court of Pennsylvania's designated master held a hearing, developed a record on the ballot received-by deadline, and subjected witnesses to cross-examination, the court found that the United States Postal Service's on-time delivery rate in Pennsylvania is higher than the national average, with 99% of presort First Class mail being received within three days of mailing. *See id*. at 21, 36. Pennsylvania's General Assembly has done everything it can to establish a voting regime that is easy and accessible, even in the midst of a pandemic.[8]

The Supreme Court of Pennsylvania's decision makes precisely the kind of policy choices the Elections Clause assigned to the various state legislatures. In doing

[8] The Supreme Court of Pennsylvania heavily relies on the USPS's Marshall Letter. *See* slip op. at 24-27. But in *Crossey*, where witnesses testified concerning the Postal Service's abilities and were subject to cross-examination, both the *Crossey* Petitioners' Postal Service expert and the Senate Intervenors' expert agreed that the Postal Service was capable of delivering ballots within Pennsylvania's statutory timeline for requesting and receiving ballots. *See Crossey*, slip op. at 10-11, 30-31, 35 (App. C at 10-11, 30-31, 35). In fact, the Secretary is spending taxpayer dollars to inform voters to request and mail in their ballot as early as possible. *See id*. at 28. There is no evidence establishing that Pennsylvania's ballot receipt-by deadline is plainly and palpably unconstitutional. *See id*. at 35.

so, the Supreme Court of Pennsylvania has unconstitutionally usurped the General Assembly's authority under the Elections Clause. It is, in fact, the General Assembly's constitutionally vested duty to regulate the time, manner, and place of federal elections, not that of the state judicial branches. *Crossey*, App. C at 36. The Supreme Court of Pennsylvania's decision to extend the received-by deadline and accept untimely voted ballots constitutes a "significant departure" from the election laws duly enacted by the General Assembly, "rais[ing] a federal constitutional question" and a substantial issue on the merits. *Bush*, 531 U.S. at 112–13 (Rehnquist, J., concurring).

Accordingly, there is at least a "reasonable probability" that this Court will hear Applicants' forthcoming appeal and at least a "fair prospect" that it will reverse this Court's decision. *See Hollingsworth*, 558 U.S. at 190; *see also Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70, 77 (2000) ("There are expressions in the opinion of the Supreme Court of Florida that may be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with Art. II, § 1, cl. 2 circumscribe the legislative power") (internal quotations omitted).

E. <u>This Court Has Stayed Or Overturned Other Challenges To States' COVID-19 Responses.</u>

There is also more than a reasonable probability that the Court will consider the case on the merits because this Court has been tracking state policy during the COVID-19 pandemic.

For example, this Court has stayed or overturned nearly every effort in federal court to alter a state's election laws in light of the Virus over the opposition of state government officials. *See, e.g., Republican Nat'l Comm.v. Democratic Nat'l Comm*., 140 S. Ct. 1205 (Apr. 6, 2020) (granting stay of district court order requiring Wisconsin to count late postmarked absentee ballots for primary election, pending final disposition on appeal);[9] *Merrill v. People First Of Ala.*, No. 19A1063 (July 2, 2020) (granting stay of district court order enjoining Alabama's duly enacted photo identification and witness requirements for absentee voting during the pandemic); *Little v. Reclaim Idaho*, No. 20A18 (July 30, 2020) (granting stay of district court orders relaxing Idaho's rules for ballot initiatives); *Clarno v. People Not Politicians*, No. 20A21 (Aug. 11, 2020) (granting stay of district court order relaxing Oregon's election procedures because of the coronavirus pandemic); *Thompson v. DeWine*, No. 19A1054 (June 25, 2020) (denying application to vacate Sixth Circuit stay of district court order suspending Ohio's enforcement of in-person signature requirements and extending filing deadlines for initiative campaigns); *Tex. Democratic Party v. Abbott*, No. 19A1055 (June 26, 2020) (denying application to vacate Fifth Circuit stay of district court order forcing Texas to implement no-excuse absentee voting). *See also Little v. Reclaim Idaho*, 591 U.S. No. 20A18, 2020 U.S. LEXIS 3585 (Roberts, C.J.,

[9] The Seventh Circuit had declined to stay this portion of the district court's order as they had done with the portion of the opinion pertaining to absentee ballot witness requirements. With this stay from the Court, the majority of the provisions from the Wisconsin district court's April order have now been stayed.

concurring) (agreeing with the Court's stay of a district court order altering initiative petition procedures in light of COVID-19 due in part to the district court's failure to "accord sufficient weight to the State's discretionary judgments about how to prioritize limited state resources across the election system as a whole."). This Court has also repeatedly refused to disrupt states' efforts to tackle issues related to COVID-19 outside of the election law context. S*ee, e.g., South Bay United Pentecostal Church v. Newsom*, No. 19A1044 (May 29, 2020); *Calvary Chapel Dayton Valley v. Sisolak*, No. 19A1070 (July 24, 2020).

This Court has permitted only one case to alter state election law in response to COVID-19, *Republican National Committee v. Common Cause Rhode Island*, 591 U.S. No. 20A28 (Aug. 13, 2020). However, that case is inapposite to the present case because, unlike the present case, state policy makers had agreed to the modification of state election law in that case. *Id*. Specifically, this Court was asked to freeze a lower court order that approved an agreement between state election officials and civic groups to waive a requirement that absentee ballots be signed in the presence of either two witnesses or a notary. *Id*. This Court explained that – unlike in other recent election-law cases like the present case – state officials in this case support the agreement that the Petitioners asked the court to block. *Id*. Here state officials are divided. Importantly, the General Assembly, the branch of state government that the United States Constitution expressly vests with the authority to enact the time, place, and manner of elections, is opposed to altering the ballot receipt deadline. The

Supreme Court of Pennsylvania's decision therefore usurps the General Assembly's authority.

Accordingly, there is at least a "reasonable probability" that this Court will hear Applicants' forthcoming appeal and at least a "fair prospect" that it will reverse this Court's decision. *See Hollingsworth*, 558 U.S. at 190.

F. Denying The Requested Stay Will Have A Cascading Effect On This Court's Docket.

Denying the requested stay will have a cascading effect across the country. Denying the stay will embolden lower federal and state courts throughout the country to alter lawfully enacted statutory deadlines in these final weeks before Election Day.

Currently, there are no less than six cases pending in state or federal court where the plaintiffs are demanding that the Court postpone the ballot-receipt deadline. *See New Georgia Project, et al. v. Raffensperger*, No. 20-13360 (11th Cir. Sept. 18, 2020) (emergency application for stay of extension of ballot receipt deadline);[10] *Michigan Alliance for Retired Americans, et al. v. Benson*, 20-000108-MM (Mich. Ct. Claims Sept. 18, 2020) (extending ballot receipt deadline to fourteen days after the election, so long as the ballot is postmarked the day before Election Day);[11] *North Carolina Alliance for Retired Americans, et al. v. N.C. State Bd. of Elections*,

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[10] Executive officials in Georgia are opposing the district court's injunction and seeking a stay pending appeal.

[11] Injunction issued over the objection of Legislature, whose intervention in the case was denied while Executive Branch defendants have acquiesced and are not pursuing appeal. It is anticipated that the Legislature will seek additional review through the state court system.

20-CVS-8881 (Wake Ct. Sept. 22, 2020) (extending ballot receipt deadline to count all ballots postmarked on Election Day and received up to nine days after Election Day);[12] *Lucero, et al. v. Simon*, 20-cv-02030 (D. Minn. Sept. 22, 2020) (Complaint filed challenging consent decree entered in *LaRose v. Simon,* No. 62-CV-20-3149 (2d Jud. Dist. Minn. June 17, 2020) with Minnesota Secretary of State extending ballot receipt deadline to eight days *after* Election Day);[13] *Democratic National Committee v. Bostelmann*, No. 20-cv-00249 (D. Wis. Sept. 21, 2020) (order granting injunction requiring county boards of elections to count ballots postmarked on Election Day and received by November 9, 2020); *appeal filed* No. 20-2844 (7th Cir. Sept. 24, 2020);[14] *Driscoll v. Stapleton*, Montana Supreme Court, Case No. 20-0295 (filed May 26, 2020) (On August 26, 2020, the State Supreme Court ruled that it would take the case on the briefing without oral argument); *Driscoll v. Stapleton*, No. DV 20-408 (Mont. 13th Jud. Dis., Yellowstone Cty., Sept. 25, 2020) (opinion available at https://bloximages.newyork1.vip.townnews.com/kulr8.com/content/tncms/assets/v3/editorial/1/81/1812256c-ff85-11ea-aa54-2f21ed82c7a1/5f6e7ac229f2a.pdf.pdf) (forcing election administrators to accept all absentee ballots postmarked by Election Day, but received after Election Day as long as they are received by the deadline for federal

[12] Similarly, Executive branch defendants reached agreement with Plaintiffs while Legislative Branch defendants are opposing the consent decree and pursuing appeals through the state courts.

[13] Preliminary injunction hearing in the District of Minnesota is scheduled for October 2, 2020.

[14] Legislative Defendants and other intervenor-defendants are pursuing this appeal through the Seventh Circuit, although the District Court has stayed its order for one week pending appeal.

write-in ballots for military and overseas voters; also extending Montana's cure deadline statutes nine days after Election Day).[15] All seven of these cases, and potentially more, could come before this Court in the next few weeks.

Numerous courts around the country, including this one, have denied attempts to extend ballot return deadlines in the midst of the COVID-19 pandemic or otherwise. *Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70 (2000); *Thomas v. Andino*, 2020 U.S. Dist. LEXIS 90812 (D. S.C. May 25, 2020); *DCCC v. Ziriax*, 2020 U.S. Dist. LEXIS 170427 (D. Ok., Sept. 17, 2020); *Grossman v. Secretary of the Commonwealth*, 485 Mass. 541 (2020); *VoteVets Action Fund v. Detzner*, No. 4:18-cv-524-MW/CAS) (N.D. Fla. November 16, 2018); *Friedman v. Snipes*, 345 F.Supp.2d 1356 (S.D. Fla. 2004).

If this Court denies the requested stay, the denial will allow similar decisions extending deadlines from other courts around the country to proliferate. This proliferation will empower courts to alter statutory deadlines that were the product of deliberation and negotiation in the branch of government that the U.S. Constitution vests with enacting these laws.

III. ABSENT THE GRANT OF THE REQUESTED STAY, PENNSYLVANIA WILL SUFFER IRREPARABLE HARM.

The Applicants, General Assembly, and the Commonwealth as a whole will suffer irreparable harm if the Supreme Court of Pennsylvania's opinion and order is

[15] Executive Defendants and proposed Legislative intervenors (intervention was denied) indicated opposition to the relief sought by Plaintiffs.

not stayed. The mere enjoining of validly enacted legislation amounts to irreparable injury because "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3 (2012). This is even truer for statutes relating to elections because "[a] State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989). Accordingly, because the Pennsylvania Supreme Court's order enjoins enforcement of Pennsylvania's ballot receipt deadline statute, its opinion and order are themselves sufficient irreparable injury to warrant a stay.

Circumstances also warrant the requested stay. Absent a stay, the machinery of the election will continue inexorably towards Election Day. With each passing day, more and more voters will learn that the deadline is not Election Day—as established by statute—but three days *after* Election Day. This Court should therefore follow its "ordinary practice" and prevent the Pennsylvania Supreme Court's order "from taking effect pending appellate review." *Strange v. Searcy*, 135 S. Ct. 940, 940 (2015) (Thomas, J., dissenting) (citing *Herbert v. Kitchen*, 134 S. Ct. 893 (2014), and *San Diegans for Mt. Soledad Nat'l War Mem'l v. Paulson*, 548 U.S. 1301 (2006) (Kennedy, J., in chambers)).

A stay would not harm the Secretary. The Secretary has dedicated substantial resources "to educate voters about the process of voting by mail and the importance of doing so promptly." *Crossey*, slip op. at 19 (App. C at 19). In fact, "The Secretary is undertaking a public education campaign to inform voters of the need to apply for

and return all mail ballots as early as possible." *See id*. at 28. Accordingly, a stay would in fact assist the Secretary in not having to dedicate additional resources to inform voters that they have *additional* time to mail their ballots and could mail their ballots on Election Day for receipt by Friday, November 6, 2020. Granting the stay would not harm the Secretary.

A stay also does not undermine the Secretary's instructions. The Secretary's public education campaign has already informed voters to request their ballots early and mail their ballots early. This way, the ballots can be received by the statutorily enacted November 3, 2020, deadline. App. C at 19, 28. Changing the rules in the middle of the game by informing voters that they now have until November 6 for their ballot to be received risks confusion and the potential for fraud. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.").

Furthermore, granting the requested stay permits a validly enacted statute to remain in force. This is a statute that the parties concede is constitutional in every respect—except in the context of COVID-19. A disease is not state action and therefore this Court should permit the election to proceed under the ballot receipt deadline that was produced through bi-partisan deliberation and negotiation.

CONCLUSION

For the aforementioned reasons, Applicants respectfully request this Court grant a stay of the portions of the Supreme Court of Pennsylvania's decision: (1) forcing election officials to accept ballots received after Election Day to be counted even if they lack a legible postmark; and, (2) extending the absentee and mail-in ballot deadline past Election Day, pending the disposition of Applicants' forthcoming petition for writ of certiorari.

Respectfully submitted,

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September 28, 2020

APPENDIX

APPENDIX A

[J-96-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

PENNSYLVANIA DEMOCRATIC PARTY, NILOFER NINA AHMAD, DANILO BURGOS, AUSTIN DAVIS, DWIGHT EVANS, ISABELLA FITZGERALD, EDWARD GAINEY, MANUEL M. GUZMAN, JR., JORDAN A. HARRIS, ARTHUR HAYWOOD, MALCOLM KENYATTA, PATTY H. KIM, STEPHEN KINSEY, PETER SCHWEYER, SHARIF STREET, AND ANTHONY H. WILLIAMS	:	No. 133 MM 2020
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	:	SUBMITTED: September 8, 2020
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v.	:	
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KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; ARMSTRONG COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON	:	

COUNTY BOARD OF ELECTIONS; :
COLUMBIA COUNTY BOARD OF :
ELECTIONS; CRAWFORD COUNTY :
BOARD OF ELECTIONS; CUMBERLAND :
COUNTY BOARD OF ELECTIONS; :
DAUPHIN COUNTY BOARD OF :
ELECTIONS; DELAWARE COUNTY :
BOARD OF ELECTIONS; ELK COUNTY :
BOARD OF ELECTIONS; ERIE COUNTY :
BOARD OF ELECTIONS; FAYETTE :
COUNTY BOARD OF ELECTIONS; :
FOREST COUNTY BOARD OF :
ELECTIONS; FRANKLIN COUNTY BOARD :
OF ELECTIONS; FULTON COUNTY :
BOARD OF ELECTIONS; GREENE :
COUNTY BOARD OF ELECTIONS; :
HUNTINGDON COUNTY BOARD OF :
ELECTIONS; INDIANA COUNTY BOARD :
OF ELECTIONS; JEFFERSON COUNTY :
BOARD OF ELECTIONS; JUNIATA :
COUNTY BOARD OF ELECTIONS; :
LACKAWANNA COUNTY BOARD OF :
ELECTIONS; LANCASTER COUNTY :
BOARD OF ELECTIONS; LAWRENCE :
COUNTY BOARD OF ELECTIONS; :
LEBANON COUNTY BOARD OF :
ELECTIONS; LEHIGH COUNTY BOARD :
OF ELECTIONS; LUZERNE COUNTY :
BOARD OF ELECTIONS; LYCOMING :
COUNTY BOARD OF ELECTIONS; :
MCKEAN COUNTY BOARD OF :
ELECTIONS; MERCER COUNTY BOARD :
OF ELECTIONS; MIFFLIN COUNTY :
BOARD OF ELECTIONS; MONROE :
COUNTY BOARD OF ELECTIONS; :
MONTGOMERY COUNTY BOARD OF :
ELECTIONS; MONTOUR COUNTY BOARD :
OF ELECTIONS; NORTHAMPTON :
COUNTY BOARD OF ELECTIONS; :
NORTHUMBERLAND COUNTY BOARD :
OF ELECTIONS; PERRY COUNTY BOARD :
OF ELECTIONS; PHILADELPHIA COUNTY :
BOARD OF ELECTIONS; PIKE COUNTY :
BOARD OF ELECTIONS; POTTER :
COUNTY BOARD OF ELECTIONS; :
SCHUYLKILL COUNTY BOARD OF :

ELECTIONS; SNYDER COUNTY BOARD OF ELECTIONS; SOMERSET COUNTY BOARD OF ELECTIONS; SULLIVAN COUNTY BOARD OF ELECTIONS; SUSQUEHANNA COUNTY BOARD OF ELECTIONS; TIOGA COUNTY BOARD OF ELECTIONS; UNION COUNTY BOARD OF ELECTIONS; VENANGO COUNTY BOARD OF ELECTIONS; WARREN COUNTY BOARD OF ELECTIONS; WASHINGTON COUNTY BOARD OF ELECTIONS; WAYNE COUNTY BOARD OF ELECTIONS; WESTMORELAND COUNTY BOARD OF ELECTIONS; WYOMING COUNTY BOARD OF ELECTIONS; AND YORK COUNTY BOARD OF ELECTIONS :

PETITION OF: KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA :

OPINION

JUSTICE BAER **DECIDED: September 17, 2020**

In October 2019, the General Assembly of the Commonwealth of Pennsylvania enacted Act 77 of 2019, which, *inter alia*, created for the first time in Pennsylvania the opportunity for all qualified electors to vote by mail, without requiring the electors to demonstrate their absence from the voting district on Election Day, 25 P.S. §§ 3150.11-3150.17. The Pennsylvania Democratic Party and several Democratic elected officials and congressional candidates, some in their official capacity and/or as private citizens (collectively, "Petitioner"), filed the instant action, initially in the Commonwealth Court, in the form of a petition for review seeking declaratory and injunctive relief relating primarily to five issues of statutory interpretation involving Act 77 and the Election Code, 25 P.S.

§§ 2600-3591.[1] This Court exercised Extraordinary Jurisdiction to address these issues and to clarify the law of this Commonwealth in time for the 2020 General Election.[2]

I. FACTS AND PROCEDURAL HISTORY

On July 10, 2020, Petitioner filed its petition for review in the Commonwealth Court against Secretary of the Commonwealth Kathy Boockvar ("Secretary") and all 67 county election boards ("Boards").[3] In its petition, Petitioner requested that the Commonwealth Court issue declaratory and injunctive relief "so as to protect the franchise of absentee and mail-in voters." Petition for Review ("Petition"), 7/10/2020, at 5.[4]

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[1] The caption reflects the Secretary of the Commonwealth Kathy Boockvar as filing the petition before the Court based upon her application for extraordinary review, which this Court granted. Regardless, as noted, we now refer to the plaintiffs in the underlying lawsuit as "Petitioner" and, as noted *infra*, Secretary Boockvar as "Secretary."

[2] Pursuant to 42 Pa.C.S. § 726, this Court

> may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of the Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.

[3] At the time Petitioner filed its petition, an action filed by Donald J. Trump for President, Inc., the Republican National Committee ("RNC"), and several Republican congressional candidates and electors (collectively, "Republican Party") against the Secretary and the Boards was pending in the U.S. District Court for the Western District of Pennsylvania. In that case, the Republican Party alleged federal and state constitutional violations stemming from the recent implementation of no excuse mail-in voting under Act 77. The specific issues raised by the Republican Party in the federal action are, to some extent, the mirror image of the issues raised by Petitioner in the case *sub judice*.

[4] Concurrently, Petitioner filed both an Application for Special Relief in the Nature of an Expedited Motion for Alternative Service and an Application for an Expedited Discovery Schedule and Evidentiary Hearing, to which several responses were filed. On July 15, 2020, the Commonwealth Court denied Petitioner's request for alternative service. On July 30, 2020, the Commonwealth Court, *inter alia*, granted in part and denied in part Petitioner's application for an expedited discovery schedule and evidentiary hearing. In this order, the Commonwealth Court set forth specific deadlines for responsive pleadings.

Specifically, Petitioner raised several discrete issues for the Commonwealth Court's consideration, which are discussed in more detail *infra*. Briefly, in Count 1, Petitioner requested declaratory relief to confirm that Act 77 permits Boards "to provide secure, easily accessible locations as the Board deems appropriate, including, where appropriate, mobile or temporary collection sites, and/or drop-boxes for the collection of mail-in ballots." *Id.* at 47, ¶ 165. Additionally, Petitioner sought an injunction requiring the Boards to "evaluate the particular facts and circumstances in their jurisdictions and develop a reasonable plan … to ensure the expedient return of mail-in ballots." *Id.* at ¶ 166.

In Count 2, Petitioner sought an injunction to "lift the deadline in the Election Code across the state to allow any ballot postmarked by 8:00 p.m. on Election Night to be counted if it is received by the Boards" by 5:00 p.m. on Tuesday, November 10, which is the deadline for ballots to be received under the Federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA").[5] *Id.* at 50, ¶ 178. In the alternative, Petitioner posited that the Commonwealth Court could, with a few caveats, "enjoin the Counties to extend a more tailored ballot extension deadline to the date that is 21 days after the particular voter's ballot is mailed by the county[.]" *Id.* at ¶ 179.

In Count 3, Petitioner highlighted that the "procedure for mail-in ballots often leads to minor errors, which result in many ballots being rejected and disenfranchising voters who believe they have exercised their right to vote." *Id.* at 51, ¶ 186. In anticipation of these expected errors, Petitioner again sought an injunction requiring Boards that have knowledge of an incomplete or incorrectly filled out ballot and the elector's contact

[5] The UOCAVA delineates, *inter alia*, the process and procedure in which overseas voters and voters in the uniformed services receive absentee ballots for federal elections. *See generally* 52 U.S.C. §§ 20301-20311.

information to contact the elector and provide them "the opportunity to cure the facial defect until the UOCAVA deadline." *Id.* at 52, ¶ 187.

In Count 4, Petitioner requested a declaration that there is no statutory authority to set aside an absentee or mail-in ballot solely for failure to place it into the official election ballot envelope (hereinafter referred to as the "secrecy envelope"), as well as an injunction prohibiting any "naked ballots," which are otherwise without error, from being invalidated.[6] *Id.* at 54, ¶ 198-199. A "naked ballot" refers to an official mail-in ballot that is not placed in the secrecy envelope before mailing.

Finally, in Count 5, Petitioner sought a declaration that the "Election Code's poll watcher residency requirement does not violate the United States Constitution's First and Fourteenth Amendments, its Equal Protection Clause, or the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution." *Id.* at 55, ¶ 207.

On August 13, 2020, the Secretary filed an Answer and New Matter to the petition. In addition, twenty of the named Boards filed answers with new matter, fourteen of the Boards filed answers, and nine of the Boards filed preliminary objections.[7] Requests to intervene were filed by Donald J. Trump for President, Inc., the Republican Party of Pennsylvania, and the RNC, as well as Joseph B. Scarnati III, President Pro Tempore, and Jake Corman, Majority Leader of the Pennsylvania Senate, in opposition to the petition. The Common Cause Pennsylvania, The League of Women Voters of

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[6] As explained more fully below, upon receipt of an official mail-in ballot, the mail-in elector is to mark the ballot in secret, and then fold the ballot, enclose, and securely seal the same in the secrecy envelope provided. 25 P.S. § 3150.16(a). The secrecy envelope "shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector." *Id.*

[7] On August 27, 2020, Petitioner filed its: (1) Answer to the Secretary's New Matter; (2) Answer to the new matter filed by various Boards; and (3) an omnibus memorandum of law opposing the preliminary objections filed by several Boards.

Pennsylvania, The Black Political Empowerment Project ("B-PEP"), Make the Road Pennsylvania, a project of Make the Road States ("Make the Road PA"), Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise filed a joint application to intervene as co-petitioners.

On August 16, 2020, the Secretary filed an application asking this Court to exercise extraordinary jurisdiction over Petitioner's petition for review.[8] Highlighting, *inter alia*, the two major political parties' "diametric positions" on the interpretation of several Act 77 provisions and the fast-approaching 2020 General Election, the Secretary asserted that "[t]he exercise of extraordinary jurisdiction by this Court is the only means available to resolve these disputes without disrupting the election." Secretary's Application for Extraordinary Relief, 8/16/2020, at 14-16. On August 19, 2020, Petitioner filed an Answer to the Secretary's application, noting that it had no objection to this Court exercising its extraordinary jurisdiction.[9]

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[8] In her application, the Secretary informed this Court that she had filed a motion in the aforementioned federal action urging the District Court to abstain from rendering a decision pursuant to *R.R. Comm'n of Tex. v. Pullman*, 312 U.S. 496 (1941) (explaining that, where appropriate, a federal court may abstain from deciding a case to permit a state court the opportunity to resolve a state law question). Secretary's Application for Extraordinary Relief, 8/16/2020, at 17. This motion was later granted. *See Trump for President, Inc.,* 2020 WL 4920952, at *21 (W.D. Pa. 2020).

[9] In addition, on August 18, 2020, Bucks, Chester, Montgomery, and Philadelphia County Boards of Election filed an Answer in Support of the Secretary's application. Likewise, on August 19, 2020, Armstrong, Bedford, Blair, Centre, Columbia, Dauphin, Fayette, Huntingdon, Indiana, Lackawanna, Lawrence, Lebanon, Montour, Northumberland, Venango, and York County Boards of Election also filed an answer joining the Secretary's application. Several of the remaining 67 counties filed no answer letters. On August 20, 2020, answers were filed by the Republican proposed intervenors, as well as proposed co-petitioners, The Common Cause Pennsylvania, The League of Women Voters of Pennsylvania, B-PEP, Make the Road PA, Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise.

Faced with a national election scheduled to occur on November 3, 2020 and substantial legal issues that required the highest court of Pennsylvania's analysis and response to ensure a free and fair election, on September 1, 2020, this Court granted the Secretary's Application and set forth a schedule for supplemental briefing and filings.[10] Later, on September 3, 2020, this Court filed an order granting the motions to intervene filed by the Republican Party of Pennsylvania (hereinafter, "Respondent") and Joseph B. Scarnati III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader, representing the Republican Senate Caucus (hereinafter, "Caucus"). Applications to intervene filed by Donald J. Trump for President, Inc., and the RNC; Common Cause of Pennsylvania, the League of Women Voters of Pennsylvania, B-PEP, Make the Road PA, Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise were denied without prejudice to the parties' ability to file briefs as *amicus curiae* pursuant to Pa.R.A.P. 531.[11] The parties have submitted supplemental filings in support of their

[10] The Secretary highlighted in her application for extraordinary relief to this Court that there was insufficient time to engage in full pre-trial proceedings and discovery before applications for summary relief could be filed. *See* Secretary's Application for Extraordinary Relief, 8/16/2020, at 13-14. In fact, the Secretary explained that because of all the uncertainties surrounding the case, it was unclear "whether discovery, dispositive motions, and a hearing were even necessary." *Id.* at 14 n.3. She maintained that Petitioner's application to expedite discovery and a hearing in Commonwealth Court was premature. Thus, the Secretary sought extraordinary review of the discrete legal claims alleged in the lawsuit as if at the summary relief stage of the case. Cognizant of our authority when exercising extraordinary jurisdiction, this Court granted the Secretary's request. *See* Order dated 9/1/2020. Accordingly, because of the intense time pressure confronting this Court, we do not address the various procedural filings in the case and, rather, address only the five discrete legal claims before us. *See* 42 Pa.C.S. §726 (this Court may "assume plenary jurisdiction of [any matter pending before any court] at any stage thereof and enter a final order or otherwise cause right and justice to be done").

[11] After this Court granted the Secretary's application and set a schedule for supplemental filings, Bryan Cutler and Kerry Bennighoff, Speaker and Majority Leader of the Pennsylvania House of Representatives, respectively, filed an Application to Intervene, while State Senator Jay Costa, on behalf of the Senate Democratic Caucus filed an

respective positions, and this matter is now ripe for disposition of the discrete five legal issues before us.

II. RELEVANT OVERARCHING PRINCIPLES OF LAW

Generally speaking, each of the five issues presented by Petitioner presents a pure question of law, over which our standard of review is *de novo* and our scope of review is plenary. *In re Vencil*, 152 A.3d 235, 241 (Pa. 2017). Specifically, in large part, Petitioner requests relief in the form of declarations of law regarding Act 77 pursuant to the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541. Accordingly, we address the issues presented mindful of the following.

The Declaratory Judgments Act, which is to be liberally construed and administered, was promulgated to "settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations[.]" 42 Pa.C.S. § 7541(a). Pertinent to the instant matter, this Act provides, in relevant part, that "[a]ny person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." 42 Pa.C.S. § 7533.[12]

Application to Intervene, which was later amended to include State Representative Frank Dermody, on behalf of the House Democratic Caucus. Because of the necessary expediency of reaching a decision in this case, and given that adequate advocacy has been provided, these applications, submitted close to this Court's deadline for supplemental filings, are denied. In any case, the requests are moot given the issuance of our decision.

[12] Notably, while Petitioner has styled its requested relief as "injunctive" in reality it seeks declaratory relief. We will treat its prayers for relief accordingly. In this regard, as noted, essentially, we are treating the matter as if it is at the summary relief stage. *See Hosp. & Healthsystem Ass'n of Pa. v. Com.*, 77 A.3d 587, 602 (Pa. 2013) ("An application for summary relief may be granted if a party's right to judgment is clear and no material issues of fact are in dispute.") (citation omitted). *See also* Pa.R.A.P. 1532(b) (providing that "[a]t

When presented with matters of statutory construction, this Court is guided by Pennsylvania's Statutory Construction Act, 1 Pa.C.S. § 1501-1991. Under this Act, "the object of all statutory construction is to ascertain and effectuate the General Assembly's intention." *Sternlicht v. Sternlicht,* 876 A.2d 904, 909 (Pa. 2005) (citing 1 Pa.C.S. § 1921(a) ("The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly")). When the words of a statute are clear and unambiguous, "the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b); *see also Sternlicht*, *supra*. However, when the words of a statute are not explicit, the General Assembly's intent is to be ascertained by consulting a comprehensive list of specific factors set forth in 1 Pa.C.S. § 1921(c). *See also Pennsylvania Associated Builders & Contractors, Inc. v. Commonwealth Dep't of Gen. Servs.,* 932 A.2d 1271, 1278 (Pa. 2007) (recognizing that when the "words of the statute are not explicit, the General Assembly's intent is to be ascertained by considering matters other than statutory language, like the occasion and necessity for the statute; the circumstances of its enactment; the object it seeks to attain; the mischief to be remedied; former laws; consequences of a particular interpretation; contemporaneous legislative history; and legislative and administrative interpretations").

Moreover, we recognize that in this Commonwealth, "[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." PA. CONST. art. I, § 5 (hereinafter referred to as the "Free and Equal Elections Clause"). The broad text of this specific provision "mandates clearly and unambiguously, and in the broadest possible terms, that *all* elections conducted in this Commonwealth must be 'free and equal.'" *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018) (emphasis in original). Stated another way, this clause was

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any time after the filing of a petition for review in an appellate or original jurisdiction matter, the court may on application enter judgment if the right of the applicant thereto is clear.").

"specifically intended to equalize the power of voters in our Commonwealth's election process[.]" *Id.* at 812.

Finally, this Court has previously observed that the purpose and objective of the Election Code, which contains Act 77, is "[t]o obtain freedom of choice, a fair election and an honest election return[.]" *Perles v. Hoffman*, 213 A.2d 781, 783 (Pa. 1965). To that end, the Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice. *Id.* at 784. With these general principles in mind, this Court will address in turn each of the five discrete issues presented by Petitioner.

III. ISSUES

A. COUNT I OF THE PETITION FOR REVIEW

Section 3150.16(a) of the Election Code, 25 P.S. § 3150.16(a), is part of Act 77 and pertinent to several issues in this matter. That statutory provision, which is entitled "Voting by mail-in electors," states as follows:

> **(a) General rule.--**At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

25 P.S. § 3150.16(a). The last sentence of this provision is the primary focus of the first question of law that we will address. The plain language of this sentence allows an elector to mail her securely sealed envelope containing the elector's "Official Election Ballot" to

her "county board of election" or, more relevant to this issue, "deliver it in person to said county board of election." *Id.*

In Count I of its petition for review, Petitioner seeks a declaration that a reasonable interpretation of Section 3150.16(a) of the Election Code permits county boards of election to provide electors with as many secure and easily accessible locations to deliver personally their mail-in ballots as each board deems appropriate.[13] Petitioner suggests that these locations can consist of mobile or temporary collection sites and that county boards of election may utilize secure drop-boxes for the collection of hand-delivered mail-in ballots.

Indeed, Petitioner contends that, by enacting Section 3150.16(a) of the Election Code, the General Assembly clearly and unambiguously intended to provide the various county boards of election with the option of accepting hand-delivered mail-in ballots at any location controlled by the boards, not just at the boards' central offices. In support of this position, Petitioner points out, *inter alia*, that pursuant to Section 3151 of the Election Code, the General Assembly empowered each county board of election to receive "ballot

[13] Under Count I, Petitioner also sought relief "in the form of an affirmative injunction requiring that county Boards are required to evaluate the particular facts and circumstances in their jurisdictions and develop a reasonable plan reflecting the needs of the citizens of the county to ensure the expedient return of mail-in ballots." Petition at 47, ¶ 166. Petitioner accurately concedes that it must establish a clear right to this relief. *Id.* at ¶ 167; *see Roberts v. Bd. of Directors of Sch. Dist. of City of Scranton*, 341 A.2d 475, 478 (Pa. 1975) (explaining that, "for a mandatory injunction to issue, it is essential that a clear right to relief in the plaintiff be established"). To the extent that Petitioner continues to seek injunctive relief in this form, we summarily decline the request, as there simply is no legal authority that would allow this Court to mandate that the county boards of election "evaluate the particular facts and circumstances in their jurisdictions and develop a reasonable plan reflecting the needs of the citizens of the county to ensure the expedient return of mail-in ballots." In other words, Petitioner cannot establish a clear right to relief with regard to their request for a mandatory injunction.

boxes and returns" in their offices or "in any such other place as has been designated by the board."[14] 25 P.S. § 3151.

The Secretary builds on Petitioner's argument. In so doing, the Secretary highlights that, in construing Section 3150.16(a) of the Election Code, the Court should consider that the General Assembly defined "county board" or "board" as meaning "the county board of elections of any county herein provided for." 25 P.S. § 2602. According to the Secretary, this definition clarifies that, for purposes of Section 3150.16(a), "county board of election" refers to a municipal body, not a physical office or address. In other words, the Secretary believes that, when this definition is used for purposes of Section 3150.16(a), that Section unambiguously permits voters to deliver mail-in ballots in person to places designated by county boards of election, other than their respective office addresses.

In further support of this position, the Secretary asserts that the Election Code contemplates that county boards of election will operate out of multiple locations. *See* 25 P.S. § 2645(b) (stating, *inter alia*, that the "county commissioners or other appropriating authorities of the county shall provide the county board with suitable and adequate offices at the county seat, property furnished for keeping its records, holding its public sessions and otherwise performing its public duties, and shall also provide, such branch offices for the board in cities other than the county seat, as may be necessary"). Echoing Petitioner's argument, the Secretary further suggests that the Election Code anticipates that "ballot

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[14] Section 3151 of the Election Code states, in full, as follows:

> Each county board of elections shall cause its office to remain open, in charge of one or more members of the board, during the entire duration of each primary and election, and after the close of the polls, until all the ballot boxes and returns have been received in the office of the county elections board, or received in such other place as has been designated by the board.

25 P.S. § 3151.

boxes and returns" may be received "in the office of the county elections board, or received in such other places as has been designated by the board." 25 P.S. § 3151.

The Secretary insists that the Election Code is devoid of any language limiting county boards of election from accepting delivery of mail-in votes solely at their primary office addresses. In fact, the Secretary takes the position that to hold otherwise would contravene the plain language of the Election Code. However, assuming *arguendo* that this Court deems the Election Code ambiguous on this point, the Secretary advocates that a reasonable interpretation of the Code nonetheless authorizes county boards of election to utilize multiple drop-off sites to accept hand-delivered mail-in ballots.

In this regard, the Secretary focuses on the statutory considerations to which this Court may refer when construing an ambiguous statute, 1 Pa.C.S. § 1921(c), as described *supra*. More specifically, the Secretary posits that the General Assembly enacted Act 77 with the object of increasing the electorate's participation in the electoral process by making it easier and more convenient to vote, providing all electors with the option to mail in their ballots. The Secretary opines that, consistent with this objective, the General Assembly intended to allow county boards of election to accept hand-delivered mail-in ballots at locations besides the boards' central office addresses. The Secretary takes the position that, if this Court deems reasonable the various parties' competing interpretations of the Election Code, then the Court should construe the Code in favor of the right to vote.

Contrary to the contentions of the Secretary and Petitioner, Respondent submits that the Election Code prohibits county boards of election from designating locations other than their established county offices for hand delivery of mail-in ballots. Rather, according to Respondent, Section 3150.16(a) of the Election Code unambiguously mandates that an elector must either mail her mail-in ballot to the office address of the county board of

election or deliver that ballot in person to the same office address. Stated differently, Respondent takes the position that the Election Code requires electors either to place their mail-in ballots, addressed to their county boards of election, into the United States Postal Service's ["USPS"] system or personally to deliver their mail-in ballot to that office.

In further support of this position, Respondent highlights the Election Code's use of the word "office" in the "deadline" provision for mail-in votes, Section 3150.16(c), which states that "a completed mail-in ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election." 25 P.S. § 3150.16(c). Respondent also points out that the Election Code requires that a secure envelope containing a mail-in ballot have printed upon it "the address of the elector's county board of election," so that "the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election." 25 P.S. § 3150.16(a). Thus, Respondent believes that, in sum, these statutory directives clearly indicate that the General Assembly intended that electors either mail or personally deliver mail-in ballots to the established office addresses of the county boards of election.

Next, Respondent reminds us that the Secretary and Petitioner are asking this Court to interpret the Election Code to allow voters to deliver their mail-in ballots to locations that will include unmanned drop-boxes. Respondent contends that Petitioner and the Secretary fail to articulate where the Election Code mentions "drop-boxes" or "satellite locations." Respondent then asserts that, if this Court were to interpret the Election Code as Petitioner and the Secretary propose, the Court would invalidate an alleged requirement of Act 77, *i.e.*, the need to deliver mail-in ballots to the established offices of county boards of election.

In addition, Respondent suggests that the preferred interpretation of the Election Code advocated by the Secretary and Petitioner permits the individual counties to

implement differing ballot-return regimes. Respondent avers that this outcome would violate principles of equal protection. In support, Respondent quotes *Pierce v. Allegheny County Bd. of Elections*, 324 F.Supp.2d 684, 697 (W.D. Pa. 2003), for the proposition that "[a] state must impose uniform statewide standards in each county in order to protect the legality of a citizen's vote. Anything less implicates constitutional problems under the equal protection clause of the Fourteenth Amendment." For these reasons, Respondent contends that the interpretation of the Election Code posited by Petitioner and the Secretary must fail.

The primary argument of the Caucus largely tracks that of Respondent, particularly the contention that the relief proposed by Petitioner and the Secretary would create an equal protection problem. According to the Caucus, pursuant to the solution offered by Petitioner and the Secretary, some counties will provide more locations for voters to deliver their mail-in ballots, while other counties will allow voters to convey their mail-in ballots solely to the office addresses of the county boards of election. The Caucus views this possibility as a violation of equal protection.

Notably, in an apparent break from Respondent's position, subject to its equal protection argument, the Caucus seems to concede that Pennsylvania law allows county boards of election to provide for in person delivery of mail-in ballots at more than one county election board office located within the county's borders. However, the Caucus insists that additional offices must comply with various requirements, including those outlined in Section 2645(b) of the Election Code. *See* 25 P.S. § 2645(b) (explaining that "[t]he county commissioners or other appropriating authorities of the county shall provide the county board with suitable and adequate offices at the county seat, property furnished for keeping its records, holding its public sessions and otherwise performing its public duties, and shall also provide, such branch offices for the board in cities other than the

county seat, as may be necessary"). In closing, the Caucus submits that unstaffed drop-boxes would not constitute a branch office of a county board of election and are otherwise not authorized by the Election Code as a method for collecting hand-delivered mail-in ballots.

Turning to our analysis, we observe that the question before us consists of the following two-part query regarding the Election Code: Does the Election Code allow a Pennsylvania voter to deliver her mail-in ballot in person to a location other than the established office address of her county's board of election, and if so, what means can county boards of election utilize to accept hand-delivered mail-in ballots? For the reasons that follow, we find that the parties' competing interpretations of the Election Code on this issue are reasonable, rendering the Code ambiguous as it relates to this query. *See A.S. v. Pennsylvania State Police*, 143 A.3d 896, 905-06 (Pa. 2016) (explaining that a "statute is ambiguous when there are at least two reasonable interpretations of the text").

In reaching this conclusion, we observe that Section 3150.16(a) of the Election Code explicitly allows an elector to deliver in person her securely sealed envelope containing her mail-in ballot "to said county board of election." 25 P.S. § 3150.16(a). The Election Code simply defines "county board" or "board" to mean "the county board of elections of any county herein provided for." 25 P.S. § 2602(c). Thus, the language used by the Legislature regarding where a mail-in ballot may be delivered in person is not solely limited to the official central office of the county board of election, and other sections of the Election Code permit a board of election to operate outside of its principal office. *See*, *e.g.*, 25 P.S. § 2645(b) (stating, *inter alia*, that the "county commissioners or other appropriating authorities of the county shall provide the county board with suitable and adequate offices at the county seat, property furnished for keeping its records, holding its public sessions and otherwise performing its public duties, and shall also provide, such

branch offices for the board in cities other than the county seat, as may be necessary"). Therefore, on the one hand, these provisions tend to favor the view of Petitioner and the Secretary that the General Assembly did not intend to limit voters to delivering personally their mail-in ballots solely to the established office addresses of their county boards of election. Rather, as these parties rationally contend, when this definition is utilized for purposes of construing Section 3150.16(a), that exercise suggests that a voter can hand deliver her mail-in ballot to any location designated by the county board of election as a place where the board will accept these ballots.

Alternatively, we recognize that Section 3150.16(a) of the Election Code directs that an elector may deliver her mail-in ballot in person only to "the county board of election." 25 P.S. § 3150.16(a). As Respondent in particular understandably emphasizes, neither this statutory language nor any other provision of the Election Code explicitly empowers a county board of election to establish satellite mail-in ballot collection facilities or to utilize secure drop-boxes for purposes of accepting hand-delivered mail-in ballots. These observations, when viewed in the totality of the various arguments, lead us to conclude that the parties' competing interpretations are reasonable.

Accordingly, we turn to interpretive principles that govern ambiguous statutes generally and election matters specifically. In so doing, we are mindful of the "longstanding and overriding policy in this Commonwealth to protect the elective franchise." *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2004) (citations omitted). Moreover, it is well-settled that, "although election laws must be strictly construed to prevent fraud, they ordinarily will be construed liberally in favor of the right to vote." *Id.* (internal quotation marks omitted). Indeed, "[o]ur goal must be to enfranchise and not to disenfranchise [the electorate]." *In re Luzerne Cty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972). Lastly, in resolving statutory ambiguity, we may consider, *inter alia*, the occasion

and necessity for, the mischief to be remedied by, and the object to be obtained by the statute. 1 Pa.C.S. § 1921(c)(1), (3), and (4), respectively.

With all of that said, we need not belabor our ultimate conclusion that the Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes. This conclusion is largely the result of the clear legislative intent underlying Act 77, which animates much of this case, to provide electors with options to vote outside of traditional polling places. Section 3150.16(a) of the Election Code undeniably exemplifies this intent by granting the Pennsylvania electorate the right to vote by way of a mail-in ballot beyond the circumstances that ordinarily allow this alternative, such as voter absenteeism.

Accordingly, although both Respondent and the Caucus offer a reasonable interpretation of Section 3150.16(a) as it operates within the Election Code, their interpretation restricts voters' rights, as opposed to the reasonable interpretation tendered by Petitioner and the Secretary. The law, therefore, militates in favor of this Court construing the Election Code in a manner consistent with the view of Petitioner and the Secretary, as this construction of the Code favors the fundamental right to vote and enfranchises, rather than disenfranchises, the electorate.

In light of this conclusion, we will briefly address the equal protection argument of Respondent and the Caucus. The premise of that argument, as detailed *supra*, is that, if this Court interprets the Election Code in a manner that is consistent with the position of Petitioner and the Secretary, which we have, then the county boards of election will employ myriad systems to accept hand-delivered mail-in ballots, which allegedly will be unconstitutionally disparate from one another in so much as some systems will offer more legal protections to voters than others will provide. However, the exact manner in which each county board of election will accept these votes is entirely unknown at this point;

thus, we have no metric by which to measure whether any one system offers more legal protection than another, making an equal protection analysis impossible at this time. Accordingly, the equal protection argument of Respondent and the Caucus does not alter our conclusion in this matter.

Thus, for these reasons, this Court declares that the Election Code permits county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes.[15]

B. COUNT II OF THE PETITION FOR REVIEW

In its second count, Petitioner presents this Court with an as-applied challenge to the Election Code's deadline for receiving ballots ("received-by deadline"), which requires mail-in and absentee ballots to be returned to Boards no later than 8:00 p.m. on Election Day, 25 P.S. §§ 3146.6(c), 3150.16(c). It contends that strict enforcement of this deadline, in light of the current COVID-19 pandemic and alleged delays in mail delivery by the USPS, will result in extensive voter disenfranchisement in violation of the Pennsylvania Constitution's Free and Equal Elections Clause.

As noted above, the Free and Equal Elections Clause provides that "[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right to suffrage." PA. CONST. art. I, § 5. Petitioner interprets this provision as forbidding the Boards from interfering with the right to vote by failing to act in

[15] We note that the Secretary has issued guidelines in this regard specifying that the Boards "may provide voters with access to a secure ballot return receptacle." *See* Secretary's Post-Submission Communication dated 8/24/2020, setting forth the Secretary's Absentee and Mail-in Ballot Return Guidance at 1.1. Additionally, and consistent with the requirement that all votes must be cast by Election Day, these guidelines specify that: "Authorized personnel should be present at ballot return sites immediately prior to 8:00 p.m. or at the time the polls should otherwise be closed"; "At 8:00 p.m. on election night, or later if the polling place hours have been extended, all ballot sites, and drop-boxes must be closed and locked"; and "Staff must ensure that no ballots are returned to ballot return sites after the close of the polls." *Id.* at 3.3.

a timely manner so as to allow electors to participate in the election through mail-in voting. Petition at 49, ¶ 176.

In support of its as-applied challenge in regard to the upcoming General Election, Petitioner recounts this Commonwealth's recent experience during the June Primary. It emphasizes that, during the Primary, the Boards were inundated with over 1.8 million requests for mail-in ballots, rather than the expected 80,000 - 100,000, due in large part to the COVID-19 pandemic, which caused many voters to be wary of congregating in polling places. Petitioner's Brief at 2, 51. Petitioner asserts that "[t]his crush of applications created massive disparities in the distribution and return of mail-in ballots." Petition at 24, ¶ 70.

It explains that, while some Boards were able to process the requests within the statutory requirements established by Act 77,[16] other boards, especially those in areas hard-hit by the pandemic, were unable to provide electors with ballots in time for the electors to return their ballot in accord with the statutory deadline. Petition at 23, ¶ 66. Indeed, it avers that in Delaware County, thousands of ballots were "not mailed out until the night" of the Primary, making timely return impossible. Petition at 26, ¶ 77. Bucks County apparently experienced similar delays.

To remedy this situation, the Election Boards of Bucks and Delaware Counties sought relief in their county courts.[17] Recognizing that the Election Code "implicitly

[16] Act 77, *inter alia*, requires Boards to verify an applicant's submitted information to determine whether the applicant is "qualified to receive an official mail-in ballot." 25 P.S. § 3150.12b(a). After approving an application, the Election Code, as amended by Act 77, instructs that "the board shall deliver or mail official mail-in ballots to the additional electors within 48 hours." 25 P.S. § 3150.15.

[17] The Election Code grants courts of common pleas the authority to address situations which arise on the day of a primary or general election, 25 P.S. § 3046. Section 3046 entitled "Duties of common pleas court on days of primaries and elections," provides:

granted [the courts the] authority to provide relief when there is a natural disaster or emergency" that threatens to deprive electors of the opportunity to participate in the electoral process, the Courts of Common Pleas of Bucks and Delaware Counties extended the deadline for the return of mail-in ballots for seven days, so long as the ballot was postmarked by the date of the Primary. *In re: Extension of Time for Absentee and Mail-In Ballots to be Received By Mail and Counted in the 2020 Primary Election*, No. 2020-02322-37 (C.P. Bucks) (McMaster, J.)*; see also In re: Extension of Time for Absentee and Mail-In Ballots to be Received By Mail and Counted in the 2020 Primary Election*, No.-CV 2020-003416 (C.P. Delaware).

Petitioner also observes that voters in six counties received an extension to the return deadline pursuant to an executive order issued by Governor Wolf, invoking the Emergency Management Services Code, 35 Pa.C.S. § 7301(c).[18] In Executive Order No. 2020-02, Governor Wolf addressed impediments to timely ballot return arising from the pandemic as well as civil unrest that had arisen immediately before the Primary in the specified counties following the killing of George Floyd by police officers. The impediments included road closures, public transportation disruptions, and curfews. To combat the potential disenfranchisement of voters, especially in light of the "unprecedented number" of mail-in ballots due to the pandemic, the Governor extended

> During such period said court shall act as a committing magistrate for any violation of the election laws; shall settle summarily controversies that may arise with respect to the conduct of the election; shall issue process, if necessary, to enforce and secure compliance with the election laws; and shall decide such other matters pertaining to the election as may be necessary to carry out the intent of this act.

25 P.S. § 3046.

[18] The affected counties were Allegheny, Dauphin, Delaware, Erie, Montgomery, and Philadelphia.

the received-by deadline for seven days, so long as the ballots were postmarked by the date of the Primary. Governor Wolf, Executive Order No. 2020-02 (June 1, 2020).

