



House of Representatives
Commonwealth of Pennsylvania

**2019-2020 Legislative Session of the
Pennsylvania House of Representatives:
Overview of Accomplishments, Changes and
Challenges Relating to Elections in Pennsylvania**

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Honorable Representative Seth Grove

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Executive Summary

As the Acting Majority Chairman of the Pennsylvania House State Government Committee, I wanted to issue a report detailing the history of the accomplishments and challenges we faced relating to election laws during this legislative session and its impact on the 2020 election, as well as future elections.

The 2020 election cycle in Pennsylvania began with fallout from the federal government's 2017 announcement that hackers had allegedly targeted the election systems of Pennsylvania and 21 other states. Governor Wolf took unilateral action in response to these threats, first issuing a directive to counties planning to purchase new voting systems and subsequently one to all counties. Later, the Wolf Administration agreed to a settlement in a lawsuit resulting in decertifying all voting systems then used in the Commonwealth as of December 31, 2019, and requiring all counties to purchase new systems that provided an auditable, voter-verifiable paper record.

As a result, in 2019 the General Assembly came together in a bipartisan fashion to enact historic election reform measures, marking the first major overhaul of our Election Code since the 1930s. These reforms continued to ensure that every eligible voter has an opportunity to vote, every eligible vote is counted, and eligible votes are not diluted by fraud or misconduct.

In 2020, the COVID-19 novel coronavirus pandemic caused widespread devastation and resulted in over 255,000 deaths across the nation to date. Fear of the virus caused some to question the safety of in-person voting. Nevertheless, the General Assembly continued its work and passed important election reform measures to provide the avenues so Pennsylvanians could continue to safely cast their votes, especially during challenging times of the current pandemic. The 2020 Primary Election was delayed, and the mail-in ballot system established by the 2019 reforms was implemented. The General Assembly also passed a law requiring the primary election be reviewed in detail to understand the implications of the changes.

Unfortunately, as the 2020 General Election approached, the Department of State issued numerous, evolving directives. Some of these directives created confusion among voters and counties and are now the subject of litigation. The Supreme Court of Pennsylvania added to this confusion, suspending portions of the recently passed election reforms and causing additional litigation leading up to and following the election.

Finally, despite the General Assembly's success in enacting these substantial reforms and emergency adjustments, agreement could not be reached on some additional measures that could have further benefited the administration of the 2020 General Election.

This report offers details on the background, Pennsylvania election laws, recent changes, Department of State directives and related litigation. It is my hope that it serves as a tool to

review this election, so we are better prepared to further address elections head on during the next legislative session.

Background

Unilateral Executive Voting Machine Action

On September 22, 2017, the federal government informed election officials in 21 states that hackers targeted their systems before the 2016 presidential election. Officials from the United States Department of Homeland Security announced states were targeted by hacking efforts—including Pennsylvania, Florida, Ohio, Virginia and Wisconsin. As noted by the federal government, these targets do not mean any data was manipulated or results were changed but rather a hacker targeted the system but was unable to penetrate. At the time, the government did not say who was behind the hacking attempts.¹

According to the transcripts from the June 21, 2017 hearing on Russian interference in the 2016 U.S. elections before the U.S. Senate Select Committee on Intelligence, most hacking attempts were unsuccessful. According to the testimony, only two intrusions into the voter registrations occurred (in Arizona and Illinois); however, no data was modified or deleted.²

On February 9, 2018, Governor Wolf announced a new Department of State directive that required any county purchasing new voting machines on or after that date to purchase machines that have a “*voter-verifiable paper ballot or paper record of votes cast.*” This directive impacted only counties that were, at the time, planning on purchasing new voting machines, and was not a mandate that all voting systems in the Commonwealth be replaced.

In his statement, Governor Wolf said, “*Counties across Pennsylvania are preparing to replace their aging voting equipment in the next few years. Today’s action by the Department of State ensures those new modern machines will include a paper record. This directive is another important step to strengthen the accuracy of our voting system and the integrity of our elections. We will continue to advocate for the federal government to provide more resources to update voting machines.*”³

On April 12, 2018, a new directive from the Wolf Administration informed all counties that their then-existing voting machines would be decertified for use in elections occurring after 2019. The directive further indicated that the replacement voting systems must provide a verifiable paper

¹ “U.S. Tells 21 States That Hackers Targeted Their Voting Systems.” The New York Times. September 22, 2017. <https://www.nytimes.com/2017/09/22/us/politics/us-tells-21-states-that-hackers-targeted-their-voting-systems.html>