While voters in specified counties benefitted from extensions of time to return their ballots, Petitioner emphasizes that the Commonwealth Court rejected a request for a statewide extension of the ballot received-by deadline in *Delisle v. Boockvar*, 319 M.D. 2020 (Pa. Cmwlth. June 2, 2020) (Memorandum Opinion), favoring instead a county-by-county remedy. Indeed, while not mentioned by Petitioner, this Court additionally denied relief to a petitioner seeking a statewide extension of the ballot received-by deadline weeks before the June Primary, where the petitioner similarly argued for the extension based upon the overwhelming number of mail-in ballot applications and delays in the USPS system. *Disability Rights Pa. v. Boockvar*, No. 83 MM 2020, 2020 WL 2820467 (Pa. May 15, 2020).

In light of the lessons learned from the June Primary, Petitioner asserts that a statewide remedy is now necessary for the General Election. It suggests that the lack of a statewide remedy risks an equal protection challenge as only some voters would benefit from the extended deadline based on their county court's determination. Petition at 32-33, ¶ 105. Moreover, it emphasizes that a statewide order from this Court early in the election process would reduce voter confusion, as compared to the last-minute county-by-county relief granted during the Primary to address emergency situations. Petitioner's Brief at 26-27 n.9.

Petitioner avers that the difficulties encountered by Boards processing the ballot applications prior to the June Primary will only be exacerbated in the November General Election. It emphasizes the continued grip of the pandemic, and a potential second wave of infections, which will result in more electors seeking to exercise their right to vote by mail. Petition at 49, ¶ 173-175. Additionally, it recognizes the undisputed fact that heavily

contested Presidential elections involve substantially greater voter participation than largely uncontested primaries, further observing that "[i]t is normal in elections with significant public attention for there to be a flood of registrations received right before deadlines." Petition at 26, ¶ 79. It highlights that the Secretary estimates that 3 million electors will seek mail-in or absentee ballots for the General Election in contrast to the 1.5 million votes cast by mail at the Primary, and the pre-pandemic assumption of 80,000 - 100,000 absentee and mail-in ballots. Petitioner's Brief at 51.

Petitioner asserts that the overwhelming demand on the Boards will be exacerbated by delays in the USPS mail delivery system. Petitioner observes that historically the law presumed that a document placed in a mail collection box would be delivered within three days of placement, rather than the current two to five day delivery expectation of the USPS. *Id.* at 50. Petitioner avers that substantial delivery delays have resulted from a combination of recent operational changes at the USPS and decreased staffing caused by the pandemic. *Id.* at 20-21. It emphasizes that the USPS recently warned that there is a "significant risk" that Pennsylvania voters who submit timely ballot requests will not have sufficient time to complete and return their ballot to meet the Election Code's received-by deadline. *Id.* at 2-3 (quoting USPS General Counsel and Executive Vice President Thomas Marshall's July 29, 2020 letter to the Secretary (hereinafter "USPS General Counsel's Letter"), discussed in detail *infra*).

Petitioner avers that this Court has the authority to act to protect electors' right to cast their ballot, as protected by Pennsylvania's Free and Equal Elections Clause. It emphasizes that "'[c]ourt[s] possess broad authority to craft meaningful remedies' when 'regulations of law . . . impair the right of suffrage.'" *Id.* at 48-49 (quoting *League of Women Voters of Pa*., 178 A.3d at 809, 822) (alterations in original). It observes that courts have exercised that authority to provide equitable relief to voters faced with natural

disasters that impede their right to vote. As an example, Petitioner highlights the Commonwealth Court's actions in *In re General Election-1985*, 531 A.2d 836, 838-39 (Pa. Cmwlth. 1987), in which the court affirmed a two-week suspension in an election where severe flooding prevented electors from safely voting due to "circumstances beyond their control." Petitioner asserts that Pennsylvania electors in the November General Election similarly face a threat to their ability to vote due to no fault of their own, but instead due to a perfect storm combining the dramatic increase in requested ballots due to the COVID-19 pandemic and the inability of the USPS to meet the delivery standards required by the Election Code.

Accordingly, Petitioner asks this Court to grant an injunction ordering the Respondent to "lift the deadline in the Election Code across the state in a uniform standard to allow any ballot postmarked by 8 p.m. on Election Night to be counted if it is received by the deadline for ballots to be received" under the UOCAVA, specifically by 5:00 p.m. on Tuesday, November 10.[19] Petition at 50, ¶ 178. Recognizing that the Secretary recommends a three-day extension, as detailed below, Petitioner counters that "[a] 7-day extension to the ballot receipt deadline is consistent with the USPS's recommendation to the Secretary that voters should mail their ballots to Boards no later than October 27, 2020," which is seven days prior to Election Day. Petitioner's Brief at 53 (referencing USPS General Counsel's Letter at 2). While it acknowledges that a seven-day extension could impact other post-election deadlines as discussed *infra*, it

[19] As adopted in Pennsylvania, the UOCAVA provides that military and overseas ballots will be counted if received by the county board by "5:00 p.m. on the seventh day following the election," which this year will be November 10, 2020. 25 Pa.C.S. § 3511.

As an alternative remedy, Petitioner proposes that each ballot could have an individualized deadline twenty-one days after the specific ballot is mailed by the county, so long as it is received before the UOCAVA deadline. Petition at 50, ¶ 108, 179.

asserts that this Court has the authority to alter those deadlines to be consistent with the relief granted in this case. *Id.* at 55.

As noted, the Secretary sought extraordinary jurisdiction to allow this Court to resolve the various challenges to the mail-in ballot process in an orderly and timely fashion before the impending General Election, where she estimates more than three million Pennsylvanians will exercise their right to vote by mail. Secretary's Brief at 1. The Secretary observes that she previously advocated against a similar request for an extension of the received-by deadline for mail-in and absentee ballots in the *Crossey* case. She, however, reassessed her position following receipt of the USPS General Counsel's Letter, which she attaches to her Application. Secretary's Application at 10, Exhibit A.

Significantly, the USPS General Counsel's Letter opined that "certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards," providing for 2-5 day delivery for domestic First Class Mail and 3-10 day delivery for domestic Marketing Mail. USPS General Counsel's Letter at 1. As the parties recognize, the Election Code designates October 27, 2020, as the last day for electors to request a mail-in ballot. 25 P.S. § 3150.12a(a) ("Applications for mail-in ballots shall be processed if received not later than five o'clock P.M. of the first Tuesday prior to the day of any primary or election."). Even if a county board were to process and mail a ballot the next day by First Class Mail on Wednesday, October 28th, according to the delivery standards of the USPS, the voter might not receive the ballot until five days later on Monday, November 2nd, resulting in the impossibility of returning the ballot by mail before Election Day, Tuesday November 3rd. The USPS General Counsel's Letter, instead, advised that voters should mail their ballots no later than October 27, 2020 in order to meet the received-by deadline. USPS General Counsel's Letter at 2. "This mismatch

[between the USPS's delivery standards and the Election Code deadlines] creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under [Pennsylvania's Election Code]." *Id.* at 1.

In light of the information contained in the USPS General Counsel's Letter, the Secretary concludes that a temporary extension of the Election Code's received-by deadline is necessary for the upcoming General Election to ensure a free and equal election as protected by Article I, Section 5 of the Pennsylvania Constitution. Secretary's Application at 27. The Secretary specifically asks that this Court order an extension of the deadline to allow the counting of any ballot postmarked by Election Day and received on or before the third day after Election Day, which is November 6, 2020.[20] *Id.* at 27-28. The Secretary deems a three-day extension of the deadline, rather than the seven-day extension sought by Petitioner, to be sufficient to address the potential delay in mailing while also not disrupting other elements of election administration. *Id.* at 29.

The Secretary emphasizes that the remedy sought here is not the invalidation of the Election Code's received-by deadline, but rather the grant of equitable relief to extend temporarily the deadline to address "mail-delivery delays during an on-going public health disaster." Secretary's Brief at 18. As no party is seeking the invalidation of the received-by deadline, the Secretary rejects the suggestion of Respondent and the Caucus that the remedy would trigger the nonseverability provision of Act 77, reasoning that the Court would be granting "a temporary short extension to address the exigencies of a natural

[20] She specifically recommends that the Court "order that ballots mailed by voters by 8:00 p.m. on Election Day be counted if they are otherwise valid and received by the county boards of election by November 6, 2020. Ballots received within this period that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, should enjoy a presumption that they were mailed by Election Day." Secretary's Application at 29. We observe that this proposal therefore requires that all votes be cast by Election Day but does not disenfranchise a voter based upon the absence or illegibility of a USPS postmark that is beyond the control of the voter once she places her ballot in the USPS delivery system.

disaster" rather than "the invalidation of a statutory deadline." *Id.* at 21 (referencing Section 11 of Act 77 set forth *infra*). She emphasizes that the statutory deadline would remain unchanged for future elections.

The Secretary observes that courts have previously granted temporary equitable relief to address natural disasters, given that neither the Election Code nor the Constitution "provides any procedure to follow when a natural disaster creates an emergency situation that interferes with an election." *Id.* at 19 (citing *In re: General Election-1985*, 531 A.2d at 839).[21] She argues that the current pandemic is equivalent to other natural disasters and that it necessitates the requested extension of the Election Code's received-by deadline for mail-in ballots.

In contrast, Respondent contends that Petitioner asks this Court to rewrite the plain language of Act 77 and to substitute its preferred ballot deadline for the statutory deadline that resulted from the legislative compromise during the bi-partisan enactment of Act 77. It emphasizes that this Court "recently reaffirmed [that] the judiciary 'may not usurp the province of the legislature by rewriting [statutes].'" Respondent's Supplemental Brief at 16 (quoting *In re Fortieth Statewide Investigating Grand Jury*, 197 A.3d 712, 721 (Pa. 2018)).

Judicial restraint, according to Respondent, is especially necessary in regard to election law, where this Court has long recognized that "[t]he power to regulate elections is a legislative one, and has been exercised by the General Assembly since the foundation of the government." *Id.* at 17 (quoting *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914)). Indeed, it observes that the United States Constitution dictates that "[t]he Times,

[21] The Secretary observes that other jurisdictions have likewise granted temporary extensions when faced with natural disasters, such as hurricanes. Secretary's Application at 28 (citing *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1259 (N.D. Fla. 2016); *Georgia Coalition for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1345 (S.D. Ga. 2016)).

Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof," subject to directives of Congress, U.S. CONST. art. I, § 4, cl. 1, and that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct," electors for President and Vice President. U.S. CONST. art. II, § 1, cl. 2.[22] Respondent highlights special concerns relevant to Presidential elections, emphasizing that "'[w]ith respect to a Presidential election,' state courts must 'be mindful of the legislature's role under Article II in choosing the manner of appointing electors.'" Respondent's Supplemental Brief at 20 (quoting *Bush v. Gore*, 531 U.S. 98, 114 (2000) (Rehnquist, C.J., concurring)).

Respondent additionally warns that if this Court were to deem application of the deadline unconstitutional and substitute a judicially-determined deadline, it would trigger the nonseverability provision of Act 77, which would invalidate the entirety of the Act, including all provisions creating universal mail-in voting. Specifically, Section 11 provides: "Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstances is held invalid, the remaining provisions or applications of this act are void." Act 77, § 11. It emphasizes that this Court has previously deemed nonseverability provisions to be constitutionally proper and additionally recognized that nonseverability provisions are crucial to the legislative process as they "may be essential to securing the support necessary to enact the legislation in the first place." Respondent's Supplemental Brief at 18 (citing *Stilp v. Commonwealth*, 905 A.2d 918, 978 (Pa. 2006)). Respondent asserts that it is clear that the severability provision in Act 77 "was intended to preserve the compromise struck" in the bipartisan enactment. *Id.* at 19.

[22] Respondent further observes that the Pennsylvania Constitution specifically directs the Legislature to "provide a manner in which, and the time and place at which" a qualified elector can submit an absentee ballot. PA. CONST. art. VII, § 14(a).

On the merits, Respondent asserts that the plain language of the Election Code setting the deadline for submission of ballots by 8:00 p.m. on Election Day does not violate the Free and Equal Elections Clause but instead provides "a neutral, evenhanded rule that applies to all Pennsylvania voters equally." Respondent's Answer to the Secretary's Application at 21. It emphasizes that numerous courts, including this Court during the June Primary, have upheld the application of mail-in deadlines during the COVID-19 pandemic. Respondent's Supplemental Brief at 24 (citing, *inter alia*, *Disability Rights Pa. v. Boockvar*, No. 83 MM 2020, 2020 WL 2820467 (Pa. May 15, 2020)).

Respondent additionally rejects the Secretary's assertion that the deadline should be extended based upon the threat of mail delays. It avers that these concerns are "speculative at best." *Id.* at 25. Moreover, it contends that "given Pennsylvania's unparalleled and generous absentee and mail-in voting period, any voter's inability to cast a timely ballot is not caused by the Election Day received-by deadline but instead by their own failure to take timely steps to effect completion and return of their ballot." *Id.* at 26-27 (internal citation and quotation marks omitted).

Respondent further supports its argument by attaching to its Supplemental Brief a declaration of USPS Vice President Angela Curtis, which in turn attaches the statement provided by Postmaster General Louis DeJoy to the Senate Committee on Homeland Security and Governmental Affairs on August 21, 2020 and his statement of August 24, 2020, to the House Committee on Oversight and Reform. In his statement, Postmaster General Louis DeJoy addressed public accusations that the implementation of various cost-saving reforms had allegedly resulted in delays in mail delivery that threatened the timely delivery of election mail.

While disputing the validity of the accusations, the Postmaster General provided the following commitments relating to the delivery of election mail:

> [R]etail hours at Post Offices won't be changed, and mail processing equipment and blue collection boxes won't be removed during this period. No mail processing facilities will be closed and we have terminated the pilot program that began in July that expedited carrier departures to their delivery routes, without plans to extend or expand it. To clear up any confusion, overtime has, and will continue to be, approved as needed. Finally, effective October 1, 2020, we will engage standby resources in all areas of our operations, including transportation, to satisfy any unforeseen demand for the election.

Statement of Postmaster General Louis DeJoy provided to Senate Committee on Homeland Security and Governmental Affairs Hearing of Aug. 21, 2020, at 14; Statement of Postmaster General Louis DeJoy provided to House Committee on Oversight and Reform of Aug. 24, 2020, at 14. Respondent emphasizes that Postmaster General DeJoy also asserted that the "USPS has not changed [its] delivery standards, [its] processing, [its] rules, or [its] prices for Election Mail[,]" and that it "can, and will, handle the volume of Election Mail [it] receive[s]." Respondent's Supplemental Brief at 10.

Finally, Respondent argues that moving the received-by deadline until after Election Day would undermine the federal designation of a uniform Election Day, as set forth in three federal statues, specifically 3 U.S.C. § 1 ("The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, every fourth year succeeding every election of a President and Vice President"); 2 U.S.C. § 7 ("The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter."); and 2 U.S.C. § 1 ("At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress is regularly by law to be chosen, a United

States Senator from said State shall be elected by the people thereof for a term commencing on the 3d day of January next thereafter.").[23]

The Caucus also files a brief with this Court arguing against the extension of the deadline for mail-in votes. It asserts that "[t]here is no constitutional right to vote by mail" and that states have broad authority to enact regulations to ensure the integrity of its elections, including mail-in ballots, as was done in Act 77, including by setting a deadline for the receipt of ballots. Caucus's Brief at 19.

The Caucus warns that granting an extension of the mail-in ballot received-by deadline in this case "would have a cascading effect on other election code deadlines, thereby causing chaos for election officials and confusion for voters." *Id.* at 26. It observes that the Election Code requires that Boards begin canvassing absentee and mail-in ballots within three days of Election Day and shall continue through the eighth day following the Election. *Id.* at 28 (citing 25 P.S. § 3146.8(g)(2)). Additionally, the Boards shall submit the unofficial returns to the Secretary on the Tuesday following the Election, and the Secretary must determine whether a recount is required within nine days of Election Day, citing 25 P.S. § 3154(f), (g)(2), and the Boards must certify the final results to the Secretary no later than twenty days after Election Day, citing 25 P.S. § 2642(k). It additionally asserts that federal law requires all state recounts and challenges to be "resolved at least 6 days prior to the meeting of electors," which it asserts this year is December 14. Caucus's Brief at 28 n.17 (citing 3 U.S.C. §§ 1, 5). The Caucus therefore urges this Court to refrain from altering the received-by deadline for mail-in ballots, asserting that the "requested injunction would override the election deadlines which were

[23] In so arguing, Respondent seemingly ignores the fact that allowing the tabulation of ballots received after Election Day does not undermine the existence of a federal Election Day, where the proposal requires that ballots be cast by Election Day, similar to the procedure under federal and state law allowing for the tabulation of military and overseas ballots received after Election Day.

fully debated and properly enacted by the peoples' representatives in the Pennsylvania General Assembly." *Id.* at 29.

Unlike other provisions of Act 77 currently before this Court, we are not asked to interpret the statutory language establishing the received-by deadline for mail-in ballots. Indeed, there is no ambiguity regarding the deadline set by the General Assembly:

> **Deadline.--**Except as provided under 25 Pa.C.S. § 3511[24] (relating to receipt of voted ballot), a completed mail-in ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

25 P.S. § 3150.16(c). Moreover, we are not asked to declare the language facially unconstitutional as there is nothing constitutionally infirm about a deadline of 8:00 p.m. on Election Day for the receipt of ballots. The parties, instead, question whether the

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[24] Section 3511 addresses the timeline for the return of ballots of uniform military and oversees voters and provides for the counting of such votes if delivered to the county board by 5 p.m. on the seventh day after Election Day:

> **§ 3511. Receipt of voted ballot**
>
> **(a) Delivery governs.--**A valid military-overseas ballot cast under section 3509 (relating to timely casting of ballot) shall be counted if it is delivered by 5 p.m. on the seventh day following the election to the address that the appropriate county election board has specified.
>
> **(b) Rule regarding postmarks.--**If, at the time of completing a military-overseas ballot and balloting materials, the voter has declared under penalty of perjury that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark or no postmark.

25 Pa.C.S. § 3511.

application of the statutory language to the facts of the current unprecedented situation results in an as-applied infringement of electors' right to vote.

In considering this issue, we reiterate that the Free and Equal Elections Clause of the Pennsylvania Constitution requires that "all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter's right to equal participation in the electoral process for the selection of his or her representatives in government." *League of Women Voters*, 178 A.3d at 804. Nevertheless, we also recognize that "the state may enact substantial regulation containing reasonable, non-discriminatory restrictions to ensure honest and fair elections that proceed in an orderly and efficient manner." *Banfield v. Cortes*, 110 A.3d 155, 176–77 (Pa. 2015) (internal citation and quotation marks omitted).

As we have recently seen, an orderly and efficient election process can be crucial to the protection of a voter's participation in that process. Indeed, the struggles of our most populous counties to avoid disenfranchising voters while processing the overwhelming number of pandemic-fueled mail-in ballot applications during the 2020 Primary demonstrates that orderly and efficient election processes are essential to safeguarding the right to vote. An elector cannot exercise the franchise while her ballot application is awaiting processing in a county election board nor when her ballot is sitting in a USPS facility after the deadline for ballots to be received.

We are fully cognizant that a balance must be struck between providing voters ample time to request mail-in ballots, while also building enough flexibility into the election timeline to guarantee that ballot has time to travel through the USPS delivery system to ensure that the completed ballot can be counted in the election. Moreover, we recognize that the determination of that balance is fully enshrined within the authority granted to the

Legislature under the United States and Pennsylvania Constitutions. *See* U.S. CONST. art. I, § 4, cl. 1; *id*. art. II, § 1, cl. 2.

Nevertheless, we find the Commonwealth Court's rationale in *In re: General Election-1985* germane to the current challenge to the application of the ballot received-by deadline. In that case, the court recognized that, while neither the Constitution nor the Election Code specified "any procedure to follow when a natural disaster creates an emergency situation that interferes with an election," courts could look to the direction of 25 P.S. § 3046. *In re General Election-1985*, 531 A.2d at 839. As noted, Section 3046 provides courts of common pleas the power, on the day of an election, to decide "matters pertaining to the election as may be necessary to carry out the intent" of the Election Code, which the Commonwealth Court properly deemed to include providing "an equal opportunity for all eligible electors to participate in the election process," which in that case necessitated delaying the election during a flood. *Id*.

We have no hesitation in concluding that the ongoing COVID-19 pandemic equates to a natural disaster. *See Friends of Devito v. Wolf*, 227 A.3d 872, 888 (Pa. 2020) (agreeing "that the COVID-19 pandemic qualifies as a 'natural disaster' under the Emergency Code"). Moreover, the effects of the pandemic threatened the disenfranchisement of thousands of Pennsylvanians during the 2020 Primary, when several of the Commonwealth's county election boards struggled to process the flow of mail-in ballot applications for voters who sought to avoid exposure to the virus. *See, e.g.,* Delaware County Board of Elections' Answer to Petition at 15, ¶ 77 (acknowledging that it "mailed out thousands of ballots in the twenty-four hour period preceding the election"). It is beyond cavil that the numbers of mail-in ballot requests for the Primary will be dwarfed by those applications filed during the upcoming highly-contested Presidential Election in the midst of the pandemic where many voters are still wary of congregating in crowded

locations such as polling places. We acknowledge that the Secretary has estimated that nearly three million Pennsylvanians will apply for mail-in applications, in contrast to the 1.5 million cast during the Primary. Secretary's Brief at 1.

In light of these unprecedented numbers and the near-certain delays that will occur in Boards processing the mail-in applications, we conclude that the timeline built into the Election Code cannot be met by the USPS's current delivery standards, regardless of whether those delivery standards are due to recent changes in the USPS's logistical procedures or whether the standards are consistent with what the General Assembly expected when it enacted Act 77. In this regard, we place stock in the USPS's General Counsel's expression that his client could be unable to meet Pennsylvania's statutory election calendar. General Counsel's Letter at 2. The Legislature enacted an extremely condensed timeline, providing only seven days between the last date to request a mail-in ballot and the last day to return a completed ballot. While it may be feasible under normal conditions, it will unquestionably fail under the strain of COVID-19 and the 2020 Presidential Election, resulting in the disenfranchisement of voters.

Under our Extraordinary Jurisdiction, this Court can and should act to extend the received-by deadline for mail-in ballots to prevent the disenfranchisement of voters. We have previously recognized that, in enforcing the Free and Equal Elections Clause, this "Court possesses broad authority to craft meaningful remedies when required." *League of Women Voters*, 178 A.3d at 822 (citing PA. CONST., art. V, §§ 1, 2, 10; 42 Pa.C.S. § 726 (granting power to "enter a final order or otherwise cause right and justice to be done")). We additionally conclude that voters' rights are better protected by addressing the impending crisis at this point in the election cycle on a statewide basis rather than allowing the chaos to brew, creating voter confusion regarding whether extensions will be granted,

for how long, and in what counties.[25] Instead, we act now to allow the Secretary, the county election boards, and most importantly, the voters in Pennsylvania to have clarity as to the timeline for the 2020 General Election mail-in ballot process.

After consideration, we adopt the Secretary's informed recommendation of a three-day extension of the absentee and mail-in ballot received-by deadline to allow for the tabulation of ballots mailed by voters via the USPS and postmarked by 8:00 p.m. on Election Day to reduce voter disenfranchisement resulting from the conflict between the Election Code and the current USPS delivery standards, given the expected number of Pennsylvanians opting to use mail-in ballots during the pandemic.[26] We observe that this extension provides more time for the delivery of ballots while also not requiring alteration of the subsequent canvassing and reporting dates necessary for the Secretary's final reporting of the election results. In so doing, we emphasize that the Pennsylvania's election laws currently accommodate the receipt of certain ballots after Election Day, as

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[25] We recognize that we rejected a very similar argument presented in *Disability Rights Pennsylvania* on May 15, 2020, weeks prior to the Primary. *Disability Rights Pa. v. Boockvar*, No. 83 MM 2020, 2020 WL 2820467 (Pa. May 15, 2020). At that time, the potential of voter disenfranchisement was speculative as many unknowns existed relating to the magnitude of the pandemic, the extent to which voters would seek mail-in applications, and the ability of Boards to handle the increase. Those uncertainties no longer exist in light of our experience in the 2020 Primary where thousands of voters would have been disenfranchised but for the emergency actions of the courts of common pleas and the Governor.

[26] We likewise incorporate the Secretary's recommendation addressing ballots received within this period that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible. Accordingly, in such cases, we conclude that a ballot received on or before 5:00 p.m. on November 6, 2020, will be presumed to have been mailed by Election Day unless a preponderance of the evidence demonstrates that it was mailed after Election Day.

We emphasize that voters utilizing the USPS must cast their ballots prior to 8:00 p.m. on Election Day, like all voters, including those utilizing drop boxes, as set forth *supra*. We refuse, however, to disenfranchise voters for the lack or illegibility of a postmark resulting from the USPS processing system, which is undeniably outside the control of the individual voter.

it allows the tabulation of military and overseas ballots received up to seven days after Election Day. 25 Pa.C.S. § 3511. We conclude that this extension of the received-by deadline protects voters' rights while being least at variance with Pennsylvania's permanent election calendar, which we respect and do not alter lightly, even temporarily.

C. COUNT III OF THE PETITION FOR REVIEW

In Count III of its petition, Petitioner seeks to require that the Boards contact qualified electors whose mail-in or absentee ballots contain minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail, and provide them with an opportunity to cure those defects. More specifically, Petitioner submits that when the Boards have knowledge of an incomplete or incorrectly completed ballot as well as the elector's contact information, the Boards should be required to notify the elector using the most expeditious means possible and provide the elector a chance to cure the facial defect up until the UOCAVA deadline of November 10, 2020, discussed *supra*.

Petitioner bases this claim on its assertion that the multi-stepped process for voting by mail-in or absentee ballot inevitably leads to what it describes as minor errors, such as not completing the voter declaration or using an incorrect ink color to complete the ballot. *See* 25 P.S. § 3146.6(a) (explaining the process for voting by absentee ballot, which requires, *inter alia*, an elector to mark the ballot using only certain writing implements and ink; and to fill out, date, and sign the declaration printed on the outer envelope); *id.* § 3150.16(a) (explaining the process for voting by mail-in ballot, which imposes the same requirements). According to Petitioner, these minor oversights result in many ballots being rejected and disenfranchising voters who believe they have exercised their right to vote.

Petitioner submits that voters should not be disenfranchised by technical errors or incomplete ballots, and that the "notice and opportunity to cure" procedure ensures that

all electors who desire to cast a ballot have the opportunity to do so, and for their ballot to be counted. Petitioner further claims there is no governmental interest in either: (1) requiring the formalities for the completion of the outside of the mailing envelope to be finalized prior to mailing as opposed to prior to counting, or (2) rejecting the counting of a ballot so long as ballots continue to arrive under federal law, which is the UOCAVA deadline of seven days after Election Day.

As legal support for its position, Petitioner relies upon the Free and Equal Elections Clause. PA. CONST. art. I, § 5 ("Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."); *see also Winston*, 91 A. at 523 (explaining that elections are "free and equal" for constitutional purposes when, *inter alia*, "the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him"). It further emphasizes that election laws should be construed liberally in favor of voters, and that "[t]echnicalities should not be used to make the right of the voter insecure." *Appeal of James*, 105 A.2d 64, 65-66 (Pa. 1954). Petitioner also asserts that ballots with minor irregularities should not be rejected, except for compelling reasons and in rare circumstances. *Id.* at 66. Based on these legal principles, as well as this Court's "broad authority to craft meaningful remedies" when necessary, *League of Women Voters*, 178 A.3d at 822, Petitioner claims that the Pennsylvania Constitution and spirit of the Election Code require the Boards to provide a "notice and opportunity to cure" procedure, and that this Court has the authority to afford the relief it seeks.

Unlike the other claims asserted herein, the Secretary opposes Petitioner's request for relief in this regard. She counters that there is no statutory or constitutional basis for requiring the Boards to contact voters when faced with a defective ballot and afford them

an opportunity to cure defects. The Secretary further notes that, while Petitioner relies upon the Free and Equal Elections Clause, that Clause cannot create statutory language that the General Assembly chose not to provide. *See Winston*, 91 A. at 522 (noting that "[t]he power to regulate elections is legislative").

The Secretary submits that so long as a voter follows the requisite voting procedures, he or she "will have an equally effective power to select the representative of his or her choice." *League of Women Voters*, 178 A.3d at 809. Emphasizing that Petitioner presents no explanation as to how the Boards would notify voters or how the voters would correct the errors, the Secretary further claims that, while it may be good policy to implement a procedure that entails notice of defective ballots and an opportunity to cure them, logistical policy decisions like the ones implicated herein are more properly addressed by the Legislature, not the courts.

Respondent echoes the Secretary's opposition to Petitioner's request for relief.[27] Specifically, it reiterates that Petitioner has failed to assert a legal basis to support imposing a "notice and opportunity to cure" procedure, noting that the Free and Equal Elections Clause does not enable courts to rewrite the Election Code to align with a litigant's notion of good election policy. Respondent emphasizes that "ballot and election laws have always been regarded as peculiarly within the province of the legislative branch of government," *Winston*, 91 A. at 522, and that to the extent restrictions are burdensome, relief should be sought in the Legislature. *Id.* at 525.

Respondent also discusses the practical implications of granting Petitioner's request, expressing concern that implementing a "notice and opportunity to cure" procedure would be a monumental undertaking requiring the expenditure of significant resources, particularly on the eve of an election. Respondent thus reiterates that the

[27] The Caucus does not advance argument on the merits of this issue.

Legislature, not this Court, is the entity best suited to address the procedure proposed by Petitioner.

Respondent adds that the tardiness of Petitioner's request is alone a sufficient basis to deny it and that, in any event, Petitioner cannot show a "plain, palpable and clear abuse of the [legislative] power which actually infringes on the rights of the electors" with respect to this claim. *Patterson v. Barlow*, 60 Pa. 54, 75 (1869). Respondent notes that, to the contrary, a requirement that voters follow the appropriate procedures when filling out their ballots easily passes constitutional muster.

Upon review, we conclude 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. Put simply, as argued by the parties in opposition to the requested relief, Petitioner has cited no constitutional or statutory basis that would countenance imposing the procedure Petitioner seeks to require (*i.e.*, having the Boards contact those individuals whose ballots the Boards have reviewed and identified as including "minor" or "facial" defects—and for whom the Boards have contact information—and then afford those individuals the opportunity to cure defects until the UOCAVA deadline).

While the Pennsylvania Constitution mandates that elections be "free and equal," it leaves the task of effectuating that mandate to the Legislature. *Winston*, 91 A. at 522. As noted herein, although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the "notice and opportunity to cure" procedure sought by Petitioner. To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, we agree that the decision to provide a "notice and opportunity to cure" procedure to alleviate that risk is one best suited for the Legislature. We express this agreement particularly in light

of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania's government. Thus, for the reasons stated, the Petitioner is not entitled to the relief it seeks in Count III of its petition.

D. COUNT IV OF THE PETITION FOR REVIEW

In Count IV, Petitioner seeks a declaration that under Act 77, the Boards must "clothe and count naked ballots," *i.e.*, place ballots that were returned without the secrecy envelope into a proper envelope and count them, rather than invalidate them. It further seeks a preliminary injunction prohibiting the Boards from excluding such ballots from the canvass.

To understand the nature of a "naked ballot," as well as Petitioner's claim that such ballots are valid and should be counted, we examine the relevant provisions of Act 77. The Act directs Boards to send to the qualified mail-in elector an official mail-in ballot, the list of candidates when authorized, the uniform instructions as prescribed by the Secretary, and two envelopes to be returned to the Boards, as described in detail *infra*. 25 P.S. § 3150.14(c).

Section 3150.14(a) ("Envelopes for official mail-in ballots") explains the nature of the envelopes sent to the mail-in voter. This provision directs the Boards to "provide two additional envelopes for each official mail-in ballot of a size and shape as prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope" addressed to the elector. *Id.* § 3150.14(a). On the smaller of the two envelopes to be returned to the Boards shall be printed only the words "Official Election Ballot." *Id.* On the larger envelope shall be printed: (1) "the form of the declaration of the elector;" (2) the "name and address of the county board of election of

the proper county;" and (3) "information indicating the local election district of the mail-in voter." *Id.*

As noted, Section 3150.16(a) directs the mail-in elector to mark the ballot in secret with the enumerated ink or lead pencil and then fold the ballot, enclose it, and secure it in the smaller envelope on which is printed "Official Election Ballot." 25 P.S. § 3150.16(a). The statute further directs the mail-in elector to place the smaller envelope into the second envelope on which is printed the form of declaration of the elector, the elector's local election district, and the address of the elector's county board of election. *Id*. The statute next directs the mail-in elector to fill out, date, and sign the declaration printed on the second envelope, and secure the ballot and send it by mail or deliver it in person to his or her county board of election. *Id.* A ballot is "naked" for purposes of this action if the mail-in elector fails to utilize the smaller envelope on which is printed "Official Election Ballot," and, instead, places the official election ballot directly into the second envelope, upon which is printed the form of declaration of the elector and the address of the elector's county board of election.

Act 77 additionally sets forth the procedure by which mail-in ballots are canvassed. *See id.* § 3146.8(a) (providing that mail-in ballots "shall be canvassed in accordance with subsection (g)"). Relevant thereto, the Act directs that mail-in ballots cast by electors who died prior to Election Day shall be rejected and not counted. *Id.* § 3146.8(d). Additionally, the Act provides that mail-in ballots shall be counted as long as: (1) election officials verify the ballots by comparing the voter's declaration with the official voting list; and (2) the ballots are not challenged on the ground that the voter is unqualified to vote. *Id.* §§ 3146.8(g)(4); 3150.12b(a)(2). Notably, Section 3146.8(g)(4)(ii) provides that if any of the envelopes on which are printed "Official Election Ballot" "contain any text, mark or symbol which reveals the identity of the elector, the elector's political affiliation or the

elector's candidate preference, the envelopes and the ballots contained therein shall be set aside and declared void." *Id.* § 3146.8(g)(4)(ii).

The crux of Petitioner's position is that although Act 77 directs a mail-in voter to utilize the secrecy envelope in submitting the mail-in ballot, there is no provision in the Election Code authorizing the Boards to discard a ballot on grounds that the voter failed to insert the ballot into the secrecy envelope before returning it to the Boards. Rather, Petitioner asserts, the statute directs the Boards to reject mail-in ballots only if the mail-in elector died prior to Election Day, *id.* § 3146.8(d), the ballot is unverified or challenged on grounds that the mail-in voter was unqualified to vote, *id.* § 3146.8(g)(4), or the ballot is returned in an "Official Election Ballot" envelope that contains "any text, mark or symbol which reveals the identity of the elector, the elector's political affiliation or the elector's candidate preference." *Id.* § 3146.8(g)(4)(ii). Petitioner concludes that the failure to place the ballot in a secrecy envelope does not fall within these enumerated statutory grounds which would result in an invalid mail-in ballot.

Moreover, Petitioner emphasizes that the General Assembly was aware of how to invalidate ballots for lack of a secrecy envelope, as it expressly did so in another provision of the Election Code regarding provisional ballots. *See id.* § 3050(a.4)(5)(ii)(C) (providing that a "provisional ballot shall not be counted if: . . . a provisional ballot envelope does not contain a secrecy envelope").[28] Had the General Assembly intended to invalidate mail-in ballots on this basis, Petitioner submits, the Legislature would have included a similar provision in Act 77, but chose not to do so.

Absent statutory authority directing the Boards to invalidate a ballot based exclusively on the lack of a secrecy envelope, Petitioner contends that the refusal to

[28] A provisional ballot is a ballot cast by an individual who claims to be properly registered and eligible to vote at the election district, but whose name does not appear on the district register and whose registration cannot be determined. 25 P.S. § 3050(a.4)(1).

canvass and count ballots cast without a secrecy envelope violates the Election Code, as well as the rights of electors to have their vote counted under the Free and Equal Elections Clause. It posits that rather than disenfranchising the voter in contravention of these edicts, the Boards could take corrective measures to protect privacy, such as placing the naked ballot inside a replacement secrecy envelope before canvassing.

Accordingly, Petitioner requests a declaration that naked ballots must be counted, as well as injunctive relief requiring Boards to undertake reasonable measures to protect the privacy of naked ballots cast by mail-in electors.

The Secretary's position aligns with Petitioner on this issue as she agrees that the counting of naked ballots is permitted by the Election Code and furthers the right to vote under the Free and Equal Elections Clause and the First and Fourteenth Amendments to the United States Constitution.[29]

The Secretary contends that the secrecy envelope procedure set forth in Section 3150.16(a) is merely directory, and that this Court's longstanding precedents establish that ballots should not be disqualified based upon the failure to follow directory provisions. *See Bickhart,* 845 A.3d at 803 (holding that although the Election Code provides that an elector may cast a write-in vote for any person not printed on the ballot, a write-in vote for a candidate whose name, in fact, appears on the ballot is not invalid where there is no

[29] The Secretary's position herein is consistent with the directive that the Department of State distributed to the counties on May 28, 2020, indicating that there is no statutory requirement nor any authority for setting aside an absentee or mail-in ballot exclusively because the voter forgot to insert it into the official election ballot envelope. *See* Exhibit B to Petition, Directive of Deputy Secretary for Elections and Commissions Jonathan M. Marks to the county election directors, May 28, 2020. The directive further indicated that "[t]o preserve the secrecy of such ballots, the board of elections in its discretion may develop a process by which the members of the pre-canvass or canvass boards insert these ballots into empty official ballot envelopes or privacy sleeves until such time as they are ready to be tabulated." *Id. See also* Exhibit J to Petition, Guidance for Missing Official Election Ballot Envelopes.

evidence of fraud and the voter's intent is clear); *Wieskerger Appeal*, 290 A.2d 108, 109 (Pa. 1972) (holding that the elector's failure to mark the ballot with the statutorily enumerated ink color does not render the ballot invalid unless there is a clear showing that the ink was used for the purpose of making the ballot identifiable or otherwise indicating fraud).

The Secretary further opines that no fraud arises from counting naked ballots, considering that the naked ballot remains sealed in an envelope and the sealed ballot is certified by the elector. Accordingly, the Secretary concludes that no voter should be disenfranchised for failing to place his or her mail-in ballot in the secrecy envelope before returning it to the Boards.

In response, Respondent argues that the statutory language of Section 3150.16(a), providing that the mail-in elector "shall . . . enclose and securely seal the [ballot] in the envelope on which is printed, stamped or endorsed 'Official Election Ballot,'" is clear and constitutes a mandatory requisite to casting a mail-in ballot, and having that ballot counted. It relies on *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223 (Pa. 2004) ("*Appeal of Pierce"*), where this Court held that the use of the term "shall" in Section 3146.6(a) of the Election Code, providing that the elector "shall" send an absentee ballot or deliver the ballot in person, carries a mandatory meaning, thereby precluding third parties from hand-delivering absentee ballots to county election boards, and invalidating those ballots that were hand-delivered by a third party. Respondent submits that Section 3150.16(a) requires the same invalidation of ballots where the mandatory statutory requisite of enclosing the ballot in a secrecy envelope is ignored.

Respondent observes that the Election Code further directs election officials to "set aside and declare[] void" a ballot whose secrecy envelope contains "any text, mark, or

symbol which reveals the identity of the elector, the elector's political affiliation or the elector's candidate preference." 25 P.S. § 3146.8(g)(4)(ii). Citing *Appeal of Weiskerger*, *supra*, it argues that the purpose of this provision is to prevent the disclosure of the elector's identity. Respondent posits that a ballot unclothed by a secrecy envelope and placed directly in the outer envelope also discloses the elector's identity because the outer envelope contains the elector's signed declaration. Thus, it concludes, Section 3146.8(g)(4)(ii) requires invalidation of any ballot contained in an envelope that reveals the identity of the voter, regardless of whether that envelope is a secrecy envelope or an outer envelope. To hold to the contrary, Respondent argues, would violate Article VII, Section 4 of the Pennsylvania Constitution, which provides, in relevant part, that "secrecy in voting shall be preserved." PA. CONST. art. VII, § 4.[30]

Respondent discounts the Secretary's suggestion that because there is no fraud involved in the submission of a naked ballot, the ballot should be counted. The secrecy envelope provision of the statute, in Respondent's view, advances the distinct constitutional interest of protecting the sanctity of the ballot by preventing the ballot from disclosing the elector's identity. The significance of this interest, it submits, distinguishes this matter from cases involving noncompliance with minor procedural demands set forth in the Election Code, such as the color of ink used to mark a ballot or the listing of a write-in candidate whose name already appears on the ballot. Accordingly, Respondent requests that we deny Petitioner's request for declaratory and injunctive relief.

The Caucus reiterates all of the arguments expressed by Respondent. It contends that in addition to violating voter secrecy, the counting of naked ballots raises the concern of voter fraud. It contends that when a ballot arrives at the county election board without

[30] Article VII, Section 4 ("Method of elections; secrecy in voting") states, in full, that "[a]ll elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved." PA CONST. art. VII, § 4.

the protective shield of a sealed privacy envelope, the election official cannot guarantee that the ballot travelled from the voter's hand to the county election board without compromise. It argues that there is no way for the election official to verify that the vote was accurately recorded, because the mere act of ascertaining the voter's identity from the elector's declaration may violate the secrecy protections of Article VII, Section 4. The Caucus concludes that the only way to be certain that no fraud has taken place is to reject all naked ballots.

Turning now to our analysis, we observe that, in determining the propriety of naked ballots, we must ascertain the General Assembly's intention by examining the statutory text of the secrecy envelope provision to determine whether it is mandatory or directory, as that will govern the consequences for non-compliance. *See JPay, Inc. v. Dep't of Corr. & Governor's Office of Admin.*, 89 A.3d 756, 763 (Pa. Cmwlth. 2014) (internal citation omitted) (observing that "[w]hile both mandatory and directory provisions of the Legislature are meant to be followed, the difference between a mandatory and directory provision is the consequence for non-compliance: a failure to strictly adhere to the requirements of a directory statute will not nullify the validity of the action involved").

Upon careful examination of the statutory text, we conclude that the Legislature intended for the secrecy envelope provision to be mandatory. We respectfully reject the contentions of Petitioner and the Secretary that because the General Assembly did not delineate a remedy narrowly linked to the mail-in elector's failure to utilize a secrecy envelope, the language of the Election Code is directory, and an elector's violation of the command inconsequential.

As noted, Section 3150.16(a) provides:

> [The mail-in elector] shall, in secret, . . . enclose and securely seal the [ballot] in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of

> the elector's county board of election and the local election district of the elector.

Id.

This statutory text must be read *in pari materia*[31] with Subsection 3146.8(g)(4)(ii), which also speaks directly to secrecy envelopes, providing:

> If any of the envelopes on which are printed, stamped or endorsed the words 'Official Election Ballot' contain any text, mark or symbol which reveals the identity of the elector, the elector's political affiliation or the elector's candidate preference, the envelopes and the ballots contained therein shall be set aside and declared void.

25 P.S. § 3146.8(g)(4)(ii).

These provisions make clear the General Assembly's intention that, during the collection and canvassing processes, when the outer envelope in which the ballot arrived is unsealed and the sealed ballot removed, it should not be readily apparent who the elector is, with what party he or she affiliates, or for whom the elector has voted. The secrecy envelope properly unmarked and sealed ensures that result, unless it is marked with identifying information, in which case that goal is compromised. Whatever the wisdom of the requirement, the command that the mail-in elector utilize the secrecy envelope and leave it unblemished by identifying information is neither ambiguous nor unreasonable.

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[31] Section 1932 of our Statutory Construction Act, "Statutes in pari materia," provides:

> (a) Statutes or parts of statutes are *in pari materia* when they relate to the same persons or things or to the same class of persons or things.
>
> (b) Statutes *in pari materia* shall be construed together, if possible, as one statute.

1 Pa.C.S. § 1932.

As noted cogently by Respondent, this case is distinguishable from those cases relied upon by the Secretary, which deemed mandatory language merely directory and without consequence. For example, in *Bickhart*, 845 A.2d at 795, the Court declined to invalidate a write-in vote cast for a candidate who was named on the ballot proper. In reaching that conclusion, the Court observed that "ballots containing mere minor irregularities should only be stricken for compelling reasons," noting that marking a ballot is an imprecise process, the focus of which is upon the "unmistakable registration of the voter's will in substantial conformity to the statutory requirements." *Bickhart*, 845 A.2d at 798-99 (internal quotation marks and citations omitted).

Similarly, in *Appeal of Weiskerger*, *supra*, this Court declined to invalidate a ballot based upon the "minor irregularity" that it was completed in the wrong color of ink. The statute at issue provided: "Any ballot that is marked in blue, black or blue-black ink . . . shall be valid and counted." 290 A.2d at 109 (citing 25 P.S. § 3063). Thus, the only mandatory direction it provided was for the canvassers who receive the ballots, not the electors who prepared them. In providing that ballots completed in the right color must be counted, the Legislature neither stated nor implied that ballots completed in a different color must not be counted. Neither statutory provision at issue in *Bickhart* nor *Weiskerger* contained anything analogous to the directive at issue in this case, which involves secrecy in voting protected expressly by Article VII, Section 4 of this Court's state charter.

As posited by Respondent, most analogous to the instant case is our decision in *Appeal of Pierce*. There, we held that the Election Code's "in-person" ballot delivery requirement, *see* 25 P.S. § 3146.6, was mandatory, and that votes delivered by third persons must not be counted. The provision in question unambiguously provided that

"the elector shall send [the absentee ballot] by mail, postage [prepaid], except where franked, or deliver it in person to [said county] board of election." *Appeal of Pierce*, 843 A.2d at 1231 (quoting 25 P.S. § 3146.6(a)). The parties seeking to ensure that votes delivered by third parties would be counted cited *Weiskerger* and its flexibility with respect to "minor irregularities."

This Court, however, was unpersuaded and declined the invitation to interpret "shall" as anything less than mandatory. Moreover, the Court rejected precisely the same reasoning for interpreting "shall" as directory that Petitioner and the Secretary offer in this case. As in the instant case, the provision of the Election Code at issue in *Appeal of Pierce* did not expressly provide for voiding a ballot delivered by someone other than the voter. Nevertheless, we held that to construe the in-person requirement "as merely directory would render its limitation meaningless and, ultimately, absurd." *Id*. at 1232. The Court further distinguished *Weiskerger* and its safe harbor for "minor irregularities," noting that the in-person requirement served the salutary purpose of "limit[ing] the number of third persons who unnecessarily come in contact with the ballot[,] . . . provid[ing] some safeguard that the ballot was filled out by the actual voter, . . . and that once the ballot has been marked by the actual voter in secret, no other person has the opportunity to tamper with it." *Id*. The provision thus served the spirit of the Code, "which requires that a voter cast his ballot alone, and that it remain secret and inviolate." *Id*.

Petitioner and the Secretary attempt to distinguish *Appeal of Pierce* by emphasizing that there was no statutory provision in that case that was inconsistent with the judicially inferred remedy, such as the provisional ballot secrecy envelope provision in this case. They assert that here, by contrast, the Legislature has directed the

disqualification of provisional ballots not enclosed in the secrecy envelope, and of mail-in ballots with certain markings on the secrecy envelope, rendering its silence with regard to omitted secrecy envelopes for mail-in ballots all the more conspicuous.

The clear thrust of *Appeal of Pierce*, however, is that, even absent an express sanction, where legislative intent is clear and supported by a weighty interest like fraud prevention, it would be unreasonable to render such a concrete provision ineffective for want of deterrent or enforcement mechanism. What we learn from that decision is that violations of the mandatory statutory provisions that pertain to integral aspects of the election process should not be invalidated *sub silentio* for want of a detailed enumeration of consequences.

We must in all instances assume that the General Assembly does not intend a statute to be interpreted in a way that leads to an absurd or unreasonable result. *See* 1 Pa.C.S. § 1922(1) ("In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions . . . may be used: (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable."). The result proffered by Petitioner and the Secretary is no more reasonable than that which the Court in *Appeal of Pierce* found untenable. The Court in *Appeal of Pierce* viewed a textual mandate pertaining to fraud prevention and ballot secrecy as signaling the Legislature's intent that its violation would require voiding the ballot, notwithstanding no statutory provision to that effect. To avoid an absurd result, it inferred that intent from nothing more than the provision itself.

We reach the same result here. It is clear that the Legislature believed that an orderly canvass of mail-in ballots required the completion of two discrete steps before

critical identifying information on the ballot could be revealed. The omission of a secrecy envelope defeats this intention. Moreover, in providing for the disqualification of mail-in ballots that arrive in secrecy envelopes that bear markings identifying the elector, the elector's party affiliation, or the elector's vote, all categories of information that appear on the ballot itself, the Legislature signaled beyond cavil that ballot confidentiality up to a certain point in the process is so essential as to require disqualification. Thus, we find that our holding in *Appeal of Pierce* leads to the inescapable conclusion that a mail-in ballot that is not enclosed in the statutorily-mandated secrecy envelope must be disqualified.

Accordingly, we hold that the secrecy provision language in Section 3150.16(a) is mandatory and the mail-in elector's failure to comply with such requisite by enclosing the ballot in the secrecy envelope renders the ballot invalid.

E. COUNT V OF THE PETITION FOR REVIEW

In Count V of its petition, Petitioner seeks a declaration specifying that the poll watcher residency requirement, found in Section 2687(b) of the Election Code, 25 P.S. §2687(b), does not violate state or federal constitutional rights.[32] Petition at 55, ¶ 207. The Secretary concurs with Petitioner in this regard.

The Election Code permits candidates and political parties to appoint "poll watchers" to monitor the integrity of the voting process.[33] "Each watcher so appointed

[32] Specifically, Petitioner maintains that the poll watcher residency requirement does not violate the United States Constitution's First Amendment, the Fourteenth Amendment, the Equal Protection Clause, or the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution.