² Hearing Before the U.S. Senate Committee on Intelligence. June 21, 2017. <https://www.intelligence.senate.gov/sites/default/files/hearings/Russian%20Interference%20in%20the%202016%20U.S.%20Elections%20S.%20Hrg.%20115-92.pdf>

³ Governor Wolf Press Release, February 9, 2018. <https://www.governor.pa.gov/newsroom/governor-wolf-statement-directive-new-voting-machines-paper-record/>

trail. Specifically, according to a Department of State press release, then-Acting Secretary of State Robert Torres told counties that they must have voter-verifiable paper record voting systems selected no later than December 31, 2019. The press release also announced that the Commonwealth would be receiving nearly \$14 million in federal funding (through the Omnibus Appropriations Act of 2018) to assist counties with the cost of replacing voting machines.⁴ One week prior, the Department of State released an Invitation For Bid for new voting systems and indicated counties would be able to buy machines that meet their certification requirements.⁵

After the Wolf Administration indicated all voting systems used in the Commonwealth would be decertified as of December 31, 2019, members of the General Assembly questioned whether or not it was reasonable or necessary to decertify every single machine in the state, particularly as a number of counties were already using voting systems with paper ballots. The Wolf Administration's directive resulted in an unfunded mandate to the counties, which, in turn, sparked a great deal of uncertainty among county and state officials regarding potential funding for the estimated \$150 million in costs for the state's 67 counties. The only money known to be available was the \$14.1 million in federal dollars under the Consolidated Appropriations Act of 2018.⁶ Ideas for paying for the voting machine upgrades included:

- Governor Wolf's 2019-20 budget proposal for \$15 million a year through 2024 for counties to upgrade voting machines.⁷ This was frowned upon by some counties as it only put a small dent in the cost for counties to comply with the mandate, as some counties did not have the reserves set aside for upfront costs.⁸
- Senate Bill 48 would have authorized the Pennsylvania Economic Development Financing Authority (PEDFA) to issue bonds to cover 60% of the costs of voting machine replacement, but the Governor vetoed the bill because of other provisions in the bill.⁹

⁴ Pennsylvania Department of State Press Release. "Department of State Tells Counties to Have New Voting Systems in Place by End of 2019." April 12, 2018. <https://www.media.pa.gov/Pages/State-Details.aspx?newsid=276>

⁵ Levy, Marc. "Pennsylvania Asks Counties to Replace Voting Systems by 2020." AP News. April 12, 2018. <https://apnews.com/article/252b015b32db47d193f0470aa4be91c3>

⁶ Pennsylvania Department of State. Help America Vote Act (HAVA) Election Security Grant Fund. <https://www.dos.pa.gov/VotingElections/Pages/2018-HAVA.aspx>

⁷ Ullery, Chris. "Wolf Asking for \$75 Million over 5 Years for Voting Machine Upgrades." TheRecordHerald.com. February 8, 2019. <https://www.therecordherald.com/news/20190208/wolf-asking-for-75-million-over-5-years-for-voting-machine-upgrades>

⁸ Lai, Jonathan. "County Election Officials say Pa. Gov. Tom Wolf's budget Falls Short for New Voting Machines." The Philadelphia Inquirer. February 6, 2019. <https://www.inquirer.com/politics/pennsylvania/pa-gov-tom-wolf-budget-voting-machines-paper-trail-funding-20190206.html#loaded>

⁹ LDPC. Senate Bill 48 Regular Session 2019-2020. <https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0048>

- Governor Wolf’s proposed issuance of a \$90 million bond without legislative approval.¹⁰
¹¹ In a number of venues, including PEDFA, House Republicans questioned the legality of this unilateral maneuver. This type of unilateral borrowing was similar to the maneuver Wolf used in 2017 when he announced a plan to borrow \$200 million from the lease for the state Farm Show complex.
- With the passage of Senate Bill 421 (Act 77 of 2019), the General Assembly not only made significant changes to modernize our election laws, but also authorized the state to borrow up to \$90 million to help counties purchase updated voting machines.¹²

Despite the Governor’s unilateral decision to decertify machines, the General Assembly took the lead in fighting for funding.