[33] Section 2687(a) provides:

must be a qualified registered elector of the county in which the election district for which the watcher was appointed is located." 25 P.S. § 2687(b). This provision, in full, specifies:

> Each watcher so appointed must be a qualified registered elector of the county in which the election district for which the watcher was appointed is located. Each watcher so appointed shall be authorized to serve in the election district for which the watcher was appointed and, when the watcher is not serving in the election district for which the watcher was appointed, in any other election district in the county in which the watcher is a qualified registered elector: Provided, That only one watcher for each candidate at primaries, or for each party or political body at general, municipal or special elections, shall be present in the polling place at any one time from the time that the election officers meet prior to the opening of the polls under section 1208 until the time that the counting of votes is complete and the district register and voting check list is locked and sealed, and all watchers in the room shall remain outside the enclosed space. It shall not be a requirement that a watcher be a resident of the election district for which the watcher is appointed. After the close of the polls and while the ballots are being counted or voting machine canvassed, all the watchers shall be permitted to be in the polling place outside the enclosed space. Each watcher shall be provided with a certificate from the county board of elections, stating his name and the name of the candidate, party or political body he represents. Watchers shall be required to show their certificates when requested to do so. Watchers allowed in the polling place under the provisions of this act, shall be permitted to keep a list of voters and shall be entitled to challenge any person making application to vote and to require proof of his qualifications, as provided by this act. During those intervals when voters are not present in the polling place either voting or waiting to vote, the judge of elections shall permit watchers, upon request, to inspect the voting check list and either of the two numbered lists of voters maintained by the county board: Provided, That the watcher shall not mark upon or alter these official

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> Each candidate for nomination or election at any election shall be entitled to appoint two watchers for each election district in which such candidate is voted for. Each political party and each political body which had nominated candidates in accordance with the provisions of this act, shall be entitled to appoint three watchers at any general, municipal or special election for each election district in which the candidates of such party or political body are to be voted for. Such watchers shall serve without expense to the county.

25 P.S. § 2687(a).

> election records. The judge of elections shall supervise or delegate the inspection of any requested documents.

25 P.S. § 2687(b) (footnote omitted).

Petitioner observes that the General Assembly enacted the current poll watcher residency requirement in 2004 and that no changes were made to this requirement in Act 77. Petitioner asserts that this provision does not suffer from any constitutional infirmities and notes that the provision has been upheld as constitutional by the federal District Court for the Eastern District of Pennsylvania in *Republican Party of Pennsylvania v. Cortés,* 218 F. Supp. 3d 396 (E.D. Pa. 2016), discussed further below.

The Secretary likewise maintains that the poll watcher residency requirement is constitutional. The Secretary notes that the United States Supreme Court in *Anderson v. Calabrezza*, 460 U.S. 780 (1983), recognized the importance of States in regulating elections. There, the Court stated,

> We have recognized that, 'as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.'

Id. at 788 (citing *Storer v. Brown*, 415 U.S. 724, 730, (1974)). In this regard, the Secretary observes that the Election Code provides a comprehensive scheme of regulations for voting and elections in the Commonwealth. The Secretary maintains that these regulatory interests are generally considered sufficient to justify reasonable, nondiscriminatory restrictions on elections. *Id.*; *see also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (specifying that "[s]tates may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder").

Regarding the provisions in the Election Code requiring that poll watchers be qualified registered electors from the county in which they serve, like Petitioner, the

Secretary observes that although this Court has not previously addressed the question of whether this requirement is constitutional, the federal District Court for the Eastern District of Pennsylvania has done so and rejected a constitutional challenge to the poll watcher residency requirement in *Cortés*, *supra.*

Specifically, there, the District Court considered a constitutional challenge to Section 2687(b) of the Election Code by the respondent here. Respondent claimed that the poll watcher residency requirement found at Section 2687(b), requiring poll watchers to reside in the county in which they serve, is violative of its Fourteenth Amendment rights to due process and equal protection and their rights to free speech and association under the First Amendment.

The District Court rejected these claims, noting first, that the regulation does not violate due process or equal protection. The court observed that serving as a poll watcher does not implicate a fundamental constitutional right, like the right to vote, but rather, is a right conferred by statute. *Id.* at 408. Additionally, the court found that because the state's regulation of the qualifications of who may serve as a poll watcher does not burden one's voting rights or any other constitutional right, the state imposing the regulation need only cite a rational basis for the regulation to be upheld. *Id.* (citing *Donatelli v. Mitchell*, 2 F.3d 508, 514 & n.10 (3d Circ. 1993) (declining to apply intermediate scrutiny standards because the plaintiffs' fundamental rights were not burdened by state law)); and *Voting for Am., Inc. v. Andrade*, 488 Fed.Appx. 890, 899 (5th Cir. 2012) (applying rational basis review as opposed to an intermediate balancing test because state election law did not implicate or burden specific constitutional rights). In this regard, the court concluded as follows:

> There is a rational basis for Section 2678(b)'s requirement that poll watchers be qualified electors in the county in which they work. The Secretary notes that in 1937, the General Assembly enacted a county-based scheme to manage elections within the state, and consistent with that

> scheme the legislature endeavored to allow county election officials to oversee a manageable portion of the state in all aspects of the process, including in credentialing poll watchers. In short, Pennsylvania opted to design a county-by-county system of elections; in doing so it ensured as much coherency in this patchwork system as possible. To that end it ensured that participants in the election--voters and watchers alike--were qualified electors in the relevant county. The legislature's decision to allow county election officials to credential only poll watchers from their own county is rationally related to the state's interest in maintaining its county-run election system; each county election official is tasked with managing credentials for a discrete part of the state's population. As the Secretary's counsel noted at the hearing, the legislature chose to 'draw the lines' at the county level, something entirely rational in fashioning a scheme for a state as large as Pennsylvania.

Cortés, 218 F.Supp. 3d at 409.

The District Court, likewise, rejected Respondent's claims that Section 2687 violates the First Amendment. The court first noted that courts have found that "poll watching is not incidental to" the right of free association and has "no distinct First Amendment protection." *Id.* at 414 (citing *Cotz v. Mastroeni,* 476 F.Supp.2d 332, 364 (S.D. N.Y. 2007); and *Dailey v. Hands*, No. 14-00423, 2015 WL 1293188, at *5 (S.D. Ala. Mar. 23, 2015) ("[P]oll watching is not a fundamental right protected by the First Amendment.")). Moreover, the court found that poll watchers do not engage in core political speech while completing their duties. *Id.* at 415. Rather, the court observed that "when a poll watcher reports incidents of violations, he is performing a public function delegated by the state." *Id.* (citing *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 158 (1978) (stating that "[w]hile the Constitution protects private rights of association and advocacy with regard to the election of public officials, [the Supreme Court] cases make it clear that the conduct of the elections themselves is an [e]xclusively public function.")). Thus, the District Court found that the Commonwealth's county poll watcher residency requirement did not implicate poll watchers' private rights of association or advocacy and, therefore, did not violate the First Amendment.

Respondent again maintains that the poll watcher residency requirement set forth in the Election Code is unconstitutional.[34] First, Respondent maintains that *Cortés* is distinguishable from this matter because of the procedural posture and the timing of that case. Specifically, Respondent emphasizes the fact that in *Cortés* it sought a preliminary injunction eighteen days before the general election and that on this basis the court found the request for relief to be untimely. Thus, it contends that the court's further discussion of the constitutionality of the poll watcher residency requirement was *dicta*.

Additionally, Respondent argues that the court in *Cortés*, like the Secretary here, gave short shrift to the Commonwealth's obligation to safeguard the electorate from voter fraud, noting that "every voter in a federal . . . election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." Respondent's Brief at 45 (citing *Anderson v. United States*, 417 U.S. 211, 227 (1974)). Respondent maintains that due to the distribution of voters throughout the Commonwealth, the county residency requirement makes it difficult for both political parties to identify poll watchers in all precincts. Thus, it asserts that, in the absence of poll watchers, "fraud can flourish." *Id.* at 46. Respondent further argues that with Pennsylvania moving to an entirely new election regime under Act 77, with alleged increased opportunities for ballot fraud and tampering, the need for poll watchers is heightened.

Turning to the merits, initially, regarding Respondent's assertion that the District Court's discussion of the constitutionality of the poll watcher residency requirement constitutes *dicta* because the court found the claims there to be untimely, we note that

[34] The Caucus does not advocate in favor of finding the poll watcher residency requirement unconstitutional.

although that court pointed out that the emergent nature of Respondent's claims amounted to a "judicial fire drill" based on their late filing, the court opined further that the relief sought "would be inappropriate for a number of reasons, not the least of which is that at this late hour courts should not disrupt an impending election 'absent a powerful reason for doing so.'" *Cortés*, 218 F.Supp.3d. at 405 (citation omitted). The court then went on to analyze the merits of the constitutional claims asserted and denied relief. Accordingly, it appears the court made its decision on multiple bases, including the merits as well as the timing of the claims. Moreover, regardless of the status of the District Court's determination of the constitutional issues presented there, we find its analysis persuasive and agree with its reasoning in upholding the constitutionality of the poll watcher residency requirement.

The "times, places and manner" of conducting elections generally falls to the states. U.S. CONST. art. I, § 4 (providing that "the Times, Places and Manner of holding Elections…shall be prescribed in each State by the Legislature thereof"). Pennsylvania has enacted a comprehensive code of election laws pursuant to its authority to regulate its elections. The General Assembly, in enacting its comprehensive scheme, has required that any person serving as a poll watcher for a particular candidate or party be a resident of the county in which she serves in her position. 25 P.S. § 2687(b).

This provision is a legislative enactment which enjoys the presumption that the General Assembly did not intend to violate constitutional norms, "in part because there exists a judicial presumption that our sister branches take seriously their constitutional oaths." *Stilp v. Commonwealth,* 905 A.2d 918, 938–39 (Pa. 2006); *see also* 1 Pa.C.S. §1922(3). Accordingly, a statute is presumed to be valid, and will be declared unconstitutional only if it is shown to be "clearly, palpably, and plainly [violative of] the

Constitution." *West Mifflin Area School District v. Zahorchak*, 4 A.3d 1042, 1048 (Pa. 2010).

In analyzing whether a state election law violates the constitution, courts must first examine the extent to which a challenged regulation burdens one's constitutional rights. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Upon determining the extent to which rights are burdened, courts can then apply the appropriate level of scrutiny needed to examine the propriety of the regulation. *See id.* (indicating that "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights").

Where a state election regulation imposes a "severe" burden on a plaintiff's right to vote, strict scrutiny applies and requires that the regulation is "narrowly drawn to advance a state interest of compelling importance." *Id.* When a state election law imposes only "reasonable, nondiscriminatory restrictions," upon the constitutional rights of voters, an intermediate level of scrutiny applies, and "the State's important regulatory interests are generally sufficient to justify" the restrictions. *See Id.* (upholding Hawaii's ban on write-in voting in the primary where doing so places a minimal burden on one's voting right and supports the state's interest in supporting its ballot access scheme). Where, however, the law does not regulate a suspect classification (race, alienage, or national origin) or burden a fundamental constitutional right, such as the right to vote, the state need only provide a rational basis for its imposition. *See Donatelli*, 2 F.3d at 510 & 515.

In examining the constitutionality of the poll watcher residency provision at issue here, we conclude, as the District Court in *Cortés* concluded, that it imposes no burden on one's constitutional right to vote and, accordingly, requires only a showing that a rational basis exists to be upheld. In this regard, as the District Court aptly noted, there

is no individual constitutional right to serve as a poll watcher; rather, the right to do so is conferred by statute. *Cortés*, 218 F.Supp.3d at 408. Additionally, courts have indicated that "poll watching is not incidental to" the right of free association and, thus, "has no distinct First Amendment protection." *Cotz*, 476 F.Supp.2d at 364. Finally, poll watching does not implicate core political speech. *Cortés*, 218 F.Supp.3d at 415.

As the poll watcher county residency requirement does not burden one's constitutional voting rights, the regulation need only be shown to satisfy a rational basis for its imposition. Again, as the District Court aptly recounted, from its inception, Pennsylvania has envisioned a county-based scheme for managing elections within the Commonwealth. Consistent therewith, the Legislature has endeavored to allow county election officials to oversee and manage their portion of the state in all aspects of the election process, including credentialing poll watchers. Given that Pennsylvania's General Assembly chose a county-based scheme for conducting elections, it is reasonable that the Legislature would require poll watchers, who serve within the various counties of the state, to be residents of the counties in which they serve. Thus, there is a clear rational basis for the county poll watcher residency requirement, and we determine, therefore, that this requirement should be upheld.

Respondent does not claim that poll watching involves a fundamental constitutional right or that a level of scrutiny other than rational basis needs to be shown regarding the regulation of poll watcher qualifications. Instead, Respondent claims that poll watchers are vital to protect against voter fraud and that because of the distribution of voters throughout Pennsylvania, the residency requirement makes it difficult to identify poll watchers in all precincts. While Respondent asserts the greater need for poll watchers because of heightened election fraud involving mail-in voting, these claims are

unsubstantiated and are specifically belied by the Act 35 report issued by the Secretary on August 1, 2020, concerning mail in voting in the Primary Election, finding:

> [D]ata provided by the counties reinforces numerous independent studies that conclude that mail ballot fraud is exceedingly rare, and it demonstrates that the errors that occurred [in the Primary Election] accounted for a very small fraction of the nearly 1.5 million absentee and mail-in ballots requested and cast by voters.

Pennsylvania 2020 Primary Election Act 35 of 2020 Report at 39; Appendix to Petitioner's Brief, Exhibit F. Moreover, Respondent's speculative claim that it is "difficult" for both parties to fill poll watcher positions in every precinct, even if true, is insufficient to transform the Commonwealth's uniform and reasonable regulation requiring that poll watchers be residents of the counties they serve into a non-rational policy choice.

Based on the foregoing, we conclude that the poll watcher residency requirement does not violate the state or federal constitutions.[35] Accordingly, we grant the relief sought by Petitioner in their petition for review and declare the poll watcher residency requirement set forth in Section 2687(b) of the Election Code, 25 P.S. § 2687(b), to be constitutional.

IV. CONCLUSION

Based on our disposition of all of the claims set forth above, we grant relief on the claims set forth in Counts I, II, and V of the Democratic Party's petition for review as follows and hold that: (Count I) the Election Code permits county boards of election to collect hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes as indicated herein, *see supra.* at 20 n. 15; (Count II) a three-day extension of the absentee and mail-in ballot received-by deadline is adopted such that

[35] Respondent has not asserted that the Pennsylvania Constitution offers greater protection under the circumstances presented. Thus, for purposes of our review, we treat them as co-extensive.

ballots mailed by voters via the United States Postal Service and postmarked by 8:00 p.m. on Election Day , November 3, 2020, shall be counted if they are otherwise valid and received by the county boards of election on or before 5:00 p.m. on November 6, 2020; ballots received within this period that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, will be presumed to have been mailed by Election Day unless a preponderance of the evidence demonstrates that it was mailed after Election Day; (Count V) the poll watcher residency requirement set forth in Section 2687(b) of the Election Code, 25 P.S. § 2687(b), is constitutional. Also, for the reasons set forth herein, we deny the relief sought in Count III and IV of the petition for review.

Justices Todd, Dougherty, and Wecht join the opinion.

Chief Justice Saylor and Justice Mundy join Parts I, II, and III(C), (D) and (E) of the opinion.

Justice Donohue joins Parts I, II, and III(A), III(C), III(D) and III(E) of the opinion.

Justice Wecht files a concurring opinion.

Chief Justice Saylor files a concurring and dissenting opinion in which Justice Mundy joins.

Justice Donohue files a concurring and dissenting opinion in which Chief Justice Saylor and Justice Mundy join Part II.

[J-96-2020] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA DEMOCRATIC PARTY, NILOFER NINA AHMAD, DANILO BURGOS, AUSTIN DAVIS, DWIGHT EVANS, ISABELLA FITZGERALD, EDWARD GAINEY, MANUEL M. GUZMAN, JR., JORDAN A. HARRIS, ARTHUR HAYWOOD, MALCOLM KENYATTA, PATTY H. KIM, STEPHEN KINSEY, PETER SCHWEYER, SHARIF STREET, AND ANTHONY H. WILLIAMS	:	No. 133 MM 2020
v.	:	SUBMITTED: September 8, 2020
KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; ARMSTRONG COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON COUNTY BOARD OF ELECTIONS;	:	

COLUMBIA COUNTY BOARD OF :
ELECTIONS; CRAWFORD COUNTY :
BOARD OF ELECTIONS; CUMBERLAND :
COUNTY BOARD OF ELECTIONS; :
DAUPHIN COUNTY BOARD OF :
ELECTIONS; DELAWARE COUNTY :
BOARD OF ELECTIONS; ELK COUNTY :
BOARD OF ELECTIONS; ERIE COUNTY :
BOARD OF ELECTIONS; FAYETTE :
COUNTY BOARD OF ELECTIONS; :
FOREST COUNTY BOARD OF :
ELECTIONS; FRANKLIN COUNTY BOARD :
OF ELECTIONS; FULTON COUNTY :
BOARD OF ELECTIONS; GREENE :
COUNTY BOARD OF ELECTIONS; :
HUNTINGDON COUNTY BOARD OF :
ELECTIONS; INDIANA COUNTY BOARD :
OF ELECTIONS; JEFFERSON COUNTY :
BOARD OF ELECTIONS; JUNIATA :
COUNTY BOARD OF ELECTIONS; :
LACKAWANNA COUNTY BOARD OF :
ELECTIONS; LANCASTER COUNTY :
BOARD OF ELECTIONS; LAWRENCE :
COUNTY BOARD OF ELECTIONS; :
LEBANON COUNTY BOARD OF :
ELECTIONS; LEHIGH COUNTY BOARD :
OF ELECTIONS; LUZERNE COUNTY :
BOARD OF ELECTIONS; LYCOMING :
COUNTY BOARD OF ELECTIONS; :
MCKEAN COUNTY BOARD OF :
ELECTIONS; MERCER COUNTY BOARD :
OF ELECTIONS; MIFFLIN COUNTY :
BOARD OF ELECTIONS; MONROE :
COUNTY BOARD OF ELECTIONS; :
MONTGOMERY COUNTY BOARD OF :
ELECTIONS; MONTOUR COUNTY BOARD :
OF ELECTIONS; NORTHAMPTON :
COUNTY BOARD OF ELECTIONS; :
NORTHUMBERLAND COUNTY BOARD :
OF ELECTIONS; PERRY COUNTY BOARD :
OF ELECTIONS; PHILADELPHIA COUNTY :
BOARD OF ELECTIONS; PIKE COUNTY :
BOARD OF ELECTIONS; POTTER :
COUNTY BOARD OF ELECTIONS; :
SCHUYLKILL COUNTY BOARD OF :
ELECTIONS; SNYDER COUNTY BOARD :

OF ELECTIONS; SOMERSET COUNTY :
BOARD OF ELECTIONS; SULLIVAN :
COUNTY BOARD OF ELECTIONS; :
SUSQUEHANNA COUNTY BOARD OF :
ELECTIONS; TIOGA COUNTY BOARD OF :
ELECTIONS; UNION COUNTY BOARD OF :
ELECTIONS; VENANGO COUNTY BOARD :
OF ELECTIONS; WARREN COUNTY :
BOARD OF ELECTIONS; WASHINGTON :
COUNTY BOARD OF ELECTIONS; :
WAYNE COUNTY BOARD OF :
ELECTIONS; WESTMORELAND COUNTY :
BOARD OF ELECTIONS; WYOMING :
COUNTY BOARD OF ELECTIONS; AND :
YORK COUNTY BOARD OF ELECTIONS :
:
:
PETITION OF: KATHY BOOCKVAR, IN :
HER CAPACITY AS SECRETARY OF THE :
COMMONWEALTH OF PENNSYLVANIA :

CONCURRING OPINION

JUSTICE WECHT **DECIDED: September 17, 2020**

I join the learned Majority's Opinion in full. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."[1] As the Supreme Court of the United States has explained, the right to vote comprises not just "the right of qualified voters within a state

[1] *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

to cast their ballots," but also the right "to have their ballots counted."[2] In our Commonwealth, the franchise is guaranteed by the Free and Equal Elections Clause of the Pennsylvania Constitution, which commands: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."[3] The history of that clause, which predates the United States Constitution and has no federal counterpart, evinces the intent of its framers that it be given "the broadest interpretation, one which governs all aspects of the electoral process."[4]

Expounding upon the contours of the guarantee of free and equal suffrage contained within the Constitution of Kentucky, which was modeled on our own organic charter, the Kentucky Supreme Court observed that, "when any substantial number of legal voters are, from any cause, denied the right to vote, the election is not free and equal, in the meaning of the Constitution."[5]

> [T]his constitutional provision admits of no evasions or exceptions. No amount of good intention or good faith can be allowed to defeat its purpose or its meaning. When the question arises, the single inquiry will be: Was the election free and equal, in the sense that no substantial number of persons entitled to vote and who offered to vote were denied the privilege?[6]

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2 *United States v. Classic*, 313 U.S. 299, 314, 315 (1941); *accord United States v. Mosley*, 238 U.S. 383, 386 (1915).

3 PA. CONST. art. I, § V.

4 *League of Women Voters of Pa. v. Pa.*, 178 A.3d 737, 809 (Pa. 2018); *see Winston v. Moore*, 91 A. 520, 523 (Pa. 1914).

5 *Wallbrecht v. Ingram*, 175 S.W. 1022, 1026 (Ky. 1915).

6 *Id*. at 1027.

Although the conditions that might infringe the franchise are too manifold to enumerate, when we are satisfied that a violation of the right has occurred or is likely to occur, "our Court possesses broad authority to craft meaningful remedies when required."[7]

"Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."[8] To that end, we recognized in *League of Women Voters* that "[a] broad and robust interpretation" of the Free and Equal Elections Clause could restore the public's confidence in the redistricting process by "guard[ing] against the risk of unfairly rendering votes nugatory."[9] The same easily could be said of an election scheduled in the wake—or midst—of a natural disaster, civil unrest, or other emergency, where systemic disruptions in basic government services like mail delivery—upon which the machinery of our election system relies more than ever with the advent of broad mail-in voting—can be demonstrated or reasonably anticipated.[10] Indeed, the "adverse consequences" occasioned by a dysfunctional electoral process that threatens to disenfranchise a broad swath of the electorate are no less pernicious than those of partisan gerrymandering. Left unabated, each threatens to "discourag[e] voters from

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7 *League of Women Voters*, 178 A.3d at 822 (citing PA. CONST. art. V, §§ 1, 2, 10); *see Reynolds v. Sims*, 377 U.S. 533, 566 (1964) ("[A] denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.").

8 *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (*per curiam*).

9 *League of Women Voters*, 178 A.3d at 814.

10 *See In re General Election-1985*, 531 A.2d 836, 839 (Pa. Cmwlth. 1987) ("To permit an election to be conducted where members of the electorate could be deprived of their opportunity to participate because of circumstances beyond their control . . . would be inconsistent with the purpose of the election laws.").

participating in the electoral process because they have come to believe" that their vote will not count through no fault of their own.[11]

In determining whether present systemic disruptions in government services are well-documented in this Commonwealth, we need look no further than the recent Congressional testimony of Postmaster General Louis DeJoy. Appearing before committees of the United States House and Senate, DeJoy acknowledged that "[a] substantial portion of [mail] delays are related to COVID."[12] Highlighting the acute effects of the pandemic on mail delays within Pennsylvania, DeJoy explained:

> As the coronavirus cases throughout the country have expanded it has had an impact on our employee availability. And in the urban areas that are hotspots—the averages don't play out what the real picture is like in areas like Philadelphia, where employee availability is significantly below normal run rates.[13]

Lacking any materially contradictory evidence, we have no reason to doubt the accuracy of DeJoy's testimony on these points. While the Postal Service may be able to prioritize election mail to mitigate these concerns, they cannot alter the laws of time and space.

The extraordinary circumstances under which this year's quadrennial presidential election must be contested manifestly justify an equitable remedy modifying the received-

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[11] *League of Women Voters*, 178 A.3d at 814; *cf. Working Families Party v. Commonwealth*, 209 A.3d 270, 306-07 (Pa. 2019) (Wecht, J., concurring and dissenting) ("The Free and Equal Elections Clause is compromised where the regulatory approach adopted by the legislature has the well-documented effect of . . . depressing voter enthusiasm and participation.").

[12] Examining the Finances and Operations of the United States Postal Service During COVID-19 and Upcoming Elections: Hearing Before the S. Homeland Security Comm., 116th Cong. (Aug. 21, 2020).

[13] Protecting the Timely Delivery of Mail, Medicine, and Mail-in Ballots: Hearing Before the H. Oversight & Gov't Reform Comm., 116th Cong. (Aug. 24, 2020).

by deadline for absentee and mail-in ballots to account for these exigencies and to ensure that no unnecessary impediments to each citizen's exercise of the franchise be interposed that reasonably can be avoided. Having determined that the convergence of a once-in-a-century pandemic and unprecedented operational delays in United States Postal Service delivery capacity threatens to undermine the integrity of our general election, this *force majeure* necessitates relief.

I endorse the Majority's narrowly-tailored remedy, which extends the received-by deadline by just three days to compensate for projected mail-delivery delays of similar duration. Extrapolating from the Department of State's primary election data, that timeframe should capture the vast majority of late-arriving ballots that were deposited with the Postal Service on or in the few days before Election Day. That approach also will minimize the number of voters denied the franchise simply for mailing their votes based upon long-trusted, but presently unrealistic expectations about the speed of the post, while minimizing any subsequent delay in the tallying of votes and avoiding any material disruption to the sequence of events that follow in the weeks following a national election.

While I join the Majority's resolution of Count III, I do so subject to the belief that it is limited to the particular concerns litigated and the lack of any proposal regarding a practicable manner of relieving the problem alleged. In my view, today's ruling should be understood to extend no farther than to ballot defects that are capable of objective assessment pursuant to uniform standards[14]—a qualification that captures all of the defects Petitioners seek the opportunity to cure in this case.

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[14] *See* PA. CONST. art. VII, § 6 ("All laws regulating the holding of elections by the citizens . . . shall be uniform throughout the State."); *Kuznik v. Westmoreland Cty. Bd. of*

For example, the failure to "fill out, date and sign the declaration printed on" the ballot return envelope, as required by 25 P.S. § 3150.16(a), is a deficiency that can be readily observed. Absent some proof that the enforcement of such a uniform, neutrally applicable election regulation will result in a constitutionally intolerable ratio of rejected ballots, I detect no offense to the Free and Equal Elections Clause. Moreover, Petitioners propose only an amorphous standard that would permit electors to cure "minor" defects and omissions; they supply no judicially manageable criteria for distinguishing "minor" defects from "major" ones that could be adopted on a statewide basis, nor do they propose a process to facilitate the opportunity to cure that they seek that can be implemented and fairly administered in every voting district in the Commonwealth in the weeks between now and the general election. So long as the Secretary and the county boards of elections provide electors with adequate instructions for completing the declaration of the elector—including conspicuous warnings regarding the consequences for failing strictly to adhere—pre-deprivation notice is unnecessary.

But I view these issues as distinct from circumstances in which a ballot's validity turns on subjective assessments, such as signature mismatches assessed by poll workers with no training or expertise in matching signatures. The enforcement of such requirements presents risks of inconsistency and arbitrariness that may implicate constitutional guarantees not raised in this case, including due process and equal protection principles. Signature comparison is a process fraught with the risk of error and

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Comm'rs, 902 A.2d 476, 490 (Pa. 2006) ("We have held that 'to be uniform in the constitutional sense . . . a law [regulating the holding of elections] must treat all persons in the same circumstances alike.'") (quoting *Kerns v. Kane*, 69 A.2d 383, 393 (Pa. 1949)).

inconsistent application, especially when conducted by lay people.[15] While this case offers no challenge to such inherently subjective bases for disqualifying ballots, I do not view today's Opinion as foreclosing the possibility of relief in a future case seeking the opportunity to address circumstances in which a subjective, lay assessment of voter requirements as to which reasonable minds might differ stands between the elector and the tabulating machine.

We would not write on a blank slate in this regard. These concerns have been recognized by numerous tribunals in recent years, and various courts have granted relief on similar grounds, including three federal courts in the last few weeks alone.[16] Those

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[15] *Cf. United States v. Starzecpyzel*, 880 F.Supp. 1027, 1046 (S.D.N.Y. 1995) (noting the risk of "natural variations" in handwriting and citing factors such as "disease, intoxication and the passage of time," and citing a putative handwriting expert as observing that "[s]ome people have a lot of individuality present in their writing and other people do not").

[16] *See, e.g.*, *Ariz. Dem. Party v. Hobbs*, CV-20-01143-PHX-DLR (D. Ariz. Sept. 10, 2020); *Richardson v. Tex. Sec. of State*, SA-19-cv-00963-OLG (W.D. Tex. Sept. 8, 2020); *Frederick v. Lawson*, 1:19-cv-01959-SEB-MDJ, ___ F. Supp. 3d ___, 2020 WL 4882696 (S.D. Ind. Aug. 20, 2020); *see also League of Un. Latin Am. Citizens of Iowa v. Pate*, Polk Cty. CVCV056403, 2018 WL 3946147, at *1 (Iowa Aug. 10, 2018) (enjoining use of signature-matching provisions in Iowa's Election Code); *Martin v. Kemp*, 341 F. Supp. 3d 1326 (N.D. Ga. 2018) (enjoining enforcement of Georgia statute permitting rejection of absentee ballots and ballot applications due to alleged signature mismatch), *emergency motion for stay of injunction pending appeal denied*, *Georgia Muslim Voter Project v. Kemp*, 918 F.3d 1262 (11th Cir. 2019); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 222 (D. N.H. 2018) (holding that New Hampshire's signature-match requirement for absentee ballots was facially unconstitutional under the Fourteenth Amendment); *Florida Dem. Party v. Detzner*, 4:16cv607-MW/CAS, 2016 WL 6090943, at *9 (N.D. Fla. Oct. 16, 2016) (striking down Florida's mail-in ballot signature match law as violative of the Fourteenth Amendment); *Zessar v. Helander*, 05 C 1917, 2006 WL 642646, at *10 (N.D. Ill. 2006) (finding that the Illinois Election Code provisions requiring signature comparisons on absentee ballots violated voters' due process rights); *La Follette v. Padilla*, CPF-17-515931, 2018 WL 3953766, at *3 (Cal. Super. Ct. Mar. 5, 2018) (holding that California Election Code ballot signature-mismatch provision facially violates due process); *cf.* Susie Armitage, *Handwriting Disputes Cause Headaches for Some Absentee Voters*, ProPublica (Nov. 5, 2018), www.propublica.org/article/handwriting-disputes-cause-

courts have found that the administrative burden of a notice-and-cure remedy is outweighed by the threat to the fundamental rights of voters whose ballots otherwise would not be counted.

While one might hope that the General Assembly would revisit the issue and consider furnishing such a procedure on its own initiative, this Court has the prerogative to address this problem if it proves worthy upon closer examination. As a "state court with the power to assure uniformity," we have the authority, and indeed the obligation, to direct the canvassing of absentee and mail-in ballots in a manner that satisfies "the rudimentary requirements of equal treatment and fundamental fairness" when we find a palpable failure to meet those constitutional thresholds.[17] Regardless, Petitioners do not bring a discrete challenge to the Commonwealth's prescribed processes for examining the validity of signatures on ballot envelopes, so resolution of that question must wait.[18]

Turning finally to Count IV, I agree wholeheartedly with the Majority's analysis. I write separately to underscore that this case illustrates most consequentially the potential for mischief, albeit well-meaning, when we are called upon to question the "true" meaning of the General Assembly's contextually ambiguous use of the word "shall." In my view,

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headaches-for-some-absentee-voters (discussing legal challenges to signature-match laws).

[17] *Bush v. Gore*, 531 U.S. 98, 109 (2000) (*per curiam*).

[18] During the pendency of this appeal, Secretary Boockvar issued a guidance document that, in furtherance of "consistency across the 67 counties," instructs election officials that "[t]he Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections." Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes at 3 (Sept. 11, 2020) www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf.

there are times when this Court has done so gratuitously. But far more frequently, this unfortunate circumstance is foisted upon us by the choices made by the General Assembly during the often tortuous drafting process,

The difficulty inherent in that enterprise, and concomitantly the risk that we will misconstrue legislative intent, is clear. In searching for methods to remove the guesswork from such situations, Pennsylvania courts have labored mightily but in vain to fashion a coherent organizing principle for determining when the legislature meant "you may" when it said "you must."

For example, the Superior Court once suggested that the distinction inheres in "the *effect* of non-compliance . . . . A provision is mandatory when failure to follow it renders the proceedings to which it relates illegal and void; it is directory when the failure to follow it does not invalidate the proceedings."[19] But where the court considers the consequences of a failure to perform a task stated in mandatory language, this distinction is nonsensical: we cannot gauge the effect of non-compliance simply by asking what the effect of non-compliance is. In *Bell v. Powell*, we proposed an equally confounding alternative:

> [Shall] may be construed to mean 'may' when no right or benefit to any one depends on its imperative use, when no advantage is lost, when no right is destroyed, when no benefit is sacrificed, either to the public or to any individual, by giving it that construction, or when it is absolutely necessary to prevent irreparable mischief, or to construe a direction so that it shall not interfere with vested rights, or conflict with the proper exercise of power by either of the fundamental branches of government . . . .[20]

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[19] *Borough of Pleasant Hills v. Carroll*, 125 A.2d 466, 469 (Pa. Super. 1956) (*en banc*) (emphasis in original).

[20] *Commonwealth ex rel. Bell v. Powell*, 94 A. 746, 748 (Pa. 1915) (cleaned up).

This impenetrable passage suggests nothing to me so much as that we are free to do whatever we want only when what we do does not matter.

To be sure, there may be value in legislating in both mandatory and directory terms. But no benefit is served by, nor is there any excuse for, rendering the distinction opaque with critical omissions, such as the failure to specify a specific consequence for failing to adhere to a particular mandate—especially where, as in the case of naked ballots, the legislature did so for closely related, if not constructively identical, correlative statutory provisions. The General Assembly must endeavor always to distinguish between what it intends to be mandatory and what directory, in its words or by clear and necessary inference. When it fails to do so, courts are left to bend unclear texts toward whatever ends that they believe to be consonant with legislative intent, but with little or no contemporaneous insight into whether they have done so successfully. When the General Assembly does not choose its words carefully according to their intended effect, it leaves courts with no choice but to sharpen what the drafters made dull.

For this Court's part, if we are to maintain a principled approach to statutory interpretation that comports with the mandate of our Statutory Construction Act, if we are to maximize the likelihood that we interpret statutes faithfully to the drafters' intended effect, we must read mandatory language as it appears, and we must recognize that a mandate without consequence is no mandate at all. If the result, at times, is that the Court imposes a more doctrinaire result than the legislature intended, that body has the tools at its disposal to ensure that the same mistake does not recur.

[J-96-2020] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA DEMOCRATIC PARTY, NILOFER NINA AHMAD, DANILO BURGOS, AUSTIN DAVIS, DWIGHT EVANS, ISABELLA FITZGERALD, EDWARD GAINEY, MANUEL M. GUZMAN, JR., JORDAN A. HARRIS, ARTHUR HAYWOOD, MALCOLM KENYATTA, PATTY H. KIM, STEPHEN KINSEY, PETER SCHWEYER, SHARIF STREET, AND ANTHONY H. WILLIAMS	:	No. 133 MM 2020
v.	:	SUBMITTED: September 8, 2020
KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; ARMSTRONG COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON COUNTY BOARD OF ELECTIONS; COLUMBIA COUNTY BOARD OF	:	

ELECTIONS; CRAWFORD COUNTY :
BOARD OF ELECTIONS; CUMBERLAND :
COUNTY BOARD OF ELECTIONS; :
DAUPHIN COUNTY BOARD OF :
ELECTIONS; DELAWARE COUNTY :
BOARD OF ELECTIONS; ELK COUNTY :
BOARD OF ELECTIONS; ERIE COUNTY :
BOARD OF ELECTIONS; FAYETTE :
COUNTY BOARD OF ELECTIONS; :
FOREST COUNTY BOARD OF :
ELECTIONS; FRANKLIN COUNTY BOARD :
OF ELECTIONS; FULTON COUNTY :
BOARD OF ELECTIONS; GREENE :
COUNTY BOARD OF ELECTIONS; :
HUNTINGDON COUNTY BOARD OF :
ELECTIONS; INDIANA COUNTY BOARD :
OF ELECTIONS; JEFFERSON COUNTY :
BOARD OF ELECTIONS; JUNIATA :
COUNTY BOARD OF ELECTIONS; :
LACKAWANNA COUNTY BOARD OF :
ELECTIONS; LANCASTER COUNTY :
BOARD OF ELECTIONS; LAWRENCE :
COUNTY BOARD OF ELECTIONS; :
LEBANON COUNTY BOARD OF :
ELECTIONS; LEHIGH COUNTY BOARD :
OF ELECTIONS; LUZERNE COUNTY :
BOARD OF ELECTIONS; LYCOMING :
COUNTY BOARD OF ELECTIONS; :
MCKEAN COUNTY BOARD OF :
ELECTIONS; MERCER COUNTY BOARD :
OF ELECTIONS; MIFFLIN COUNTY :
BOARD OF ELECTIONS; MONROE :
COUNTY BOARD OF ELECTIONS; :
MONTGOMERY COUNTY BOARD OF :
ELECTIONS; MONTOUR COUNTY BOARD :
OF ELECTIONS; NORTHAMPTON :
COUNTY BOARD OF ELECTIONS; :
NORTHUMBERLAND COUNTY BOARD :
OF ELECTIONS; PERRY COUNTY BOARD :
OF ELECTIONS; PHILADELPHIA COUNTY :
BOARD OF ELECTIONS; PIKE COUNTY :
BOARD OF ELECTIONS; POTTER :
COUNTY BOARD OF ELECTIONS; :
SCHUYLKILL COUNTY BOARD OF :
ELECTIONS; SNYDER COUNTY BOARD :
OF ELECTIONS; SOMERSET COUNTY :

BOARD OF ELECTIONS; SULLIVAN COUNTY BOARD OF ELECTIONS; SUSQUEHANNA COUNTY BOARD OF ELECTIONS; TIOGA COUNTY BOARD OF ELECTIONS; UNION COUNTY BOARD OF ELECTIONS; VENANGO COUNTY BOARD OF ELECTIONS; WARREN COUNTY BOARD OF ELECTIONS; WASHINGTON COUNTY BOARD OF ELECTIONS; WAYNE COUNTY BOARD OF ELECTIONS; WESTMORELAND COUNTY BOARD OF ELECTIONS; WYOMING COUNTY BOARD OF ELECTIONS; AND YORK COUNTY BOARD OF ELECTIONS	:
PETITION OF: KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA	:

CONCURRING AND DISSENTING OPINION

JUSTICE DONOHUE **DECIDED: September 17, 2020**

I.

I join the Majority's opinion as to Parts I, II, and III(A), III(C), III(D) and III(E).

II.

With respect to Part III(B), I agree that Petitioners are entitled to relief, but I distance myself from the Majority's analysis to reach this conclusion as well as the specific relief granted. Petitioners base their request for relief on the infringement of the rights afforded by Article 1, Section 5 of the Pennsylvania Constitution, our Free and Equal Elections Clause.[1] In my mind, the issue must be framed as an as-applied challenge,

[1] Article I, Section 5 of the Pennsylvania Constitution provides as follows:

during the duration of the COVID-19 public health crisis and current USPS service standards, to the constitutionality of Sections 3150.12a(a) and 3150.16(c) of Act 77, which respectively set the last date on which voters may request mail-in ballots and the deadline for when ballots must be received by county boards of elections. With deference to my learned colleagues, I believe that this issue should have been decided in a case in this Court's original jurisdiction under Act 77, *Michael Crossey et al, v. Kathy Bookckvar, et al.*, No. 108 MM 2020, where the claims likewise were based on the Free and Equal Elections clause and in which this Court ordered the creation of a complete evidentiary record to determine whether the petitioners there had met their high burden to prove the existence of a constitutional injury entitling them to relief.

Despite invoking an as-applied constitutional challenge in the present case, Petitioners and the Secretary (as in *Crossey*) seek equitable relief in the form of an order permitting non-compliance with the received-by provision in Act 77 (Section 3150.16(c)) during the COVID-19 pandemic. I am not as comfortable as the Majority with the ability of this Court to exercise equitable powers in election matters.[2] Because they are

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> Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Pa. Const., art. 1, § 5.

[2] Section 3046 of the Election Code provides courts of common pleas with authority, with some latitude, to make rulings on Election Day to secure compliance with the election laws. 25 P.S. § 6046. Specifically, a judge or judges from each county will remain in session on Election Day to "act as a committing magistrate for any violation of the election laws; shall settle summarily controversies that may arise with respect to the conduct of the election; shall issue process, if necessary, to enforce and secure compliance with the election laws; and shall decide such other matters pertaining to the election as may be necessary to carry out the intent of this act." *Id.* The Commonwealth Court relied on Section 3046 in deciding *In re General Election-1985*, 531 A.2d 836 (Pa. Commw. 1987)

inherently political, elections are appropriately regulated by the political branch. *In re Guzzardi*, 99 A.3d 381, 385 (Pa. 2014). As such, out of respect for legislatures and for the sake of regularity and orderliness in the election process, the supreme courts of our sister states have routinely held that courts cannot exercise equitable powers to mitigate harsh results in derogation of legislative requirements for strict compliance with election-related deadlines. *Butts v. Bysiewicz*, 5 A.3d 932, 947 (Conn. 2010) ("Equity only applies in the absence of a specific statutory mandate."); *see also Martin v. Secretary of State*, 755 N.W.2d 153, 154 (Mich. 2008); *Smith v. Kiffmeyer*, 721 N.W.2d 912, 914–15 (Minn. 2006); *Andrews v. Secretary of State*, 200 A.2d 650, 651 (Md. 1964). Following the leads of these courts, in 2014, this Court denied equitable relief to a litigant in an election case, holding as follows:

> [T]he judiciary should act with restraint, in the election arena, subordinate to express statutory directives. Subject to constitutional limitations, the Pennsylvania General Assembly may require such practices and procedures as it may deem necessary to the orderly, fair, and efficient administration of public elections in Pennsylvania. At least where the Legislature has attached specific consequences to particular actions or omissions, Pennsylvania courts may not mitigate the legislatively prescribed outcome through recourse to equity.

Guzzardi, 99 A.3d at 385. The Court recently reaffirmed our decision in *Guzzardi*. *Reuther v. Delaware Cty. Bureau of Elections*, 205 A.3d 302, 308-09 (Pa. 2019).

(in light of a flood occurring on election day, the court of common pleas had the authority to suspend voting in certain districts until the emergency was over), *appeal denied*, 544 A.2d 963 (Pa. 1988).

The Majority relies on *In re General Election-1985* to support our broad equitable powers to act in this case despite the limitations in Section 3046.

Without the availability of equitable relief, it is my view that Petitioners are entitled to relief only in the context of an as-applied constitutional challenge. Specifically, Petitioners must prove that in light of the existing circumstances, the short seven-day timeframe established by Sections 3150.12a(a) and 3150.16(c) of Act 77 provides insufficient time for a voter to request a mail-in ballot (by October 27, 2020) and return it to a county board of elections by the statutorily set received-by date (8:00 p.m. on Election Day, November 3, 2020), so that the vote is counted. Such a constitutional challenge requires a plain showing of injury. "There is a presumption that lawfully enacted legislation is constitutional. Should the constitutionality of legislation be challenged, the challenger must meet the burden of rebutting the presumption of constitutionality by a clear, palpable and plain demonstration that the statute violates a constitutional provision." *Yocum v. Commw. of Pennsylvania Gaming Control Bd.*, 161 A.3d 228, 238 (Pa. 2017).

In *Crossey*, the petitioners produced sufficient evidence to meet this high "clear, palpable and plain" burden of proof. Given the deadlines set for the request of and subsequent return of ballots, considered in light of the pandemic and current lagging USPS service standards (which are highly unlikely to improve significantly before Election Day), the evidence in *Crossey* established that there is a strong likelihood that voters who wait until the last day to apply for a mail-in or absentee ballot will be disenfranchised, as their mail-in ballots will not be delivered by Election Day and thus will not be counted. Thus, the short seven-day window set forth in Sections 3150.12a(a) and 3150.16(c) of Act 77 constitutes an interference with the free exercise of the right to vote as guaranteed by our Free and Equal Elections Clause. The evidentiary linchpin for establishing the

unconstitutionality of the seven-day time frame was correspondence from Thomas J. Marshall, General Counsel and Executive Vice President for the USPS, to Secretary Boockvar dated July 29, 2020 advising that the current service standards for delivery of First Class Mail is two to five days, and cautioning that Pennsylvania's application and return deadlines for mail-in ballots are such that despite prompt actions by voters, the ballots may "not be returned in time to be counted." The letter was accepted into evidence in *Crossey* and was further supported by the testimony of the Deputy Postmaster at the time the correspondence was crafted.

The existence of the constitutional injury suffered by virtue of adherence to the statutory deadlines for request and return of ballots is illustrated in the following chart, which incorporates the fact of receipt by the board of elections of an application on the statutory deadline of October 27, 2020. It also assumes that the application is immediately processed and a ballot mailed to the voter within forty-eight hours of receipt of the application.[3] I further take into account that mail is processed by USPS but not delivered on Sundays. All computations are based on the use of First-Class Mail:

DATE BALLOT MAILED BY BOARD	**DELIVERY TIME (in days)**	**DATE BALLOT IS RECEIVED BY VOTER**	**DATE BALLOT IS MAILED BACK BY VOTER**	**DELIVERY TIME (in days)**	**DATE BALLOT IS RECEIVED BY BOARD**	**BALLOT RECEIVED IN TIME TO BE COUNTED?**
Thursday, 10/29/2020	2		Saturday, 10/31/2020	2	Monday, 11/2/2020	YES
				3	Tuesday, 11/3/2020	YES

[3] In this regard, we note that 25 P.S. § 3150.15 provides that county boards of elections must deliver the ballots to the voters within forty-eight hours **after** approval of the application. *See* 25 P.S. § 3150.15 ("As additional applications are received and approved, the board shall deliver or mail official mail-in ballots to the additional electors within 48 hours.").

		Saturday, 10/31/2020		4	Wednesday, 11/4/2020	NO
				5	Thursday, 11/5/2020	NO
		Saturday, 10/31/2020	Monday, 11/2/2020	2	Wednesday, 11/4/2020	NO
				3	Thursday, 11/5/2020	NO
				4	Friday, 11/6/2020	NO
				5	Saturday, 11/7/2020	NO
	3-4	Monday, 11/2/2020	Monday, 11/2/2020	2	Wednesday, 11/4/2020	NO
		Monday, 11/2/2020		3	Thursday, 11/5/2020	NO
				4	Friday, 11/6/2020	NO
				5	Saturday 11/7/2020	NO
		Monday, 11/2/2020	Tuesday, 11/3/2020	2-5	(After Election Day)	NO
	5	Tuesday, 11/3/2020		2-5	(After Election Day)	NO
			Wednesday, 11/4/2020	2-5	(After Election Day)	NO

The only way the current statutory framework works is if the ballot is delivered by USPS in two days, the voter immediately returns the ballot, and it is received by the board of elections within three days. All other voters who comply with the statutory framework are disenfranchised, even though they complied with the statute.

The role of the judiciary when a meritorious constitutional challenge is brought "includes the obligation to vindicate" the constitutional rights at issue, and in doing so courts have wide latitude to craft an appropriate remedy." *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 953 (Pa. 2013); *see also League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 793 (Pa. 2018) ("The Court possesses broad authority to craft meaningful remedies [for constitutional violations] when required."). Where, as

here, "a legislatively unforeseen constitutional problem requires modification of a statutory provision as applied," the United States Supreme Court has admonished courts to look to legislative intent when devising a remedy. *See United States v. Booker*, 543 U.S. 220, 246-47 (2005) (after ruling that federal sentencing statute that made guidelines mandatory was unconstitutional, the Court made an effort to determine what "'Congress would have intended' in light of the Court's constitutional holding." *Id*. at 246-47.

In *Crossey* (and in the present case), Petitioners recommend that the "received by" date be moved from Election Day to seven days after Election Day, so long as the mailing is postmarked by Election Day. In *Crossey* (and here), Secretary Boockvar believes that moving the received-by day forward by three days is sufficient, and that Petitioners' longer time period would in fact interfere with other important functions that must take place after Election Day. In crafting a remedy for an as-applied constitutional violation, a court's duty is to effectuate the intent of the General Assembly to the extent possible and to otherwise not disrupt the statutory scheme. In light of these principles, I do not believe that either of the parties' recommended remedies provide the appropriate solution.

There is no reasonable reading of the statute that would lead to the conclusion that the Tuesday before Election Day was of any institutional importance. Instead, the clear legislative intent was that all ballots were to be cast by 8:00 p.m. on Election Day, the termination of the balloting process. It cannot be viewed as a coincidence that the closing of the polls terminating in-person voting and the receipt of mail-in ballots were designated by the statute to be the same. The last date on which applications for ballots would be accepted was tied to an assumption that a timely vote could be cast before the only

meaningful milestone, Election Day. As a result, the remedy to best effectuate the legislative intent before the intervening circumstances is to move back, i.e., make earlier, the final date on which applications for mail-in ballots may be submitted to the county boards of elections. I would accept Secretary Boockvar's opinion that three additional days will substantially correct the problem. However, moving back by three days the deadline for the receipt of applications by the boards of elections would result in that deadline falling on Saturday. Instead, to reflect normal business days, the deadline for receipt of the application by the boards of election should be moved to Friday, October 23, 2020. The received-by date for the ballot by the boards of elections, Election Day by 8:00 p.m., should remain unchanged.

For comparison, the following chart illustrates the new deadlines interfaced with current USPS delivery standards:

<table>
<tr><th>DATE BALLOT MAILED BY BOARD</th><th>DELIVERY TIME (in days)</th><th>DATE BALLOT RECEIVED BY VOTER</th><th>DATE BALLOT MAILED BY VOTER</th><th>DELIVERY TIME (in days)</th><th>DATE BALLOT RECEIVED BY BOARD</th><th>BALLOT RECEIVED IN TIME TO BE COUNTED?</th></tr>
<tr><td rowspan="10">Monday, 10/26/2020</td><td rowspan="5">2</td><td rowspan="4">Wednesday, 10/28/2020</td><td rowspan="4">Wednesday, 10/28/2020</td><td>2</td><td>Friday, 10/30/2020</td><td>YES</td></tr>
<tr><td>3</td><td>Saturday, 10/31/2020</td><td>YES</td></tr>
<tr><td>4</td><td>Monday 11/2/2020</td><td>YES</td></tr>
<tr><td>5</td><td>Monday 11/2/2020</td><td>YES</td></tr>
<tr><td rowspan="2">Wednesday, 10/28/2020</td><td rowspan="5">Thursday, 10/29/2020</td><td>2</td><td>Saturday, 10/31/2020</td><td>YES</td></tr>
<tr><td>3</td><td>Monday, 11/2/2020</td><td>YES</td></tr>
<tr><td rowspan="4">3</td><td rowspan="3">Thursday, 10/29/2020</td><td>4</td><td>Monday, 11/2/2020</td><td>YES</td></tr>
<tr><td>5</td><td>Tuesday, 11/3/2020</td><td>YES</td></tr>
<tr><td>Thursday, 10/29/2020</td><td>Friday, 10/30/2020</td><td>2</td><td>Monday, 11/2/2020</td><td>YES</td></tr>
</table>

				3	Monday, 11/2/2020	YES
	4	Friday, 10/30/2020		4	Tuesday, 11/3/2020	YES
				5	Wednesday, 11/4/2020	NO
		Friday, 10/30/2020	Saturday, 10/31/2020	2	Monday, 11/2/2020	YES
				3	Tuesday, 11/3/2020	YES
	5	Saturday, 10/31/2020		4	Wednesday, 11/4/2020	NO
				5	Thursday, 11/5/2020	NO
		Saturday, 10/31/2020	Monday, 11/2/2020	2-5	(After Election Day)	NO

As with the previous illustration, I assume that county boards of elections will process **and** send out the ballots within forty-eight hours of receipt. Whether this is possible, likely or impossible is apparently immaterial, since Secretary Boockvar, with knowledge of the capacities of the county boards of elections, recommended a three-day extension, so I assume that it accounted for this factor.

As required when remedying an as-applied constitutional defect, this remedy is the least disruptive to the enacted statutory scheme. The problem to be remedied here is that the seven-day period to complete the mail-in vote process has been rendered unworkable by the current extraordinary circumstances. I have no doubt that the statute was intended to accommodate the realities as they existed when Act 77 was enacted. It is unconstitutional as applied to the November 2020 general election because of current realities.

For these reasons, in connection with the November 2020 general election only, the deadline for requesting a ballot should be moved to Friday, October 23, 2020.[4] The legislative choice of Election Day at 8:00 p.m. should remain intact.

In summary, I agree with the Majority that the received-by date for ballot applications in light of the deadline for submission of ballots to the county boards of election is unworkable under current circumstances. I dissent from the invocation of equitable powers to craft a remedy. In my view, this issue should have been decided on the evidentiary record developed in *Crossey* based on the analytical framework for an as-applied challenge to the constitutionality of the statutory provisions as violative of Article 1, Section 5 of our Constitution, with the remedy crafted based upon the legislative intent in enacting the circumstantially defective statutes.

Chief Justice Saylor and Justice Mundy join Part II of this concurring and dissenting opinion.

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[4] To the extent that the non-severability clause in Section 11 of Act 77, 1 Pa.C.S. § 1925 is enforceable, I do not view the election specific remedies at issue here as-applied constitutional violation as triggering the draconian consequence. In the context of the COVID-19 pandemic, applying the non-severability provision to void Act 77 in its entirety would itself be unconstitutional, as it would disenfranchise a massive number of Pennsylvanians from the right to vote in the upcoming election.

More broadly, in *Stilp v. Commonwealth*, 905 A.2d 918, 978 (Pa. 2006), this Court declined to apply an identically worded non-severability provision, *id.* at 973, refusing to allow the General Assembly to "dictate the effect of a judicial finding that a provision in an act is 'invalid.'" *Id.* at 976. Here, as in *Stilp*, Act 77's boilerplate non-severability provision "sets forth no standard for measuring non-severability, but instead simply purports to dictate to the courts how they must decide severability." *Id.* at 973.

[J-96-2020][M.O. - Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA DEMOCRATIC PARTY, NILOFER NINA AHMAD, DANILO BURGOS, AUSTIN DAVIS, DWIGHT EVANS, ISABELLA FITZGERALD, EDWARD GAINEY, MANUEL M. GUZMAN, JR., JORDAN A. HARRIS, ARTHUR HAYWOOD, MALCOLM KENYATTA, PATTY H. KIM, STEPHEN KINSEY, PETER SCHWEYER, SHARIF STREET, AND ANTHONY H. WILLIAMS	:	No. 133 MM 2020
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KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; ARMSTRONG COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON COUNTY BOARD OF ELECTIONS;	:	

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BOARD OF ELECTIONS; FAYETTE :
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HUNTINGDON COUNTY BOARD OF :
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OF ELECTIONS; SOMERSET COUNTY BOARD OF ELECTIONS; SULLIVAN COUNTY BOARD OF ELECTIONS; SUSQUEHANNA COUNTY BOARD OF ELECTIONS; TIOGA COUNTY BOARD OF ELECTIONS; UNION COUNTY BOARD OF ELECTIONS; VENANGO COUNTY BOARD OF ELECTIONS; WARREN COUNTY BOARD OF ELECTIONS; WASHINGTON COUNTY BOARD OF ELECTIONS; WAYNE COUNTY BOARD OF ELECTIONS; WESTMORELAND COUNTY BOARD OF ELECTIONS; WYOMING COUNTY BOARD OF ELECTIONS; AND YORK COUNTY BOARD OF ELECTIONS

PETITION OF: KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA

CONCURRING AND DISSENTING OPINION

CHIEF JUSTICE SAYLOR **DECIDED: September 17, 2020**

I join Parts I, II, and III(C), (D) and (E) of the majority opinion, and I respectfully dissent relative to Parts III(A) and (B), concerning the approval of unmanned drop boxes and the extension of the deadline for receiving mail-in ballots.

With regard to drop boxes, I agree with Respondent and the Caucus that the statutory option for a voter to deliver a mail-in ballot "in person to said county board of election" contemplates in-person delivery to a manned, office location. 25 P.S. §3150.16(a). Although another provision of the Election Code contemplates receipt of "ballot boxes and returns . . . in such other place as has been designated by the board" on Election Day, *id.* §3151, no analogous provision applies to the submission by voters of individual ballots. Moreover, the legislative policy to restrain aggregated handling of

mail-in ballots by third parties is manifest, *see, e.g.*, *id.* §3150.16(a) (requiring *the elector* to mail or deliver a ballot), and the enforceability of this policy is weakened by the use of non-statutory, unmanned drop boxes. This, to me, this suggests against a permissive interpretation of the Election Code.

Relative to the deadline for receiving mail-in ballots, I join Part II of Justice Donohue's concurring and dissenting opinion, as this most closely hews to the express legislative intent that the election be concluded by 8:00 p.m. on election night.

Finally, although the majority decision appears to be designed to accommodate only ballots actually mailed on Election Day or before, the majority does not so much as require a postmark. Particularly in combination with the allowance of drop boxes, this substantially increases the likelihood of confusion, as well as the possibility that votes will be cast after 8:00 p.m. on Election Day, thus greatly undermining a pervading objective of the General Assembly.

Justice Mundy joins this concurring and dissenting opinion.

APPENDIX B

[J-96-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA DEMOCRATIC PARTY, NILOFER NINA AHMAD, DANILO BURGOS, AUSTIN DAVIS, DWIGHT EVANS, ISABELLA FITZGERALD, EDWARD GAINEY, MANUEL M. GUZMAN, JR., JORDAN A. HARRIS, ARTHUR HAYWOOD, MALCOLM KENYATTA, PATTY H. KIM, STEPHEN KINSEY, PETER SCHWEYER, SHARIF STREET, AND ANTHONY H. WILLIAMS	:	No. 133 MM 2020 Emergency Applications for Stay
v.	:	
KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; ARMSTRONG COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON COUNTY BOARD OF ELECTIONS; COLUMBIA COUNTY BOARD OF	:	

ELECTIONS; CRAWFORD COUNTY :
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PETITION OF: KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA	:

ORDER

PER CURIAM

AND NOW, this 24th day of September, 2020, the Applications for Stay submitted in the above captioned case are **DENIED**.

Justice Mundy files a dissenting statement.

[J-96-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA DEMOCRATIC PARTY, NILOFER NINA AHMAD, DANILO BURGOS, AUSTIN DAVIS, DWIGHT EVANS, ISABELLA FITZGERALD, EDWARD GAINEY, MANUEL M. GUZMAN, JR., JORDAN A. HARRIS, ARTHUR HAYWOOD, MALCOLM KENYATTA, PATTY H. KIM, STEPHEN KINSEY, PETER SCHWEYER, SHARIF STREET, AND ANTHONY H. WILLIAMS	:	No. 133 MM 2020
	:	Emergency Applications to Stay
v.	:	
KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; ARMSTRONG COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON COUNTY BOARD OF ELECTIONS; COLUMBIA COUNTY BOARD OF	:	

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PETITION OF: KATHY BOOCKVAR, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA	:

DISSENTING STATEMENT

JUSTICE MUNDY **FILED: September 24, 2020**

In my view, Intervenors[1] make a substantial case on the merits that this Court should stay the portion of our opinion extending the deadline for receipt of mail-in ballots past 8:00 p.m. on November 3, 2020, Election Day.[2] In *Pennsylvania Democratic Party v. Boockvar*, ___ A.3d ___, 2020 WL 5554644 (Pa. 2020), a majority of this Court held that all mail-in ballots postmarked by 8:00 on Election Day, and received by 5:00 p.m.

[1] Intervenors refers to the Republican Party of Pennsylvania and Joseph B. Scarnati III, President Pro Tempore, Jake Corman, Majority Leader of the Pennsylvania Senate, Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives.

[2] A stay may be granted where Petitioners, "make a substantial case on the merits and show that without the stay, irreparable injury will be suffered. Additionally, before granting a request for a stay, the court must be satisfied the issuance of the stay will not substantially harm other interested parties in the proceedings and will not adversely affect the public interest." *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz,* 573 A.2d 1001, 1003 (1990).

November 6, 2020, even those lacking a postmark or bearing an illegible postmark, would be counted. *Id*. at *37. Without further explanation, the majority qualified that such ballots "will be presumed to have been mailed by Election Day unless a preponderance of the evidence demonstrates that it was mailed after Election Day." *Id.* The Republican Party of Pennsylvania Intervenors argue that virtually no evidence exists to overcome such a presumption, and "the Court's presumption opens the door to illegally and untimely cast or mailed ballots being counted in, and tainting the results of, the imminent general election in which millions of Pennsylvanians will exercise their right to vote." Republican Party of Pennsylvania Application for Partial Stay at 4.

Intervenors assert that there is a substantial likelihood that they will be successful on the merits of the stay application and writ of certiorari to be filed in the United States Supreme Court. Citing to *Republican Nat'l Comm. v. Democratic Nat'l Comm*., 140 S. Ct. 1205 (2020), Intervenors note that the United States Supreme Court stayed a Wisconsin Supreme Court judgment and held that "[e]xtending the date by which ballots may be cast by voters after the scheduled election day fundamentally alters the nature of the election." *Id.* at 1207. It is reasonable that the United States Supreme Court may view this Court's presumption regarding ballots lacking a postmark or bearing an illegible postmark in the same light. As a result, I would grant a stay to preserve the public confidence in the integrity of the upcoming election.

APPENDIX C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, and the Pennsylvania Alliance for Retired Americans, Petitioners	:	
v.	:	266 M.D. 2020
Kathy Boockvar, Secretary of the Commonwealth, and Jessica Mathis Director of the Bureau of Election Services and Notaries, Respondents	:	

AMENDMENT ORDER

AND NOW this 7th day of September, 2020, the Recommended Findings of Fact and Conclusions of Law filed by the Court in the above-captioned matter on September 4, 2020, is amended to reflect the following corrections:

Page 3, footnote 4, line 1, clause 1 should read as follows:

> Article I, Section ~~5~~ **1** of the Pennsylvania Constitution provides:

Page 14, paragraph no. 7 should read as follows:

> Dr. Eisenberg acknowledged the **CDC** [Centers for Disease Control and Prevention] has adopted "interim guidance for ensuring various voting options, encouraging physical distancing, personal prevention practices, and employing environmental cleaning and disinfection to lower COVID-19 transmission during elections." N.T. 307 (quoting Senate Intervenors Ex.17 at 2).

Pages 29-30, Conclusion of Law No. 1 should read as follows:

> The deadline for receipt of absentee and mail in ballots by 8:00 p.m. on Election Day represents a policy choice made by the legislative and executive branches in the enactment of Act 77. **The deadline for mailed-in ballots has always been by date of receipt, not date of submission to the USPS**. This deadline was first adopted for absentee ballots. *See* Section 22 of the Act of August 13, 1963, P.L. 707 (effective January 1, 1964). The same **type** deadline was adopted in Act 77 for mail-in ballots. See Section 1306-D(c) of the Election Code, 25 P.S. §3150.16(c).

Page 32, citation on lines 3-4 should read as follows:

> *See generally In re Fortieth Statewide ~~Investigation~~ **Investigative** Grand Jury*, 197 A.3d 712, 721 (Pa. 2018)

Page 32, first full paragraph, first sentence should read as follows:

> Moreover, "'[i]t is a mistake to suppose[] that a court of equity is amenable to no law, either common or statute, and assumes the ~~rule~~ **[role]** of an arbitrary legislator in every particular case.'

Page 37, first paragraph, first sentence should read as follows:

> The 8:00 p.m. Election Day deadline ~~for returning absentee and mail-in ballots has been in existence since 1964~~ **applies to those who vote in person and those who vote by absentee and mail-in ballots**.[12]

In all other respects, the Court's Recommended Findings of Fact and Conclusions of Law remain the same. The attached copy incorporates the corrections listed above.

s/Mary Hannah Leavitt
MARY HANNAH LEAVITT, President Judge

Order Exit
09/07/2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Crossey, Dwayne Thomas, Irvin Weinreich, Brenda Weinreich, and the Pennsylvania Alliance for Retired Americans, Petitioners	:	
v.	:	266 M.D. 2020
Kathy Boockvar, Secretary of the Commonwealth, and Jessica Mathis Director of the Bureau of Election Services and Notaries, Respondents	:	

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction

On April 22, 2020, the Pennsylvania Alliance for Retired Americans and four individuals, two of whom are members of the Alliance (collectively, Petitioners), filed a Petition for Declaratory and Injunctive Relief (Petition) against the Secretary of the Commonwealth, Kathy Boockvar, and the Director of the Bureau of Election Services and Notaries, Jessica Mathis (collectively, Secretary) in this Court. Anticipating disruptions to the June 2, 2020, primary election from the COVID-19 pandemic, the Petition raised, *inter alia*, constitutional claims about provisions of the Pennsylvania Election Code (Election Code)[1] related to mail-in ballots, which is a method of voting that the General Assembly added to the Election Code by the Act of October 31, 2019, P.L. 552, No. 77 (Act 77). Petitioners filed a May 8, 2020, Emergency Application for Special Relief in the Nature of a

[1] Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§2600-3591.

Preliminary Injunction and for Expedited Review (Preliminary Injunction Application).

This Court held a pre-hearing telephone conference call on the Preliminary Injunction Application, during which the Secretary confirmed her intention to challenge this Court's jurisdiction over the Petition in her preliminary objections. The parties agreed to bifurcate the issue of jurisdiction over the Preliminary Injunction Application from the merits. After briefing by the parties and intervenors,[2] this Court denied the Preliminary Injunction Application on May 28, 2020, on the basis that Petitioners were not likely to prevail on the issue of this Court's jurisdiction.

On June 17, 2020, this Court issued an opinion and order transferring the matter to the Supreme Court of Pennsylvania. This Court agreed with the Secretary that the Petition's claims fell within the Supreme Court's exclusive jurisdiction over constitutional challenges to Act 77 under Section 13(b) of Act 77.[3] *Crossey v. Boockvar* (Pa. Cmwlth., No. 266 M.D. 2020, filed June 17, 2020).

[2] After this Court transferred the matter to the Supreme Court, the Supreme Court granted the applications for leave to intervene filed on behalf of President Pro Tempore Joseph B. Scarnati, III, and Majority Leader of the Senate Jake Corman (collectively, Senate Intervenors) and on behalf of the Speaker of the House of Representatives Bryan Cutler and House Majority Leader Kerry Benninghoff (House Intervenors). *See Crossey v. Boockvar* (Pa., No. 108 MM 2020, filed August 21, 2020).

The Supreme Court denied the application for leave to intervene filed by the Republican Party of Pennsylvania, the Republican National Committee, and the National Republican Congressional Committee. *Id.*

[3] Specifically, this Court concluded that the Petition challenged Sections 1306 and 1306-D of the Election Code. These sections relate to the date, time, and manner by which absentee or mail-in ballots must be returned to the county boards of elections. They are listed in Section 13(b) of Act 77 as sections over which the Supreme Court had exclusive jurisdiction if a challenge was brought within 180 days of Act 77's effective date.

The Supreme Court accepted the transfer at 108 MM 2020 and granted Petitioners' Application for Leave to File an Amended Petition by July 13, 2020. The Amended Petition for Review (Amended Petition) sets forth constitutional claims arising from the Secretary's failure (1) to allow the return of absentee and mail-in ballots after the 8:00 p.m. Election Day deadline, because of alleged backlogs in the application process and delays by the United States Postal Service (USPS) in mail delivery; (2) to provide prepaid postage on mail-in ballots; and (3) to allow voters to obtain third-party assistance in the return of mail-in ballots. The Amended Petition alleges that the Secretary's failure to implement such procedures violates Article I, Sections 1,[4] 5,[5] and 26[6] of the Pennsylvania Constitution. Petitioners request the Supreme Court to declare that the above-listed barriers to voting by mail violate their constitutionally protected right to free access to a free and equal election during the pandemic. Petitioners request the Supreme Court to order the Secretary to implement additional safeguards for the November 3, 2020, general election and any other election held during the pandemic. These proposed safeguards include providing prepaid postage on all absentee and mail-in ballots; counting ballots delivered after the statutory deadline of 8:00 p.m. Election Day; and authorizing third-party assistance in the collection and submission of absentee and

[4] Article I, Section 1 of the Pennsylvania Constitution provides: "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." PA. CONST. art. I, §1.

[5] Article I, Section 5 of the Pennsylvania Constitution provides: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." PA. CONST. art. I, §5.

[6] Article I, Section 26 of the Pennsylvania Constitution provides: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." PA. CONST. art. I, §26.

mail-in ballots to the extent the latter two measures do not trigger Act 77's non-severability provisions.

The Secretary and Intervenors filed preliminary objections to the Amended Petition.[7] Prior to disposition thereof, the Supreme Court issued an August 26, 2020, order appointing the undersigned as Special Master and directing the Court "to create an evidentiary record on claims raised in this case including the ability of the United States Postal Service to comply with deadlines for the November 3, 2020 general election." *Crossey v. Boockvar* (Pa., No. 108 MM 2020, filed August 26, 2020). The Supreme Court directed this Court to file with the Prothonotary of the Supreme Court its proposed findings of fact and conclusions of law and recommended disposition no later than Friday, September 4, 2020. *Id.*

On August 27, 2020, this Court issued a case management order that directed the parties and intervenors to file pre-hearing statements by Friday, August 28, 2020. It scheduled a pre-hearing telephone conference for Saturday, August 29, 2020, and an evidentiary hearing for August 31, 2020. It also ordered that the parties

[7] The Secretary objected on the basis that the Amended Petition (1) fails to state a constitutional claim because its allegations are hypothetical; (2) the Alliance lacks standing as an organization and asserts claims not ripe for review; and (3) fails to join indispensable parties, *i.e.*, the county boards of elections. The Secretary also objected on the basis that the Commonwealth enjoys sovereign immunity that bars mandatory injunctive relief.

On August 13, 2020, the Secretary withdrew her preliminary objections that the Amended Petition did not state a constitutional violation and was not ripe for review.

Senate Intervenors objected on the basis of (1) lack of jurisdiction and ripeness; (2) failure to join the county boards of elections as indispensable parties; (3) the claims raise non-justiciable political questions; (4) failure to conform to law; (5) insufficient specificity of the pleadings; and (6) lack of capacity to sue.

House Intervenors objected on the basis of (1) lack of standing of the Alliance because it does not vote; (2) failure to state a constitutional violation; (3) failure to present a justiciable claim; and (4) failure to join indispensable parties.

and intervenors file and serve proposed findings of fact and conclusions of law by September 2, 2020, 9:00 a.m.

II. Evidentiary Hearing of August 31, 2020

The Court summarizes the hearing testimony and documentary evidence as follows.

A. Petitioners' Witnesses[8]

1. Ronald Stroman

1. Ronald Stroman served as Deputy Postmaster General from 2011 to June 2020. Notes of Testimony, [Aug. 31, 2020,] 13-15 (N.T. ____).
2. He holds a B.A. in government from Manhattan College and a J.D. from Rutgers University. N.T. 13.
3. Mr. Stroman was a member of the USPS Board of Governors, which oversees the strategic direction of the USPS. He served on the Postmaster General's Executive Leadership Team, which implements the directions of the Board of Governors. N.T. 15.
4. Mr. Stroman had responsibility to improve the communications between the USPS, election officials and the election mail community; to improve the internal training for USPS employees on election mail; and to develop a system for rapid response to election mail issues. N.T. 17; Petitioners' Ex. 32.

[8] The Court took witnesses out of order so that the testimony relevant to each issue was addressed at the same time. The Court further notes that the transcript of the evidentiary hearing is incomplete. Paragraphs 16, 39, and 40 of the summary of Mr. Stroman's testimony is based upon the notes of the court and staff, not the transcript. On September 4, 2020, a corrected transcript was filed with the Court. The citations herein refer to the transcript filed with the Court on September 1, 2020.

5. The Court accepted Mr. Stroman as an expert in the USPS' operations and delivery standards, and the application of those delivery standards to voting by mail. N.T. 19, 25.
6. Mr. Stroman testified that there are three aspects to the USPS mail process: retail (local post office), processing and delivery. N.T. 26.
7. Mail is collected by carriers or at a local post office. All mail is collected and placed with similar types of mail (*e.g.*, First-Class Mail, Marketing Mail) and transported to the processing center. At the processing center, mail is placed in sorting machines to find the correct zip code. If the mail remains in the same zip code, it is taken to a truck for transportation to a delivery unit. Carriers and clerks sort the mail by routes, and then the mail is placed on trucks for delivery to the addressees. N.T. 26-27.
8. If mail is designated for a location outside the boundaries of the processing center, it is transported to the appropriate processing center. Upon receipt there, the same process is used to deliver the mail. *Id.*
9. Mr. Stroman was Deputy Postmaster General during the April 2020 Wisconsin primary, and he testified about the investigation the USPS conducted into its performance during that primary. N.T. 28; Petitioners' Ex. 4.
10. Mr. Stroman attributed the delay in the receipt of absentee ballots during the Wisconsin primary election to: (1) the different service standards depending on the class of mail; and (2) the date upon which a voter requested a ballot. N.T. 28, 29.
11. Mr. Stroman testified about the July 29, 2020, letter that General Counsel and Executive Vice President of the USPS, Thomas J. Marshall, sent to

Secretary Boockvar. That letter advised the Secretary that the Commonwealth's election law deadlines for requesting and casting mail-in ballots are incongruous with the USPS' delivery standards, and that this mismatch creates a risk that ballots requested near the deadline would not be returned in time to be counted under the law. N.T. 34; Petitioners' Ex. 6.

12. The July 29, 2020, letter further advised that there are two main classes of mail used for ballots: First-Class Mail and Marketing Mail, the latter of which uses a nonprofit postage rate. Petitioners' Ex. 6.
13. Mr. Stroman agreed with Mr. Marshall's statement that voters must use First-Class Mail (or an expedited service) to mail their ballots and ballot requests, while election officials may generally use First-Class Mail or Marketing Mail to mail ballots to voters. N.T. 37.
14. Domestic First-Class Mail has a nationwide delivery standard of 2 to 5 days upon receipt at the post office. N.T. 38, 75; Petitioners' Ex. 6, 32, ¶18.
15. Marketing Mail has a nationwide delivery standard of 3 to 10 days upon receipt at the post office. N.T. 38, 75; Petitioners' Exs. 6, 32, ¶18.
16. Mr. Stroman agreed that the July 29, 2020, letter does not advocate for changes in Pennsylvania's election law to accommodate the USPS's delivery standards and was intended to be educational.
17. According to Mr. Stroman, mail delivered within the above-listed standards is considered timely under normal circumstances. N.T. 38, 39.
18. Mr. Stroman identified three circumstances that he does not consider normal at this time: the COVID-19 pandemic, new initiatives by the new Postmaster General and the increase in the volume of mail-in ballots. N.T. 39, 45.

19. The pandemic has caused issues with USPS employee availability, which in turn affects the processing and delivery of mail in both the primary location and secondary location to which the mail is directed. N.T. 39, 40.
20. In the Pennsylvania June 2, 2020, primary, the pandemic affected the delivery of mail not only in the Philadelphia region but also in the entire mail-processing network. N.T. 43, 44.
21. Mr. Stroman testified that the new Postmaster General, Louis DeJoy, issued a new directive that mail transportation trucks leave at the designated time. If the mail has not been processed before the scheduled departure, the truck leaves without all the mail. In a cumulative fashion, this causes delays and backups on the delivery side of the process. N.T. 45-47, 55.
22. The third factor affecting the delivery standards is the volume of ballots. States are amending their election laws, which requires the USPS to train its employees to process election mail. N.T. 47.
23. The above factors will delay the USPS' ability to meet its delivery standards, according to Mr. Stroman. N.T. 49.
24. Mr. Stroman testified about Petitioners' Exhibit 9, which is a Score Break-down of Presort First-Class Mail on a nationwide basis and shows a decline in delivery times for three weeks in July 2020. He testified that Petitioners' Exhibit 9 was consistent with his knowledge of the Postmaster General's testimony in recent U.S. House and Senate Hearings. N.T. 49-51; Petitioners' Ex. 9.
25. Exhibit 9 purports to show how close the USPS came to meeting its performance standards. The decline in the score indicates that the USPS did not meet its service performance targets. N.T. 52-54.

26. Mr. Stroman opined that the USPS' failure to hit its performance targets has a compounding effect and that delays in delivery will get worse as time runs. N.T. 54, 55.
27. Mr. Stroman testified that all ballots returned to the county boards of elections will be single-piece mailings, which requires them to go through the sorting process. This may cause delays. N.T. 56, 85, 88.
28. Mr. Stroman testified regarding Petitioners' Exhibit 28, which is an Areas Inspiring Mail Chart. The Chart uses a baseline performance standard of 96%, meaning that percentage of time the USPS meets its delivery standard of 2 to 5 days for First-Class Mail or 3 to 10 days for Mass Marketing Mail. N.T. 58-63; Petitioners' Ex. 28.
29. The Chart provides that in the 43rd week, the USPS' performance rates, when compared to its intended performance standard of 96%, was 72.86% for Central Pennsylvania; 85.68% for the Philadelphia Metropolitan area; and 90.01% for Western Pennsylvania. N.T. 61; Petitioners' Ex. 28.
30. Mr. Stroman attributed the drop in the performance to the Postmaster General's changes in operations. N.T. 60.
31. These numbers mean that the USPS is not meeting its service target rates by a large margin, according to Mr. Stroman. N.T. 61, 62.
32. Mr. Stroman has a high degree of confidence in the data used in Petitioners' Exhibit 28 based on his personal knowledge of how the USPS operates and how such data is retrieved and compiled. N.T. 101-02.
33. Mr. Stroman opined that the USPS cannot improve its performance before the November 2020 general election. It takes time to fix the problems due

to the integrated nature of the USPS' network and to clear backlogs. N.T. 62, 63.

34. Mr. Stroman opined that there is a significant risk that the USPS will not meet its First-Class Mail service delivery standards of 2 to 5 days during the November 2020 election. N.T. 66, 70.
35. Mr. Stroman further observed that not all absentee ballots will be deposited in the mail from within the Commonwealth. N.T. 71.
36. Mr. Stroman testified that the USPS' delivery standard is 2 to 5 days within the Commonwealth, which includes mail deposited in the mail outside of the Commonwealth. N.T. 76, 77.
37. Mr. Stroman did not know which class of mail Pennsylvania election officials will use to mail the ballots to voters or the class by which the ballots will be returned to election officials. He believed that Pennsylvania's boards of elections are not using uniform mailing. N.T. 78.
38. Election mail is not separated from the general mail but the USPS attempts to prioritize it by tagging or coding election mail. N.T. 83, 85.
39. Mr. Stroman agreed that the county boards of elections play a very important role in getting the ballots to voters on time and are ultimately responsible for mailing ballots. N.T. 107. The county boards of elections should ensure that the envelopes used are automation compatible, the proper weight and properly addressed.
40. Mr. Stroman recommended that voters mail their completed ballots to the county election board at least 10 days prior to the election.
41. Mr. Stroman testified that it was possible but highly unlikely that a voter who requested a mail-in ballot the Tuesday before the election could have

that ballot mailed to the voter and then received by the county board of elections before the Election Day 8:00 p.m. deadline. N.T. 120-22; Petitioners' Ex. 32, ¶19.

2. Devon Laudenslager

1. Devon Laudenslager is a resident of the City of Philadelphia and has been registered to vote for four years. N.T. 282.
2. Due to the COVID-19 pandemic, Ms. Laudenslager applied for a mail-in ballot from her county board of elections on May 5, 2020, and received a confirmation email the next day that her application had been received. N.T. 282.
3. On May 15, 2020, Ms. Laudenslager received a second email indicating that her ballot had been mailed on May 15, 2020, and if she did not receive the ballot by May 22, 2020, she should contact her board of elections. N.T. 283.
4. When Ms. Laudenslager did not receive her mail-in ballot by May 22, 2020, she attempted to contact her board of elections. N.T. 283. Initially, she received a busy signal and, when the line was not busy, no one answered the phone and there was no ability to leave a message. N.T. 283-84.
5. She attempted to locate an alternate phone number to contact the board from its website, but her attempts to reach the board through alternate phone numbers were unsuccessful. N.T. 284.
6. As of May 26, 2020, the deadline to apply for a mail-in ballot, Ms. Laudenslager had not received her ballot. N.T. 283.
7. Ms. Laudenslager contacted her state representative's office, which told her that it had been in touch with the City of Philadelphia Commissioners

Office, and had a list of voters that needed replacement ballots. N.T. 285-86.

8. On June 2, 2020, Ms. Laudenslager went to her polling place to vote because she had not received her mail-in ballot. N.T. 286.
9. Her vote was counted. N.T. 286.
10. Ms. Laudenslager received a ballot by mail on June 4, 2020. N.T. 286.
11. Ms. Laudenslager intends to vote in the November 3, 2020, general election but doubts she will attempt to use a mail-in ballot due to her experience in the June 2020 primary and her fears that she cannot be assured that her county board of elections will receive her ballot in time to be counted even if she receives her ballot timely. N.T. 287-89.
12. Ms. Laudenslager gave two other examples of issues she had with her mail. She expected a follow-up letter from a graduate school and she received a letter from the Department of Transportation indicating her license would be renewed but that she should expect a follow-up letter. She never received either follow-up letter. N.T. 287.

3. Dr. Joseph Eisenberg

1. Joseph N.S. Eisenberg, PhD, MPH, is the John G. Searle endowed Chair and Professor of Epidemiology in the School of Public Health at the University of Michigan. He also has an adjunct appointment at the Universidad San Francisco de Quito in Ecuador. He received his PhD in Bioengineering in the joint University of California, Berkeley/University of California, San Francisco program, and an MPH from the School of Public Health at the University of California, Berkeley (focusing on the science of infectious disease transmission). Petitioners' Ex. 30 at ¶2.

2. Dr. Eisenberg is an infectious disease epidemiologist who researches how pathogens move through the environment and society to cause infectious diseases. Petitioners' Ex. 30 at ¶¶3, 5.
3. Since February 2020, Dr. Eisenberg has provided expert advice on COVID-19 by serving on advisory panels (Bipartisan Policy Center, Washington D.C.); presenting Webinars (Alliance for Health Policy, Barsan Research Forum, The University of Michigan Club of Washington, D.C.); and participating in media interviews (Detroit Fox News, MSNBC, WXYX Detroit, New York Times, Washington Post). During the initial phase of the pandemic, Dr. Eisenberg was a member of a subcommittee informing the Governor of Michigan's task force on opening the economy. Dr. Eisenberg has consulted with companies such as Ford Motor Company and Gemline on best practices during the COVID-19 pandemic. Petitioners' Ex. 30 at ¶6.
4. The Court admitted Dr. Eisenberg as an expert in the field of epidemiology. N.T. 295.
5. Dr. Eisenberg observed that COVID-19 cases in Pennsylvania have plateaued, but he expects significant transmission to continue in the fall. N.T. 297.
6. The novel coronavirus that causes COVID-19 is spread from person to person through the air and on environmental surfaces. The higher the concentration of virus to which one is exposed, the greater the chances of being infected. Additionally, being close to people who are coughing, speaking with force, or sneezing is riskier than those who are just speaking normally. Transmissibility increases when people are in enclosed, poorly ventilated spaces, in crowded spaces and in close proximity to other people.

Public gatherings at polling places and ballot return locations in municipal buildings may contribute to the spread of the virus. Petitioners' Ex. 30 at ¶¶2, 14.

7. Dr. Eisenberg acknowledged the CDC [Centers for Disease Control and Prevention] has adopted "interim guidance for ensuring various voting options, encouraging physical distancing, personal prevention practices, and employing environmental cleaning and disinfection to lower COVID-19 transmission during elections." N.T. 307 (quoting Senate Intervenors Ex.17 at 2).
8. Allowing voters to vote by mail is consistent with current public health guidelines to minimize the spread of the virus and prevent COVID-19 illness because it (1) decreases the number of people who need to vote in person; (2) allows high-risk individuals to avoid in-person voting; and (3) minimizes the chances that indoor ballot return locations, such as polling stations or county board of elections' offices, will contribute to the spread of the virus. Petitioners' Ex. 30 at ¶¶2, 36.

B. Respondents' Witness

1. Kathy Boockvar, Secretary of the Commonwealth

1. Kathy Boockvar was appointed as Secretary of the Commonwealth in January 2019 and confirmed by the Pennsylvania Senate in November 2019.
2. Secretary Boockvar is the chief elections official for the Commonwealth of Pennsylvania with responsibility for assessing risks to the voting process, including obstacles to the accessibility, security and integrity of elections. She and the Department of State engage in a "constant assessment and evaluation" to ensure "the highest level of accessibility, security, and safety

to the voters of Pennsylvania to make sure that they can exercise their right to vote." N.T. 144.

3. At the inception of this litigation in April 2020, Secretary Boockvar opposed a statewide extension of the received-by deadline for mail-in ballots, preferring instead to deal with issues that would arise during the 2020 primary election on a county-by-county basis. N.T. 132.
4. The courts of common pleas in three counties extended the received-by deadline in the 2020 primary election. N.T. 133. An executive order by Governor Tom Wolf extended the received-by deadline by seven days in six counties due to civil unrest. *Id*. at 169.
5. On July 29, 2020, Secretary Boockvar received a letter from Thomas J. Marshall, General Counsel and Executive Vice President of the USPS. Respondents' Ex. 1.
6. In his letter, Mr. Marshall advised Secretary Boockvar that "most domestic First-Class Mail is delivered 2 to 5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3 to 10 days after it is received." Respondents' Ex. 1 at 1. Based on these guidelines, Mr. Marshall recommended that (a) where voters will both receive and send a ballot by mail, they should request a ballot from their election officials at least 15 days before Election Day; (b) election officials should use First-Class Mail to transmit blank ballots and allow one week for delivery to voters; and (c) domestic voters should mail their completed ballots at least one week before the state's due date. *Id*. at 1-2.
7. Observing that Pennsylvania's election laws require a ballot to be returned by Election Day and that voters may request a mail-in ballot as late as 7 days

before Election Day, Mr. Marshall opined that "to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted." Respondents' Ex. 1 at 2.

8. Mr. Marshall sent the same letter to the Secretary of State of North Carolina on July 30, 2020, noting that in North Carolina "a voter may generally request a ballot as late as 7 days before the November general election, and that a completed ballot must be postmarked by Election Day and received by election officials no later than 3 days after the election." Petitioners' Ex. 7. Mr. Marshall's letter to North Carolina also described North Carolina's election law deadline for receipt of absentee and mail-in ballots "incongruous" and "incompatible" with the USPS nationwide delivery standards for First-Class Mail and Marketing Mail. *Id*. The letter went to 46 states. N.T. 135.

9. Secretary Boockvar testified that Mr. Marshall's estimate that most domestic First-Class Mail is delivered 2 to 5 days after it is received by the USPS differed from her understanding that such mail typically has a 1 to 3 business day turnaround time, which is what voters would have expected in previous elections. N.T. 138.

10. A total of 1,462,254 ballots were cast by mail in the 2020 primary election. Respondents' Ex. 2. According to the Department of State's records, the mailed ballots were received by the county boards of elections in the following timeframes:

2/24/2020 – 3/31/2020:	278
4/1/2020 – 4/30/2020:	51,743

5/1/2020 – 5/19/2020:	292,412
5/20/2020 – 5/26/2020:	320,032
5/27/2020 – 5/31/2020:	436,701
6/1/2020:	173,869
6/2/2020 (Election Day):	89,018
6/3/2020:	31,183
6/4/2020:	14,177
6/5/2020:	15,973
6/6/2020:	3,966
6/7/2020:	84
6/8/2020:	10,240
6/9/2020 – 6/24/2020:	22,578

Id.

11. The State of Washington conducts its elections solely by mail and experienced "significant mail delays and a huge increase in the number of ballots received after election day" in the 2020 primary election. N.T. 141.
12. The Pennsylvania Department of State predicts that approximately 3 million voters will cast their votes by mail-in or absentee ballot in the November 2020 general election. N.T. 181. Based on voting patterns in the 2020 primary election, the Department expects that approximately half of the mail-in and absentee ballots will arrive in the last week of voting. *Id*. at 150-51.
13. Based primarily upon Mr. Marshall's letter, Secretary Boockvar changed her position on a statewide change to the received-by deadline. In addition, she has had discussions with other state election officials. Secretary Boockvar is concerned that Pennsylvania's deadlines for mail-in ballots are incompatible with the USPS' current delivery timeframes, which are applicable statewide. She recommends that mail-in ballots should be counted if they are postmarked by Election Day, November 3, 2020, and received by the county

boards of elections no later than 3 days after the election, or by Friday, November 6, 2020. N.T. 134-136.

14. Secretary Boockvar opined that, in weighing the contours of an extension, she considered the balance between ensuring citizens can exercise their right to vote and conducting efficient election administration. Based on voting patterns in the 2020 primary election, the majority of late mail-in ballots arrived within 3 days after the election. N.T. 154; Respondents' Ex. 2.
15. Secretary Boockvar opined that Petitioners' requested 7-day extension of the received-by deadline will adversely impact other deadlines. N.T. 153. These deadlines include the deadline by which certain voters using mail-in or absentee ballots must provide identification, which is on the sixth day after the election;[9] the deadline for defeated candidates to give up any right to a recount or recanvass, which is on the eighth day after the election;[10] and the deadline for the Secretary to order a recount or recanvass, which is on the ninth day after the election.[11]
16. County boards of elections are increasing their staffing in advance of the November 3, 2020, election and will mail out ballots beginning in September. Federal funds are available to the boards for purchasing additional processing equipment. N.T. 145.
17. The Department of State will reimburse county boards of elections for the return postage they affix to the mail-in ballot envelopes, which will be done in different ways depending on the county, *i.e.*, business return mail, a stamp

[9] Section 1308(h) of the Election Code, added by the Act of March 6, 1951, P.L. 3, *as amended*, 25 P.S. §3146.8(h).
[10] Section 1404(h) of the Election Code, 25 P.S. §3154(h).
[11] Section 1404(g)(2) of the Election Code, 25 P.S. §3154(g)(2).

or a meter marking. N.T. 158-59. "[A]n overwhelming majority of times there's going to be a postmark." *Id*. at 159.

18. The Department of State is conducting major efforts to educate voters about the process of voting by mail and the importance of doing so promptly. N.T. 146-47.
19. When impediments to voting arise in individual counties, such as local emergencies or delays in issuing ballots, a county may seek relief from its own court of common pleas. N.T. 132, 155-56.

C. Senate Intervenors' Witness

1. Michael Plunkett

1. Michael Plunkett is a retired 25-year employee of the USPS. He holds a B.A. in Economics from the Pennsylvania State University, an M.B.A. from the Wharton School, University of Pennsylvania, and a second M.B.A. from the Massachusetts Institute of Technology. N.T. 205.
2. Mr. Plunkett worked for the USPS in various staff and management positions, including letter carrier and Associate Vice President of Business Development. N.T. 193; Senate Intervenors (SI) Ex. 1, ¶¶1-3. He retired from the USPS in 2011 and since 2016 has served as President and CEO of the Association for Postal Commerce, which is a trade association for companies that use the USPS in their business. SI Ex. 1, ¶3.
3. Mr. Plunkett was admitted as an expert witness in USPS delivery performance standards and practices on postmarks. N.T. 202, 211.
4. Mr. Plunkett used the quarterly reports filed by the USPS with the Postal Regulatory Commission, the regulator for the USPS, as the source of data

for his expert testimony about USPS operational performance in Pennsylvania and in the Eastern Area. SI Ex. 1, ¶7.

5. Pennsylvania has 8.5 million registered voters. For purposes of his opinion, Mr. Plunkett assumed that all voters would vote by absentee or mail-in ballots in the November 2020 general election over the 50-day period permitted under the Election Code. SI Ex. 1, ¶¶13, 15.
6. Most outbound First-Class Mail is sent in batches known as "Presort First-Class Mail," which will be used to send ballots to voters by county boards of elections. SI Ex.1, ¶¶8, 10.
7. Election mail is treated differently than other First-Class Mail because it is prioritized for faster delivery. N.T. 267-268.
8. Mr. Plunkett testified that USPS delivery standards are zip code specific. The service performance standard for First-Class Mail within the 48 contiguous states is 2 to 3 days, and 2 to 5 days for those states plus Alaska, Hawaii and Puerto Rico. It is 6 days for Guam. For mail within Pennsylvania, the service performance standard is 2 days, although it is 3 days for mail between Erie and Philadelphia. For intra-county mail in Pennsylvania, the service performance standard is 2 days but up to 3 days for some counties. N.T. 213, 244.
9. Mr. Plunkett testified about the USPS report for the first quarter of 2020 covering the Eastern Area, made up of four districts that cover Pennsylvania identified as "Appalachian," "Central Pennsylvania," "Philadelphia Metro" and "Western Pennsylvania." N.T. 217. The report showed that 99.5% of outbound Presort First-Class Mail was delivered within 3 days. This included mail originating within and outside Pennsylvania. Of that total,

98.3% was delivered within 1 day. SI Ex. 1, ¶¶8, 10. The service standard is 2 days for mail originating and ending in Pennsylvania. N.T. 219.

10. The USPS report for the first quarter of 2020 showed that in the Eastern Area, 97.0% of First-Class Mail was delivered within 3 days. Of that number, 92.5% of all First-Class Mail was delivered within 1 day. SI Ex. 1, Attachment A.
11. The USPS report for the second quarter of 2020 in the Eastern Area showed that approximately 99% of Presort First-Class Mail in Pennsylvania was delivered within 3 days, with 97.4% being delivered within 1 day. SI Ex. 4 at 2; N.T. 217.
12. The second quarter of 2020 included the period of time the USPS experienced a reduction in employee availability caused by the COVID-19 pandemic. N.T. 225.
13. The volume of First-Class Mail declined approximately 9% between 2019 and 2020, which suggests that the USPS has capacity to handle an increase in mail volume. SI Ex.1, ¶18.
14. During the first quarter of 2020, the USPS processed approximately 700 million Presort First-Class Mail letters and postcards in the Eastern Area. SI Ex.1 ¶11. If all 8.5 million registered voters in Pennsylvania request an absentee or mail-in ballot for the November 2020 election, that would represent 1.2% of USPS capacity in the Eastern service area. N.T. 144. The Secretary anticipates that 3 million Pennsylvanians will vote by mail in 2020, which represents 0.4% of USPS capacity in the Eastern service area. N.T. 181.

15. Given the volume of First-Class Mail handled by the USPS in the Eastern Area, Mr. Plunkett testified that the addition of 8.5 million ballots would not create an operational issue for the USPS. N.T. 181; SI Ex. 1, ¶15. Mr. Plunkett opined that "adding outbound and inbound election related mail in Pennsylvania would not impact the USPS' ability to provide reliable and timely mail service." SI Ex. 1, ¶24.
16. Mr. Plunkett is "unaware of any significant disruptions to First-Class Mail service." SI Ex. 1, ¶19. Such disruptions would be known to him given his 25-year employment with the USPS and current employment with the Association for Postal Commerce, which continually monitors USPS performance. N.T. 205.
17. Upon being shown Petitioners' Exhibit 28, Mr. Plunkett testified that the Postmaster General acknowledged that policy changes caused a temporary decline in service. Because the Postmaster General has ended the practice of trucks leaving a processing center before all mail has been sorted, USPS service should return to pre-decision levels. N.T. 252-53.
18. "Postmarks" are applied to stamped mail to prevent reuse of the stamp. N.T. 236; SI Ex. 1. Commercial mail generally bears evidence of payment, such as permit imprints, that are linked numerically to postage accounts. This mail does not bear traditional "postmarks" readable by the human eye. SI Ex. 1, ¶29.
19. The USPS has created specific service type identification (STID) codes, which are encoded in an intelligent mail barcode, for use on election mail that will allow it to identify and track ballots as they move through the USPS network. SI Ex. 1, ¶35.

20. The marks imprinted by the USPS on this type of mail are not readable by the human eye and would require scanners and software to decode. SI Ex. 1, ¶36. Mr. Plunkett testified that the USPS "plans to isolate election mail and to postmark even where postmarks are not necessary." N.T. 246, 261.
21. Mr. Plunkett testified that a voter who requests a ballot on the last day in the general election cycle, Tuesday, October 27, 2020, would likely receive a ballot on Thursday or Friday. If the voter mails her ballot on Saturday, it would likely be received on Monday or Tuesday, Election Day. N.T. 271, 272.
22. Mr. Plunkett testified that a 1-day delay in service would not mean that ballots would not be received on time. N.T. 267.

D. House Intervenors' Witness

1. Torren Ecker

1. Mr. Ecker is a member of the House of Representatives and represents the 193rd District. N.T. 331.
2. He ran in the May 15, 2018, primary as one of four candidates for the office. N.T. 331.
3. At 9:30 p.m. that day, the election results were posted and it appeared that Mr. Ecker lost by one vote. N.T. 332.
4. Election officials learned that one precinct had not counted its absentee ballots. When those ballots were counted, Mr. Ecker gained an additional vote. At that point, the election was tied. N.T. 332-33.
5. When the county board of elections recanvassed its ballots, it found two provisional ballots. An unqualified voter submitted one ballot, and the other voter cast a ballot in favor of Mr. Ecker. N.T. 334.

6. The losing candidate petitioned the court of common pleas for a recount, but after the recount Mr. Ecker remained the winner of the primary election. N.T. 335.
7. Starting on May 15, 2018, the entire process took approximately one month. N.T. 335.
8. As a candidate, Mr. Ecker agreed that he wanted constituents of the 193rd District to vote. N.T. 338.

III. Findings of Fact

1. All witnesses testified credibly. To the extent that the opinions of Mr. Stroman and the Secretary differ from the opinions of Mr. Plunkett, the Court finds Mr. Plunkett's opinions more credible and persuasive than those of Mr. Stroman and the Secretary, in light of his experience in statistical and financial analysis of USPS data both as a 25-year employee of the USPS and as current president of the Association for Postal Commerce.
2. The USPS has a standard delivery performance of 2 to 3 days for First-Class Mail in the contiguous United States; 5 days for First-Class Mail sent to Alaska, Hawaii, and Puerto Rico; and 6 days for mail sent to Guam.
3. Marketing mail has a nationwide standard delivery performance of 3 to 10 days.
4. For First-Class Mail within Pennsylvania, the standard delivery performance is 2 to 3 days after collection by the USPS. However, mail may take 3 days to be delivered from one end of the Commonwealth to the other (for example, from Philadelphia to Erie).
5. These above-described standards for delivery performance have been in place for a long time and not been adjusted since the enactment of Act 77.

6. For intra-county mail, the standard delivery performance is 2 days after collection by the USPS and, with limited exceptions, may take 3 days within some counties.

7. Petitioners' Exhibit 9, entitled "USPS Service Performance Measurement, PMG Briefing, August 12, 2020," shows the percentage of time that the USPS met its performance target of 96% nationwide for the period of March 14, 2020, through August 1, 2020, for various classes of mail. Relevantly, the graph shows a downturn in the USPS' performance for the period of July 4, 2020, through July 18, 2020, for Presort First-Class Mail. The Court declines to draw an inference from this exhibit that there is a general decline in standard delivery performance because the graph is based upon a snapshot of three weeks of experience. Mr. Stroman attributed the downturn to the Postmaster General's new policy directive on transportation, and this policy directive has been terminated.