On December 31, 2019, Governor Wolf announced that all 67 counties took action toward acquiring new voting systems. Forty-five counties used new systems in the 2019 general election in November 2019.¹³

2016 Green Party Lawsuit Settlement

It is important to note that part of the push for new voting machines stems from a settlement Governor Wolf reached on a vote-counting lawsuit filed after the 2016 presidential election. The settlement (filed on November 29, 2018, in the United States District Court for the Eastern District of Pennsylvania) was an agreement to a 2016 lawsuit filed by the Green Party Presidential Candidate Jill Stein as she sought recounts in Pennsylvania and other states (Pennsylvania, Wisconsin and Michigan shared a history of backing Democrats before they were narrowly won by Donald Trump). The settlement affirmed Governor Wolf’s commitment to using voting systems that leave a verifiable paper trail by 2020. The settlement also required Pennsylvania to institute audits of election results by 2022 before the results are certified.¹⁴ Prior

¹⁰ Governor Wolf Press Release. July 9, 2019. <https://www.governor.pa.gov/newsroom/pennsylvania-will-use-bonding-authority-to-fund-county-voting-security-upgrades/>

¹¹ Sasha Hupka and Jonathan Lai. “Gov. Tom Wolf says he’ll issue \$90 million in bonds for voting machines upgrade.” Pittsburgh Post-Gazette. July 9, 2019. <https://www.post-gazette.com/news/politics-state/2019/07/09/gov-tom-wolf-voting-machines-upgrade-pa-bonds-issuance/stories/201907090119>

¹² Levy, Marc. “90M for voting machines, mail-in ballots signed into law.” AP News. October 31, 2019. <https://apnews.com/article/6d9642e84f044cee8fdd19e55e2354aa>

¹³ Governor Wolf Press Release. December 31, 2019. <https://www.governor.pa.gov/newsroom/all-pennsylvania-counties-select-new-voting-systems-by-year-end-deadline/>

¹⁴ Levy, Marc. “Pennsylvania Commits to New Voting Machines, Election Audits.” AP News. November 29, 2018. <https://apnews.com/article/da88a6bf0fd1489abfb72b967bfd6fa4>

to this settlement agreement and the Governor’s directive, Pennsylvania was one of 14 states that did not require a voter verifiable paper trail.¹⁵

¹⁵ Andrea Cordova McCadney, Elizabeth Howard and Lawrence Norden. “Voting Machine Security: Where We Stand Six Months Before the New Hampshire Primary.” Brennan Center for Justice. August 13, 2019. <https://www.brennancenter.org/our-work/analysis-opinion/voting-machine-security-where-we-stand-six-months-new-hampshire-primary>

2019 and 2020 Election Laws and Changes

Introduction

It is the General Assembly's responsibility to enact election laws that advance the principles of free and fair elections, while protecting election integrity. Our State Constitution¹⁶ establishes the General Assembly's role in this process:

ARTICLE VII ELECTIONS

§ 1. Qualifications of electors.

Every citizen 21 years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact..

§ 4. Method of elections; secrecy in voting.

All 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.

§ 6. Election and registration laws.

All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State, except that laws regulating and requiring the registration of electors may be enacted to apply to cities only, provided that such laws be uniform for cities of the same class, and except further, that the General Assembly shall by general law, permit the use of voting machines, or other mechanical devices for registering or recording and computing the vote, at all elections or primaries, in any county, city, borough, incorporated town or township of the Commonwealth, at the option of the electors of such county, city, borough, incorporated town or township, without being obliged to require the use of such voting machines or mechanical devices in any other county, city, borough, incorporated town or township, under such regulations with reference thereto as the General Assembly may from time to time prescribe. The General Assembly may, from time to time, prescribe the number and duties of election officers in any political subdivision of the Commonwealth in which voting

¹⁶ The Constitution of Pennsylvania, Article VII, §1, §4, §6 and §14

machines or other mechanical devices authorized by this section may be used.

§ 14. Absentee voting.

(a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

Our United States Constitution¹⁷ also sets forth the role of state legislatures, including the Pennsylvania General Assembly, in establishing the laws governing elections.

The Elections Clause of the U.S. 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.”

Under this authority, the General Assembly enacted several election reforms during the legislative session of 2019-2020. The most comprehensive efforts to modernize and improve Pennsylvania’s elections since the 1930s was passed by the General Assembly and signed into law. Bipartisan compromises allowed the most significant improvements that made Pennsylvania a national leader in voter-friendly election reforms.

¹⁷ United States Constitution, Article I, Section 4, Clause 1.

Historic Changes to the Election Code

The General Assembly came together this legislative session in a bipartisan fashion to enact historic election reform measures, marking the first major overhaul of our Election Code since the 1930s.