8. Petitioners' Exhibit 28, which is a graph produced by Areas Inspiring Mail, shows that for the 41st through 43rd weeks there was a drop in the USPS's performance against the target of 96%. The graph shows that during those three weeks the USPS met its standard delivery target 72.86% of the time for Central Pennsylvania; 85.68% of the time for the Philadelphia Metro Area; 84.96% of the time for the Appalachian region; and 90.01% of the time for Western Pennsylvania. The Court declines to assign Exhibit 28 any weight. First, the document appears undated or the date is obscured. It does not show the year and month of the activity depicted. Second, Mr. Stroman testified that Exhibit 28 compares the USPS' performance for 2019 to that of 2020 and that the graph shows a sharp decline in the USPS' performance

targets between the 41st and 43rd weeks. N.T. 59. However, it is not clear that the weeks identified in the graph correspond directly to weeks of the calendar year. We have not reached the 41st through 43rd weeks of calendar year 2020. Third, the graph depicts a snapshot of three weeks and does not predict what the data will show for the 12-week period from June 1, 2020, to September 30, 2020.

9. Mail for deposit with the USPS may be handed directly to a postal carrier or collected by a carrier from a voter's residential mail receptacle.

10. There is no separate delivery performance standard for election-related First-Class Mail. The USPS prioritizes First-Class Mail identified as election-related.

11. Although there was testimony and argument regarding USPS "delivery delays," there was no evidence to define a delay. The USPS delivery standards are set in ranges, *i.e.*, 2 to 3 days in Pennsylvania. There is no evidence that USPS performance in Pennsylvania extends beyond that range. To the contrary, the USPS performance in Pennsylvania falls within the range over 98% of the time.

12. Pennsylvania's USPS performance exceeds the national average. In the first quarter of 2020 for Pennsylvania, 99.5% of USPS outbound Presort First-Class Mail was delivered within 3 days. More than 98% was delivered within 1 day. In the second quarter of 2020 for Pennsylvania, 99.4% of USPS outbound Presort First-Class Mail was delivered within 3 days. More than 98% was delivered within 1 day.

13. If all 8.5 million registered voters in Pennsylvania elect to vote by absentee or mail-in ballot, the quantity of mail generated will represent only 1.2% of

USPS' capacity in the Eastern service area and will not overwhelm the system.

14. A voter may cast a ballot in person at a polling location any time between 7:00 a.m. and before 8:00 p.m. on Election Day. If the voter has applied for an absentee or mail-in ballot, she may personally return the ballot to the county board of elections by 8:00 p.m. on Election Day or mail the ballot to the county board in such time that the board receives the ballot no later than 8:00 p.m., Election Day (the "received-by deadline").

15. A voter may elect to return the ballot by using a prepaid postage envelope if one is provided by the county board of elections, by placing a First-Class stamp on the return envelope or by purchasing expedited delivery from the USPS or other private delivery service.

16. If a voter applies for an absentee or mail-in ballot but cannot return it to the county board of elections before the received-by deadline, the voter may cast a provisional ballot in person at her polling place, as Ms. Laudenslager did.

17. There was no evidence that the county boards of elections anticipate consolidating polling places as they did in the primary election, that the county boards anticipate insufficient staffing or that the health and safety procedures used by the county boards during the June 2020 primary were ineffective.

18. Section 1206 of the Election Code, 25 P.S. §3046, provides a remedy for emergencies arising on election day; that is, an individual or county may bring a controversy before the court of common pleas and have the matter decided expeditiously. This was done in three counties during the 2020 primary election. Where an individual is seeking a judicial order to vote,

the court must inform the individual of the provisional ballot process set forth in Section 1206 of the Election Code, 25 P.S. §3046.

19. Secretary's Exhibit 2, a chart identifying the number of mail-in ballots received by each county and the date of receipt, does not support a finding that the received-by deadline should be extended by three days, to Friday, November 6, 2020. The exhibit does not explain when the voters applied for their absentee or mail-in ballots, when the county boards of elections mailed the ballots to the voters or when the voters deposited the ballots in the return mail.

    Secretary's Exhibit 2 showed that 61,333 votes were received by county boards of elections during the three days that followed the primary election day. Of that total, 52,761 were received in counties where the Governor had extended the received-by deadline because of civil unrest or where the court of common pleas had extended the received-by deadline for receipt of absentee and mail-in ballots. Accordingly, all 52,761 were counted. Secretary's Exhibit 2 does not predict how many mail-in ballots will be received after 8:00 p.m. on Election Day because it is not known whether the mailing of ballots in the primary election was affected by the announced extension of the received-by deadline.

20. The Secretary is working with the county boards of elections and the USPS to design election-related mail envelopes. The Secretary is undertaking a public education campaign to inform voters of the need to apply for and return all mail ballots as early as possible.

21. Ms. Laudenslager was not disenfranchised because she voted at a polling place and her vote was counted.

22. Petitioners presented no evidence to support their request for third-party assistance in the delivery of ballots to either the USPS or the county boards of election or for their request for prepaid postage on all absentee and mail-in ballots.
23. Petitioners' claim for prepaid postage is moot in light of the Secretary's announcement that the Department of State will provide funding to the county boards of elections for postage.
24. There was no clear evidence presented on whether prepaid postage envelopes, which may be provided by the county boards of elections to voters for mailing their completed ballots, will be postmarked. A postmark would evidence the date the voter placed the ballot in the mail.
25. There was no evidence showing that COVID-19 was transmitted to an individual who appeared at a polling place in Pennsylvania during the primary election on June 2, 2020.
26. There was no evidence presented to address how an extension of the statutory deadline could be implemented without causing confusion among the 67 county boards of elections that are preparing to conduct the general election in accordance with the received-by deadline which has been in effect for all elections in Pennsylvania since 1964, and among the voting public.

IV. Conclusions of Law

1. The deadline for receipt of absentee and mail-in ballots by 8:00 p.m. on Election Day represents a policy choice made by the legislative and executive branches in the enactment of Act 77. The deadline for mailed-in ballots has always been by date of receipt, not date of submission to the

USPS. This deadline was first adopted for absentee ballots. *See* Section 22 of the Act of August 13, 1963, P.L. 707 (effective January 1, 1964). The same type deadline was adopted in Act 77 for mail-in ballots. *See* Section 1306-D(c) of the Election Code, 25 P.S. §3150.16(c).

2. Petitioners' evidence did not prove that disruptions to USPS operations are likely to occur in November 2020 that will cause timely mailed ballots to go uncounted in the general election. Petitioners offered no evidence that a single mail-in ballot in the primary election was received by a county board of elections after the June 2, 2020, deadline because of a delay in delivery by the USPS. Petitioners offered no evidence upon which the Court can find, as fact, that the USPS will not be able to deliver absentee and mail-in ballots within 2 to 3 days of their being posted. The credible evidence shows just the opposite, *i.e.*, the USPS is unlikely to be overwhelmed in November.
3. If the current deadlines remain in place for the November general election and significant delays develop in certain counties with the processing of ballot applications or in the USPS delivery of mail, the county courts of common pleas are empowered to provide targeted relief. Petitioners have not demonstrated that such county-specific relief will be inadequate and that an immediate statewide remedy is necessary.
4. As Justice Wecht wrote in support of the Pennsylvania Supreme Court's recent decision dismissing a similar COVID-19-related challenge to the Commonwealth's administration of the 2020 primary election, "the instant request … is predicated upon mere speculation about what may or may not occur with delivery operations within the Commonwealth in several weeks' time. While circumstances may change, the possibility that votes may be

suppressed due to late ballot delivery, as presently alleged, is too remote at this time to constitute a cognizable injury." *Disability Rights Pennsylvania v. Boockvar*, (Pa., No. 83 MM 2020, filed May 15, 2020) (Wecht, J., Concurring Statement at 1-2).

5. Petitioners' evidentiary case did not address the alleged injury occasioned by the prohibition against third-party assistance in casting and delivering absentee and mail-in ballots or the need for prepaid postage on all absentee and mail-in ballots.
6. The Court concludes that it is not necessary to address the outstanding legal objections raised by Respondents, by Senate Intervenors or by House Intervenors.
7. Petitioners have not made a "clear, palpable and plain demonstration" that the received-by deadline for absentee and mail-in ballots in Act 77 is unconstitutional for any election during the COVID-19 pandemic. *Yocum v. Commonwealth of Pennsylvania Gaming Control Board*, 161 A.3d 228, 238 (Pa. 2017). The received-by deadline for mail-in ballots is a valid election administration regulation, and the opportunity to vote by mail-in ballot accommodates those voters who do not wish to vote in person during the COVID-19 pandemic.

V. Discussion

Constitutional challenges to any legislation, including election laws, are cognizable only where the injury is concrete. "There is a presumption that lawfully enacted legislation is constitutional. Should the constitutionality of legislation be challenged, the challenger must meet the burden of rebutting the presumption of constitutionality by a *clear, palpable and plain demonstration* that the statute

violates a constitutional provision." *Yocum*, 161 A.3d at 238 (emphasis added). Where a court determines that a law is unconstitutional, it is not the court's role to design an alternative scheme that passes constitutional muster; rather, the court must grant the legislature sufficient time to consider and enact remedial legislation. *See generally In re Fortieth Statewide Investigative Grand Jury*, 197 A.3d 712, 721 (Pa. 2018) (courts may not usurp the province of the legislature by rewriting legislation and adding hearing and evidentiary requirements that the participants must follow in grand jury proceedings); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 821 (Pa. 2018) (providing timeframe for legislative and executive branches to enact remedial redistricting plan).

Moreover, "'[i]t is a mistake to suppose[] that a court of equity is amenable to no law, either common or statute, and assumes the [role] of an arbitrary legislator in every particular case.' When the rights of a party are clearly established by defined principles of law, equity should not change or unsettle those rights. Equity follows the law." *Piper v. Tax Claim Bureau of Westmoreland County*, 910 A.2d 162, 165 (Pa. Cmwlth. 2006) (quoting *First Federal Savings and Loan Association v. Swift*, 321 A.2d 895, 897 (Pa. 1974)).

The United States Constitution provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing [sic] Senators." U.S. CONST. art. I, §4, cl.1. Article I, Section 5 of the Pennsylvania Constitution further states: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." PA. CONST. art. I, §5.

Each state's election code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects -- to least some degree -- the individual's right to vote …." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). "A court considering a challenge to a state election law must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and the Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick*, 504 U.S. at 434 (quoting *Anderson,* 460 U.S. at 789).

Although Petitioners seek to add new provisions to the existing Election Code, rather than expressly challenging the validity of a particular provision, the premise of *Yocum* applies with equal force. This Court has explained that "[a] statute is cloaked with a strong presumption of constitutionality and one who attacks it bears the burden of demonstrating that the legislation 'clearly, palpably and plainly violates the constitution.'" *Ketterer v. Department of Transportation*, 574 A.2d 735, 736 (Pa. Cmwlth. 1990) (quotation omitted).

Petitioners premise their claims on different provisions of the Pennsylvania Constitution, but the alleged injury in each instance is at bottom the same: if the legislative and executive branches do not implement the responsive measures to the ongoing COVID-19 pandemic favored by Petitioners, some voters will be burdened in the exercise of their vote. They believe this warrants declaratory and injunctive relief.

Petitioners allege that counties could (1) face shortages of poll workers and may have to contend with social-distancing guidelines in processing ballots, *see* Amended Petition ¶6; (2) fall behind on processing mail-in and absentee ballots applications, *id*., *see also* ¶53; and (3) the USPS may not be able to deliver election ballots in a timely manner, *id*. ¶54. Petitioners allege that it is "anyone's guess whether voters who timely request mail ballots will receive them in time to complete the [ballots] and mail them back to county officials such that they arrive by 8:00 p.m. on Election Day." *Id*. ¶55.

Petitioners allege that without third-party assistance with delivery of mail-in and absentee ballots, "[v]oters … who have struggled with delayed mail delivery will be forced to deliver their ballots for the general election in-person this year to ensure their votes are counted[.]" *Id*. ¶63. Similarly, Petitioners assert that without prepaid postage on absentee and mail-in ballots, voters will have to shoulder the "unnecessary expense" of stamps, which "could be cost prohibitive," and will also risk a "trip to the post office or any other establishment that sells stamps, at a time when individuals have been instructed to maintain social distancing guidelines to stem the spread of COVID-19[.]" *Id*. ¶¶66-67. Some of the reforms for which Petitioners advocate are under consideration by the General Assembly. If they are not enacted, Petitioners believe these reforms must be ordered by the Supreme Court of Pennsylvania.

The Amended Petition states that in the days before the June primary election, some counties took targeted measures to address COVID-19-specific challenges. *See* Amended Petition ¶25 n.4, ¶57 (citing *In re Extension of Time for Absentee and Mail-In Ballots to be Received by Mail and Counted in the 2020 Primary Election*, (C.C.P. Del. Cty. No. 2020-003416)). However, Petitioners

believe these county-specific judicial orders (and executive orders) will not suffice in November 2020.

In her preliminary objections filed with the Supreme Court, the Secretary stated that "nothing in the Amended Petition gives any specifics on what exactly will go wrong, where it will go wrong, or, -- just as importantly -- why the statewide remedy Petitioners seek will be necessary to correct the problem. Nor could the Amended Petition supply these specifics; in a fast-changing situation, and with the November general election months away, such predications are necessarily conjectural at best." Secretary Preliminary Objections, at 16 ¶21.

Considering the above, Petitioners did not carry their burden of showing that the Election Code's deadline for returning absentee and mail-in ballots is plainly and palpably unconstitutional. One year ago, the former Election Code required that all mail-in ballots, which were limited to absentee ballots, had to be returned to the county boards of elections by 5:00 p.m. on the Friday *before* Election Day in order to be counted. *Former* Section 1306(a) of the Election Code, 25 P.S. §3146.69(a). The General Assembly, which determines the time, place and manner of Pennsylvania's elections, extended the former received-by deadline by four days in Act 77. It is for the General Assembly to decide what further changes should be made to all the statutory deadlines, which may include advancing the deadline for requesting an absentee or mail-in ballot.

Presently, voters in Pennsylvania have 50 days to request and cast a mail-in ballot. Section 1302.1 – D of the Election Code, 25 P.S. §3150.12a. Voters have the option to request a ballot early in the process and to return it early in the process. They also have the option to wait until one week before the election to request a ballot from the county board of elections, which has 48 hours to respond.

If the voter receives the ballot one day before Election Day, she can purchase overnight mailing from the USPS to ensure its timely receipt. If the voter receives the ballot on Election Day, she can personally deliver the ballot to the county board of elections. If the requested ballot is not received by Election Day, the voter can vote in person at her designated polling place, as did Ms. Laudenslager. And, of course, voters have the option to appear at their polling place and vote in person before 8:00 p.m. on Election Day.

Section 1206 of the Election Code provides that where significant problems develop in a precinct or county, our courts of court of common pleas can order relief. 25 P.S. §3046. This was done in several counties in the 2020 primary election, which extended the deadline for receipt of absentee and mail-in ballots.

As the Secretary noted, there must be deadlines in order for a free and equal election to take place. And every deadline will mean that some voters will not be able to participate in an election. A voter may arrive at the polling place at 8:05 p.m. on Election Day, or a voter's mail-in ballot may arrive at the county board of elections at 8:05 p.m. on Election Day. Neither vote will be counted.

In her original preliminary objections, the Secretary argued that Petitioners' pleading did not present a controversy ripe for judicial review. Nor did Petitioners' evidence. Whatever delays may be occasioned in the November 2020 general election with respect to the receipt of mail-in ballots by county boards of elections, they are not likely to be caused by the USPS. The evidence demonstrated that USPS performance in Pennsylvania exceeds the national average.

There are an infinite number of considerations that go into setting the rules for a free and equal election. It is the job of the legislature, not the judiciary, to make these policy choices.

The 8:00 p.m. Election Day deadline applies to those who vote in person and those who vote by absentee and mail-in ballots.[12] For a court to order a new statewide deadline may create widespread confusion among voters and the county boards of elections, the parties that actually conduct the election. This militates against intervention by a court sitting in equity, assuming grounds for relief were demonstrated, and here they were not.

Even if that hurdle were crossed, an order enjoining enforcement of the received-by deadline would have to be issued to the county boards of elections. They are the persons that process and qualify ballots. Because they are not parties to this case, they cannot be enjoined from enforcing the received-by deadline in the Election Code.

In sum, the Election Code provides meaningful responses for conducting an election during the COVID-19 pandemic. Voters may cast their vote by mail if they conclude their polling place will not meet their standards of safety. That voters have the responsibility to obtain a ballot and return it by 8:00 p.m. Election Day does not impose an unlawful burden on the free exercise of the right to vote. At the next level, county boards of elections may seek relief from their courts of common pleas should the circumstances require that step appropriate. Finally, the General Assembly can enact appropriate measures should it determine that the COVID-19 pandemic requires a statewide response.

[12] Pennsylvania's received-by deadline is consistent with other state election laws. *See* ARIZ. REV. STAT. ANN. §16-558.01 (West 2015) (requiring the return of a mail-in ballot by 7:00 p.m. on the day of the election); GA. CODE ANN. §21-2-386(a)(1)(f) (West 2019) (requiring the destruction of absentee ballots received after the polls close); ME. REV. STAT. ANN. tit. 21-a, §755 (1991) (requiring the return of an absentee ballot before the close of the polls on election day); MICH. COMP. LAWS ANN. §168.764a (West 2012) (requiring receipt of absentee ballot before the close of polls on election day); WIS. STAT. ANN §7.52(1)(a) (West 2018) (requiring the canvas of all absentee ballots received by 8:00 p.m. on election day).

VI. Conclusion

For these reasons, the Court recommends that the Supreme Court deny Petitioners' Prayer for Relief.

Respectfully submitted,

s/Mary Hannah Leavitt
MARY HANNAH LEAVITT, President Judge

Filed: September 4, 2020

Exhibits Admitted into Evidence at Evidentiary Hearing

Exhibit No.	Description
Petitioners	
Petitioners' Ex. 4	USPS Office of Inspector General Management Alert (July 7, 2020)
Petitioners' Ex. 6	USPS General Counsel Thomas J. Marshall Letter to the Hon. Kathy Boockvar (July 29, 2020)
Petitioners' Ex. 7	USPS General Counsel Thomas J. Marshall Letter to the Hon. Elaine Marshall (July 30, 2020)
Petitioners' Ex. 9	USPS PMG Briefing, Service Performance Measurement (Aug. 12, 2020)
Petitioners' Ex. 28	Eastern Areas Inspiring Mail Service Update
Petitioners' Ex. 30	Preliminary Report of Joseph Eisenberg
Petitioners' Ex. 32	Preliminary Report of Ronald Strohman
Respondents	
Respondents' Ex. 1	Letter dated July 29, 2020, from Thomas J. Marshall, General Counsel and Executive Vice President of the United States Postal Service, to Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania
Respondents' Ex. 2	Chart of County Absentee or Mail-in Ballots
Respondents' Ex. 4	Postal Bulletin: Your 2020 Election and Political Mail Guide (Feb. 13, 2020)
Senate Intervenors	
Senate Intervenors' Ex. 1	Mr. Plunkett's Declaration that as filed on May 18, 2020 as Ex. A to Legislative Intervenors' Opposition to the Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction
Senate Intervenors' Ex. 2	Attachment A from Plunkett's Report, *Quarterly Performance for First-Class Flats: Service Variance*
Senate Intervenors' Ex. 3	Attachment B from Plunkett's Report, *Quarterly Performance Aggregation for First-Class Flats: Service Variance*
Senate Intervenors' Ex. 4	Quarterly Performance for Presort First-Class Mail® Service Variance, USPS, FY 2020 Quarter III
Senate Intervenors' Ex. 6	In the Matter of: Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District
Senate Intervenors' Ex. 7	Final Report of the Miami-Dade County Grand Jury, Spring Term A.D. 2012, available

Senate Intervenors' Ex. 10	USPS Service Alert, Aug. 28, 2020
Senate Intervenors' Ex. 11	Postmaster General Louis DeJoy Statement, USPS, Aug. 18, 2020
Senate Intervenors' Ex. 16	Dhaval M. Dave, *et al. Black Lives Matter Protests, Social Distancing, and COVID-19*
Senate Intervenors' Ex. 17	U.S. Department of Health and Human Services and Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, *Notes from the Field*, July 31, 2020
House Intervenors	
House Intervenors' Ex. 1	Statement of Postmaster General and Chief Executive Office Louis DeJoy (Aug. 21, 2020)

APPENDIX D

 Received 9/22/2020 9:39:56 AM Supreme Court Middle District

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133 MM 2020

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 133 MM 2020

PENNSYLVANIA DEMOCRATIC PARTY, et al.,
Petitioners,

v.

KATHY BOOCKVAR, et al.,
Respondents.

APPLICATION FOR STAY OF COURT'S OPINION AND ORDER OF SEPTEMBER 17, 2020 BY INTERVENOR RESPONDENTS JOSEPH B. SCARNATI III, PRESIDENT PRO TEMPORE, JAKE CORMAN, MAJORITY LEADER OF THE PENNSYLVANIA SENATE, BRYAN CUTLER, SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, AND KERRY BENNINGHOFF, MAJORITY LEADER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES

Intervenor Respondents, Joseph B. Scarnati III, Pennsylvania Senate President Pro Tempore, and Jake Corman, Senate Majority Leader, and Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives,[1]

[1] One of the issues that Speaker Cutler and Majority Leader Benninghoff ("the House Leaders") will appeal to the Supreme Court of the United States is this Court's inexplicable denial of their intervention application in a footnote of the Opinion. The House Leaders' intervention application was timely filed, and was unopposed, with even the Petitioners agreeing that the House Leaders' intervention was appropriate. *See Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, Response to Motions to Intervene of Senator Costa and Representatives Dermody, Cutler, and Benninghoff (filed Sept. 9, 2020) ("Petitioners believe the motions to intervene filed by Proposed

(together "Intervenor Respondents") by and through the undersigned counsel, jointly submit this Application for Stay of this Court's Opinion and Order of September 17, 2020 on two grounds.

First, the decision violates federal law, which establishes "the Tuesday next after the 1st Monday in November" as a single Federal Election Day, which falls on November 3rd this year. 2 U.S.C. § 7; *see also* 2 U.S.C. § 1; 3 U.S.C. § 1. These provisions mandate holding all elections for Congress and the Presidency on a single day throughout the Union. However, Footnote 26 and page 63 of this Court's Slip Opinion extend Election Day past November 3, 2020. It does this by forcing election officials to accept ballots received after election day even if these ballots lack a legible postmark. This permits ballots to be both voted and counted after election day, extending the General Election past November 3, 2020. This clearly violates 2 U.S.C. § 7.

Intervenors offer the same issues as the motions decided by the Court in its September 3 Order and have no objection to the intervention of the Proposed Intervenors either as individuals or as leaders of their respective caucuses, consistent with this Court's order of September 3."). The House Leaders were also permitted to intervene by this Court in another case concerning the received-by deadline. *See Crossey, et al. v. Boockvar, et al.*, No. 108 MM 2020. Despite there having been no reasonable basis for the petition's denial, the petition to intervene was denied by this Court. As United States Supreme Court precedent supports a writ of certiorari being sought by anyone with an interest in the outcome of a matter, including wrongly denied intervenors, the House Leaders join in this Petition to both demonstrate the unanimity of the General Assembly in this matter, and because they plan to seek a writ of certiorari from the United States Supreme Court. *See United States v. Int'l Bhd. of Teamsters*, 931 F.2d 177, 183–84 (2d Cir.1991) (quoting *Hispanic Soc'y v. N.Y. City Police Dep't*, 806 F.2d 1147, 1152 (2d Cir.1986), *aff'd*, *Marino v. Ortiz*, 484 U.S. 301, 108 S.Ct. 586, 98 L.Ed.2d 629 (1988)); *Kaplan v. Rand*, 192 F.3d 60, 67 (2d Cir.1999) ((("The question therefore is whether the putative appellant can identify an 'affected interest.'").

Second, the decision violates the Elections Clause, Article I, § 4 cl. 1 of the United States Constitution, by seizing control of setting the times, places, and manner of federal elections from the state legislature. Although this Court has the final say on the substantive law of Pennsylvania, the Elections Clause of the United States Constitution vests the authority to regulate the times, places, and manner, of federal elections to Pennsylvania's General Assembly, subject only to alteration by Congress, not this Court. U.S. Const. Art. I, § 4. The General Assembly has not delegated authority to alter these regulations to the Pennsylvania Judiciary, yet this Court's decision fundamentally changes the policy decisions inherent in the General Assembly's duly enacted election laws. This Court has substituted its will for the will of the General Assembly and this substitution usurps the authority vested in the General Assembly by the Elections Clause. U.S. Const. Art. I, § 4.

For these reasons, Intervenor Respondents request that this Court stay the portions of its decision: (1) forcing election officials to accept ballots received after election day to be counted even if they lack a legible postmark; and, (2) extending the absentee and mail-in ballot deadline past Election Day, pending the disposition of Intervenor Respondents' forthcoming petition for writ of certiorari to the United States Supreme Court.

ARGUMENT

I. THE COURT SHOULD STAY ITS DECISION PENDING APPEAL.

On an application for stay pending appeal, the movant must (1) "make a substantial case on the merits," (2) "show that without the stay, irreparable injury will be suffered," and (3) that "the issuance of the stay will not substantially harm other interested parties in the proceedings and will not adversely affect the public interest." *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 573 A.2d 1001, 1003 (1990); *see also Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (enunciating similar considerations for stay applications to the United States Supreme Court). All of these elements are met here.

A. Intervenor Respondents Are Likely To Succeed On Appeal.

There is, at minimum, a "reasonable probability" that the United States Supreme Court will take the Intervenor Respondents' forthcoming appeal and a "fair prospect" that it will reverse this Court's decision. *See Hollingsworth*, 558 U.S. at 190 (enunciating stay standards). The Court's decision violates federal law because its mandate to accept late ballots lacking a legible postmark permits individuals to cast votes after Election Day, creating multiple election days in contravention of 2 U.S.C. § 7, 2 U.S.C. § 1, and 3 U.S.C. § 1. The Court's decision also intrudes on power delegated expressly to Pennsylvania's legislative processes under the

Elections Clause of the federal Constitution, presenting an issue of federal law long overdue for definitive resolution by the United States Supreme Court.

1. <u>The Decision Violates Federal Law By Permitting Votes After Election Day.</u>

The Elections Clause also provides Congress with the authority to make laws prescribing "[t]he times, places and manner of holding elections for senators and representatives . . . ." U.S. Const. art. I, § 4, cl. 1. Consistent with the Elections Clause, in 1872 Congress established a national uniform election day for choosing members of the House of Representatives by enacting, which provides: "[t]he Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter." 2 U.S.C. § 7.

Likewise, Congress has set the same date for the selection of presidential electors: "[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President." 3 U.S.C. § 1; *see also* U.S. Const. art. II, § 1, cl. 4 ("The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States."). Upon ratification of the Seventeenth Amendment, Congress adopted a similar provision respecting the election of

Senators. *See* 2 U.S.C. § 1; *see also Foster v. Love,* 522 U.S. 67, 69-70 (1997). In combination these provisions "mandate[] holding all elections for Congress and the Presidency on a single day throughout the Union." *Foster,* 522 U.S. at 69-70.

Although these statutes clearly establish one uniform "Federal Election Day" throughout the nation, the omission of a definition of the term "election" has led the United States Supreme Court to comment on the opacity of the statutory language at issue in this case, particularly regarding the precise acts that the statutes require a State to perform on that day. *Foster*, 522 U.S. at 72. Accordingly, courts have turned to the statutes' legislative history for guidance. *See Blum v. Stenson*, 465 U.S. 886, 896 (1984)).

By establishing a uniform date for holding federal elections, Congress sought "to remedy more than one evil arising from the election of members of congress occurring at different times in the different states." *Ex Parte Yarbrough*, 110 U.S. 651, 661 (1884). Specifically, a review of the legislative history of these provisions demonstrates that Congress wanted to, *inter alia*, prevent States that voted early from unduly influencing those voting later and to combat fraud by minimizing the opportunity for voters to cast ballots in more than one election. *Love*, 90 F.3d at 1029; *Busbee v. Smith*, 549 F. Supp. 494, 524 (D.D.C. 1982) (three-judge court), *aff'd*, 459 U.S. 1166 (1983). These objectives reflect the importance voting played in the political debates of the Reconstruction era. *Voting Integrity Project, Inc. v.*

Keisling, 259 F.3d 1169, 1172 (9th Cir. 2001) (placing congressional debates over enactment of 2 U.S.C. § 7 and allowing voting over multiple days in their historical context).

In advancing these rationales, proponents expressed their understanding of what establishing a national, uniform federal election day meant. Representative Butler of Massachusetts, who authored the 1872 law, articulated his aim in sponsoring the legislation:

> The object of this amendment is to provide a uniform time of electing Representatives in Congress . . . . But on account of the facility for colonization and repeating among the large central States, New York holding its election in November, and Ohio, Pennsylvania, and Indiana holding their elections in October, the privilege is allowed the border States, if any man is so disposed, of throwing voters across from one into the other. *I think it will be fair for everybody that on the day when one votes all should vote, and that the whole question should be decided then***.**

Cong. Globe, 42d Cong., 2d Sess. 112 (1871) (emphasis added). Representative Butler further elaborated:

> Unless we do fix some time at which, as a rule, Representatives shall be elected, it will be in the power of each State to fix upon a different day, and we may have a canvass going on all over the Union at different times. It gives some states undue advantage. It gives some parties undue advantage.

Cong. Globe, 42d Cong., 2d Sess. 141 (1871).

In congressional debate over establishing a single national election day, the Senate even defeated an amendment that would have permitted voting for

Representatives over multiple days in states that conducted elections for their own officers on more than one day. Cong. Globe, 42d Cong., 2d Sess. 676-77 (1871).

In *Foster v. Love*, the United States Supreme Court considered whether Louisiana's "open primary" statute conflicted with federal election statutes. 522 U.S. 67, 68 (1997). Under Louisiana law, an open primary was held for congressional offices in October. *Id*. All candidates, regardless of party, appeared on the same ballot. *Id*. If any candidate received a majority of votes in the primary, he or she was considered "elected" without any further action on federal election day. *Id*. The Court held that Louisiana's open primary system conflicted with federal election statutes because the "final selection" of candidates could be "concluded as a matter of law before the federal election day, with no act in law or in fact to take place on the date chosen by Congress . . ." *Id*. at 72. *Foster* is instructive on the meaning of "election" under 2 U.S.C. § 7. 522 U.S. at 68. The Court observed that:

> When the federal statutes speak of "the election" of a Senator or Representative, they plainly refer to *the combined actions of voters and officials meant to make a final selection of an officeholder* . . . . See N. Webster, An American Dictionary of the English Language 433 (C. Goodrich & N. Porter eds. 1869) (defining "election" as 'the act of choosing a person to fill an office'). By establishing a particular day as 'the day' on which these actions must take place, the statutes simply regulate the time of the election, a matter on which the Constitution explicitly gives Congress the final say.

Id. at 71-72 (emphasis added). This Court declined to identify these combined acts of voters and officials. *Id*. at 72. *But see Lamone v. Capozzi*, 396 Md. 53, 83-84 (Md.

2006) ("The Constitution contemplates an election in terms of the voter, not in terms of the election process. Moreover . . . there is no dispute that the 'combined actions' must occur, *that voting must end*, on federal election day." (emphasis added)) (interpreting 2 U.S.C. § 7, *Foster*, 522 U.S. 67, and Maryland Law). *See also Fladell v. Elections Canvassing Comm'n of Fla*., CL 00-10965 AB, CL 00-10970 AB, CL 00-10988 AB, CL 00-10992 AB, CL 00-11000 AB, 2000 Fla. Cir. LEXIS 768, *6-*17 (Fla. 15th Jud. Cir. 2000) ("[T]he Constitution of the United States . . . require[s] that Presidential 'electors' be elected on the *same day* throughout the United States. (emphasis added)).

a. Requiring Counties To Count Ballots That Are Received By Friday, November 6, 2020, Even Absent A Postmark Establishing The Ballot Was Mailed on Election Day, Violates Federal Law.

This Court's decision provides for a three-day extension of the federal election in contravention of federal law. Specifically, the decision forces election officials to accept ballots received by them after election day even if the ballots "lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible." Slip Op. at 37, n. 26. *See also id*. at 63. This functionally enables votes that are cast *after* election day to be counted if no legible postmark is placed on the envelope. This creates a scenario where votes will be cast *and* counted on days *after* election day, and is especially troubling given this Court's sanctioning of unmanned, unsecured dropboxes in contravention of the statutorily-defined procedures for mail-

in voting. *Id*. at 20. The casting *and* counting of ballots unquestionably constitutes an "election" under federal law. *See Foster*. 522 U.S. 67. Accordingly, this Court's decision creates multiple federal election days, including after Election Day, and raises the same concerns of fraud, undue advantage, and non-uniformity which led to the creation of a Federal Election Day. *See* Cong. Globe, 42d Cong., 2d Sess. 112 (1871); Cong. Globe, 42d Cong., 2d Sess. 141 (1871); *see also Ex Parte Yarbrough*, 110 U.S. at 661; *Love*, 90 F.3d at 1029; *Busbee*, 549 F. Supp. at 524.

Moreover, the fact that courts have determined that early voting procedures are consistent with federal law does not save this Court's decision from illegality. In those cases, early voting conducted prior to election day was legal because "the final selection [of candidates] is not made before the federal election day." *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000). *See also Millsaps v. Thompson*, 259 F.3d 535, 545-46 (5th Cir. 2001); *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d at 1175-76. This is because the word "election" in 2 U.S.C. § 7, as interpreted by the United States Supreme Court, means "the combined actions of voters and officials meant to make a final selection of an office holder." *Foster*, 522 U.S. at 71. This Court's decision, which permits voting *after* Election Day, is clearly distinguishable from *early* voting cases because voting after election day is a combined action of voters and officials that makes a final selection of an office holder. *See Foster*, 522 U.S. at 71. In early voting, voters cast votes *prior to* election

day, but, in contrast to the *post-election* voting in this case, those votes are not counted immediately. Rather, election officials hold the ballots of early voters until the close of all polling places on election day, then record the early votes along with absentee votes. *See, e.g., Millsaps v. Thompson*, 259 F.3d at 537. Here, under this Court's decision, individuals are able to vote and have those votes counted by election officials *after election day*. *See Foster*, 522 U.S. at 71. Because a final selection of an office holder cannot be made until all votes are counted, post-election voting necessarily requires a final selection on a day other than election day. This creates multiple election days in violation of 2 U.S.C. § 7, 2 U.S.C. § 1, and 3 U.S.C. § 1.

Accordingly, there is more than a "reasonable probability" that the United States Supreme Court will hear Intervenor Respondents' forthcoming appeal and at least a "fair prospect" that it will reverse this Court's decision. *See Hollingsworth*, 558 U.S. at 190.

2. <u>Intervenor Respondents are Likely to Succeed on its Appeal Because This Court's Decision Violates The Elections Clause.</u>

This Court's decision also violates the Elections Clause of the United States Constitution. *See* Const. art. I, § 4, cl. 1. The Elections Clause provides that "[t]he times, places and manner of holding elections for senators and representatives, shall be prescribed in each State by *the legislature thereof*; but the Congress may at any time by law make or alter such regulations, except as to the places of chusing

Senators." U.S. Const. art. I, § 4, cl. 1 (emphasis added). The Elections Clause commits power to regulate congressional elections to "the legislature" of each state and to "Congress." *Id*.

a. *The Plain Text and Historical Context of the Elections Clause Subverts this Court's Assumption of Legislative Power.*

The Constitution does not delegate any authority regarding the time, place and manner of elections to state courts. In fact, the Clause specifically excludes them. The principle that state courts are not delegated any Elections Clause authority is plain from the provision's text. The word "legislature" was "not one 'of uncertain meaning when incorporated into the Constitution.'" *Smiley v. Holm*, 285 U.S. 355, 365 (1932) (quoting *Hawke v. Smith*, 253 U.S. 221, 227 (1920)). The term "legislature" necessarily differentiates between that body and the "State" of which it is only a subpart. By empowering one body of the state to prescribe election rules, the Constitution impliedly denies it to others.

Aside from its plain language, the Elections Clause denies authority to state judiciaries through several contextual reference points. For example, the power to regulate federal elections is incidental to the Constitution's establishment of a federal government; it is not an inherent state power. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 806 (1995); *Cook v. Gralike*, 531 U.S. 510, 522 (2001). Thus, it "had to be delegated to, rather than reserved by, the states." *Cook*, 531 U.S.

at 522 (quotations omitted). Because the delegation necessarily confines the scope of power, the term "legislature" is "a limitation upon the state in respect of any attempt to circumscribe the legislative power" over federal elections. *McPherson v. Blacker*, 146 U.S. 1, 25 (1892).

Further, in referencing the "Times, Places and Manner" of elections, the Elections Clause plainly references what English Parliamentary law called "methods of proceeding" as to the "time and place of election" to the House of Commons. *See* William Blackstone, 1 Blackstone Commentaries *158-59, *170-174. Those "time and place" "methods" were in turn completely within parliamentary control, beyond the reach of "the Common Law" and "the Judges." George Petyt, Lex Parliamentaria, 9, 36-37, 70, 74-75, 80 (1690); William Blackstone, 1 Blackstone Commentaries, *146-47. By delegating the procedures of congressional elections to legislative bodies, the Elections Clause carried forward that English law tradition of maintaining legislative control, and excluding judicial control, over such matters.

Another contextual reference point for the Elections Clause comes from the framing debates and early commentaries. Though all concerned parties appreciated that state legislatures might abuse their authority over election rules, none of them even proposed that other branches of state government may exercise a check on such abuse. Instead, they viewed Congress as the *exclusive* check. *See* The Federalist No. 59 (Alexander Hamilton). That check, expressed directly in the Constitution's text,

parallels the judicial-type functions Congress performs in other quintessentially legislative affairs, as described in adjacent constitutional provisions. *See, e.g.,* U.S. Const. art. I, §§ 2-5. It was furthermore assumed that even Congress would exercise its prerogative to override state legislatures' regulations only "from an extreme necessity, or a very urgent exigency." 1 J. Story, Commentaries on the Constitution of the United States § 820 (3d ed. 1858). This was because the power "will be so desirable a boon" in the "possession" of "the state legislatures" that "the exercise of power" in Congress would (it was thought) be highly unpopular. *Id*. That state courts might deprive state legislatures of this "desirable . . . boon" in their "possession" was beyond belief. *Id*.

While the authority to regulate congressional elections is conferred by the federal Constitution on the state legislatures via the Elections Clause, the states also retain their own plenary power to regulate state elections. *See Tex. Democratic Party v. Abbott*, 961 F.3d 389 at 29 (5th Cir. 2020); *Tashjian v. Republican Party*, 479 U.S. 208, 217 (1986). In either event, the power to regulate and administer elections is committed to "Congress and state legislatures—not courts." *Coalition v. Raffensperger*, No. 1:20-cv-1677-TCB, 2020 U.S. Dist. LEXIS 86996 at *8-9 (N.D. Ga. May 14, 2020); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) ("The law of Article III standing, which is built on separation-of-powers principles, serves

to prevent the judicial process from being used to usurp the powers of the political branches.").

A final point of reference for the Elections Clause comes from its sister provision found in U.S. Const. art. I, § 1, cl. 2 (the "Electors Clause"). The Electors Clause particularly "convey[s] the broadest power of determination" and "leaves it to the legislature exclusively to define the method" of appointment of electors. *McPherson v. Blacker*, 146 U.S. 1, 27 (1892). "Thus, the text of the election law itself, and not just its interpretation by the courts of the States, takes on independent significance." *Bush v. Gore*, 531 U.S. 98, 112–13 (2000) (Rehnquist, J., concurring). "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question," including when such departure is carried out by the state judiciary. *Id.* at 113. "[W]ith respect to a Presidential election," state courts must be "mindful of the legislature's role under Article II in choosing the manner of appointing electors." *Id.* at 114.

Therefore, the plain language, context, and history of the Elections Clause clearly demonstrate that the Legislature has the primary authority to regulate elections checked only by the United States Congress.

b. *This Court Does Not Possess Legislative Power Pursuant To The Elections Clause.*

"[T]he duty of courts is to interpret laws, not to make them." *Watson v. Witkin*, 22 A.2d 17, 23 (Pa. 1941). As such, this Court does not exercise a legislative function

when it decides cases. And, contrary to what this Court implied in its Opinion, the General Assembly has never delegated its authority to regulate elections in a blanket manner to the judiciary. *Cf.* Slip Op. at 35 (citing 25 P.S. § 3046; In re General Election-1985, 531 A.2d at 839). Accordingly, this Court has no authority to alter the General Assembly's duly enacted prescriptions for federal elections in Pennsylvania, and doing so violated Article I, Section 4 of the United States Constitution.

Moreover, the fact that the Court ruled solely on Pennsylvania substantive law does not save it from violating the Elections Clause. This frustrates the Elections Clause's express delegation of authority to "the legislature" because an alleged conflict between the state constitution's policy and the state legislature's policy requires the state courts to pick one policy over another. This would instigate a battle between the state's courts and its legislature, and the Elections Clause plainly sides with "the legislature" in that dispute.

A state court's enforcement of constitutional policy prescriptions results in court-made policy superseding legislative policy. Inferences courts draw from constitutional rules may be remote and tenuous, whereas an actual enacted policy undoubtedly reflects the choices of "the legislature." Accordingly, the United States Supreme Court has never held that state constitutional provisions purporting to set time, place, or manner rules or policy limitations on those rules can nullify contrary

acts of a legislature pursuant to their authority under the Elections Clause. Indeed, many other state courts, including this one, have concluded that a state constitution may not "impose a restraint upon the power of prescribing the manner of holding [federal] elections." *Chase v. Miller*, 41 Pa. 403, 409 (1862); *In re Plurality Elections*, 8 A. 881, 882 (R.I. 1887). *See also In re Op. of Justices*, 45 N.H. 595, 601-07 (N.H. 1864); *Wood v. State*, 142 So. 747, 755 (Miss. 1932) (concurring opinion); *Thomas Cooley et al.*, TREATISE ON THE CONSTITUTIONAL LIMITATION WHICH REST UPON THE LEGISLATIVE POWER OF THE STATE OF THE AMERICAN UNION 903 & n.1 (1903).

c. This Court's Extension Of the Ballot Receipt Deadline Violates The Elections Clause.

Pennsylvania's period for absentee and mail-in ballot submission is unquestionably a regulation of the times, places, or manner of elections, U.S. Const. Art. I, § 4, because it regulates the time during which absentee and mail-in ballots may be submitted to elections officials. *See* 25 P.S. § 3150.16(c).[2] This deadline is a quintessential example of the General Assembly exercising its authority under the Elections Clause. *See In re Nomination of Driscoll,* 847 A.2d 44, 45 n.1 (Pa. 2004) (stating that a candidate for federal office must "abide by the election procedures in

[2] Pennsylvania used to require that absentee ballots be received by the Friday before the election. The General Assembly changed that in the fall of 2019. *See* Act 77. The legislature also made changes again to Pennsylvania's election code in March of 2020 as the legislature considered the impact of COVID on the primary. ACT 12. No further change in the receipt deadline was included in that legislation.

the Pennsylvania Election Code" because, unless altered by Congress, Pennsylvania's General Assembly prescribes the Times, Places and Manner of holding Elections for Senators and Representatives); *In re Guzzardi*, 99 A.3d 381, 385-86 (Pa. 2014) (stating that the legislature enacts election related deadlines for the orderly, efficient, and fair proceedings of elections as well as creating much needed stability). This federal constitutional grant of authority provides state legislatures with "a wide discretion in the formulation of a system for the choice by the people of representatives in Congress." *In re Nomination of Driscoll*, 847 A.2d at 45 n.1.

This Court was "not asked to interpret the statutory language establishing the received-by deadline for mail-in ballots" because "*there is no ambiguity regarding the deadline set by the General Assembly* . . . ." Slip Op. at 32 (emphasis added). Moreover, this Court was "not asked to declare the language facially unconstitutional as *there is nothing constitutionally infirm* about a deadline of 8:00 p.m. on Election Day for the receipt of ballots." *Id*. (emphasis added). Instead, this Court was asked to replace the General Assembly's policy judgments with its own.[3] This Court obliged. This Court's ruling ignores this Court's own precedent establishing that when reviewing challenges to election related statutes,

[3] This Court said as much in its opinion. *See id*. at 32-33. *See also id*. ("The parties, instead, question whether the application of the statutory language to the facts of the current unprecedented situation results in an as-applied infringement of electors' right to vote.").

"Pennsylvania courts may not mitigate the legislatively prescribed outcome through recourse to equity." *See In re Guzzardi*, 99 A.3d at 386. This Court's view of equity's role when interpreting unambiguous statutes is longstanding:

> When the rights of a party are clearly established by defined principles of law, equity should not change or unsettle those rights. Equity follows the law." *Piper v. Tax Claim Bureau of Westmoreland County*, 910 A.2d 162, 165 (Pa. Cmwlth. 2006) (quoting *First Federal Savings and Loan Association v. Swift*, 321 A.2d 895, 897 (Pa. 1974)).

See Crossey, et al. v. Boockvar, et al., No. 266 M.D. 2020, slip op. at 32 (Pa. Comm. Ct. Sept. 7, 2020) (Leavitt, P.J., amended report and recommendation) (attached as Ex. A). Voters can vote in person on Election Day. Voters can request and cast their mail-in ballot beginning 50 days before an election. 25 P.S. §3150.12a. Voters can choose to wait a week before Election Day to request their ballot. *Crossey*, slip op. at 35. Voters can send their ballot via overnight mail or deliver their ballot to the county election office. *See id*. at 35-36. This is not a case where the right to vote is illusory. In fact, in the parallel case where this Court's designated master held a hearing, developed a record on the ballot received-by deadline, and subjected witnesses to cross-examination, the Court found that the United States Postal Service's on-time delivery rate in Pennsylvania is higher than the national average, with 99% of presort First Class mail being received within 3 days of mailing. *See id*.

at 21, 36. Pennsylvania's General Assembly has done everything it can to establish a voting regime that is easy and accessible, even in the midst of a pandemic.[4]

This Court's decision makes precisely the kind of policy choices the Elections Clause assigned to the various state legislatures. In doing so, this Court has unconstitutionally usurped the General Assembly's authority under the Elections Clause. It is, in fact, the General Assembly's constitutionally vested duty to regulate the time, manner and place of federal elections, not the judicial branch's duty. *Crossey*, slip op. at 36. Accordingly, there is at least a "reasonable probability" that the United States Supreme Court will hear Intervenor Respondents' forthcoming appeal and at least a "fair prospect" that it will reverse this Court's decision. *See Hollingsworth*, 558 U.S. at 190; *see also Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70, 77 (2000) ("There are expressions in the opinion of the Supreme Court of Florida that may be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with Art. II, § 1, cl. 2 circumscribe the legislative power") (internal quotations omitted).

[4] This Court heavily relies on the USPS's Marshall Letter. *See* slip op. at 24-27. But in *Crossey*, where witnesses testified concerning the Postal Service's abilities and were subject to cross-examination, both the *Crossey* Petitioners' Postal Service expert and the Senate Intervenors' expert agreed that the Postal Service was capable of delivering ballots within Pennsylvania's statutory timeline for requesting and receiving ballots. *See Crossey*, slip op. at 10-11, 30-31, 35. In fact, the Secretary is spending taxpayer dollars to inform voters to request and mail in their ballot as early as possible. *See id*. at 28. There is no evidence establishing that Pennsylvania's ballot receipt-by deadline is plainly and palpably unconstitutional. *See id*. at 35.

This Court's decision to extend the received-by deadline and accept untimely voted ballots constitutes a "significant departure" from the election laws duly enacted by the General Assembly, "rais[ing] a federal constitutional question" and a substantial issue on the merits. *Bush*, 531 U.S. at 112–13 (Rehnquist, J., concurring).

B. The Equitable Factors Support A Stay.

First, Intervenor Respondents, Respondents, and the Commonwealth will suffer irreparable harm if the case is not stayed. The mere enjoining of validly enacted legislation amounts to irreparable injury because "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3 (2012).

A stay would prevent harm to the public and to the Commonwealth that otherwise would result from this Court's Decision. *Melvin*, 79 A.3d at 1200. The United States Supreme Court has repeatedly warned that courts should not make or alter election laws on the eve of elections. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006); *Husted v. Ohio State Conference of N.A.A.C.P.*, 573 U.S. 988 (2014). Such late changes by judicial fiat can cause widespread "voter confusion," erode public "[c]onfidence in the integrity of our electoral process," and create an "incentive to remain away from the polls." *Purcell*, 549 U.S. at 4–5.

The Court's Order will engender confusion and uncertainty about the rules governing the fast-approaching 2020 General Election. The Commonwealth's interest in election integrity and the general public's interest in predictable procedures outweighs the private interests advanced by Petitioners here. The citizens and election administrators of the Commonwealth are familiar with those procedures. Those citizens and officials have a right to *an Election Day* at a predictable time according to predictable procedures that do not overly confuse the average person or change at a moment's notice. The public interest weighs overwhelmingly in favor of the status quo.

The risks to the public and Commonwealth are further exacerbated here because the United States Supreme Court has made clear that stays are appropriate to restore postmark deadlines and to prevent a "fundamental[] alter[ation] [of] the nature of the election" through judicial "[e]xten[sion] [of] the date by which ballots may be cast by voters [until] after the scheduled election day." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020). Therefore, a stay should be granted here.

CONCLUSION

For the forgoing reasons, this Court should stay the portions of its decision: (1) forcing election officials to accept ballots received after election day to be counted even if they lack a legible postmark; and, (2) extending the absentee and

mail-in ballot deadline past Election Day, pending the disposition of Intervenor Respondents' forthcoming stay application and petition for writ of certiorari to the United States Supreme Court.