Legislation Enacted in 2019

ACT 77 of 2019¹⁸ (formerly SB421) **Elimination of Straight Ticket and other Reforms**

In advance of the April 2020 primary election date (which was later changed to June), the General Assembly acted to modernize our election system to strengthen the security of our elections, ensure voting was convenient and accessible to all voters, and provide new opportunities for voters to vote for the candidates of their choice—whether in person at the polls or by mail-in ballots.

The notion of democracy depends upon voters being educated about the candidates. Straight party voting mistakenly assumes that a candidate’s ideological values apply simply because of party affiliation. Well informed voters are how a representative democracy thrives. With the enactment of Act 77 of 2019 in Pennsylvania there are now only six states that offer straight-ticket voting: Alabama, Indiana (abolished for at-large races only), Michigan, Kentucky, Oklahoma and South Carolina.¹⁹

The election modernizations within Act 77 include:

- Eliminating the straight-party voting option.
- Changing the voter registration deadline from 30 to 15 days prior to an election.
- Establishing a mail-in vote process that allows no-excuse voting by mail up until 8 p.m. on the day of the election for any qualified voter.
 - Requires mailed and hand-delivered absentee ballots, including emergency ballots, to be received by board of elections by 8 p.m. on Election Day so that all voters are treated equally, whether voting in person or by mail.
 - Restricts voters who already cast an absentee or mail-in ballot from appearing at a polling place to vote in person.
 - Establishes a single timeline and process for applying for an emergency absentee ballot after 5 p.m. on the first Tuesday prior to the election through the close of polls on Election Day and eliminates the requirement

¹⁸ LDPC. Senate Bill 421 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0421>

¹⁹ National Conference of State Legislatures. Straight Ticket Voting States. March 25, 2020.

<https://www.ncsl.org/research/elections-and-campaigns/straight-ticket-voting.aspx>

that certain emergency absentee ballot applications be filed with the Court of Common Pleas.

- Mandates that absentee ballots be counted centrally and not counted at polling places.
- Prohibiting stickers for write-in votes.
- Establishing processes by which both physical and electronic absentee ballot applications are made available to the public.
- Prohibiting the decertification of voting systems in 50% or more of the state's counties unless the General Assembly is notified of a replacement plan at least 180 days prior to the decertification.
- Restricting the authority of counties to alter election district boundaries during the period of December 31, 2019, through November 30, 2022. This time period is prior to and concurrent with legislative and congressional redistricting.
- Reducing the number of paper ballots counties are required to print for each election to at least 10-15% more than the highest number of ballots cast in the three previous comparable elections.
- Allowing counties to commence counting as soon as polls close, but no later than three days after the election and through 5 p.m. of the eighth day following the election.
- Establishing the PA Supreme Court as having exclusive jurisdiction to hear challenges to a number of provisions of the bill.

The bill was amended in the House and passed final consideration with bipartisan support (138-61) in the House on October 29, 2019. The bill was signed into law on October 31, 2019.

ACT 94 of 2019²⁰ (formerly HB 227) Paper Ballots and Optical Scan Systems

The law amends Section 912.1 of the Election Code to establish and set the minimum number of valid signatures required for nomination petitions for school director at 10. The law also includes the following provisions:

- A requirement that the county board of elections in each county with paper optical scan voting systems must provide each election district with supplies necessary to ensure that voters may insert their ballots into the automatic tabulating equipment in secret.
- A requirement that the Secretary establish standards for these supplies.
- Elimination of the requirement that paper ballots used in optical scan voting systems must include numbered, detachable stubs.²¹

The bill was amended by the Senate and passed final consideration unanimously (187-0) in the House on November 21, 2019. The bill was signed into law on November 27, 2019.

²⁰ LDPC. House Bill 227 Regular Session 2019-2020.

https://ldpc6.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2019&ind=0&body=H&type=B&bn=227

²¹ House of Representatives Republican Committee Bill Summary. HB 227. 11/20/19.

<https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/HB0227P2925.pdf>

Election Reform and the Impact of COVID-19

The COVID-19 novel coronavirus pandemic has caused widespread economic devastation and killed over 255,076.²² Americans have called into question the integrity and safety of our election process. Despite this pandemic, the General Assembly worked to protect Pennsylvanians' right to vote.

With the passage of Act 77, the primary election of 2020 marked the first time in Pennsylvania history in which all registered voters were able to vote by mail-in ballot without having an excuse. Over 1.5 million mail-in and absentee ballots were cast during that election. In 2016, there were only approximately 84,000 absentee ballots cast. Also, the last 22 counties began using new voting systems during the primary election.²³

Due to the pandemic, which resulted in great restrictions on the daily lives of Pennsylvanians and a higher-than-national-average unemployment rate, Pennsylvania and other states made changes to their primaries, runoffs and presidential preference primaries. These states included: Alabama, Alaska, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maine, Maryland, Mississippi, Montana, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, West Virginia and Wyoming.²⁴

In Pennsylvania, the date of the primary election changed from April 28 to June 2. This was accomplished under Act 12 of 2020.²⁵ Act 12 also provided county election officials time to create a contingency plan, and allowed counties to consolidate polling places for the primary election, as long as they provided notice of polling place changes at least 20 days before the election and provided the consolidations did not reduce the number of polling locations by more than 60% in the county. The bill also temporarily expanded polling place availability for the primary by allowing polling places to be located in buildings where malt or brewed beverages and liquors are served, as long as voting did not occur in a room where those beverages were dispensed and voters did not have to go through those rooms. Act 12 also established a Pennsylvania Election Law Advisory Board.

The Department of State released three special guidelines to carry out provisions of Act 12 polling place consolidations.²⁶

The Department of State released guidance on Election Operations During COVID-19 on April 28, 2020 (which was later updated on October 14). The department noted the pandemic was

²² Centers for Disease Control and Prevention. United States COVID-19 Cases and Deaths by State. November 22, 2020. https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days

²³ Governor Wolf Press Release. June 18, 2020. <https://www.governor.pa.gov/newsroom/governor-wolf-signs-law-to-help-prepare-for-the-general-election/>

²⁴ NCSL. "2020 State Primary Election Dates." November 3, 2020. <https://www.ncsl.org/research/elections-and-campaigns/2020-state-primary-election-dates.aspx>

²⁵ LDPC. Senate Bill 422 Regular Session 2019-2020. <https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0422>

²⁶ Pennsylvania Department of State. Election Administration Tools. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Pages/Election-Adminstration-Tools.aspx>

impacting the conduct of elections and the department's guidance was intended to provide recommendations by health experts, and assist in integrating these conditions and recommendations into the election process in Pennsylvania.²⁷ Such recommendations impacted public meetings, staffing, voting services including registration and ballot applications, access to the Statewide Uniform Registry of Electors, poll worker training, polling places, and voter considerations.

Legislation Enacted in 2020

ACT 12 of 2020²⁸ (formerly SB 422) **Postponement of Presidential Primary and other Reforms**

In order to ensure the greatest participation by voters while allowing implementation of COVID-19 safety protocols, the law postponed the April 28 presidential primary until June 2, 2020. Act 12 also enacted several emergency provisions in order to make it easier to ensure polling places were available and corrected deadlines were in place for the new date. These emergency provisions expired after the June primary.

In addition to these emergency provisions, Act 12 also made changes to the Election Code to ensure an easier process for implementation of Act 77, both on June 2 and with future elections, including eliminating out-of-date provisions in the Election Code and allowing county election directors to process mail-in ballots beginning at 7 a.m. on Election Day.

Senate Bill 422 was amended by the House and passed final consideration unanimously (198-0) in the House on March 25, 2020. The bill was signed into law as Act 12 on March 25, 2020.

ACT 35 of 2020²⁹ (formerly HB 2502) **Report on Implementation of the 2020 General Primary Election**

This law required the Department of State to gather data relative to the 2020 Primary Election and provide a report to the Majority and Minority Chairs of the Senate and House State Government Committees. In addition to the data information, the report was to review any action taken by the Department of State, a county board of elections or a registration commission in response to incidents, including determinations made on incidents, legal actions filed, and referrals to law enforcement. A review was to be offered on the issues or incidents encountered

²⁷ Pennsylvania Department of State. Election Operations During COVID-19. October 14, 2020.

https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Election%20Operations%20During%20COVID_General.pdf

²⁸ LDPC. Senate Bill 422 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0422>

²⁹ LDPC. House Bill 2502 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=2502>

with an electronic voting system that received the approval of the Secretary of the Commonwealth, including any technical issues encountered.

House Bill 2502 passed with bipartisan support in the House (201-1) on May 19, 2020. The bill was signed into law as Act 35 on June 17, 2020.