Dated: September 22, 2020	Respectfully submitted, **Obermayer Rebmann Maxwell & Hippel LLP** By: */s/ Richard Limburg* Lawrence J. Tabas (ID No. 27815) Mathieu J. Shapiro (ID No. 76266) Richard Limburg (ID No. 39598) Centre Square West 1515 Market St., Suite 3400 Philadelphia, PA 19102 *Attorneys for Joseph B. Scarnati III and Jake Corman* **Holtzman Vogel Josefiak Torchinsky PLLC** By: */s/ Jason B. Torchinsky* Jason B. Torchinsky (Va. ID No. 47481) Jonathan P. Lienhard (Va. ID No. 41648) Shawn T. Sheehy (Va. ID No. 82630) Gineen Bresso (Md. ID No. 9912140076) Phillip M. Gordon (DC. ID No. 1531277) 45 North Hill Drive, Suite. 100 Warrenton, VA 20186 (540) 341-8808 (P) (540) 341-8809 (F) *Attorneys for Joseph B. Scarnati III, and Jake Corman pending approval of application for admission pro hac vice* **HOLLAND & KNIGHT LLP**

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CERTIFICATE OF COMPLIANCE

I hereby 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 requires filing confidential information and documents differently than non -confidential information and documents.

By: */s/ Richard Limburg*

Date: September 22, 2020

PROOF OF SERVICE

I, Richard Limburg, hereby certify that I am this day serving the foregoing Supplemental Brief upon all counsel of record via PACFi1e eService, which service satisfies the requirements of Pa.R.A.P. 12.

By: */s/ Richard Limburg*

Date: September 22, 2020

 Received 9/22/2020 9:39:56 AM Supreme Court Middle District

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 133 MM 2020

PENNSYLVANIA DEMOCRATIC PARTY, et al.,
Petitioners,

v.

KATHY BOOCKVAR, et al.,
Respondents.

[PROPOSED] ORDER GRANTING APPLICATION FOR STAY OF THIS COURT'S OPINION AND ORDER OF SEPTEMBER 17, 2020

AND NOW, this _____ day of September, 2020, upon consideration of Intervenor Respondents' Application for Stay of Court's Order of September 17, 2020, it is hereby ORDERED, ADJUDGED, and DECREED that the Application is GRANTED.

This Court's Order of September 17, 2020 as it pertains to the required extension of the statutory received-by deadline is stayed pending the Intervenor Respondents' appeal to the Supreme Court of the United States.

BY THE COURT:

_____
J.

APPENDIX E

Session of 2019
No. 2019-77

SB 421

AN ACT

Amending the act of June 3, 1937 (P.L.1333, No.320), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," in preliminary provisions, further providing for definitions; in the Secretary of the Commonwealth, providing for requirements for disapproval or decertification of voting apparatuses and for census outreach; in district election officers, further providing for compensation of district election officers; in election districts and polling places, further providing for restrictions on alteration; in nomination of candidates, further providing for petition may consist of several sheets and affidavit of circulator, for manner of signing nomination petitions and time of circulating and for nominations by political bodies; in ballots, further providing for form of official primary ballot, for form of official election ballot, for number of ballots to be printed and specimen ballots and for forms of ballots on file and open to public inspection and ballots and diagrams to be furnished to candidates and parties; in voting machines, further providing for requirements of voting machines and for form of ballot labels on voting machines; in electronic voting systems, further providing for requirements of electronic voting systems, for forms, for election day procedures and the process of voting and for post election procedures; providing for voting apparatus bonds; in preparation for and conduct of primaries and elections, further providing for manner of applying to vote and persons entitled to vote and voter's certificates and entries to be made in district register and numbered lists of voters and challenges, for method of marking ballots and depositing same in districts in which ballots are used, for instructions of voters and manner of voting in districts in which voting machines are used, for count and return of votes in districts in which ballots are used, for what ballots shall be counted, manner of counting and defective ballots and for canvass and return of votes in districts in which voting machines are used and providing for deadline for receipt of valid voter registration application, for appeals and for appeals to court of common pleas; in voting by qualified absentee electors, further providing for applications for official absentee ballots, for date of application for absentee ballot, for approval of application for absentee ballot, for absentee electors files and lists, for official absentee voters ballots, for delivering or mailing ballots, for voting by absentee electors, for canvassing of official absentee ballots and for public

records; providing for voting by qualified mail-in electors; in returns of primaries and elections, further providing for manner of computing irregular ballots; providing for dissemination of information and for jurisdiction; removing references to the Traffic Court of Philadelphia; and making related repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102(z.5)(3) of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, is amended and the section is amended by adding a subsection to read:

Section 102. Definitions.--The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:

* * *

(z.5) The words "proof of identification" shall mean:

* * *

(3) For a qualified absentee elector under section 1301 **or a qualified mail-in elector under section 1301-D**:

(i) in the case of an elector who has been issued a current and valid driver's license, the elector's driver's license number;

(ii) in the case of an elector who has not been issued a current and valid driver's license, the last four digits of the elector's Social Security number;

(iii) in the case of an elector who has a religious objection to being photographed, a copy of a document that satisfies paragraph (1); or

(iv) in the case of an elector who has not been issued a current and valid driver's license or Social Security number, a copy of a document that satisfies paragraph (2).

(z.6) The words "qualified mail-in elector" shall mean a qualified elector who is not a qualified absentee elector.

Section 2. The act is amended by adding sections to read:

Section 207. Requirements for Disapproval or Decertification of Voting Apparatuses.--(a) The Commonwealth may not disapprove or decertify a voting apparatus in 50% or more counties until the requirements of this section have been met.

(b) If the Commonwealth intends to make a disapproval or decertification under subsection (a), the Department of State must submit a written plan to the President pro tempore of the Senate, the Speaker of the House of Representatives, the Appropriations Committee of the Senate, the Appropriations Committee of the House of Representatives, the State Government Committee of the Senate and the State Government Committee of the House of Representatives at least 180 days prior to the effective date of the replacement voting apparatuses, containing all of the following information:

(1) The reason for the disapproval or decertification.

(2) The estimated cost to replace the disapproved or decertified voting apparatus and the plan for how funding will be obtained to cover the estimated cost.

(3) A plan for replacing the disapproved or decertified voting apparatus.

(4) The effective date of the replacement voting apparatus.

(c) As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Electronic voting system" shall have the meaning given to the term in section 1101-A.

"Voting apparatus" shall mean a kind or type of electronic voting system that received the approval of the Secretary of the Commonwealth under section 1105-A.

Section 208. Census Outreach.--The Department of State may utilize up to $4,000,000 of funds not expended, encumbered or committed from appropriations from the General Fund for a fiscal year ending before July 1, 2020, for an executive branch agency, which is subject to the policy, supervision and control of the Governor, for communication, administration and assistance within each county of the Commonwealth for the purpose of ensuring a complete and accurate census count of the Commonwealth in the 2020 Federal decennial census. The funds shall be transferred by the Secretary of the Budget to a restricted account as necessary to make payments under this section and, when transferred, are hereby appropriated to carry out the provisions of this section. The Secretary of the Budget may make a transfer of funds if the transfer will not result in a deficit in an appropriation from which funds are transferred. The Secretary of the Budget shall provide at least 10 days prior notification of a transfer to the chair and minority chair of the Appropriations Committee of the Senate and the chair and minority chair of the Appropriations Committee of the House of Representatives.

Section 3. Sections 412.2, 536(a) and (b), 630.1, 908, 909, 910, 951(d), 976, 981.1, 993(a), 998(a) and (b), 1002(a) and (b), 1003(a) and (e), 1004, 1007, 1008, 1107(b), 1110(h), 1107-A(3), 1109-A(a)(2) and (d), 1112-A(a)(2) and (4) and (b)(4) and 1113-A(d) of the act are amended to read:

Section 412.2. Compensation of District Election Officers.--(a) In all counties regardless of class, [the compensation of] judges of election, inspectors of election, clerks and machine operators shall be **paid compensation as** fixed by the county board of elections for each election [in accordance with the following:

Election Officers	Minimum Compensation	Maximum Compensation
Judges of election	$75	$200
Inspectors of election	$75	$195
Clerks and machine operators	$70	$195]

, which amount shall be at least $75 and not more than $200.

(a.1) An election officer shall receive additional compensation, as fixed by the county board of elections, for participating in election training.

(a.2) A judge of election shall receive additional compensation, as fixed by the county board of elections, for picking up and returning election materials.

(b) If a county board of elections authorizes that the duties of a clerk of elections or machine operator may be performed by two individuals who each perform [such] **the** duties for one-half of an election day, [such individuals shall each] **each individual shall** be compensated at one-half of the rate authorized for a single individual who performs the duties for the entire election day.

(c) The county board of elections may[, in its discretion,] establish different per diem rates within [the minima and maxima provided for in] **minimum and maximum rates provided for under** subsection (a) based on the number of votes cast for the following groups:

(1) 150 votes or fewer.

(2) 151 to 300 votes.

(3) 301 to 500 votes.
(4) 501 to 750 votes.
(5) 751 votes and over.

(d) For transmitting returns of elections and the ballot box or boxes, all judges of election shall be entitled to receive the additional sum of [twenty dollars ($20)] **$20.**

(e) The county board of elections may[, in its discretion,] require the minority inspector of election to accompany the judge of election in transmitting the returns of elections, in which case the minority inspector of election shall be entitled to receive the additional sum of [twenty dollars ($20)] **$20.**

(f) The [person] **individual** furnishing transportation to the judge of election and the minority inspector in transmitting returns and ballot boxes shall be entitled to a minimum of [thirty-five cents (35¢)] **35¢** per circular mile from the polling place to the county court house. The name of [such person] **the individual** shall appear on the voucher of the judge of election[, and only one person shall] **and only one individual may** receive mileage compensation.

(h) When a primary and special election or a special election and a general or municipal election take place on the same date, [they] **the elections** shall be construed as one election for the purpose of receiving compensation.

(i) Compensation and other payments received by election officials [pursuant to] **under** this section shall not be deemed income classified and categorized under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

Section 536. Restrictions on Alteration.--(a) Except as provided in subsection (b), there shall be no power to establish, abolish, divide, consolidate or alter in any manner an election district during the period [July 15, 2009] **from December 31, 2019,** through November 30, [2012] **2022,** or through resolution of all judicial appeals to the [2012] **2022** Congressional Redistricting Plan, whichever occurs later.

(b) During the period from [July 15, 2009] **December 31, 2019,** through December 31, [2010] **2020,** an election district may be divided or election districts may be combined if the following are met:

(1) In the case of the division of an election district, the boundary of each resulting district is composed entirely of clearly visible physical features conforming with the census block lines or portions of the original boundary of the election district which was divided.

(2) In the case of the combination of election districts, the boundary of each resulting district is composed entirely of portions of the original boundaries of the election districts which were combined.

* * *

Section 630.1. Affidavits of Candidates.--Each candidate for any State, county, city, borough, incorporated town, township, school district or poor district office, or for the office of United States Senator or Representative in Congress, selected as provided in section 630 of this act, shall file with the nomination certificate an affidavit stating--(a) his residence, with street and number, if any, and his post-office address; (b) his election district, giving city, borough, town or township; (c) the name of the office for which he consents to be a candidate; (d) that he is eligible for such office; (e) that he will not knowingly violate any provision of this act, or of any law regulating and limiting election expenses and prohibiting corrupt practices in connection therewith; (f)

unless he is a candidate for judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school board in a district where that office is elective or for the office of justice of the peace, that he is not a candidate for the same office of any party or political body other than the one designated in such certificate; (g) that he is aware of the provisions of section 1626 of this act requiring election and post-election reporting of campaign contributions and expenditures; and (h) that he is not a candidate for an office which he already holds, the term of which is not set to expire in the same year as the office subject to the affidavit.

Section 908. Manner of Signing Nomination Petitions; Time of Circulating.--Each signer of a nomination petition shall sign but one such petition for each office to be filled, and shall declare therein that he is a registered and enrolled member of the party designated in such petition: Provided, however, That where there are to be elected two or more persons to the same office, each signer may sign petitions for as many candidates for such office as, and no more than, he could vote for at the succeeding election. He shall also declare therein that he is a qualified elector of the county therein named, and in case the nomination is not to be made or candidates are not to be elected by the electors of the State at large, of the political district therein named, in which the nomination is to be made or the election is to be held. He shall add his [residence] **address where he is duly registered and enrolled**, giving city, borough or township, with street and number, if any, and shall legibly print his name and add the date of signing, expressed in words or numbers: Provided, however, That if the said political district named in the petition lies wholly within any city, borough or township, or is coextensive with same, it shall not be necessary for any signer of a nomination petition to state therein the city, borough or township of his residence. No nomination petition shall be circulated prior to the thirteenth Tuesday before the primary, and no signature shall be counted unless it bears a date affixed not earlier than the thirteenth Tuesday nor later than the tenth Tuesday prior to the primary.

Section 909. Petition May Consist of Several Sheets; [Affidavit] **Statement** of Circulator.--Said nomination petition may be on one or more sheets, and different sheets must be used for signers resident in different counties. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one petition, and each sheet shall be numbered consecutively beginning with number one, at the foot of each page. In cases of petitions for delegate or alternate delegate to National conventions, each sheet shall contain a notation indicating the presidential candidate to whom he is committed or the term "uncommitted." Each sheet shall have appended thereto the [affidavit] **statement** of the circulator of each sheet, setting forth, **subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)**--(a) that he or she is a qualified elector **of the Commonwealth, who is** duly registered and enrolled as a member of the [designated party of the State, or of the political district, as the case may be, referred to] **party designated** in said petition, unless said petition relates to the nomination of a candidate for a court of common pleas, for the Philadelphia Municipal Court [or for the Traffic Court of Philadelphia] or for justice of the peace, in which event the circulator need not be a duly registered and enrolled member

of the designated party; (b) his residence, giving city, borough or township, with street and number, if any; (c) that the signers thereto signed with full knowledge of the contents of the petition; (d) that their respective residences are correctly stated therein; (e) that they all reside in the county named in the [affidavit] **statement**; (f) that each signed on the date set opposite his name; and (g) that, to the best of [affiant's] **the circulator's** knowledge and belief, the signers are qualified electors and duly registered and enrolled members of the designated party of the State, or of the political district, as the case may be.

Section 910. Affidavits of Candidates.--Each candidate for any State, county, city, borough, incorporated town, township, ward, school district, poor district, election district, party office, party delegate or alternate, or for the office of United States Senator or Representative in Congress, shall file with his nomination petition his affidavit stating--(a) his residence, with street and number, if any, and his post-office address; (b) his election district, giving city, borough, town or township; (c) the name of the office for which he consents to be a candidate; (d) that he is eligible for such office; (e) that he will not knowingly violate any provision of this act, or of any law regulating and limiting nomination and election expenses and prohibiting corrupt practices in connection therewith; (f) unless he is a candidate for judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school director in a district where that office is elective or for the office of justice of the peace that he is not a candidate for nomination for the same office of any party other than the one designated in such petition; (g) if he is a candidate for a delegate, or alternate delegate, member of State committee, National committee or party officer, that he is a registered and enrolled member of the designated party; (h) if he is a candidate for delegate or alternate delegate the presidential candidate to whom he is committed or the term "uncommitted"; (i) that he is aware of the provisions of section 1626 of this act requiring pre-election and post-election reporting of campaign contributions and expenditures; and (j) that he is not a candidate for an office which he already holds, the term of which is not set to expire in the same year as the office subject to the affidavit. In cases of petitions for delegate and alternate delegate to National conventions, the candidate's affidavit shall state that his signature to the delegate's statement, as hereinafter set forth, if such statement is signed by said candidate, was affixed to the sheet or sheets of said petition prior to the circulation of same. In the case of a candidate for nomination as President of the United States, it shall not be necessary for such candidate to file the affidavit required in this section to be filed by candidates, but the post-office address of such candidate shall be stated in such nomination petition.

Section 951. Nominations by Political Bodies.--* * *

(d) Nomination papers may be on one or more sheets and different sheets must be used for signers resident in different counties. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one nomination paper, and each sheet shall be numbered consecutively, beginning with number one (1) at the foot of each page. Each sheet shall have appended thereto the [affidavit] **statement** of some person, not necessarily a signer, and not necessarily the same person on each sheet, setting

forth, **subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)**--[(1) that the affiant is a qualified elector of the State, or of the electoral district, as the case may be, referred to in the nomination paper;] (2) [his] **the person's** residence, giving city, borough or township with street and number, if any; (3) that the signers signed with full knowledge of the contents of the nomination paper; (4) that their respective residences are correctly stated therein; (5) that they all reside in the county named in the [affidavit] **statement**; (6) that each signed on the date set opposite his name; and (7) that, to the best of [affiant's] **the person's** knowledge and belief, the signers are qualified electors of the State, or of the electoral district, as the case may be.

* * *

Section 976. Examination of Nomination Petitions, Certificates and Papers; Return of Rejected Nomination Petitions, Certificates and Papers.--When any nomination petition, nomination certificate or nomination paper is presented in the office of the Secretary of the Commonwealth or of any county board of elections for filing within the period limited by this act, it shall be the duty of the said officer or board to examine the same. No nomination petition, nomination paper or nomination certificate shall be permitted to be filed if--(a) it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits; or (b) it contains material alterations made after signing without the consent of the signers; or (c) it does not contain a sufficient number of signatures as required by law; Provided, however, That the Secretary of the Commonwealth or the county board of elections, although not hereby required so to do, may question the genuineness of any signature or signatures appearing thereon, and if he or it shall thereupon find that any such signature or signatures are not genuine, such signature or signatures shall be disregarded in determining whether the nomination petition, nomination paper or nomination certificate contains a sufficient number of signatures as required by law; or (d) in the case of nomination petitions, if nomination petitions have been filed for printing the name of the same person for the same office, except the office of judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or the office of school director in districts where that office is elective or the office of justice of the peace upon the official ballot of more than one political party; or (e) in the case of nomination papers, if the candidate named therein has filed a nomination petition for any public office for the ensuing primary, or has been nominated for any such office by nomination papers previously filed; or (f) if the nomination petitions or papers are not accompanied by the filing fee or certified check required for said office; or (g) in the case of nomination papers, the appellation set forth therein is identical with or deceptively similar to the words used by any existing party or by any political body which has already filed nomination papers for the same office, or if the appellation set forth therein contains part of the name, or an abbreviation of the name or part of the name of an existing political party, or of a political body which has already filed nomination papers for the same office. The invalidity of any sheet of a nomination petition or nomination paper shall not affect the validity of such petition or paper if a sufficient petition or paper remains after eliminating such invalid sheet. The action of said officer

or board in refusing to receive and file any such nomination petition, certificate or paper, may be reviewed by the court upon an application to compel its reception as of the date when it was presented to the office of such officer or board: Provided, however, That said officer or board shall be entitled to a reasonable time in which to examine any petitions, certificates or papers, and to summon and interrogate the candidates named therein, or the persons presenting said petitions, certificates or papers, and his or their retention of same for the purpose of making such examination or interrogation shall not be construed as an acceptance or filing.

Upon completion of any examination, if any nomination petition, certificate or paper is found to be defective, it shall forthwith be rejected and returned to the candidate or one of the candidates named therein, together with a statement of the reasons for such rejection:

Provided further, That no nomination petition, nomination paper or nomination certificate shall be permitted to be filed, if the political party or political body referred to therein shall be composed of a group of electors whose purposes or aims, or one of whose purposes or aims, is the establishment, control, conduct, seizure or overthrow of the Government of the Commonwealth of Pennsylvania or the United States of America by the use of force, violence, military measure or threats of one or more of the foregoing. The authority to reject such nomination petition, paper or certificate for this reason shall, when filed with the Secretary of the Commonwealth, be vested in a committee composed of the Governor, the Attorney General and the Secretary of the Commonwealth, and when filed with any county board of elections shall be vested in such board. If in such case the committee or board, as the case may be, shall conclude that the acceptance of such nomination petition, paper or certificate should be refused, it shall within two days of the filing of such nomination petition, paper or certificate fix a place and a time five days in advance for hearing the matter, and notice thereof shall be given to all parties affected thereby. At the time and place so fixed the committee or board, as the case may be, shall hear testimony, but shall not be bound by technical rules of evidence. The testimony presented shall be stenographically recorded and made a part of the record of the committee or board. Within two days after such hearing the committee or board, if satisfied upon competent evidence that the said nomination petition, paper or certificate is not entitled to be accepted and filed, it shall announce its decision and immediately notify the parties affected thereby. Failure to announce decision within two days after such hearing shall be conclusive that such nomination petition, paper or certificate has been accepted and filed. The decision of said committee or board in refusing to accept and file such nomination petition, paper or certificate may be reviewed by the court upon an application to compel its reception as of the date when presented to the Secretary of the Commonwealth or such board. The application shall be made within two days of the time when such decision is announced. If the application is properly made, any judge of said court may fix a time and place for hearing the matter in dispute, of which notice shall be served with a copy of said application upon the Secretary of the Commonwealth or the county board of elections, as the case may be. At the time so fixed, the court, or any judge thereof assigned for the purpose, shall hear the case de novo. If after such hearing the said court shall find that the decision of the committee or the board was erroneous, it shall

issue its mandate to the committee or board to correct its decision and to accept and file the nomination paper, petition or certificate. From any decision of the court an appeal may be taken within two days after the entry thereof. It shall be the duty of the said court to fix the hearing and to announce its decision within such period of time as will permit the Secretary of the Commonwealth or the county board of elections to permit the names of the candidates affected by the court's decision to be printed on the ballot, if the court should so determine.

Section 981.1. Affidavits of Candidates.--Each candidate for any State, county, city, borough, incorporated town, township, ward, school district, poor district or election district office, or for the office of United States Senator or Representative in Congress, selected as provided in sections 979 and 980 of this act, shall file with the substituted nomination certificate an affidavit stating--(a) his residence, with street and number, if any, and his post-office address; (b) his election district, giving city, borough, town or township; (c) the name of the office for which he consents to be a candidate; (d) that he is eligible for such office; (e) that he will not knowingly violate any provision of this act, or of any law regulating and limiting election expenses and prohibiting corrupt practices in connection therewith; (f) unless he is a candidate for judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school board in a district where that office is elective or for the office of justice of the peace, that he is not a candidate for the same office of any party or political body other than the one designated in such certificate; (g) that he is aware of the provisions of section 1626 of this act requiring election and post-election reporting of campaign contributions and expenditures; and (h) that he is not a candidate for an office which he already holds, the term of which is not set to expire in the same year as the office subject to the affidavit.

Section 993. Filling of Certain Vacancies in Public Office by Means of Nomination Certificates and Nomination Papers.--(a) In all cases where a vacancy shall occur for any cause in an elective public office, including that of judge of a court of record, at a time when such vacancy is required by the provisions of the Constitution or the laws of this Commonwealth to be filled at the ensuing election but at a time when nominations for such office cannot be made under any other provision of this act, nominations to fill such vacancies shall be made by political parties in accordance with party rules relating to the filling of vacancies by means of nomination certificates in the form prescribed in section nine hundred ninety-four of this act, and by political bodies by means of nomination papers in accordance with the provisions of sections nine hundred fifty-one, nine hundred fifty-two and nine hundred fifty-four of this act. No such nomination certificate shall nominate any person who has already been nominated by any other political party or by any political body for the same office unless such person is a candidate for the office of judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school director in districts where that office is elective or for the office of justice of the peace. No such nomination papers shall nominate any person who has already been nominated by any political party or by any other political body for any office to be filled at the ensuing November election, unless such

person is a candidate for the office of judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school director in districts where that office is elective or for the office of justice of the peace.

* * *

Section 998. Substituted Nominations to Fill Certain Vacancies for a November Election.--(a) Any vacancy happening or existing in any party nomination made in accordance with the provisions of section nine hundred ninety-three of this act for a November election by reason of the death or withdrawal of any candidate may be filled by a substituted nomination made by such committee as is authorized by the rules of the party to make nominations in the event of vacancies on the party ticket, in the form prescribed by section nine hundred ninety-four of this act. But no substituted nomination certificate shall nominate any person who has already been nominated by any other political party or by any political body for the same office, unless such person is a candidate for the office of judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school director in districts where that office is elective or for the office of justice of the peace.

(b) In case of the death or withdrawal of any candidate nominated by a political body for an election, the committee named in the original nomination papers may nominate a substitute in his place by filing a substituted nomination certificate in the form and manner prescribed by section nine hundred eighty of this act. In the case of a vacancy caused by the death of any candidate, said nomination certificate shall be accompanied by a death certificate properly certified. No substituted nomination certificate shall nominate any person who has already been nominated by any political party or by any other political body for any office to be filled at the ensuing November election, unless such person is a candidate for the office of judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school director in districts where that office is elective or for the office of justice of the peace.

* * *

Section 1002. Form of Official Primary Ballot.--(a) At primaries separate official ballots shall be prepared for each party which shall be in substantially the following form:

Official..... Primary Ballot.

(Name of Party)

.....District,.....Ward, City of....., County of....., State of Pennsylvania

.....Primary election held on the.....day of....., 19...

Make a cross (X) or check (ˆš) in the square to the right of each candidate for whom you wish to vote. If you desire to vote for a person whose name is not on the ballot, write[, print or paste] **or stamp** his name in the blank space provided for that purpose. Mark ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink in fountain pen or ball point pen. Use the same pencil or pen for all markings you place on the ballot.

President of the United States.

(Vote for one)

John Doe
Richard Roe
John Stiles

United States Senator.

(Vote for one)

John Doe
Richard Roe
John Stiles

Governor.
(Vote for one)

John Doe
Richard Roe
John Stiles

Representative in Congress.....District.
(Vote for one)

John Doe
Richard Roe
John Stiles

Delegates at Large to National Convention.
(Vote for.....)

John Doe
(Committed to Jeremiah Smith)
John Stiles
(Uncommitted)

Delegate to National Convention.....District.
(Vote for.....)

John Doe
(Committed to Jeremiah Smith)
John Stiles
(Uncommitted)

Senator in the General Assembly.....District.
(Vote for one)

John Doe
Richard Roe
John Stiles

Member of State Committee.
(Vote for one)

John Doe
Richard Roe
John Stiles

Party Committeemen.
(Vote for.....)

John Doe
Richard Roe
John Stiles

(b) On the back of each ballot shall be printed in prominent type the words "OFFICIAL PRIMARY BALLOT OF .....PARTY FOR" followed by the designation of the election district for which it is prepared, the date of the primary and the facsimile signatures of the members of the county board of elections. The names of candidates shall in all cases be arranged under the title of the office for which they are candidates, and be printed thereunder in the order determined by the casting of lots as provided by this act. Under the title of such offices where more than one candidate is to be voted for, shall be printed "Vote for not more than ....." (the blank space to indicate the number of candidates to be voted for the particular office.) At the right of the name of each candidate there shall be a square of sufficient size for the convenient insertion of a cross (x) or check (ˆš) mark. There shall be left at the end of the list of candidates for each office (or under the title of the office itself in case there be no candidates who have filed nomination petitions therefor) as many blank spaces as there are persons to be voted for, for such office, in which space the elector may insert, **by writing or stamping**, the name of any person whose name is not printed on the ballot as a

candidate for such office. Opposite or under the name of each candidate, except candidates for the office of President of the United States and candidates for delegate or alternate delegate to a National Party Convention, who is to be voted for by the electors of more than one county, shall be printed the name of the county in which such candidate resides; and opposite or under the name of each candidate except candidates for delegate or alternate delegate to a National Party Convention who is to be voted for by the electors of an entire county or any congressional, senatorial or representative district within the county, shall be printed the name of the city, borough, township or ward, as the case may be, in which such candidate resides.

* * *

Section 1003. Form of Official Election Ballot.--

(a) The official ballots for general, municipal and special elections shall be in substantially the following form:

OFFICIAL BALLOT

.....District, ...Ward, City of ....., County of ....., State of Pennsylvania..... Election held on the ..... day of ....., [19]**20**.....

A cross (X) or check (ˆš) mark in the square opposite the name of any candidate indicates a vote for that candidate.

[To vote a straight party ticket, mark a cross (X) or check (ˆš) in the square, in the Party Column, opposite the name of the party of your choice. To vote for an individual candidate of another party after making a mark in the party square, mark a cross (X) or check (ˆš) opposite his name. For an office where more than one candidate is to be voted for, the voter, after marking in the party square, may divide his vote by marking a cross (X) or check (ˆš) to the right of each candidate for whom he or she desires to vote. For such office votes shall not be counted for candidates not individually marked.]

To vote for a person whose name is not on the ballot, write[, print or paste] **or stamp** his name in the blank space provided for that purpose. A cross (X) or check (ˆš) mark in the square opposite the names of the candidates of any party for President and Vice-President of the United States indicates a vote for all the candidates of that party for presidential elector. To vote for individual candidates for presidential elector, write[, print or paste] **or stamp** their names in the blank spaces provided for that purpose under the title "Presidential Electors." Mark ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen; use the same pencil or pen for all markings you place on the ballot.

Before leaving the voting compartment, fold this ballot, without displaying the markings thereon, in the same way it was folded when received, then leave the compartment and exhibit the ballot to one of the election officers who shall ascertain by an inspection of the number appearing upon the right hand corner of the back of the ballot whether the ballot so exhibited to him is the same ballot which the elector received before entering the voting compartment. If it is the same, the election officer shall direct the elector, without unfolding the ballot, to remove the perforated corner containing the number, and the elector shall immediately deposit the ballot in the ballot box. Any ballot deposited in a ballot box at any primary or election without having the said number torn off shall be void and shall not be counted.

[Party Column Presidential Electors

To Vote a Straight Party Ticket Mark a Cross (X) or Check (ˆš) in this Column.	(Vote for the candidates of one party for President and Vice-President, or insert the names of candidates.)
Democratic	For John Stiles and Richard Doe, Democratic.....
Republican	For John Doe and Richard Roe, Republican.....
Socialist	For John Smith and William Jones, Socialist.....
Citizens]	

Presidential Electors.

(Vote for the candidates of one party for President and Vice President, or insert the names of candidates)

For
John Stiles and Richard Doe..... Democratic
For
John Doe and Richard Roe..... Republican
For
John Smith and William Jones..... Socialist
For
..... Citizens

United States Senator.
(Vote for one)

RichardRoe.....Democratic
JohnDoe.....Republican
RichardStiles.....Socialist

Governor.
(Vote for one)

RichardRoe.....Democratic
JohnDoe.....Republican
RichardStiles.....Socialist

Representatives in Congress,
..... District.
(Vote for one)

RichardRoe.....Democratic
JohnDoe.....Republican
RichardStiles.....Socialist

Senator in the General Assembly,
..... District.
(Vote for one)

JohnDoe.....Democratic
RichardRoe.....Republican

* * *

(e) There shall be left at the end of the group of candidates for President and Vice-President of the United States under the title "Presidential Electors," as many blank spaces as there are presidential electors to be elected, in which spaces the elector may insert, **by writing or stamping**, the names of any individual candidates for presidential electors for whom he desires to vote. There shall also be left at the end of each group of candidates for each other office (or under the title of the office itself in case no candidates have been nominated

therefor), as many blank spaces as there are persons to be voted for for such office, in which space the elector may insert the name of any person or persons whose name is not printed on the ballot as a candidate for such office.

* * *

Section 1004. Form of Ballots; Printing Ballots; Stubs; Numbers.--From the lists furnished by the Secretary of the Commonwealth under the provisions of sections 915 and 984, and from petitions and papers filed in their office, the county election board shall print the official primary and election ballots in accordance with the provisions of this act: Provided, however, That in no event, shall the name of any person consenting to be a candidate for nomination for any one office, except the office of judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or the office of school director in districts where that office is elective or the office of justice of the peace be printed as a candidate for such office upon the official primary ballot of more than one party. All ballots for use in the same election district at any primary or election shall be alike. They shall be at least six inches long and four inches wide, and shall have a margin extending beyond any printing thereon. They shall be printed with the same kind of type (which shall not be smaller than the size known as "brevier" or "eight point body") upon white paper of uniform quality, without any impression or mark to distinguish one from another, and with sufficient thickness to prevent the printed matter from showing through. Each ballot shall be attached to a stub, and all the ballots for the same election district shall be bound together in books of fifty, in such manner that each ballot may be detached from its stub and removed separately. The ballots for each party to be used at a primary shall be bound separately. The stubs of the ballots shall be consecutively numbered, and in the case of primary ballots, the number shall be preceded by an initial or abbreviation designating the party name. The number and initial or abbreviation which appears upon the stub shall also be printed in the upper right hand corner of the back of the ballot, separated from the remainder of the ballot by a diagonal perforated line so prepared that the upper right hand corner of the back of the ballot containing the number may be detached from the ballot before it is deposited in the ballot box and beside that corner shall also be printed, "Remove numbered stub immediately before depositing your ballot in ballot box."

Section 1007. Number of Ballots to Be Printed; Specimen Ballots.--**(a)** The county board of each county shall provide for each election district [in which a primary is to be held, one book of fifty official ballots of each party for every forty-five registered and enrolled electors of such party and fraction thereof, appearing upon the district register, and shall provide for each election district in which an election is to be held one book of fifty official ballots for every forty-five registered electors and fraction thereof appearing upon the district register. They] **a supply of official election ballots for:**

(1) the general primary election held in even-numbered years in which candidates for the office of President of the United States are not nominated in an amount of at least 10% greater than the highest number of ballots cast in the election district in any of the previous three general primary elections at which candidates for the office of President of the United States were not nominated;

(2) the general primary election held in even-numbered years in which candidates for the office of President of the United States are nominated in an amount of at least 15% greater than the highest number of ballots cast in the election district in any of the previous three general primary elections at which candidates for the office of President of the United States were nominated;

(3) the municipal primary election held in odd-numbered years in an amount of at least 10% greater than the highest number of ballots cast in any of the previous three municipal primary elections in the election district;

(4) the general election held in even-numbered years in which candidates for the office of President of the United States are not elected in an amount of at least 10% greater than the highest number of ballots cast in the election district in any of the previous three general elections at which candidates for the office of President of the United States were not elected;

(5) the general election held in even-numbered years in which candidates for the office of President of the United States are elected in an amount of at least 15% greater than the highest number of ballots cast in the election districts in any of the previous three general elections at which candidates for the office of President of the United States were elected; and

(6) the municipal election held in odd-numbered years in an amount of at least 10% greater than the highest number of ballots cast in any of the previous three municipal elections in the election district.

(b) The county board of each county shall also, in addition to the number of ballots required to be printed for general distribution, maintain a sufficient supply of such ballots at the office of the county board for the use of absentee electors **or mail-in electors** and for the use of any district, the ballots for which may be lost, destroyed or stolen. They shall also cause to be printed on tinted paper, and without the facsimile endorsements, permanent binding or stubs, copies of the form of ballots provided for each polling place at each primary or election therein, which shall be called specimen ballots, and which shall be of the same size and form as the official ballots, and at each election they shall deliver to the election officers, in addition to the official ballots to be used at such election, a suitable supply of specimen ballots for the use of the electors. At each primary, a suitable supply of specimen ballots of each party shall be furnished.

Section 1008. Forms of Ballots on File and Open to Public Inspection; Ballots and Diagrams to Be Furnished to Candidates and Parties.--

(a) The county board of elections shall have on file in its office[, on and] after the Thursday [preceding] **before** each primary and election, open to public inspection, forms of the ballots and ballot labels[, with the names and such statements and notations as may be required by the provisions of this act, printed thereon, which shall be used in each election district within the county]. **The forms of the ballots and ballot labels shall be published on the county board's publicly accessible Internet website.**

(b) On the Thursday [preceding] **before** each primary, the county board shall, upon request made at their office, [there] deliver to each candidate whose name is printed on the ballot of any party, or to his authorized representative, without charge, three [specimen] **sample** ballots of such party for the

entire district [in which such candidate is to be voted for, and the candidate may, at his own expense, have printed on different colored paper as many copies as he requires for conducting his campaign].

(c) On the Thursday [preceding] **before** each November election, the county board shall, upon request made at their office, [there] deliver to the county chairman or other authorized representative of each political party and political body in the county, without charge, two [specimen] **sample** ballots [or diagrams] for each election district within the county in which candidates of such party or political body are [to be voted for, and such political party or political body may, at its own expense, have printed on different colored paper as many copies as it requires for conducting its campaign.] **running for office.**

Section 1107. Requirements of Voting Machines.--No voting machine shall, upon any examination or reexamination, be approved by the Secretary of the Commonwealth, or by any examiner appointed by him, unless it shall, at the time, satisfy the following requirements:

* * *

[(b) It shall permit each voter, at other than primary elections, to vote a straight political party ticket in one operation, and, in one operation, to vote for all the candidates of one political party for presidential electors, and, in one operation, to vote for all the candidates of one political party for every office to be voted for, except those offices as to which he votes for individual candidates.]

* * *

Section 1110. Form of Ballot Labels on Voting Machines.--

* * *

(h) The names of all candidates of a political party shall appear in the same row or column, and except in cases of names of presidential commitments of nominees for delegate or alternate delegate to political party National conventions no other names shall appear in the same row or column[, to the left or top of which shall be a straight party lever, by means of which an elector may, in one operation, vote for all the candidates of that political party for every office to be voted for]. Where the names of the delegate or alternate delegate and the presidential candidate he is supporting shall both appear, the print size of the name of the delegate or alternate delegate shall be equal to the size of the name of the particular presidential candidate to whom he is committed, or in the case where he is uncommitted, the word "uncommitted" shall appear in the same size print. The names of such candidates shall be arranged under or opposite the title of the office for which they are candidates, and shall appear in the order of the votes obtained by the candidate for Governor of the party nominated at the last gubernatorial election, beginning with the party obtaining the highest number of votes: Provided, however, That in the case of parties or bodies not represented on the ballot at the last gubernatorial election, the names of the candidates of such parties shall be arranged alphabetically, according to the party or body name. The names of all candidates of a political body shall appear in the same row or column, and, if the number of parties and bodies permits, each political body shall be entitled exclusively to a separate row or column[, with a straight party lever]. If, however, the number of political parties and political bodies renders it impossible or impracticable to so arrange the political bodies, in such case said bodies shall not be entitled to a separate row or

column [and a straight party lever], but shall be listed by political appellations on the first left hand or top row, with the designating letter and number of the ballot label where their candidates may be found, together with the political appellations of other political bodies, whose candidates may be interspersed on the same row or column. Subject to the aforesaid limitations, the form and arrangement of ballot labels, as to the placing thereon of political bodies, shall be within the discretion of the county board.

* * *

Section 1107-A. Requirements of Electronic Voting Systems.--No electronic voting system shall, upon any examination or reexamination, be approved by the Secretary of the Commonwealth, or by any examiner appointed by him, unless it shall be established that such system, at the time of such examination or reexamination:

* * *

[(3) Permits each voter, at other than primary elections, to vote a straight political party ticket by one mark or act and, by one mark or act, to vote for all the candidates of one political party for presidential electors and, by one mark or act, to vote for all the candidates of one political party for every office to be voted for, and every such mark or act shall be equivalent to and shall be counted as a vote for every candidate of the political party so marked including its candidates for presidential electors, except with respect to those offices as to which the voter has registered a vote for individual candidates of the same or another political party or political body, in which case the automatic tabulating equipment shall credit the vote for that office only for the candidate individually so selected, notwithstanding the fact that the voter may not have individually voted for the full number of candidates for that office for which he was entitled to vote.]

* * *

Section 1109-A. Forms.--(a) * * *

(2) The pages placed on the voting device shall be of sufficient number to include, following the listing of particular candidates, the names of candidates for any nonpartisan offices and any measures for which a voter may be qualified to vote on a given election day, provided further that for municipal, general or special elections, the first ballot page shall list in the order that such political parties are entitled to priority on the ballot, the names of such political parties [with designating arrows so as to indicate the voting square or position on the ballot card where the voter may insert by one mark or punch the straight party ticket of his choice].

* * *

[(d) In partisan elections the ballot cards shall include a voting square or position whereby the voter may by one punch or mark record a straight party ticket vote for all the candidates of one party or may vote a split ticket for the candidates of his choice.]

* * *

Section 1112-A. Election Day Procedures and the Process of Voting.--(a) In an election district which uses an electronic voting system in which votes are registered electronically, the following procedures will be applicable for the conduct of the election at the election district:

* * *

(2) At [primary] **all** elections, the voter shall be able to vote for each candidate individually by the means provided. [At all other elections, he may vote for each candidate individually, or he may vote a straight political party ticket in one operation by operating the straight political party mechanism of the political party or political body of his choice. He may also, after having operated the straight party mechanism and before recording his vote, cancel the vote for any candidate of such political party or political body and may thereupon vote for a candidate of another party, or political body for the same office.] The voter may also vote individually for or against a question submitted to the vote of the electors.

* * *

(4) At any general election at which presidential electors are to be chosen, each elector shall be permitted to vote by one operation for all the presidential electors of a political party or political body. For each party or body nominating presidential electors, a ballot label shall be provided containing only the words "Presidential Electors," preceded by the names of the party or body and followed by the names of the candidates thereof for the Office of President and Vice-President, and the corresponding counter or registering device shall register votes cast for said electors when thus voted for collectively. If any elector desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or body, he may write or deposit a paper ballot prepared by himself in the receptacle provided in or on the voting device for that purpose, or he may list their names on the write-in ballot or envelope provided for that purpose. The voting device shall be so constructed that it will not be possible for any one voter to vote a straight party ticket for presidential electors and at the same time to deposit a ballot for presidential electors in a receptacle as [hereinabove] provided **in this section.** When the votes for presidential electors are counted, the votes appearing upon the counter or registering device corresponding to the ballot label containing the names of the candidates for President and Vice-President of any party or body shall be counted as votes for each of the candidates for presidential elector of such party or body, and thereupon all candidates for presidential elector shall be credited, in addition, with the votes cast for them upon the ballots deposited in the machine, as [hereinabove] provided **in this section.**

* * *

(b) In an election district which uses an electronic voting system which utilizes paper ballots or ballot cards to register the votes, the following procedures will be applicable for the conduct of the election at the election district:

* * *

(4) [If the voter desires to vote for every candidate of a political party or political body, except its candidates for offices as to which he votes for individual candidates in the manner hereinafter provided, he may make a cross (X) or check (ˆš) or punch or mark sense mark in the square opposite the name of the party or political body so marked, including its candidates for presidential electors, except for those offices as to which he has indicated a choice for individual candidates of the same or another party or political body, by making a cross (X) or check (ˆš) or punch or mark sense mark opposite their names in the manner hereinabove provided, as to which

offices his ballot shall be counted only for the candidates which he has thus individually marked, notwithstanding the fact that he made a mark in the party column, and even though in the case of an office for which more than one candidate is to be voted for, he has not individually marked for such office the full number of candidates for which he is entitled to vote.] If he desires to vote for the entire group of presidential electors nominated by any party or political body, he may make a cross (X) or check (ˆš) or punch or mark sense mark in the appropriate space opposite the names of the candidates for President and Vice-President of such party or body. If he desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or political bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or political body, or wholly of names of persons not in nomination by any party or political body, he shall insert, **by writing or stamping,** the names of the candidates for presidential electors for whom he desires to vote in the blank spaces provided therefor on the write-in ballot under the title of the office "Presidential Electors". In case of a question submitted to the vote of the electors, he may make a cross (X) or check (ˆš) or punch or mark sense mark in the appropriate square opposite the answer which he desires to give.

* * *

Section 1113-A. Post Election Procedures.--* * *

(d) In returning any votes cast for any person whose name is not printed on the official ballot, the election officers shall record any such names exactly as they were written[, stamped or applied to the ballot by sticker] **or stamped.**

* * *

Section 3.1. The act is amended by adding an article to read:

ARTICLE XI-B
VOTING APPARATUS BONDS

Section 1101-B. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account." The County Voting Apparatus Reimbursement Account established under section 1106-B.

"Authority." The Pennsylvania Economic Development Financing Authority.

"Bond." Any type of revenue obligation, including a bond or series of bonds, note, certificate or other instrument, issued by the authority for the benefit of the department under this article.

"Bond administrative expenses." Expenses incurred to administer bonds as provided under the Financing Law, or as otherwise necessary to ensure compliance with applicable Federal or State law.

"Bond obligations." The principal of a bond and any premium and interest payable on a bond, together with any amount owed under a related credit agreement or a related resolution of the authority authorizing a bond.

"Credit agreement." A loan agreement, a revolving credit agreement, an agreement establishing a line of credit, a letter of credit or another agreement that enhances the marketability, security or creditworthiness of a bond.

"Department." The Department of State of the Commonwealth.

"Election security equipment." Information technology such as intrusion detection sensors and other infrastructure deployed

to enhance the security of voting apparatus and election systems by detecting and reporting hacking attempts and other election security breaches.

"Electronic voting system." As defined in section 1101-A.

"Financing Law." The act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

"Voting apparatus." A kind or type of electronic voting system that received the approval of the Secretary of the Commonwealth under section 1105-A.

Section 1102-B. Bond issuance.

(a) Declaration of policy.--The General Assembly finds and declares that funding the replacement of voting apparatuses, including interest, through the authority, is in the best interest of this Commonwealth.

(b) Authority.--Notwithstanding any other law, the following shall apply:

(1) The department may be a project applicant under the Financing Law and may apply to the authority for the funding of the replacement of voting apparatuses.

(2) The authority may issue bonds under the Financing Law, consistent with this article, to finance projects to fund the replacement of county voting apparatuses or to reimburse counties for their cost to purchase or enter into capital leases for voting apparatuses.

(3) Participation of an industrial and commercial development authority shall not be required to finance the replacement of voting apparatuses.

(c) Debt or liability.--

(1) Bonds issued under this article shall not be a debt or liability of the Commonwealth and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth.

(2) Bond obligations and bond administrative expenses shall be payable solely from revenues or money pledged or available for repayment as authorized under this article. This paragraph shall include the proceeds of any issuance of bonds.

(3) Each bond shall contain on its face a statement that:

(i) the authority is obligated to pay the principal or interest on the bonds only from the revenues or money pledged or available for repayment as authorized under this article;

(ii) neither the Commonwealth nor a county is obligated to pay the principal or interest; and

(iii) the full faith and credit of the Commonwealth or any county is not pledged to the payment of the principal of or the interest on the bonds.

Section 1103-B. Criteria for bond issuance.

(a) Determination.--If the department decertifies one or more voting apparatuses that are in use in any county of this Commonwealth, the department shall apply to the authority to issue bonds for reimbursements to each county for the cost of procuring new voting apparatuses.

(a.1) Issuance.--Bonds may be issued in one or more series, and each series may finance reimbursement grants to one or more counties.

(b) Terms.--

(1) The department, with the approval of the Office of the Budget, shall specify in its application to the authority:

(i) the maximum principal amount of the bonds for each bond issue; and

(ii) the maximum term of the bonds consistent with applicable law.

(2) The total principal amount for all bonds issued under this article may not exceed $90,000,000.

(3) The term of the bonds issued under this article may not exceed 10 years from the respective date of original issuance.

(c) Expiration.--For the purpose of this article, authorization to issue bonds, not including refunding bonds, shall expire December 31, 2020.

Section 1104-B. Issuance of bonds, security and sources of payments.

(a) Issuance.--The authority shall consider issuance of bonds upon application by the department. Bonds issued under this article shall be subject to the provisions of the Financing Law, unless otherwise specified under this article.

(b) Service agreement authorized.--The authority and the department may enter into an agreement or service agreement to effectuate this article, including an agreement to secure bonds issued for the purposes under section 1102-B(b), pursuant to which the department shall agree to pay the bond obligations and bond administrative expenses to the authority in each fiscal year that the bonds or refunding bonds are outstanding in amounts sufficient to timely pay in full the bond obligations, bond administrative expenses and any other financing costs due on the bonds issued for the purposes under section 1102-B(b). The department's payment of the bond obligations, bond administrative expenses and other financing costs due on the bonds as service charges under an agreement or service agreement shall be subject to and dependent upon the appropriation of funds by the General Assembly to the department for payment of the service charges. The service agreement may be amended or supplemented by the authority and the department in connection with the issuance of any series of bonds or refunding bonds authorized under this section.

(c) Security.--Bond obligations and bond administrative expenses may be secured, for the benefit of the holders of the bonds and the obligees under credit agreements or the agreements under subsection (b), by pledge of a security interest in and first lien on the following:

(1) Money relating to the bonds held on deposit in any other fund or account under an instrument or agreement pertaining to the bonds, including bond reserves and interest income on the money.

(2) The security provided under this subsection shall not apply to money in any fund relating to arbitrage rebate obligations.

Section 1105-B. Sale of bonds.

The authority shall offer the bonds for sale by means of a public, competitive sale or by means of a negotiated sale based on the authority's determination of which method will produce the most benefit to counties and the Commonwealth.

Section 1106-B. Deposit of bond proceeds.

The net proceeds of bonds, other than refunding bonds, exclusive of costs of issuance, reserves and any other financing charges, shall be transferred by the authority to the State Treasurer for deposit into a restricted account established in the State Treasury and held solely for the purposes under section 1102-B(b) to be known as the County Voting Apparatus Reimbursement Account. The department shall pay out the bond

proceeds to the counties from the account in accordance with this article.

Section 1107-B. Payment of bond-related obligations.

For each fiscal year in which bond obligations and bond administrative expenses will be due, the authority shall notify the department of the amount of bond obligations and the estimated amount of bond administrative expenses in sufficient time, as determined by the department, to permit the department to request an appropriation sufficient to pay bond obligations and bond administrative expenses that will be due and payable in the following fiscal year. The authority's calculation of the amount of bond obligations and bond administrative expenses that will be due shall be subject to verification by the department.

Section 1108-B. Commonwealth not to impair bond-related obligations.

The Commonwealth pledges that it shall not do any of the following:

(1) Limit or alter the rights and responsibilities of the authority or the department under this article, including the responsibility to:

(i) pay bond obligations and bond administrative expenses; and

(ii) comply with any other instrument or agreement pertaining to bonds.

(2) Alter or limit the service agreement under section 1104-B(b).

(3) Impair the rights and remedies of the holders of bonds, until each bond issued at any time and the interest on the bond are fully met and discharged.

Section 1109-B. (Reserved).

Section 1110-B. Personal liability.

The members, directors, officers and employees of the department and the authority shall not be personally liable as a result of good faith exercise of the rights and responsibilities granted under this article.

Section 1111-B. Annual report.

No later than March 1 of the year following the first full year in which bonds have been issued under this article and for each year thereafter in which bond obligations existed in the prior year, the department shall submit an annual report to the chair and minority chair of the Appropriations Committee of the Senate, the chair and minority chair of the Appropriations Committee of the House of Representatives, the chair and minority chair of the State Government Committee of the Senate and the chair and minority chair of the State Government Committee of the House of Representatives providing all data available on bonds issued or existing in the prior year. The report shall include existing and anticipated bond principal, interest and administrative costs, revenue, repayments, refinancing, overall benefits to counties and any other relevant data, facts and statistics that the department believes necessary in the content of the report.

Section 1112-B. Reimbursement of county voting apparatus expenses.

(a) Application.--A county may apply to the department to receive funding to replace the county's voting apparatuses or to reimburse the county's cost to purchase or lease by capital lease voting apparatuses. Each county shall submit an application for funding on a form containing information and documentation prescribed by the department no later than July 1, 2020.

(b) Documentation for prior purchase or lease.--If a county seeks reimbursement of the county's cost to purchase or lease by capital lease a voting apparatus that the county purchased or leased before the date that the county submits its application to the department, the county's application shall include documentation prescribed by the department to substantiate the county's cost to purchase or lease the voting apparatus, including copies of fully executed voting apparatus contracts, invoices and proof of payment to the vendor of the voting apparatus.

(c) Documentation for subsequent purchase or lease.--If a county seeks funding to purchase or lease by capital lease a voting apparatus that the county will purchase or lease after the date that the county submits its application to the department, the county's application shall include documentation prescribed by the department to substantiate the county's estimate to purchase or lease the voting apparatus, including copies of fully executed voting apparatus contracts, bids or price quotes submitted to the county by voting apparatus vendors and other price estimates or cost proposals.

(d) Review.--The department shall review each county application on a rolling basis and shall either approve or deny each county's application within 90 days of the date the application is received by the department. A county may supplement or amend submitted applications during the 90-day review period in consultation with the department.

(e) Approval for prior purchase or lease.--If the department approves a county's application submitted under subsection (b), the department and the county shall enter into a written grant agreement through which the department shall reimburse the county at the amount determined under subsection (g).

(f) Approval for subsequent purchase or lease.--If the department approves a county's application under subsection (c), the department and the county shall enter into a written grant agreement through which the department will provide funding to reimburse the county's cost to purchase or lease a voting apparatus at the amount determined under subsection (g). The county shall hold the grant money in an account of the county that is separate from each other county account. The county shall deliver quarterly reports to the department of the voting apparatus costs paid from the grant money in a form prescribed by the department. The county shall return any unspent grant money to the department within 30 days of the expiration of the grant agreement.

(g) Payments.--

(1) A county shall only receive amounts under this section to the extent that the department has bond proceeds available in the account from which to make payments.

(2) Except as provided under paragraph (3), a county which submitted an application approved under subsection (e) or (f) shall receive 60% of the total amount submitted under subsection (b) or (c) which may be reimbursed or paid.

(3) If the total amount submitted by all counties under paragraph (2) exceeds the total amount available for reimbursement or payment, a county shall receive a portion of the amount available equal to the total amount submitted by the county under subsection (b) or (c) which may be reimbursed or paid, divided by the total amount submitted by all counties under subsection (b) or (c) which may be reimbursed or paid.

(4) If any bond proceeds remain after the department has issued all reimbursements in accordance with paragraphs

(1), (2) and (3), the department may utilize the remaining balance for grants for counties for the purchase and distribution to the counties of election security equipment. The department shall provide notice to each county no later than 30 days prior to receiving applications for grants under this paragraph.

(h) Certification.--A county shall only receive the reimbursement or funding under this article after making a certification to the department, the President pro tempore of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, the chair and minority chair of the Appropriations Committee of the Senate, the chair and minority chair of the Appropriations Committee of the House of Representatives, the chair and minority chair of the State Government Committee of the Senate and the chair and minority chair of the State Government Committee of the House of Representatives that the county has completed a program under 25 Pa.C.S. § 1901(b)(1) (relating to removal of electors) and mailed notices required under 25 Pa.C.S. § 1901(b)(3) within the prior 12 months. The certification shall include information on whether the county has undertaken a canvass under 25 Pa.C.S. § 1901(b)(2).

(i) Department application.--The department shall apply to the authority for funding under section 1102-B only if the department has approved county applications under this article which total at least $50,000,000.

Section 3.2. Sections 1210(a.4)(1) and (5)(ii), 1215(b) and (c), 1216(d) and (f), 1222, 1223(a) and 1227(d) of the act are amended to read:

Section 1210. Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges.--* * *

(a.4) (1) At all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot. Individuals who appear to vote shall be required to produce proof of identification pursuant to subsection (a) and if unable to do so shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot. **An elector who appears to vote on election day having requested an absentee ballot or mail-in ballot and who is not shown on the district register as having voted an absentee ballot or mail-in ballot shall be permitted to cast a provisional ballot.**

* * *

(5) * * *

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

(A) either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;

(B) the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual;

(C) a provisional ballot envelope does not contain a secrecy envelope;

(D) in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board

of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; [or]

(E) in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot[.]; **or**

(F) the elector's absentee ballot or mail-in ballot is timely received by a county board of elections.

* * *

Section 1215. Method of Marking Ballots and Depositing Same in Districts in Which Ballots are Used.--* * *

(b) At primaries, the elector shall prepare his ballot in the following manner: He shall vote for the candidates of his choice for nomination or election, according to the number of persons to be voted for by him, for each office, by making a cross (X) or check (ˆš) mark in the square opposite the name of the candidate, or he may insert by writing[,] **or** stamping [or sticker,] in the blank space provided therefor, any name not already printed on the ballot, and such insertion shall count as a vote without the making of a cross (X) or check (ˆš) mark. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots.**

(c) At elections, the elector shall prepare his ballot in the following manner: He may vote for the candidates of his choice for each office to be filled according to the number of persons to be voted for by him for each office, by making a cross (X) or check (ˆš) mark in the square opposite the name of the candidate, or he may insert by writing[,] **or** stamping [or sticker,] in the blank spaces provided therefor, any name not already printed on the ballot, and such insertion shall count as a vote without the making of a cross (X) or check (ˆš) mark. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots.** If he desires to vote for every candidate of a political party or political body, except its candidates for offices as to which he votes for individual candidates in the manner hereinafter provided, he may make a cross (X) or check (ˆš) mark in the square opposite the name of the party or political body of his choice in the party column on the left of the ballot, and every such cross (X) or check (ˆš) mark shall be equivalent to and be counted as a vote for every candidate of a party or political body so marked, including its candidates for presidential electors, except for those offices as to which he has indicated a choice for individual candidates of the same or another party or political body, by making a cross (X) or check (ˆš) mark opposite their names in the manner hereinabove provided, as to which offices his ballot shall be counted only for the candidates which he has thus individually marked, notwithstanding the fact that he made a mark in the party

column, and even though in the case of an office for which more than one candidate is to be voted for, he has not individually marked for such office the full number of candidates for which he is entitled to vote. If he desires to vote for the entire group of presidential electors nominated by any party or political body, he may make a cross (X) or check (ˆš) mark in the appropriate square at the right of the names of the candidates for President and Vice-President of such party or body. If he desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or political bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or political body, or wholly of names of persons not in nomination by any party or political body, he shall insert, **by writing or stamping**, the names of the candidates for presidential electors for whom he desires to vote in the blank spaces provided therefor under the title of the office "Presidential Electors." In case of a question submitted to the vote of the electors, he may make a cross (X) or check (ˆš) mark in the appropriate square opposite the answer which he desires to give.

* * *

Section 1216. Instructions of Voters and Manner of Voting in Districts in Which Voting Machines are Used.--

* * *

(d) At [primaries, he] **all elections, the elector** shall vote for each candidate individually by operating the key, handle, pointer or knob, upon or adjacent to which the name of such candidate is placed. [At elections, he may vote for each candidate individually by operating the key, handle, pointer or knob, upon or adjacent to which the names of candidates of his choice are placed, or he may vote a straight political party ticket in one operation by operating the straight political party lever of the political party or political body of his choice, if such machine has thereon a separate lever for all the candidates of the political body. He may also, after having operated the straight party lever, and before recording his vote, cancel the vote for any candidate of such political party or political body by replacing the individual key, handle, pointer or knob of such candidate, and may thereupon vote for a candidate of another party, or political body for the same office by operating the key, handle, pointer or knob, upon or adjacent to which the name of such candidate appears.] In the case of a question submitted to the vote of the electors, the elector shall operate the key, handle, pointer or knob corresponding to the answer which he desires to give.

* * *

(f) At any general election at which presidential electors are to be chosen, each elector shall be permitted to vote by one operation for all the presidential electors of a political party or political body. For each party or body nominating presidential electors, a ballot label shall be provided containing only the words "Presidential Electors," preceded by the names of the party or body and followed by the names of the candidates thereof for the office of President and Vice-President, and the corresponding counter or registering device shall register votes cast for said electors when thus voted for collectively. If an elector desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or body, or wholly of names of

persons not in nomination by any party or body, he may write or deposit a paper ballot prepared by himself in the receptacle provided in or on the machine for the purpose. The machine shall be so constructed that it will not be possible for any one voter to vote a straight party ticket for presidential electors and at the same time to deposit a ballot for presidential electors in a receptacle as [hereinabove] provided **in this section.** When the votes for presidential electors are counted, the votes appearing upon the counter or registering device corresponding to the ballot label containing the names of the candidates for President and Vice-President of any party or body shall be counted as votes for each of the candidates for presidential elector of such party or body, and thereupon all candidates for presidential elector shall be credited, in addition, with the votes cast for them upon the ballots deposited in the machine, as [hereinabove] provided **in this section.**

* * *

Section 1222. Count and Return of Votes in Districts in Which Ballots are Used.--

(a) As soon as all the ballots have been properly accounted for, and those outside the ballot box, as well as the "Voting Check List," numbered lists of voters and district register sealed, the election officers shall forthwith open the ballot box, and take therefrom all ballots therein, and at primaries, separate the same according to the party to which they belong. The ballots shall then be counted one by one, and a record made of the total number, and at primaries of the total number cast for each party. Then the judge, under the scrutiny of the minority inspector, or the minority inspector, under the scrutiny of the judge, in the presence of the other officers, clerks, and of the overseers, if any, and within the hearing and sight of the watchers outside the enclosed space, shall read aloud the names of the candidates marked or inserted upon each ballot (at primaries the ballots of each party being read in sequence), together with the office for which the person named is a candidate, and the answers contained on the ballots to the questions submitted, if any, and the majority inspector and clerks shall carefully enter each vote as read, and keep account of the same in ink in triplicate tally papers (triplicate tally papers for each party at primaries) to be provided by the county board of elections for that purpose, all three of which shall be made at the same time.[: Provided, That at all general, municipal and special elections, in entering each vote received by candidates at such election, it shall not be necessary to enter separate tally marks for each vote received by such candidates upon the ballots containing the same votes for the same names, commonly known, and in this act designated as "Straight Party Tickets" for such purpose straight party ticket votes shall be entered carefully as each straight party ticket vote is read on the triplicate tally sheets under the heading "Number of votes received upon the ..... straight party tickets." Upon completing the number of votes received by each straight party ticket, the number so tallied for each party shall be entered numerically on the extreme right hand margin of each such tally paper.] All ballots, after being removed from the box, shall be kept within the unobstructed view of all persons in the voting room until replaced in the box. No person while handling the ballots shall have in his hand any pencil, pen, stamp or other means of marking or spoiling any ballot. The election officers shall forthwith proceed to canvass and compute the

votes cast, and shall not adjourn or postpone the canvass or computation until it shall have been fully completed.

(b) When the vote cast for the different persons named upon the ballots and upon the questions, if any, appearing thereon, shall have been fully recorded in the tally papers and counted, the election officers shall duly certify to the number of votes cast for each person (upon the respective party tickets at primaries), and shall prepare in ink two (2) general returns, showing, in addition to the entries made thereon as aforesaid, the total number of ballots received from the county board (the total of each party at primaries), the number of ballots cast (the number of each party at primaries), the number of ballots (of each party at primaries) declared void, and the number of ballots spoiled and cancelled, and any blank ballots cast, as well as the votes cast for each candidate. At elections, the number of votes cast for each candidate by each political party or political body of which such candidate is a nominee shall be separately stated.[: Provided, That the number of votes received by each set of candidates upon "straight party tickets" shall be entered opposite the names of the respective candidates in a column immediately adjoining upon the left which column shall be of convenient width and shall be headed "number of votes received upon straight party tickets."] In an immediate column to the left thereto, the number of votes received by each candidate upon all ballots [other than "straight party tickets" including all ballots known as "split tickets"] shall be entered, such column to be of convenient width and shall be headed "number of votes [received other than upon straight party tickets." The number of votes received by each candidate as shown in the column headed "number of votes received upon straight party tickets" shall then be added, together with the number of votes received by each candidate as shown in the column headed "number of votes received other than upon straight party tickets" and thereupon, the] **received." The** total number of votes received by each candidate shall be entered in a column on the extreme right-hand side of the return sheets, which column shall be of convenient width and shall be headed "total number of votes."

Nothing in this section contained shall be construed to authorize or permit the canvassing, counting or tallying ballots with any less degree of strictness than otherwise required by law.[, the intention of this section being to dispense with the individual tally marks only so far as the so-called "straight party tickets" are concerned, and all other operations of tallying, counting, canvassing and announcing the votes shall proceed as near as may be in accordance with the other provisions of this act.]

(c) In returning any votes cast for any person whose name is not printed on the ballot, the election officers shall record any such names exactly as they were written[,] **or** stamped [or applied to] **upon** the ballot [by sticker]. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots. A vote cast by means of a sticker or label affixed to a ballot or ballot card shall be void and may not be counted.**

Section 1223. What Ballots Shall Be Counted; Manner of Counting; Defective Ballots.--(a) No ballot which is so marked as to be capable of identification shall be counted. Any ballot that is marked in blue, black or blue-black ink, in fountain pen or ball point pen, or black lead pencil or indelible pencil, shall be valid and counted: Provided, That all markings on the ballot are made by the same pen or pencil. Any ballot marked

by any other mark than an (X) or check (ˆš) in the spaces provided for that purpose shall be void and not counted: Provided, however, That no vote recorded thereon shall be declared void because a cross (X) or check (ˆš) mark thereon is irregular in form. [Any erasure, mutilation or defective marking of the straight party column at November elections shall render the entire ballot void, unless the voter has properly indicated his choice for candidates in any office block, in which case the vote or votes for such candidates only shall be counted.] Any erasure or mutilation in the vote in any office block shall render void the vote for any candidates in said block, but shall not invalidate the votes cast on the remainder of the ballot, if otherwise properly marked. Any ballot indicating a vote for any person whose name is not printed on the ballot, by writing[, stamping or sticker] **or stamping**, shall be counted as a vote for such person, if placed in the proper space or spaces provided for that purpose, whether or not an (X) or check (ˆš) is placed after the name of such person: Provided, however, That if such writing[, stamping or sticker] **or stamping** is placed over the name of a candidate printed on the ballot, it shall render the entire vote in said office block void. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots. A vote cast by means of a sticker or label affixed to a ballot or ballot card shall be void and may not be counted.** If an elector shall mark his ballot for more persons for any office than there are candidates to be voted for for such office, or if, for any reason, it may be impossible to determine his choice for any office, his ballot shall not be counted for such office, but the ballot shall be counted for all offices for which it is properly marked. Ballots not marked, or improperly or defectively marked, so that the whole ballot is void, shall be set aside and shall be preserved with the other ballots.

* * *

Section 1227. Canvass and Return of Votes in Districts in Which Voting Machines are Used.--* * *

(d) The election officers, on the foregoing returns, shall record any votes which have been cast for a person whose name is not printed on the ballot labels, by means of an irregular ballot, as defined herein. In returning any such votes which have been written[,] **or** deposited [or affixed] upon receptacles or devices provided for the purpose, the election officers shall record any such names exactly as they were written[,] **or** deposited [or affixed].

Section 4. The act is amended by adding sections to read:

Section 1231. Deadline for Receipt of Valid Voter Registration Application.--(a) Except as provided under subsection (b), each commission, commissioner and registrar or clerk appointed by the commission shall receive, during ordinary business hours and during additional hours as the commission prescribes, at the office of the commission and at additional places as the commission designates, applications from individuals who apply to be registered to vote as provided under 25 Pa.C.S. Pt. IV (relating to voter registration) who appear and claim that they are entitled to be registered as electors of a municipality.

(b) In the administration of voter registration, each commission shall ensure that an applicant who is a qualified elector is registered to vote in an election when the applicant has met any of the following conditions:

(1) In the case of voter registration with a motor vehicle driver's license application under 25 Pa.C.S. § 1323 (relating to application with driver's license application), if the valid voter registration application is received by the appropriate commission not later than fifteen days before the election.

(2) (Reserved).

(3) In the case of voter registration at a voter registration agency under 25 Pa.C.S. § 1325 (relating to government agencies), if the valid voter registration application is received by the appropriate commission not later than fifteen days before the election.

(4) In any other case, if the valid voter registration application of the applicant is received by the appropriate commission not later than fifteen days before the election.

(c) (1) In the case of a special election within a congressional, senatorial or representative district held on a day other than the day of a primary, general or municipal election, the registration application forms shall not be processed in the wards and election districts comprising the district for the fifteen days prior to the special election for such election.

(2) No applications shall be received as follows:

(i) On Sundays.

(ii) On holidays.

(iii) On the day of the election.

(iv) During the fifteen days next preceding each general, municipal and primary election except as provided under subsection (b).

(d) As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Commission" shall mean a registration commission established under 25 Pa.C.S. § 1203 (relating to commissions).

"Commissioner" shall mean a member of a commission.

Section 1232. Appeals.--(a) An individual whose application to be registered has been denied under section 1231 or 25 Pa.C.S. Pt. IV (relating to voter registration) may file with the commission a petition to be registered, setting forth the grounds of the petition under oath or affirmation. The petition must be filed by the eighth day prior to an election.

(b) (1) The commission shall fix a time for a public hearing at its office not later than the fifth day prior to the election.

(2) The commission shall give the person responsible for the rejection forty-eight hours' notice of the hearing.

(3) At the hearing, a clerk, inspector of registration or qualified elector of the county may offer evidence as to why the petitioner should not be registered.

(4) The commission, if satisfied that the petitioner is entitled to be registered, shall direct registration.

(c) As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Commission" shall mean a registration commission established under 25 Pa.C.S. § 1203 (relating to commissions).

Section 1233. Appeals to Court of Common Pleas.--(a) An applicant whose claim for registration under section 1231 and 25 Pa.C.S. Pt. IV (relating to voter registration) has been denied shall have standing to appeal an action of a commission to the appropriate court of common pleas.

(b) An appeal under subsection (a) must be made by the third day preceding an election.

(c) The appeal must request relief and specify the grounds for relief.

(d) Upon timely receipt of an appeal under this section, the court shall conduct a hearing.

(e) If the court finds that an injustice has been done, the court shall reverse or modify the ruling of the commission and issue appropriate injunctive relief.

(f) The following shall apply:

(1) Except as provided in paragraph (2), the court may award costs for the appeal to the prevailing party.

(2) Costs may not be assessed against a commission or a county.

(g) As used in this section, "commission" shall mean a registration commission established under 25 Pa.C.S. § 1203 (relating to commissions).

Section 5. Section 1302(b), (c), (d), (e.1) and (i) of the act are amended and the section is amended by adding subsections to read:

Section 1302. Applications for Official Absentee Ballots.--* * *

(b) [The application] **An application for a qualified elector under subsection (a)** shall contain the following information: Home residence at the time of entrance into actual military service or Federal employment, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident of voting district, voting district if known, party choice in case of primary, name and, for a military elector, his stateside military address, FPO or APO number and serial number. Any elector other than a military elector shall in addition specify the nature of his employment, the address to which ballot is to be sent, relationship where necessary, and such other information as may be determined and prescribed by the Secretary of the Commonwealth. When such application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

(b.1) An application for a qualified elector other than under subsection (a) shall contain the following information: Date of birth, length of time a resident of voting district, voting district if known, party choice in case of primary and name. The elector shall in addition specify the nature of his or her employment, the address to which ballot is to be sent, relationship where necessary, and other information as may be determined and prescribed by the Secretary of the Commonwealth. When the application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

(c) [The application of any qualified elector, as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h), for an official absentee ballot in any primary or election may not be made over the signature of any person, other than the qualified elector or an adult member of his immediate family, as required in the preceding subsection.] A qualified absentee military or overseas elector, as defined by the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924), may submit his application for an official absentee ballot by [facsimile method if the original application is received prior to the election by the county election office. The absentee ballot of the qualified military or overseas elector shall not be counted unless the elector's original application is received prior to the election by the county election office. The facsimile] **electronic transmission method. The electronic transmission** method shall not be acceptable

for the official absentee ballot. **As used in this subsection, "electronic transmission method" means any technology that can transmit a document or an image of a document via electronic or electromechanical means, including, but not limited to, facsimile method. An elector entitled to submit an application for an official absentee ballot under a method authorized under 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters) may submit an application using a method authorized under 25 Pa.C.S. Ch. 35, in addition to the methods authorized in this article.**

(d) The application of any qualified elector, as defined in preceding section 1301, subsections [(b)] **(a)** to (h), inclusive, for an official absentee ballot in any primary or election shall be signed by the applicant[.], **except that for electors under section 1301(a), an adult member of the applicant's immediate family may sign the application on the elector's behalf.**

* * *

(e.1) Any qualified registered elector[, including any qualified bedridden or hospitalized veteran,] who is unable because of illness or physical disability to attend his polling place on the day of any primary or election or operate a voting machine and state distinctly and audibly that he is unable to do so as required by section 1218 of this act may, with the certification by his attending physician that he is permanently disabled, and physically unable to attend the polls or operate a voting machine and make the distinct and audible statement required by section 1218 appended to the application hereinbefore required, be placed on a permanently disabled absentee ballot list file. An absentee ballot application shall be mailed to every such person [for each primary or election] **otherwise eligible to receive one, by the first Monday in February each year,** so long as he does not lose his voting rights by failure to vote as otherwise required by this act. Such person shall not be required to file a physician's certificate of disability with each application as required in subsection (e) of this section [but such person must submit a written statement asserting continuing disability every four years in order to maintain his eligibility to vote under the provisions of this subsection]. Should any such person lose his disability he shall inform the county board of elections of the county of his residence. **An absentee ballot application mailed to a voter under this section, which is completed and timely returned by the voter, shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year.**

* * *

(i) **(1)** Application for official absentee ballots shall be on **physical and electronic** forms prescribed by the Secretary of the Commonwealth. The application shall state that [a voter] **an elector** who receives **and votes** an absentee ballot pursuant to section 1301 [and who, on election day, is capable of voting at the appropriate polling place must void the absentee ballot and vote in the normal manner at the appropriate voting place] **shall not be eligible to vote at a polling place on election day.** Such **physical application** forms shall be made freely available to the public at county board of elections, municipal buildings and at such other locations designated by the secretary. **Such electronic application forms shall be made**

freely available to the public through publicly accessible means. No written application or personal request shall be necessary to receive **or access** the application forms. Copies **and records** of all completed **physical and electronic** applications for official absentee ballots shall be retained by the county board of elections.

(2) Nothing in this act shall prohibit a private organization or individual from printing blank voter applications for absentee ballots or shall prohibit the use of such applications by another individual, provided the form, content and paper quality have been approved by the Secretary of the Commonwealth.

* * *

(k) The Secretary of the Commonwealth may develop an electronic system through which all qualified electors may apply for an absentee ballot and request permanent absentee voter status under subsection (e.1), provided the system is able to capture a digitized or electronic signature of the applicant. A county board of elections shall treat any application or request received through the electronic system as if the application or request had been submitted on a paper form or any other format used by the county.

Section 5.1. Sections 1302.1, 1302.2, 1302.3 heading, (a) and (c), 1303(d) and (e) and 1305(b) of the act are amended to read:

Section 1302.1. Date of Application for Absentee Ballot.--(a) Except as provided in [subsections (a.1) and (a.2)] **subsection (a.3)**, applications for absentee ballots shall be received in the office of the county board of elections not earlier than fifty (50) days before the primary or election [and], **except that if a county board of elections determines that it would be appropriate to its operational needs, any applications for absentee ballots received more than fifty (50) days before the primary or election may be processed before that time. Applications for absentee ballots shall be processed if received** not later than five o'clock P.M. of the first Tuesday prior to the day of any primary or election.

[(a.1) Except as provided in subsection (a.2), in the event any elector otherwise qualified who is so physically disabled or ill on or before the first Tuesday prior to any primary or election that he is unable to file his application or who becomes physically disabled or ill after the first Tuesday prior to any primary or election and is unable to appear at his polling place or any elector otherwise qualified who because of the conduct of his business, duties or occupation will necessarily be absent from the municipality of his residence on the day of the primary or election, which fact was not and could not reasonably be known to said elector on or before the first Tuesday prior to any primary or election, the elector shall be entitled to an absentee ballot at any time prior to five o'clock P.M. on the first Friday preceding any primary or election upon execution of an Emergency Application in such form prescribed by the Secretary of the Commonwealth.

(a.2) In the event any elector otherwise qualified who becomes so physically disabled or ill between five o'clock P.M. on the first Friday preceding any primary or election and eight o'clock P.M. on the day of any primary or election that he is unable to appear at his polling place or any elector otherwise qualified who because of the conduct of his business, duties or occupation will necessarily be absent from the municipality of his residence on the day of the primary or election, which fact was not and could not reasonably be known to said elector

prior to five o'clock P.M. on the first Friday preceding any primary or election, the elector shall be entitled to an absentee ballot if the elector completes and files with the court of common pleas in the county in which the elector is qualified to vote an Emergency Application or a letter or other signed document, which includes the same information as is provided on the Emergency Application. Upon a determination that the elector is a qualified absentee elector under section 1301, the judge shall issue an absentee ballot to the elector.]

(a.3) (1) The following categories of electors may apply for an absentee ballot under this subsection, if otherwise qualified:

(i) An elector whose physical disability or illness prevented the elector from applying for an absentee ballot before five o'clock P.M. on the first Tuesday prior to the day of the primary or election.

(ii) An elector who, because of the elector's business, duties or occupation, was unable to apply for an absentee ballot before five o'clock P.M. on the first Tuesday prior to the day of the primary or election.

(iii) An elector who becomes so physically disabled or ill after five o'clock P.M. on the first Tuesday prior to the day of the primary or election that the elector is unable to appear at the polling place on the day of the primary or election.

(iv) An elector who, because of the conduct of the elector's business, duties or occupation, will necessarily be absent from the elector's municipality of residence on the day of the primary or election, which fact was not and could not reasonably be known to the elector on or before five o'clock P.M. on the first Tuesday prior to the day of the primary or election.

(2) An elector described in paragraph (1) may submit an application for an absentee ballot at any time up until the time of the closing of the polls on the day of the primary or election. The application shall include a declaration describing the circumstances that prevented the elector from applying for an absentee ballot before five o'clock P.M. on the first Tuesday prior to the day of the primary or election or that prevent the elector from appearing at the polling place on the day of the primary or election, and the elector's qualifications under paragraph (1). The declaration shall be made subject to the provisions of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(3) If the county board of elections determines that the elector meets the requirements of this section, the board shall issue an absentee ballot to the elector.

(4) If the elector is unable to appear [in court] **at the office of the county board of elections** to receive the ballot, the [judge] **board** shall give the elector's absentee ballot to an authorized representative of the elector who is designated in writing by the elector. The authorized representative shall deliver the absentee ballot to the elector and return the completed absentee ballot, sealed in the official absentee ballot envelopes, to **the office of** the county board of elections, [who] **which** shall [distribute] **retain** the ballot, unopened, [to the absentee voter's election district] **until the canvassing of all absentee ballots.**

(5) Multiple people qualified under this subsection may designate the same person, and a single person may serve as the authorized representative for multiple qualified electors.

(6) If the elector is unable to appear [in court] **at the office of the county board of elections** or unable to obtain assistance from an authorized representative, **the county board**

may provide an authorized representative or ask the judge [shall] **of the court of common pleas in the county in which the elector is qualified to vote to** direct a deputy sheriff of the county to deliver the absentee ballot to the elector if the elector is at a physical location within the county and return the completed absentee ballot, sealed in the official absentee ballot envelopes, to the county board of elections[, who shall distribute the ballots, unopened, to the absentee voter's respective election district]. If there is no authorized representative and a deputy sheriff is unavailable to deliver an absentee ballot under this section, the judge may direct a constable to make such delivery in accordance with the provisions of this section.

(7) In the case of an elector who requires assistance in marking the elector's ballot, the elector shall designate in writing the person who will assist in marking the ballot. Such person shall be otherwise eligible to provide assistance to electors eligible for assistance, and such person shall declare in writing that assistance was rendered. Any person other than the designee who shall render assistance in marking a ballot or any person rendering assistance who shall fail to execute a declaration shall be guilty of a violation of this act.

(8) No absentee ballot under this subsection shall be counted which is received in the office of the county board of elections later than [eight o'clock P.M. on the day of the primary or election] **the deadline for its receipt as provided in section 1308(g).**

(b) In the case of an elector whose application for an absentee ballot is received by the office of the county board of elections earlier than fifty (50) days before the primary or election, the application shall be held and processed upon commencement of the fifty-day period **or at such earlier time as the county board of elections determines may be appropriate.**

[(c) In the case of an elector who is physically disabled or ill on or before the first Tuesday prior to a primary or election or becomes physically disabled or ill after the first Tuesday prior to a primary or election, such Emergency Application, letter or other signed document shall contain a supporting affidavit from his attending physician stating that due to physical disability or illness said elector was unable to apply for an absentee ballot on or before the first Tuesday prior to the primary or election or became physically disabled or ill after that period.

(d) In the case of an elector who is necessarily absent because of the conduct of his business, duties or occupation under the unforeseen circumstances specified in subsections (a.1) and (a.2), such Emergency Application, letter or other signed document shall contain a supporting affidavit from such elector stating that because of the conduct of his business, duties or occupation said elector will necessarily be absent from the municipality of his residence on the day of the primary or election which fact was not and could not reasonably be known to said elector on or before the first Tuesday prior to the primary or election.]

Section 1302.2. Approval of Application for Absentee Ballot.--

(a) The county board of elections, upon receipt of any application filed by a qualified elector not required to be registered under preceding section 1301, shall ascertain from the information on such application, district register or from any other source that such applicant possesses all the

qualifications of a qualified elector other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked approved such approval decision shall be final and binding except that challenges may be made only on the ground that the applicant did not possess qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to [5:00 o'clock P.M. on the first Friday prior to the election.] **the applicable deadline for the absentee ballots to be received, as provided in section 1308(g).** When so approved, the county board of elections shall cause the applicant's name and residence (and at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilians Absentee Voters File as provided in section 1302.3, subsection (b): Providing, however, That no application of any qualified elector in military service shall be rejected for failure to include on [his] **the elector's** application any information if such information may be ascertained within a reasonable time by the county board of elections.

(b) The county board of elections, upon receipt of any application filed by a qualified elector who is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting as provided under preceding section 1301, shall ascertain from the information on such application or from any other source that such applicant possesses all the qualifications of a qualified elector. If the board is satisfied that the applicant is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting and that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector prior to or concurrently with the time of voting. Such challenges must be made to the county board of elections prior to [5:00 o'clock P.M. on the first Friday prior to the election.] **the applicable deadline for the absentee ballots to be received, as provided in section 1308(g).** When so approved, the county board of elections shall cause the applicant's name and residence (and at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3 subsection (b).

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of preceding section 1301, shall determine the qualifications of such applicant by verifying the proof of identification and comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding, except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to [5:00 o'clock P.M. on the first Friday prior to the election.] **the applicable deadline for the absentee ballots to be received, as provided**

in section 1308(g). When so approved, the registration commission shall cause an absentee voter's temporary registration card to be inserted in the district register on top of and along with the permanent registration card. The absentee voter's temporary registration card shall be in the color and form prescribed in subsection (e) of this section:

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the insertion of the absentee voter's temporary registration card of any elector from the district register as set forth in section 1302.2 shall include only such applications and emergency applications as are received on or before the first Tuesday prior to the primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before [five o'clock P. M. on the first Friday prior to] **eight o'clock P.M. on the day of** the primary or election, the county board of elections shall determine the qualifications of such applicant by verifying the proof of identification and comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b). [In addition, the local district boards of elections shall, upon canvassing the official absentee ballots under section 1308, examine the voting check list of the election district of said elector's residence and satisfy itself that such elector did not cast any ballot other than the one properly issued to him under his absentee ballot application. In all cases where the examination of the local district board of elections discloses that an elector did vote a ballot other than the one properly issued to him under the absentee ballot application, the local district board of elections shall thereupon cancel said absentee ballot and said elector shall be subject to the penalties as hereinafter set forth.]

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval. For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the absentee ballot requiring the elector to provide proof of identification with the absentee ballot or the ballot will not be counted.

(e) The absentee voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the absentee voter's name and address and shall conspicuously contain the words "Absentee Voter." [Such card shall also contain the affidavit required by subsection (b) of section 1306.]

(f) Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 1302.3. Absentee **and Mail-in** Electors Files and Lists.--(a) The county board of elections shall maintain at its office a file containing the duplicate absentee voter's temporary registration cards of every registered elector to whom an absentee ballot has been sent. Such duplicate absentee voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards **and the registration cards under section 1302.3-D** so filed shall constitute the Registered Absentee **and Mail-in** Voters File for the Primary or Election of (date of primary or election) and shall be kept on file for a period commencing the Tuesday prior to the day of the primary or election until the day following the primary or election or the day the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations.

* * *

(c) Not less than five days preceding the election, the chief clerk shall prepare a list for each election district showing the names and post office addresses of all voting residents thereof to whom official absentee **or mail-in** ballots shall have been issued. Each such list shall be prepared in duplicate, shall be headed "Persons in (give identity of election district) to whom absentee **or mail-in** ballots have been issued for the election of (date of election)," and shall be signed by him not less than four days preceding the election. He shall post the original of each such list in a conspicuous place in the office of the county election board and see that it is kept so posted until the close of the polls on election day. He shall cause the duplicate of each such list to be delivered to the judge of election in the election district in the same manner and at the same time as are provided in this act for the delivery of other election supplies, and it shall be the duty of such judge of election to post such duplicate list in a conspicuous place within the polling place of his district and see that it is kept so posted throughout the time that the polls are open. Upon written request, he shall furnish a copy of such list to any candidate or party county chairman.

Section 1303. Official Absentee Voters Ballots.--* * *

(d) In cases where there is not time to print on said ballots the names of the various candidates, the county board of elections shall print special write-in absentee ballots which shall be in substantially the form of other official absentee ballots except that such special write-in absentee ballots shall contain blank spaces only under the titles of such offices in which electors may insert, **by writing or stamping**, the names of the candidates for whom they desire to vote, and in such cases the county board of elections shall furnish to electors lists containing the names of all the candidates named in nomination petitions or who have been regularly nominated under the provisions of this act, for the use of such electors in preparing their ballots. Special write-in absentee ballots also shall include all constitutional amendments and other questions to be voted on by the electors.

(e) The official absentee voter ballot shall state that a voter who receives an absentee ballot pursuant to section 1301 **and whose ballot is not timely received** and who, on election day, is capable of voting at the appropriate polling place [must void the absentee ballot and vote in the normal manner at the

appropriate voting place] **may only vote on election day by provisional ballot.**

Section 1305. Delivering or Mailing Ballots.--

* * *

(b) **(1)** The county board of elections upon receipt and approval of an application filed by any elector qualified in accordance with the provisions of section 1301, subsections (i) to (l), inclusive, shall commence to deliver or mail official absentee ballots [on] **as soon as a ballot is certified and the ballots are available. While any proceeding is pending in a Federal or State court which would affect the contents of any ballot, the county board of elections may await a resolution of that proceeding but in any event, shall commence to deliver or mail official absentee ballots not later than** the second Tuesday prior to the primary or election. For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2(d) with the absentee ballot. As additional applications are received and approved **after the time that the county board of elections begins delivering or mailing official absentee and mail-in ballots,** the board shall deliver or mail official absentee ballots to such additional electors within forty-eight hours.

(2) Notwithstanding any other provisions of this act and notwithstanding the inclusion of a mailing address on an absentee or mail-in ballot application, a voter who presents the voter's own application for an absentee or mail-in ballot within the office of the county board of elections during regular business hours may request to receive the voter's absentee or mail-in ballot while the voter is at the office. This request may be made orally or in writing. Upon presentation of the application and the making of the request and upon approval under sections 1302.2 and 1302.2-D, the county board of elections shall promptly present the voter with the voter's absentee or mail-in ballot. If a voter presents the voter's application within the county board of elections' office in accordance with this section, a county board of elections may not deny the voter's request to have the ballot presented to the voter while the voter is at the office unless there is a bona fide objection to the absentee or mail-in ballot application.

* * *

Section 6. Section 1306(a) introductory paragraph and (1) and (b) of the act are amended and the section is amended by adding a subsection to read:

Section 1306. Voting by Absentee Electors.--(a) Except as provided in paragraphs [(1),] (2) and (3), at any time after receiving an official absentee ballot, but on or before [five o'clock P.M. on the Friday prior to] **eight o'clock P.M. the day of** the primary or election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Absentee Ballot." **This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail,**

postage prepaid, except where franked, or deliver it in person to said county board of election.

[(1) Any elector who submits an Emergency Application and receives an absentee ballot in accordance with section 1302.1(a.2) or (c) shall mark the ballot on or before eight o'clock P.M. on the day of the primary or election. This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.]

* * *

(b) [In the event that any such elector, excepting an elector in military service or any elector unable to go to his polling place because of illness or physical disability, entitled to vote an official absentee ballot shall be in the municipality of his residence on the day for holding the primary or election for which the ballot was issued, or in the event any such elector shall have recovered from his illness or physical disability sufficiently to permit him to present himself at the proper polling place for the purpose of casting his ballot, such absentee ballot cast by such elector shall, be declared void.

Any such elector referred to in this subsection, who is within the municipality of his residence, must present himself at his polling place and shall be permitted to vote upon presenting himself at his regular polling place in the same manner as he could have voted had he not received an absentee ballot: Provided, That such elector has first presented himself to the judge of elections in his local election district and shall have signed the affidavit on the absentee voter's temporary registration card, which affidavit shall be in substantially the following form:

I hereby swear that I am a qualified registered elector who has obtained an absentee ballot, however, I am present in the municipality of my residence and physically able to present myself at my polling place and therefore request that my absentee ballot be voided.

.....
(Date)

....
(Local Judge of Elections) (Signature of Elector)

An elector who has received an absentee ballot under the emergency application provisions of section 1302.1, and for whom, therefore, no temporary absentee voter's registration card is in the district register, shall sign the aforementioned affidavit in any case, which the local judge of elections shall then cause to be inserted in the district register with the elector's permanent registration card.]

(1) Any elector who receives and votes an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted absentee ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted an absentee ballot to vote at the polling place.

(2) An elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote by provisional ballot under section 1210(a.4)(1).

(c) Except as provided under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot), a completed absentee ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

Section 7. Sections 1308 heading, (a), (b), (b.1), (d), (e), (f), (g)(1), (2), (3), (4) and (5) and (h) and 1309 of the act are amended to read:

Section 1308. Canvassing of Official Absentee Ballots **and Mail-in Ballots**.--(a) The county boards of election, upon receipt of official absentee ballots in [such] **sealed official absentee ballot** envelopes **as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D**, shall safely keep the [same] **ballots** in sealed or locked containers until they [distribute same to the appropriate local election districts in a manner prescribed by the Secretary of the Commonwealth.

Except as provided in section 1302.1(a.2), the county board of elections shall then distribute the absentee ballots, unopened, to the absentee voter's respective election district concurrently with the distribution of the other election supplies. Absentee ballots shall be canvassed immediately and continuously without interruption until completed after the close of the polls on the day of the election in each election district. The results of the canvass of the absentee ballots shall then be included in and returned to the county board with the returns of that district. Except as provided in section 1302.1(a.2) and subsection (g), no absentee ballot shall be counted which is received in the office of the county board of election later than five o'clock P.M. on the Friday immediately preceding the primary or November election.] **are to be canvassed by the county board of elections. An absentee ballot, whether issued to a civilian, military or other voter during the regular or emergency application period, shall be canvassed in accordance with subsection (g). A mail-in ballot shall be canvassed in accordance with subsection (g).**

(b) Watchers shall be permitted to be present when the envelopes containing official absentee ballots **and mail-in ballots** are opened and when such ballots are counted and recorded.

[(b.1) In all election districts in which electronic voting systems are used, absentee ballots shall be opened at the election district, checked for write-in votes in accordance with section 1113-A and then either hand-counted or counted by means of the automatic tabulation equipment, whatever the case may be.]

(d) Whenever it shall appear by due proof that any absentee elector **or mail-in elector** who has returned his ballot in accordance with the provisions of this act has died prior to the opening of the polls on the day of the primary or election, the ballot of such deceased elector shall be rejected by the canvassers but the counting of the ballot of an **absentee** elector **or a mail-in elector** thus deceased shall not of itself invalidate any nomination or election.

[(e) At such time the local election board shall then further examine the declaration on each envelope not so set aside and shall compare the information thereon with that contained in the "Registered Absentee Voters File," the absentee

voters' list and the "Military Veterans and Emergency Civilians Absentee Voters File." If the local election board is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee Voters File," the absentee voters' list and the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the local election board shall announce the name of the elector and shall give any watcher present an opportunity to challenge any absentee elector upon the ground or grounds (1) that the absentee elector is not a qualified elector; or (2) that the absentee elector was within the municipality of his residence on the day of the primary or election during the period the polls were open, except where he was in military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (3) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein the local election board shall mark "challenged" on the envelope together with the reason or reasons therefor, and the same shall be set aside for return to the county board unopened pending decision by the county board and shall not be counted. All absentee ballots not challenged for any of the reasons provided herein shall be counted and included with the general return of paper ballots or voting machines, as the case may be as follows. Thereupon, the local election board shall open the envelope of every unchallenged absentee elector in such manner as not to destroy the declaration executed thereon. All of such envelopes on which are printed, stamped or endorsed the words "Official Absentee Ballot" shall be placed in one or more depositories at one time and said depository or depositories well shaken and the envelopes mixed before any envelope is taken therefrom. If any of these envelopes shall contain any extraneous marks or identifying symbols other than the words "Official Absentee Ballot," the envelopes and the ballots contained therein shall be set aside and declared void. The local election board shall then break the seals of such envelopes, remove the ballots and record the votes in the same manner as district election officers are required to record votes. With respect to the challenged ballots, they shall be returned to the county board with the returns of the local election district where they shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges and notice shall be given where possible to all absentee electors thus challenged and to every attorney, watcher or candidate who made such challenge. The time for the hearing shall not be later than seven (7) days after the date of said challenge. On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges and, in hearing the testimony, the county board shall not be bound by technical rules of evidence. The testimony presented shall be stenographically recorded and made part of the record of the hearing. The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any person aggrieved by the decision of the county board. Such appeal shall be taken, within two (2) days after such decision shall have been made, whether reduced to writing or not, to the court of

common pleas setting forth the objections to the county board's decision and praying for an order reversing same. Pending the final determination of all appeals, the county board shall suspend any action in canvassing and computing all challenged ballots irrespective of whether or not appeal was taken from the county board's decision. Upon completion of the computation of the returns of the county, the votes cast upon the challenged official absentee ballots shall be added to the other votes cast within the county.]

(f) Any person challenging an application for an absentee ballot [or], an absentee ballot, **an application for a mail-in ballot or a mail-in ballot** for any of the reasons provided in this act shall deposit the sum of ten dollars ($10.00) in cash with the [local election] **county** board, [in cases of challenges made to the local election board and with the county board in cases of challenges made to the county board for which he shall be issued a receipt for each challenge made,] which sum shall only be refunded if the challenge is sustained or if the challenge is withdrawn within five (5) days after the primary or election. If the challenge is dismissed by any lawful order then the deposit shall be forfeited. [All deposit money received by the local election board shall be turned over to the county board simultaneously with the return of the challenged ballots.] The county board shall deposit all deposit money in the general fund of the county.

Notice of the requirements of subsection (b) of section 1306 shall be printed on the envelope for the absentee ballot **or mail-in ballot.**

(g) (1) **(i)** An absentee ballot cast by any absentee elector as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h) [which is received in the office of the county board of elections after five o'clock P.M. on the Friday immediately preceding the election and no later than five o'clock P.M. on the seventh day following an election] shall be canvassed in accordance with this subsection if [the absentee ballot is postmarked no later than the day immediately preceding the election.] **the ballot is cast, submitted and received in accordance with the provisions of 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters).**

(ii) An absentee ballot cast by any absentee elector as defined in section 1301(i), (j), (k), (l), (m) and (n), an absentee ballot under section 1302(a.3) or a mail-in ballot cast by a mail-in elector shall be canvassed in accordance with this subsection if the absentee ballot or mail-in ballot is received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

(2) The county board of elections shall meet [on the eighth day following the election to canvass] **no earlier than the close of polls on the day of the election and no later than the third day following the election to begin canvassing** the absentee ballots **and mail-in ballots** received under this subsection and subsection (h)(2). **The canvass shall continue through the eighth day following the election.** One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots **and mail-in ballots** are canvassed. Representatives shall be permitted to challenge any absentee elector **or mail-in elector** in accordance with the provisions of paragraph (3).

(3) When the county board meets to canvass absentee ballots **and mail-in ballots** under paragraph (2), the board shall examine

the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the "Registered Absentee **and Mail-in** Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File," whichever is applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee **and Mail-in** Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the county board shall announce the name of the elector and shall give any candidate representative or party representative present an opportunity to challenge any absentee elector **or mail-in elector** upon the ground or grounds: (i) that the absentee elector **or mail-in elector** is not a qualified elector; or [(ii) that the absentee elector was within the municipality of his residence on the day of the primary or election during the period the polls were open, except where he was in the military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or] (iii) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein, the board shall mark "challenged" on the envelope together with the reasons therefor, and the same shall be set aside unopened pending final determination of the challenge according to the procedure described in paragraph (5).

(4) All absentee ballots **and mail-in ballots** not challenged for any of the reasons provided in paragraph (3) shall be counted and included with the returns of the applicable election district as follows[.]:

(i) The county board shall open the envelope of every unchallenged absentee elector **and mail-in elector** in such manner as not to destroy the declaration executed thereon.

(ii) If any of the envelopes on which are printed, stamped or endorsed the words "Official Absentee Ballot" **or "Official Mail-in Ballot"** contain any extraneous marks or identifying symbols, the envelopes and the ballots contained therein shall be set aside and declared void.

(iii) The county board shall then break the seals of such envelopes, remove the ballots and record the votes.

(5) With respect to the challenged ballots, they shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges, and notice shall be given where possible to all absentee electors **and mail-in electors** thus challenged and to every individual who made a challenge. The time for the hearing shall not be later than five (5) days after the date of the challenge. On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges, and, in hearing the testimony, the county board shall not be bound by the Pennsylvania Rules of Evidence. The testimony presented shall be stenographically recorded and made part of the record of the hearing.

* * *

(h) For those absentee ballots **or mail-in ballots** for which proof of identification has not been received or could not be verified:

[(1) If the proof of identification is received and verified by the county board of elections prior to the distribution of the absentee ballots to the local election districts, then the county shall distribute the absentee ballots for which proof of identification is received and verified, along with the other absentee ballots, to the absentee voter's respective election district. If the county board of elections does not receive or is not able to verify the proof of identification for an elector prior to the absentee ballots' being sent to the appropriate local election districts, the county board shall keep the absentee ballot and follow the procedures set forth in paragraph (2) or (3), whichever is applicable.]

(2) If the proof of identification is received and verified [after the absentee ballots have been distributed to the appropriate local election districts, but] prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots **and mail-in ballots** under this subsection in accordance with subsection (g)(2)[, unless the elector appeared to vote at the proper polling place for the purpose of casting a ballot, then the absentee ballot cast by that elector shall be declared void].

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot **or mail-in ballot** shall not be counted.

* * *

Section 1309. Public Records.--**(a)** All official absentee ballots, files, applications for such ballots and envelopes on which the executed declarations appear, and all information and lists are hereby designated and declared to be public records and shall be safely kept for a period of two years, except that no proof of identification shall be made public, nor shall information concerning a military elector be made public which is expressly forbidden by the Department of Defense because of military security.

(b) For each election, the county board shall maintain a record of the following information, if applicable, for each elector who makes application for an absentee ballot:

(1) The elector's name and voter registration address.

(2) The date on which the elector's application is received by the county board.

(3) The date on which the elector's application is approved or rejected by the county board.

(4) The date on which the county board mails or delivers the absentee ballot to the elector.

(5) The date on which the elector's completed absentee ballot is received by the county board.

(c) The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within forty-eight hours.

Section 8. The act is amended by adding an article to read:

ARTICLE XIII-D

VOTING BY QUALIFIED MAIL-IN ELECTORS

Section 1301-D. Qualified mail-in electors.

(a) General rule.--The following individuals shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article:

(1) Any qualified elector who is not eligible to be a qualified absentee elector under Article XIII.

(2) (Reserved).

(b) Construction.--The term "qualified mail-in elector" shall not be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition in section 102(t).

Section 1302-D. Applications for official mail-in ballots.

(a) General rule.--A qualified elector under section 1301-D may apply at any time before any primary or election for an official mail-in ballot in person or on any official county board of election form addressed to the Secretary of the Commonwealth or the county board of election of the county in which the qualified elector's voting residence is located.

(b) Content.--The following shall apply:

(1) The qualified elector's application shall contain the following information:

(i) Date of birth.

(ii) Length of time a resident of voting district.

(iii) Voting district, if known.

(iv) Party choice in case of primary.

(v) Name.

(2) A qualified elector shall, in addition, specify the address to which the ballot is to be sent, the relationship where necessary and other information as may be determined by the Secretary of the Commonwealth.

(3) When an application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

(c) Signature required.--Except as provided in subsection (d), the application of a qualified elector under section 1301-D for an official mail-in ballot in any primary or election shall be signed by the applicant.

(d) Signature not required.--If any elector entitled to a mail-in ballot under this section is unable to sign the application because of illness or physical disability, the elector shall be excused from signing upon making a statement which shall be witnessed by one adult person in substantially the following form:

I hereby state that I am unable to sign my application for a mail-in ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

(Mark)

(Date)

(Complete Address of Witness)

(Signature of Witness)

(e) Numbering.--The county board of elections shall number, in chronological order, the applications for an official mail-in ballot, which number shall likewise appear on the official mail-in ballot for the qualified elector. The numbers shall appear legibly and in a conspicuous place but, before the ballots are distributed, the number on the ballot shall be torn off by the county board of election. The number information shall be appropriately inserted and become a part of the Registered Absentee and Mail-in Voters File provided under section 1302.3.

(f) Form.--Application for an official mail-in ballot shall be on physical and electronic forms prescribed by the Secretary of the Commonwealth. The application shall state that a voter who receives and votes a mail-in ballot under section 1301-D

shall not be eligible to vote at a polling place on election day. The physical application forms shall be made freely available to the public at county board of elections, municipal buildings and at other locations designated by the Secretary of the Commonwealth. The electronic application forms shall be made freely available to the public through publicly accessible means. No written application or personal request shall be necessary to receive or access the application forms. Copies and records of all completed physical and electronic applications for official mail-in ballots shall be retained by the county board of elections.

(g) Permanent mail-in voting list.--

(1) Any qualified registered elector may request to be placed on a permanent mail-in ballot list file. A mail-in ballot application shall be mailed to every person otherwise eligible to receive a mail-in ballot application by the first Monday in February each year, so long as the person does not lose the person's voting rights by failure to vote as otherwise required by this act. A mail-in ballot application mailed to a voter under this section, which is completed and timely returned by the voter, shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year.

(2) The Secretary of the Commonwealth may develop an electronic system through which all qualified electors may apply for a mail-in ballot and request permanent mail-in voter status under this section, provided the system is able to capture a digitized or electronic signature of the applicant. A county board of elections shall treat an application or request received through the electronic system as if the application or request had been submitted on a paper form or any other format used by the county.

Section 1302.1-D. Date of application for mail-in ballot.

(a) General rule.--Applications for mail-in ballots shall be received in the office of the county board of elections not earlier than 50 days before the primary or election, except that if a county board of elections determines that it would be appropriate to the county board of elections' operational needs, any applications for mail-in ballots received more than 50 days before the primary or election may be processed before that time. Applications for mail-in ballots shall be processed if received not later than five o'clock P.M. of the first Tuesday prior to the day of any primary or election.

(b) Early applications.--In the case of an elector whose application for a mail-in ballot is received by the office of the county board of elections earlier than 50 days before the primary or election, the application shall be held and processed upon commencement of the 50-day period or at such earlier time as the county board of elections determines may be appropriate.

Section 1302.2-D. Approval of application for mail-in ballot.

(a) Approval process.--The county board of elections, upon receipt of any application of a qualified elector under section 1301-D, shall determine the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained on the applicant's permanent registration card. The following shall apply:

(1) If the board is satisfied that the applicant is qualified to receive an official mail-in ballot, the application shall be marked "approved."

(2) The approval decision shall be final and binding, except that challenges may be made only on the grounds that the applicant did not possess the qualifications of a mail-in elector.

(3) Challenges must be made to the county board of elections prior to the applicable deadline for the mail-in ballots to be received, as provided in section 1308(g).

(4) When approved, the registration commission shall cause a mail-in voter's temporary registration card to be inserted in the district register on top of and along with the permanent registration card.

(5) The mail-in voter's temporary registration card shall be in the color and form prescribed under subsection (d).

(b) Duties of county boards of elections and registration commissions.--The duties of the county boards of elections and the registration commissions with respect to the insertion of the mail-in voter's temporary registration card of any elector from the district register as provided under this section shall include only the applications as are received on or before the first Tuesday prior to the primary or election.

(c) Notice.--In the event that an application for an official mail-in ballot is not approved by the county board of elections, the elector shall be notified immediately with a statement by the county board of the reasons for the disapproval. For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the mail-in ballot requiring the elector to provide proof of identification with the mail-in ballot or the ballot will not be counted.

(d) Temporary registration card.--The mail-in voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the mail-in voter's name and address and shall conspicuously contain the words "Mail-in Voter."

Section 1302.3-D. Mail-in electors files and lists.

The county board of elections shall maintain at its office a file containing the duplicate mail-in voter's temporary registration cards of every registered elector to whom a mail-in ballot has been sent. The duplicate mail-in voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards filed shall be included in the Registered Absentee and Mail-in Voters File for the Primary or Election of (date of primary or election) under section 1302.3(a).

Section 1303-D. Official mail-in elector ballots.

(a) General rule.--In election districts in which ballots are used, the ballots for use by mail-in voters under this act shall be the official ballots printed in accordance with sections 1002 and 1003.

(a.1) Duties of county boards of elections.--The county board of elections, when detaching the official ballots for mail-in voters, shall be required to indicate on the stub of each detached ballot the name of the applicant to which that precise ballot is being sent. The county board of elections shall also remove the numbered stub from each ballot and shall print, stamp or endorse in red color on the official ballots the words, "Official Mail-in Ballot." The ballots shall be distributed by a board as provided under this section.

(b) Preparation of ballots.--In election districts in which voting machines are used and in election districts in which paper ballots are used, the county board of elections in that election district will not print official mail-in ballots in accordance with sections 1002 and 1003. The ballots for use by mail-in voters under this section shall be prepared sufficiently in advance by the county board of elections and shall be distributed by the boards as provided under this act. The ballots shall be marked "Official Mail-in Ballot" but shall not be numbered and shall otherwise be in substantially the form for ballots required by Article X, which form shall be prescribed by the Secretary of the Commonwealth.

(c) Use of ballot cards.--In election districts in which electronic voting systems are utilized, the mail-in ballot may be in the form of a ballot card which shall be clearly stamped on the ballot card's face "Mail-in Ballot."

(d) Special write-in mail-in ballots.--In cases where there is not time to print on the ballots the names of the various candidates, the county board of elections shall print special write-in mail-in ballots which shall be in substantially the form of other official mail-in ballots, except that the special write-in mail-in ballots shall contain blank spaces only under the titles of the offices in which electors may insert by writing or stamping the names of the candidates for whom they desire to vote, and in those cases, the county board of elections shall furnish to electors lists containing the names of all the candidates named in nomination petitions or who have been regularly nominated under the provisions of this act, for the use of the electors in preparing their ballots. Special write-in mail-in ballots shall include all constitutional amendments and other questions to be voted on by the electors.

(e) Notice.--The official mail-in voter ballot shall state that a voter who receives a mail-in ballot under section 1301-D and whose mail-in ballot is not timely received may only vote on election day by provisional ballot.

Section 1304-D. Envelopes for official mail-in ballots.

(a) Additional envelopes.--The county boards of election shall provide two additional envelopes for each official mail-in ballot of a size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official Mail-in Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the mail-in voter.

(b) Form of declaration and envelope.--The form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth and shall contain, among other things, a statement of the elector's qualifications, together with a statement that the elector has not already voted in the primary or election.

(c) Mailing envelope.--The mailing envelope addressed to the elector shall contain the two envelopes, the official mail-in ballot, lists of candidates, when authorized by section 1303-D(b), the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else.

(d) Notice.--Notice of the requirements under section 1306-D shall be printed on the envelope for the mail-in ballot.

Section 1305-D. Delivering or mailing ballots.

The county board of elections, upon receipt and approval of an application filed by a qualified elector under section 1301-D, shall commence to deliver or mail official mail-in ballots as soon as a ballot is certified and the ballots are available. While any proceeding is pending in a Federal or State court which would affect the contents of any ballot, the county board of elections may await a resolution of that proceeding but in any event, shall commence to deliver or mail official absentee ballots not later than the second Tuesday prior to the primary or election. For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2-D(c) with the mail-in ballot. As additional applications are received and approved, the board shall deliver or mail official mail-in ballots to the additional electors within 48 hours.

Section 1306-D. Voting by mail-in electors.

(a) General rule.--At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Mail-in Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(a.1) Signature.--Any elector who is unable to sign the declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form:

> I hereby declare that I am unable to sign my declaration for voting my mail-in ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.
>
> (Mark)
>
> (Date)
>
> (Complete Address of Witness)
>
> (Signature of Witness)

(b) Eligibility.--

(1) Any elector who receives and votes a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.

(2) An elector who requests a mail-in ballot and who is not shown on the district register as having voted may vote by provisional ballot under section 1210(a.4)(1).

(c) Deadline.--Except as provided under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot), a completed mail-in ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

Section 1307-D. Public records.

(a) General rule.--All official mail-in ballots, files, applications for ballots and envelopes on which the executed declarations appear and all information and lists are designated and declared to be public records and shall be safely kept for a period of two years, except that no proof of identification shall be made public, nor shall information concerning a military elector be made public which is expressly forbidden by the Department of Defense because of military security.

(b) Record.--For each election, the county board shall maintain a record of the following information, if applicable, for each elector who makes application for a mail-in ballot:

(1) The elector's name and voter registration address.

(2) The date on which the elector's application is received by the county board.

(3) The date on which the elector's application is approved or rejected by the county board.

(4) The date on which the county board mails or delivers the mail-in ballot to the elector.

(5) The date on which the elector's completed mail-in ballot is received by the county board.

(c) Compilation.--The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within 48 hours.

Section 1308-D. Violation of provisions relating to mail-in voting.

(a) Penalties.--Except as provided under subsection (b), a person who violates any of the provisions of this act relating to mail-in voting shall, unless otherwise provided, be subject to the penalties provided under section 1850.

(b) Persons not qualified as mail-in voters.--A person who knowingly assists another person who is not a qualified mail-in voter in filling out a mail-in ballot application or mail-in ballot commits a misdemeanor of the third degree.

Section 9. Section 1405 of the act is amended to read:

Section 1405. Manner of Computing Irregular Ballots.--The county board, in computing the votes cast at any primary or election, shall compute and certify votes cast on irregular ballots exactly as such names were written, stamped[, affixed to the ballot by sticker,] or deposited [or affixed] in or on receptacles for that purpose, and as they have been so returned by the election officers. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots. A vote cast by means of a sticker or label affixed to a ballot or ballot card shall be void and may not be counted.** In the primary the Secretary of the Commonwealth shall not certify the votes cast on irregular ballots for any person for a National office including that of the President of the United States, United States Senator and Representative in Congress; or for any State office including that of Governor and Lieutenant Governor, Auditor General, State Treasurer, Senator and Representative in the General Assembly, justices and judges of courts of record or for any party office including that of delegate or alternate delegate to National conventions and member of State committee unless the total number of votes cast for said person is equal to or greater

than the number of signatures required on a nomination petition for the particular office. In the primary the county board shall not certify the votes cast on irregular ballots for any person for a justice of the peace, constable, National, State, county, city, borough, town, township, ward, school district, election or local party office unless the total number of votes cast for said person is equal to or greater than the number of signatures required on a nomination petition for the particular office.

Section 10. The Secretary of the Commonwealth shall prepare and disseminate information to the public regarding the changes to the voting procedures under this act.

Section 11. Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.

Section 12. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of section 1231 of the act.

(2) 25 Pa.C.S. § 1326 is repealed.

(3) The General Assembly declares that the repeal under paragraph (4) is necessary to effectuate the addition of section 1232 of the act.

(4) 25 Pa.C.S. § 1330 is repealed.

(5) The General Assembly declares that the repeal under paragraph (6) is necessary to effectuate the addition of section 1233 of the act.

(6) 25 Pa.C.S. § 1602(a)(1) is repealed.

Section 13. The following apply:

(1) This section applies to the amendment or addition of the following provisions of the act:

(i) Section 102.
(ii) section 1003(a).
(iii) Section 1007(b).
(iv) Section 1107.
(v) Section 1110.
(vi) Section 1107-A.
(vii) Section 1109-A.
(viii) Section 1112-A(a).
(ix) Section 1216(d).
(x) Section 1222(a) and (b).
(xi) Section 1223.
(xii) Section 1231.
(xiii) Section 1232.
(xiv) Section 1233.
(xv) Section 1302.
(xvi) Section 1302.1.
(xvii) Section 1302.2.
(xviii) Section 1305.
(xix) Section 1306.
(xx) Section 1308.
(xxi) Article XIII-D.

(2) The Pennsylvania Supreme Court has exclusive jurisdiction to hear a challenge to or to render a declaratory judgment concerning the constitutionality of a provision referred to in paragraph (1). The Supreme Court may take action it deems appropriate, consistent with the Supreme Court retaining jurisdiction over the matter, to find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief.

(3) An action under paragraph (2) must be commenced within 180 days of the effective date of this section.

Section 14. This act shall apply to elections held on or after April 28, 2020.

Section 15. This act shall take effect as follows:

(1) The addition of section 207 of the act shall take effect in 180 days.

(2) The amendment of section 908 of the act shall take effect in 60 days.

(3) The remainder of this act shall take effect immediately.

APPROVED--The 31st day of October, A.D. 2019.

TOM WOLF

APPENDIX F

Session of 2020
No. 2020-12

SB 422

AN ACT

Amending the act of June 3, 1937 (P.L.1333, No.320), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," in preliminary provisions, further providing for definitions; in county boards of elections, further providing for powers and duties of county boards; in ballots, further providing for forms of ballots, printing ballots, numbers; in electronic voting systems, further providing for forms, for election day procedures and the process of voting and for post election procedures; in preparation for and conduct of primaries and elections, further providing for manner of applying to vote, persons entitled to vote, voter's certificates, entries to be made in district register, numbered lists of voters, challenges and for deadline for receipt of valid voter registration application; in voting by qualified absentee electors, further providing for applications for official absentee ballots, for approval of application for absentee ballot, for absentee and mail-in electors files and lists, for official absentee voters ballots, for envelopes for official absentee ballots, for delivering or mailing ballots, for voting by absentee electors, for canvassing of official absentee ballots and mail-in ballots and for public records and repealing provisions relating to violation of provisions relating to absentee voting; in voting by qualified mail-in electors, further providing for qualified mail-in electors, for applications for official mail-in ballots, for approval of application for mail-in ballot, for official mail-in elector ballots, for envelopes for official mail-in ballots, for voting by mail-in electors and for public records and repealing provisions relating to violation of provisions relating to mail-in voting; providing for Pennsylvania Election Law Advisory Board; in penalties, further providing for violations of provisions relating to absentee electors ballots; providing for emergency provisions for 2020 general primary election; and making a related repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102(a.1) and (z.6) of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, added October 31, 2019 (P.L.552, No.77), are amended and the section is amended by adding a subsection to read:

Section 102. Definitions.--The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:

* * *

(a.1) ["Canvass" includes] **The word "canvass" shall mean the** gathering [the] **of** ballots after the [election] **final pre-canvass meeting** and **the** counting, computing and tallying **of** the votes **reflected on the ballots.**

* * *

(q.1) The word "pre-canvass" shall mean the inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots.

* * *

(z.6) The words "qualified mail-in elector" shall mean a qualified elector [who is not a qualified absentee elector.]. **The term does not include a person specifically prohibited from being a qualified absentee elector under section 1301.**

Section 2. Section 302(p) of the act is amended to read:

Section 302. Powers and Duties of County Boards.--The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

* * *

(p) A county board of elections shall not pay compensation to a judge of elections who wilfully fails to deliver by two o'clock A. M. on the day following the election envelopes; supplies, including all uncast provisional ballots; and returns, including all provisional ballots [and absentee ballots] cast in the election district **and statements signed under sections 1306 and 1302-D.**

Section 3. Section 1004 of the act, amended October 31, 2019 (P.L.552, No.77) and November 27, 2019 (P.L.673, No.94), is amended to read:

Section 1004. Form of Ballots; Printing Ballots[; Numbers].--From the lists furnished by the Secretary of the Commonwealth under the provisions of sections 915 and 984, and from petitions and papers filed in their office, the county election board shall print the official primary and election ballots in accordance with the provisions of this act: Provided, however, That in no event, shall the name of any person consenting to be a candidate for nomination for any one office, except the office of judge of a court of common pleas, the Philadelphia Municipal Court or the office of school director in districts where that office is elective or the office of justice of the peace be printed as a candidate for such office upon the official primary ballot of more than one party. All ballots for use in the same election district at any primary or election shall be alike. [They shall be at least six inches long and four inches wide, and shall have a margin extending beyond any printing thereon. They shall be printed with the same kind of type (which shall not be smaller than the size known as "brevier" or "eight point body") upon white paper of uniform quality, without any impression or mark to distinguish one from another, and with sufficient thickness to prevent the printed matter from showing through. All the ballots for the same election district shall be bound together in books of fifty, in such manner that each ballot may be detached and

removed separately. The ballots for each party to be used at a primary shall be bound separately.]

Section 4. Sections 1109-A(a)(2), (b) and (e) and 1112-A(b)(2), (3) and (4) of the act, amended October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1109-A. Forms.--(a) * * *

(2) The pages placed on the voting device shall be of sufficient number to include, following the listing of particular candidates, the names of candidates for any nonpartisan offices and any measures for which a voter may be qualified to vote on a given election day.[, provided further that for municipal, general or special elections, the first ballot page shall list in the order that such political parties are entitled to priority on the ballot, the names of such political parties.]

* * *

(b) Ballot labels shall be printed in plain clear type [in black ink], of such size and arrangement as to fit the construction of the voting device; and they shall be printed [on clear white material or on material of different colors to identify different ballots or parts of the ballot and in primary elections to identify each political party.] **in a manner prescribed by the Secretary of the Commonwealth to identify different ballots or parts of a ballot and in primary elections to identify each political party.**

* * *

(e) In primary elections, the Secretary of the Commonwealth shall [choose a color for each party eligible to have candidates on the ballot and a separate color for independent voters. The ballot cards or paper ballots and ballot pages shall be printed on card or paper stock of the color of the party of the voter and the appropriate party affiliation or independent status shall be printed on the ballot card or at the top of the paper ballot and on the ballot pages.] **prescribe a method to ensure that the elector votes the correct ballot.**

* * *

Section 1112-A. Election Day Procedures and the Process of Voting.--* * *

(b) In an election district which uses an electronic voting system which utilizes paper ballots or ballot cards to register the votes, the following procedures will be applicable for the conduct of the election at the election district:

* * *

(2) At primary elections, the voter shall vote for the candidates of his choice for nomination, according to the number of persons to be voted for by him, for each office by making a cross (X) or check (✓) mark or by making a punch or mark sense mark in the square opposite the name of the candidate **or by otherwise indicating a selection associated with the candidate**, or he may so [mark the write-in position provided on the ballot for the particular office] **indicate on the ballot that the voter is electing to write in the name of a person for the particular office**, and[, in the space provided therefor on the ballot and/or ballot envelope, write] **insert** the identification of the office in question and the name of any person not already [printed on the ballot for that office] **listed as a candidate for that office**, and such [mark] **indication** and [written] insertion shall count as a vote for that person for such office.

(3) At all other elections, the voter shall vote for the candidates of his choice for each office to be filled, according to the number of persons to be voted for by him for each office,

by making a cross (X) or check (✓) mark or by making a punch or mark sense mark in the square opposite the name of the candidate, **or by otherwise indicating a selection associated with the candidate,** or he may so [mark the write-in position provided on the ballot for the particular office] **indicate on the ballot that the voter is electing to write in the name of a person for the particular office,** and[, in the space provided therefor on the ballot and/or ballot envelope, write] **insert** the identification of the office in question and the name of any person not already [printed on the ballot for that office] **listed as a candidate for that office,** and such [mark] **indication** and [written] insertion shall count as a vote for that person for such office.

(4) If he desires to vote for the entire group of presidential electors nominated by any party or political body, he may make a cross (X) or check (✓) or punch or mark sense mark [in the appropriate space opposite] **or otherwise indicate a selection associated with** the names of the candidates for President and Vice-President of such party or body. If he desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or political bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or political body, or wholly of names of persons not in nomination by any party or political body, he shall insert[, by writing or stamping,] the names of the candidates for presidential electors for whom he desires to vote [in the blank spaces provided therefor] on the write-in ballot under the title of the office "Presidential Electors". In case of a question submitted to the vote of the electors, he may make a cross (X) or check (✓) or punch or mark sense mark [in the appropriate square opposite] **or otherwise indicate a selection associated with** the answer which he desires to give.

* * *

Section 5. Section 1113-A(i) of the act is amended to read:

Section 1113-A. Post Election Procedures.--* * *

(i) In the event that district tabulation of votes is not provided for by the voting system, it shall be the responsibility of the county board of elections to make available to the public at the central tabulating center, the election results for each election district. [It shall be the further duty of the county board of elections to post such results in each election district no later than 5:00 p.m. of the second day following the election.]

* * *

Section 6. Section 1210(a.4)(1) of the act, amended October 31, 2019 (P.L.552, No.77), is amended to read:

Section 1210. Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges.--* * *

(a.4) (1) At all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot. Individuals who appear to vote shall be required to produce proof of identification pursuant to subsection (a) and if unable to do so shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot. [An elector who appears to vote on election day having requested

an absentee ballot or mail-in ballot and who is not shown on the district register as having voted an absentee ballot or mail-in ballot shall be permitted to cast a provisional ballot.]

* * *

Section 7. Section 1231(c)(2) of the act, added October 31, 2019 (P.L.552, No.77), is amended and the section is amended by adding a subsection to read:

Section 1231. Deadline for Receipt of Valid Voter Registration Application.--* * *

(c) * * *

[(2) No applications shall be received as follows:

(i) On Sundays.

(ii) On holidays.

(iii) On the day of the election.

(iv) During the fifteen days next preceding each general, municipal and primary election except as provided under subsection (b).]

* * *

(e) (1) An applicant whose voter registration application is timely received under subsection (b) or (c) shall be deemed a registered elector of the county immediately upon acceptance of the voter registration application by the commission under 25 Pa.C.S. § 1328(c)(1) or (2) (relating to approval of registration applications), and the commission shall enter the elector's registration information in the general register, with the elector's unique identification number entered as his or her SURE registration number.

(2) Notwithstanding 25 Pa.C.S. § 1328(b)(2), if under subsection (b) or (c) an applicant timely presents his or her own application for voter registration under 25 Pa.C.S. § 1322 (relating to in-person voter registration), the commission shall immediately examine the application pursuant to 25 Pa.C.S. § 1328(a) and shall, while the applicant waits, promptly decide on said application by either accepting it, rejecting it or forwarding it pursuant to 25 Pa.C.S. § 1328(b) and, if accepted, process the application in accordance with 25 Pa.C.S. § 1328(c).

Section 8. Sections 1302(e.1) and (i)(1), 1302.2(c) and (e) and 1302.3(a), amended October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1302. Applications for Official Absentee Ballots.--* * *

(e.1) Any qualified registered elector who is unable because of illness or physical disability to attend his polling place on the day of any primary or election or operate a voting machine and state distinctly and audibly that he is unable to do so as required by section 1218 of this act may **at any time request,** with the certification by his attending physician that he is permanently disabled[,] and physically unable to attend the polls or operate a voting machine and make the distinct and audible statement required by section 1218 appended to the application hereinbefore required, **to** be placed on a permanently disabled absentee ballot list file. An absentee ballot application shall be mailed to every such person otherwise eligible to receive one, by the first Monday in February each year, **or within forty-eight hours of receipt of the request, whichever is later,** so long as he does not lose his voting rights by failure to vote as otherwise required by this act. Such person shall not be required to file a physician's certificate of disability with each application as required in subsection (e) of this section. Should any such person lose his disability he shall inform the county board of elections of the

county of his residence. An absentee ballot application mailed to [a voter] **an elector** under this section, which is completed and timely returned by the [voter] **elector**, shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year. **The transfer of a qualified registered elector on a permanently disabled absentee ballot list from one county to another county shall only be permitted upon the request of the qualified registered elector.**

* * *

(i) (1) Application for official absentee ballots shall be on physical and electronic forms prescribed by the Secretary of the Commonwealth. The application shall state that an elector who [receives and votes] **applies for** an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day[.] **unless the elector brings the elector's absentee ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect.** Such physical application forms shall be made freely available to the public at county board of elections, municipal buildings and at such other locations designated by the secretary. Such electronic application forms shall be made freely available to the public through publicly accessible means. No written application or personal request shall be necessary to receive or access the application forms. Copies and records of all completed physical and electronic applications for official absentee ballots shall be retained by the county board of elections.

* * *

Section 1302.2. Approval of Application for Absentee Ballot.--

* * *

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of preceding section 1301, shall determine the qualifications of such applicant by verifying the proof of identification and comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding, except that challenges may be made only on the ground that the applicant [did not possess the qualifications of an absentee] **was not a qualified** elector. Such challenges must be made to the county board of elections prior to [the applicable deadline for the absentee ballots to be received, as provided in section 1308(g). When so approved, the registration commission shall cause an absentee voter's temporary registration card to be inserted in the district register on top of and along with the permanent registration card. The absentee voter's temporary registration card shall be in the color and form prescribed in subsection (e) of this section:

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the insertion of the absentee voter's temporary registration card of any elector from the district register as set forth in section 1302.2 shall include only such applications and

emergency applications as are received on or before the first Tuesday prior to the primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before eight o'clock P.M. on the day of the primary or election, the county board of elections shall determine the qualifications of such applicant by verifying the proof of identification and comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b).] **five o'clock p.m. on the Friday prior to the election: Provided, however, That a challenge to an application for an absentee ballot shall not be permitted on the grounds that the elector used an application for an absentee ballot instead of an application for a mail-in ballot or on the grounds that the elector used an application for a mail-in ballot instead of an application for an absentee ballot.**

* * *

[(e) The absentee voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the absentee voter's name and address and shall conspicuously contain the words "Absentee Voter."]

* * *

Section 1302.3. Absentee and Mail-in Electors Files and Lists.--[(a) The county board of elections shall maintain at its office a file containing the duplicate absentee voter's temporary registration cards of every registered elector to whom an absentee ballot has been sent. Such duplicate absentee voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards and the registration cards under section 1302.3-D so filed shall constitute the Registered Absentee and Mail-in Voters File for the Primary or Election of (date of primary or election) and shall be kept on file for a period commencing the Tuesday prior to the day of the primary or election until the day following the primary or election or the day the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations.]

* * *

Section 9. Section 1303(a) and (e), amended October 31, 2019 (P.L.552, No.77) and November 27, 2019 (P.L.673, No.94), are amended to read:

Section 1303. Official Absentee Voters Ballots.--(a) In districts in which ballots are used, the ballots for use by such absentee electors under the provisions of this act shall be the official ballots printed in accordance with sections 1002 and 1003: Provided, however, That the county board of elections when [detaching] **preparing** the official ballots for absentee electors shall be required to track the name of the applicant to which a ballot is being sent. The county board of elections shall also be required to print, stamp or endorse [in red color] upon such official ballots the words, Official

Absentee Ballot. Such ballots shall be distributed by such boards as hereinafter provided.

* * *

(e) The official absentee voter ballot shall state that [a voter] **an elector** who receives an absentee ballot pursuant to section 1301 and whose **voted** ballot is not timely received **by the commission** and who, on election day, is capable of voting at the appropriate polling place may only vote on election day by provisional ballot[.] **unless the elector brings the elector's absentee ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect.**

Section 10. Section 1304 of the act is amended to read:

Section 1304. Envelopes for Official Absentee Ballots.--

The county boards of election shall provide two additional envelopes for each official absentee ballot of such size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official [Absentee] **Election** Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector, and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the absentee voter. Said form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth and shall contain among other things a statement of the electors qualifications, together with a statement that such elector has not already voted in such primary or election. The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, lists of candidates, when authorized by section 1303 subsection (b) of this act, the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else.[: Provided, however, That envelopes for electors qualified under preceding section 1301, subsections (a) to (h), inclusive, shall have printed across the face of each transmittal or return envelope two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed, in the upper right corner of each such envelope in a box, the words "Free of U. S. Postage, Including Air Mail;" that all printing on the face of each such envelope be in red, and that there be printed in red, in the upper left corner of each such envelope, the name and address of the county board of elections of the proper county or blank lines for return address of the sender:

Provided further, That the aforesaid envelope addressed to the elector may contain absentee registration forms where required, and shall contain detailed instructions on the procedures to be observed in casting an absentee ballot as prescribed by the Secretary of the Commonwealth, together with return envelope upon which is printed the name and address of the registration commission of the proper county, which envelope

shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed in the upper right corner of each such envelope in a box the words "Free of U. S. Postage, Including Air Mail," and, in the upper left corner of each such envelope, blank lines for return address of the sender; that all printing on the face of each such envelope be in red.]

Section 11. Sections 1306(a) introductory paragraph and (b), 1308(g) and 1309(c) of the act, amended or added October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1306. Voting by Absentee Electors.--(a) Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official [Absentee] **Election** Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

* * *

(b) (1) Any elector who receives and votes an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted absentee ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted an absentee ballot to vote at the polling place.

(2) An elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote by provisional ballot under section 1210(a.4)(1).

(3) Notwithstanding paragraph (2), an elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote at the polling place if the elector remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and the elector signs a statement subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) in substantially the following form:

I hereby declare that I am a qualified registered elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast my absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot and the envelope containing the declaration of the elector to the judge of elections at my polling place to be spoiled and therefore request that my absentee ballot or mail-in ballot be voided.

(Date)

(Signature of Elector).....(Address of Elector)
(Local Judge of Elections)

* * *

Section 1308. Canvassing of Official Absentee Ballots and Mail-in Ballots.--* * *

(g) (1) (i) An absentee ballot cast by any absentee elector as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h) shall be canvassed in accordance with this subsection if the ballot is cast, submitted and received in accordance with the provisions of 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters).

(ii) An absentee ballot cast by any absentee elector as defined in section 1301(i), (j), (k), (l), (m) and (n), an absentee ballot under section 1302(a.3) or a mail-in ballot cast by a mail-in elector shall be canvassed in accordance with this subsection if the absentee ballot or mail-in ballot is received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

(1.1) The county board of elections shall meet no earlier than seven o'clock A.M. on election day to pre-canvass all ballots received prior to the meeting. A county board of elections shall provide at least forty-eight hours' notice of a pre-canvass meeting by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed. No 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.

(2) The county board of elections shall meet no earlier than the close of polls on the day of the election and no later than the third day following the election to begin canvassing [the] absentee ballots and mail-in ballots [received under this subsection and subsection (h)(2).]**not included in the pre-canvass meeting. The meeting under this paragraph shall continue until all absentee ballots and mail-in ballots received prior to the close of the polls have been canvassed. The county board of elections shall not record or publish any votes reflected on the ballots prior to the close of the polls.** The canvass **process** shall continue through the eighth day following the election[.] **for valid military-overseas ballots timely received under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot). A county board of elections shall provide at least forty-eight hours' notice of a canvass meeting by publicly posting a notice on its publicly accessible Internet website.** One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are canvassed. [Representatives shall be permitted to challenge any absentee elector or mail-in elector in accordance with the provisions of paragraph (3).]

(3) When the county board meets to **pre-canvass or** canvass absentee ballots and mail-in ballots under [paragraph] **paragraphs (1), (1.1) and** (2), the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the "Registered Absentee and Mail-in Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File," whichever is

applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee and Mail-in Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the county board shall [announce the name of the elector and shall give any candidate representative or party representative present an opportunity to challenge any absentee elector or mail-in elector upon the ground or grounds: (i) that the absentee elector or mail-in elector is not a qualified elector; or (iii) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein, the board shall mark "challenged" on the envelope together with the reasons therefor, and the same shall be set aside unopened pending final determination of the challenge according to the procedure described in paragraph (5).] **provide a list of the names of electors whose absentee ballots or mail-in ballots are to be pre-canvassed or canvassed.**

(4) All absentee ballots [and mail-in ballots not challenged for any of the reasons provided in] **which have not been challenged under section 1302.2(c) and all mail-in ballots which have not been challenged under section 1302.2-D(a)(2) and that have been verified under** paragraph (3) shall be counted and included with the returns of the applicable election district as follows:

(i) The county board shall open the envelope of every unchallenged absentee elector and mail-in elector in such manner as not to destroy the declaration executed thereon.

(ii) If any of the envelopes on which are printed, stamped or endorsed the words "Official [Absentee] **Election** Ballot" [or "Official Mail-in Ballot"] contain any [extraneous marks or identifying symbols,] **text, mark or symbol which reveals the identity of the elector, the elector's political affiliation or the elector's candidate preference,** the envelopes and the ballots contained therein shall be set aside and declared void.

(iii) The county board shall then break the seals of such envelopes, remove the ballots and [record the votes.] **count, compute and tally the votes.**

(iv) Following the close of the polls, the county board shall record and publish the votes reflected on the ballots.

(5) [With respect to the challenged ballots, they] **Ballots received whose applications have been challenged and ballots which have been challenged** shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges, and notice shall be given where possible to all absentee electors and mail-in electors thus challenged and to every individual who made a challenge. The time for the hearing shall not be later than [five (5)] **seven (7)** days after the [date of the challenge] **deadline for all challenges to be filed.** On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges, and, in hearing the testimony, the county board shall not be bound by the Pennsylvania Rules of Evidence. The testimony presented shall be stenographically recorded and made part of the record of the hearing.

(6) The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any person aggrieved by the decision of the county board. The appeal shall be taken, within two (2) days after the decision was made, whether the decision was reduced to writing or not, to the court of common pleas setting forth the objections to the county board's decision and praying for an order reversing the decision.

(7) Pending the final determination of all appeals, the county board shall suspend any action in canvassing and computing all challenged ballots received under this subsection irrespective of whether or not appeal was taken from the county board's decision. Upon completion of the computation of the returns of the county, the votes cast upon the challenged official absentee ballots that have been finally determined to be valid shall be added to the other votes cast within the county.

* * *

Section 1309. Public Records.--* * *

(c) The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within forty-eight hours **of the request.**

Section 12. Section 1331 of the act is repealed:

[Section 1331. Violation of Provisions Relating to Absentee Voting.--(a) Except as provided in subsection (b), any person who shall violate any of the provisions of this act relating to absentee voting shall, unless otherwise provided, be subject to the penalties provided for in section 1850 of this act.

(b) Any person who knowingly assists another person who is not a qualified absentee elector in filling out an absentee ballot application or absentee ballot commits a misdemeanor of the third degree.]

Section 12.1. Sections 1301-D(a), 1302-D(f) and (g), 1302.2-D(a)(2), (3), (4) and (5), (b) and (d) and 1302.3-D of the act, added October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1301-D. Qualified mail-in electors.

(a) General rule.--[The following individuals] **A qualified mail-in elector** shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.[:

(1) Any qualified elector who is not eligible to be a qualified absentee elector under Article XIII.

(2) (Reserved).]

* * *

Section 1302-D. Applications for official mail-in ballots.

* * *

(f) Form.--Application for an official mail-in ballot shall be on physical and electronic forms prescribed by the Secretary of the Commonwealth. The application shall state that a voter who [receives and votes] **applies for** a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day[.] **unless the elector brings the elector's mail-in ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect.** The physical application forms shall be made freely available to the public at county board of elections, municipal buildings and at other locations designated by the Secretary of the Commonwealth. The

electronic application forms shall be made freely available to the public through publicly accessible means. No written application or personal request shall be necessary to receive or access the application forms. Copies and records of all completed physical and electronic applications for official mail-in ballots shall be retained by the county board of elections.

(g) Permanent mail-in voting list.--

(1) Any qualified registered elector may request to be placed on a permanent mail-in ballot list file **at any time during the calendar year.** A mail-in ballot application shall be mailed to every person otherwise eligible to receive a mail-in ballot application by the first Monday in February each year **or within 48 hours of receipt of the request, whichever is later,** so long as the person does not lose the person's voting rights by failure to vote as otherwise required by this act. A mail-in ballot application mailed to [a voter] **an elector** under this section, which is completed and timely returned by the [voter] **elector,** shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year.

(2) The Secretary of the Commonwealth may develop an electronic system through which all qualified electors may apply for a mail-in ballot and request permanent mail-in voter status under this section, provided the system is able to capture a digitized or electronic signature of the applicant. A county board of elections shall treat an application or request received through the electronic system as if the application or request had been submitted on a paper form or any other format used by the county.

(3) The transfer of a qualified registered elector on a permanent mail-in voting list from one county to another county shall only be permitted upon the request of the qualified registered elector.

Section 1302.2-D. Approval of application for mail-in ballot.

(a) Approval process.--The county board of elections, upon receipt of any application of a qualified elector under section 1301-D, shall determine the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained on the applicant's permanent registration card. The following shall apply:

* * *

(2) The approval decision shall be final and binding, except that challenges may be made only on the grounds that the applicant [did not possess the qualifications of a mail-in] **was not a qualified** elector.

(3) Challenges must be made to the county board of elections prior to [the applicable deadline for the mail-in ballots to be received, as provided in section 1308(g).] **five o'clock p.m. on the Friday prior to the election: Provided, however, That a challenge to an application for a mail-in ballot shall not be permitted on the grounds that the elector used an application for a mail-in ballot instead of an application for an absentee ballot or on the grounds that the elector used an application for an absentee ballot instead of an application for a mail-in ballot .**

(4) When approved, the registration commission shall cause a mail-in voter's [temporary registration card] **record** to be inserted in the district register [on top of and along

with the permanent registration card] **as prescribed by the Secretary of the Commonwealth.**

[(5) The mail-in voter's temporary registration card shall be in the color and form prescribed under subsection (d).]

(b) Duties of county boards of elections and registration commissions.--The duties of the county boards of elections and the registration commissions with respect to the insertion of the mail-in voter's [temporary registration card of any elector from the district register as provided under this section] **record** shall include only the applications as are received on or before the first Tuesday prior to the primary or election.

* * *

[(d) Temporary registration card.--The mail-in voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the mail-in voter's name and address and shall conspicuously contain the words "Mail-in Voter."]

[Section 1302.3-D. Mail-in electors files and lists.

The county board of elections shall maintain at its office a file containing the duplicate mail-in voter's temporary registration cards of every registered elector to whom a mail-in ballot has been sent. The duplicate mail-in voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards filed shall be included in the Registered Absentee and Mail-in Voters File for the Primary or Election of (date of primary or election) under section 1302.3(a).]

Section 13. Section 1303-D(a.1) and (e), amended or added October 31, 2019 (P.L.552, No.77) and November 27, 2019 (P.L.673, No.94), are amended to read:

Section 1303-D. Official mail-in elector ballots.

* * *

(a.1) Duties of county boards of elections.--The county board of elections, when [detaching] **preparing** the official ballots for mail-in voters, shall be required to indicate on [the stub of each detached ballot the name of the applicant to which that precise ballot is being sent.] **the voter's record the identification number of specific ballot envelope into which the voter's ballot is inserted.** The county board of elections shall also [remove the numbered stub from each ballot and shall] print, stamp or endorse [in red color] on the official ballots the words, "Official Mail-in Ballot." The ballots shall be distributed by a board as provided under this section.

* * *

(e) Notice.--The official mail-in voter ballot shall state that a voter who receives a mail-in ballot under section 1301-D and whose **voted** mail-in ballot is not timely received may only vote on election day by provisional ballot[.] **unless the elector brings the elector's mail-in ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect .**

Section 14. Sections 1304-D(a), 1305-D, 1306-D(a) and (b) and 1307-D(c) of the act, added October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1304-D. Envelopes for official mail-in ballots.

(a) Additional envelopes.--The county boards of election shall provide two additional envelopes for each official mail-in ballot of a size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official [Mail-in] **Election** Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the mail-in voter.

* * *

Section 1305-D. Delivering or mailing ballots.

The county board of elections, upon receipt and approval of an application filed by a qualified elector under section 1301-D, shall commence to deliver or mail official mail-in ballots as soon as a ballot is certified and the ballots are available. While any proceeding is pending in a Federal or State court which would affect the contents of any ballot, the county board of elections may await a resolution of that proceeding but in any event, shall commence to deliver or mail official [absentee] **mail-in** ballots not later than the second Tuesday prior to the primary or election. For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2-D(c) with the mail-in ballot. As additional applications are received and approved, the board shall deliver or mail official mail-in ballots to the additional electors within 48 hours.

Section 1306-D. Voting by mail-in electors.

(a) General rule.--At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official [Mail-in] **Election** Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

* * *

(b) Eligibility.--

(1) Any elector who receives and votes a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.

(2) An elector who requests a mail-in ballot and who is not shown on the district register as having voted may vote by provisional ballot under section 1210(a.4)(1).

(3) Notwithstanding paragraph (2), an elector who requests a mail-in ballot and who is not shown on the district register as having voted the ballot may vote at the polling place if the elector remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and the elector signs a statement subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) which shall be in substantially the following form:

I hereby declare that I am a qualified registered elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast my absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot to the judge of elections at my polling place to be spoiled and therefore request that my absentee ballot or mail-in ballot be voided.

(Date)

(Signature of Elector).....(Address of Elector)

(Local Judge of Elections)

* * *

Section 1307-D. Public records.

* * *

(c) Compilation.--The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within 48 hours **of the request.**

Section 14.1. Section 1308-D of the act is repealed:

[Section 1308-D. Violation of provisions relating to mail-in voting.

(a) Penalties.--Except as provided under subsection (b), a person who violates any of the provisions of this act relating to mail-in voting shall, unless otherwise provided, be subject to the penalties provided under section 1850.

(b) Persons not qualified as mail-in voters.--A person who knowingly assists another person who is not a qualified mail-in voter in filling out a mail-in ballot application or mail-in ballot commits a misdemeanor of the third degree.]

Section 15. The act is amended by adding an article to read:

ARTICLE XIII-E

PENNSYLVANIA ELECTION LAW ADVISORY BOARD

Section 1301-E. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The Pennsylvania Election Law Advisory Board established under section 1302-E(a).

Section 1302-E. Pennsylvania Election Law Advisory Board.

(a) Establishment.--The Pennsylvania Election Law Advisory Board is established within the Joint State Government Commission.

(b) Members.--The board shall be comprised of the following members:

(1) The Secretary of the Commonwealth or a designee.

(2) The President pro tempore of the Senate or a designee.

(3) The Minority Leader of the Senate or a designee.

(4) The Speaker of the House of Representatives or a designee.

(5) The Minority Leader of the House of Representatives or a designee.

(6) One member from each congressional district, of whom no more than half may be registered with the same

political party, appointed by the Governor and confirmed by the Senate and which shall include members who:

(i) represent groups advocating for individuals with disabilities;

(ii) represent groups advocating for voting rights; and

(iii) represent county commissioners or county election officials.

(c) Duties.--The board shall have the following duties:

(1) Study this act and identify statutory language to repeal, modify or update.

(2) Collaborate with other agencies and political subdivisions of the Commonwealth to study election-related issues.

(3) Study the development of new election technology and voting machines.

(4) Evaluate and make recommendations on:

(i) improving the electoral process in this Commonwealth by amending this act or through regulations promulgated by the Department of State; and

(ii) implementing best practices identified to ensure the integrity and efficiency of the electoral process in this Commonwealth.

(5) By the end of each fiscal year, publish extensive and detailed findings on the Joint State Government Commission's publicly accessible Internet website and make them available in electronic format to the Office of the Governor and members of the General Assembly.

(d) Quorum.--A majority of appointed members shall constitute a quorum for the purpose of conducting business.

(e) Chairperson and vice chairperson.--The members shall select a member to be chairperson and another member to be vice chairperson.

(f) Transparency and ethics.--The board shall be subject to the following laws:

(1) The act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.

(2) The act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.

(3) The act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(4) 65 Pa.C.S. Ch. 7 (relating to open meetings).

(g) Information gathering.--The board may conduct hearings and otherwise gather relevant information and analysis that it considers appropriate and necessary to fulfill its duties.

(h) Reimbursement.--Members of the board shall be reimbursed for reasonable expenses.

Section 15.1. Section 1853 of the act is amended to read:

Section 1853. Violations of Provisions Relating to Absentee [Electors] **and Mail-in** Ballots.--If any person shall sign an application for absentee ballot, **mail-in ballot** or declaration of elector on the forms prescribed knowing any matter declared therein to be false, or shall vote any ballot other than one properly issued to [him] **the person**, or vote or attempt to vote more than once in any election for which an absentee ballot **or mail-in ballot** shall have been issued to [him] **the person**, or shall violate any other provisions of Article XIII **or Article XIII-D** of this act, [he] **the person** shall be guilty of a misdemeanor of the [first] **third** degree, and, upon conviction, shall be sentenced to pay a fine not exceeding [ten thousand dollars ($10,000)] **two thousand five hundred dollars ($2,500),**

or be imprisoned for a term not exceeding [five (5)] **two (2)** years, or both, at the discretion of the court.

If any chief clerk or member of a board of elections, member of a return board or member of a board of registration commissioners, shall neglect or refuse to perform any of the duties prescribed by Article XIII **or Article XIII-D** of this act, or shall reveal or divulge any of the details of any ballot cast in accordance with the provisions of Article XIII **or Article XIII-D** of this act, or shall count an absentee ballot **or mail-in ballot** knowing the same to be contrary to Article XIII **or Article XIII-D**, or shall reject an absentee ballot **or mail-in ballot** without reason to believe that the same is contrary to Article XIII **or Article XIII-D**, or shall permit an elector to cast [his] **the elector's** ballot at a polling place knowing that there has been issued to the elector an absentee ballot, [he] **the elector** shall be guilty of a felony of the third degree, and, upon conviction, shall be punished by a fine not exceeding fifteen thousand dollars ($15,000), or be imprisoned for a term not exceeding seven (7) years, or both, at the discretion of the court.

Section 16. The act is amended by adding an article to read:

ARTICLE XVIII-B

EMERGENCY PROVISIONS FOR 2020 GENERAL PRIMARY ELECTION

Section 1801-B. Election officers.

(a) Requirement.--

(1) Except as provided under paragraph (2), and notwithstanding section 402 or any other law of this Commonwealth, an election officer must be a qualified registered elector of the county in which the polling place is located.

(2) An election officer shall not be required to be a qualified registered elector in the election district in which the election officer is appointed.

(b) (Reserved).

Section 1802-B. Polling place.

(a) Consolidation of polling places.--

(1) A county board of elections may, not less than 20 days prior to the election, select and designate as the polling place for an election district any public or private building situated in another election district within the county, notwithstanding if the building is located in an election district which is not immediately adjacent to the boundary of the election district for which the building is to be a polling place.

(2) A polling place may be selected and designated under this subsection without the approval of a court.

(3) Two or more polling places may be consolidated, except that the consolidation of polling places may not result in more than a 60% reduction of polling place locations in the county, except for necessitous circumstances and as approved by the Department of State. Two or more polling places may be located in the same building.

(4) A polling place selected and designated under this subsection must be directly accessible by a public street or thoroughfare.

(b) Posting.--A county board of elections shall, not less than 15 days prior to the election under section 1804-B, post in a conspicuous place at the office of the county board of elections, a list of each place at which the election is to be held in each election district of the county. The list shall be available for public inspection at the office of the county

board of elections and posted on the county's publicly accessible Internet website.

Section 1803-B. Permissible polling place locations.

(a) Service.--Subject to subsection (b) and notwithstanding section 529(a) and (b) or any other law of this Commonwealth, malt or brewed beverages and liquors may be served in a building where a polling place is located during the hours that the polling place is open, except that an election may not be held in a room where malt or brewed beverages or liquors are dispensed.

(b) Accessibility.--A polling place under subsection (a) must be accessible from an outside entrance that does not require passageway through the room where malt or brewed beverages or liquors are dispensed.

Section 1804-B. General primary election.

(a) Time.--Notwithstanding section 603 or any law of this Commonwealth, the general primary election shall occur throughout this Commonwealth on June 2, 2020.

(b) Calculation.--The following shall apply:

(1) Except for the deadline relating to the nomination of a candidate under Article IX, any date or deadline in this act, 25 Pa.C.S. Pt. IV (relating to voter registration) or 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters) that depends on, or is contingent on, the date of the general primary election, shall be calculated based on the June 2, 2020, date for the general primary election.

(2) Notwithstanding subsection (a), the due date for the sixth Tuesday pre-primary cycle 1 campaign finance report shall be March 17, 2020.

(c) Nonapplicability.--This section shall not be construed to apply to the nominating petition process.

(d) Ballots.--A ballot for the general primary 2020 which has been purchased, printed or acquired prior to the effective date of this section and shows an election date of April 28, 2020, shall not be deemed to be invalid because of the date.

Section 1805-B. Expiration.

This article shall expire on July 3, 2020.

Section 17. This act shall apply as follows:

(1) The amendment or addition of the following shall apply to elections occurring on or after June 2, 2020:

(i) Section 102(a.1), (q.1) and (z.6).
(ii) Section 1302.2(c).
(iii) Section 1308(g).
(iv) Section 1301-D(a).
(v) Section 1302.2-D(a).

(2) The amendment or addition of the following shall apply to elections occurring on or after November 2, 2020:

(i) Section 302(p).
(ii) Section 1302(i)(1).
(iii) Section 1303(e).
(iv) Section 1306(b).
(v) Section 1302-D(f).
(vi) Section 1303-D(e).
(vii) Section 1306-D(b).

(3) The amendment or addition of the following shall apply to envelopes and ballots purchased, printed or acquired after the effective date of this section:

(i) Section 1004.
(ii) Section 1109-A(b) and (e).
(iii) Section 1112-A(b)(2),(3) and (4).
(iv) Section 1303(a).

(v) Section 1304.
(vi) Section 1306(a) introductory paragraph.
(vii) Section 1303-D(a.1).
(viii) Section 1304-D(a).
(ix) Section 1306-D(a).

Section 18. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment or addition of section 1231(c)(2) and (e).

(2) 25 Pa.C.S. § 1328(c)(4) and (5) are repealed.

Section 19. This act shall take effect immediately.

APPROVED--The 27th day of March, A.D. 2020.

TOM WOLF