Primary Election Report

On August 1, 2020, the Department of State issued the Primary Election Report in accordance with Act 35 of 2020.³⁰ The full report can be accessed on the Department of State's website at <https://www.dos.pa.gov/VotingElections/Documents/2020-08-01-Act35Report.pdf>

Governor Extends Mail-in Ballot Deadline

Between the time of the enactment of Act 12 of 2020 (primary election date change) and Act 35 of 2020 (report on the primary election), the Governor signed an executive order extending mail ballot deadlines for the primary election in Allegheny, Dauphin, Delaware, Erie, Montgomery, and Philadelphia counties to June 9.³¹

The Executive Order³² referenced the unprecedented number of voters using absentee voting and mail-in ballots due in large part to COVID-19 and the civil unrest that occurred in the counties that led to curfews and travel restrictions.

House Efforts at Election System Efficiency and Integrity

House Bill 2626³³ **Election System Efficiency** (*Passed the House (112-90) on Sept. 2, 2020*)

This legislation would have given election officials the early pre-canvassing measure that could have made a significant impact on election night. The bill would have given counties clearer guidance for the handling of mail-in ballots and brought more transparency to the process. The progress of the bill came to a halt. The House passed the bill, the Governor threatened to veto

³⁰ Pennsylvania Department of State. Pennsylvania 2020 Primary Election Act 35 of 2020 Report. August 1, 2020. <https://www.dos.pa.gov/VotingElections/Documents/2020-08-01-Act35Report.pdf>

³¹ Governor Wolf Press Release. June 1, 2020. <https://www.governor.pa.gov/newsroom/gov-wolf-signs-executive-order-extending-mail-ballot-deadline-in-six-counties-to-june-9/>

³² Executive Order. Commonwealth of Pennsylvania Governor's Office. June 1, 2020. <https://www.governor.pa.gov/wp-content/uploads/2020/06/20200601-EO-Deadline-Extention.pdf>

³³ LDPC. House Bill 2626 Regular Session 2019-2020. <https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=2626>

it,³⁴ and then the Administration turned to the courts to intervene. The Pennsylvania Supreme Court improperly stepped in and changed the election.

The bill would have made the following changes to the Election Code:

- Requiring that the Department of State produce a report on each election. The report would be similar to the report on the 2020 primary election from Act 35 of 2020.
- Requiring the recording of the pre-canvassing and canvassing meetings, and requiring that the recordings be made available for public inspection.
- Allowing poll workers to be appointed from anywhere in a county.
- Allowing poll watchers to be registered electors of the Commonwealth, rather than registered electors from the county.
- Clarifying how absentee and mail-in ballots may be returned only through these methods:
 - By mail.
 - In person to the county board of elections permanent office.
 - In person to a location in the courthouse designated by the county board of elections.
 - In person to the voter's polling place on Election Day.
- Eliminating the spoilage provision from Act 12 of 2020 that allows a voter to remit their absentee or mail-in ballot to the judge of elections and vote on the voting machines.
- Moving the deadline to apply for absentee and mail-in ballots from seven days prior to an election to 15 days prior to an election.
- Moving the final deadline for county boards of election to begin to send absentee and mail-in ballots to voters from 14 days before an election to 28 days before an election.
- Allowing county boards of election to begin the verification, opening, scanning and processing of absentee and mail-in ballots as early as 8 a.m. on the Saturday before the election. At least one meeting would be required. Ballots received on Election Day could not be pre-canvassed.
- Requiring the maintenance of chain of custody for absentee and mail-in ballots if the pre-canvassing or canvassing is done at a site other than the county board of elections offices.
- Allowing the county chairperson of each political party to appoint an authorized representative to observe a pre-canvassing and canvassing meeting.
- Requiring that authorized representatives observing the pre-canvassing or canvassing meeting be within audio range and have a clear line of sight of the activities.
- Requiring canvassing to begin no later than 9 a.m. on the day after the election, rather than the current three-day requirement.
- Establishing a procedure to contact a voter whose signature on the outer envelope of the absentee or mail-in ballot does not match the signature on file with the person's voter registration, and to allow the voter to cure this deficiency.
- Codifying into law the bar code tracking system that is used through the SURE system to track absentee and mail-in ballots issued and returned.
- Doubling all criminal penalties for violations of the Election Code.

³⁴ Previti, Emily. "Gov. Wolf plans to veto election code bill in its current form." WITF. September 2, 2020. <https://www.witf.org/2020/09/02/gov-wolf-plans-to-veto-election-code-bill-in-its-current-form/>

- Clarifying criminal penalties for release of results from pre-canvassing.³⁵

House Resolution 1032³⁶ **Select Committee on Election Integrity** (*Re-committed to House State Government Committee on Oct. 19, 2020*)

Over the last two years, the General Assembly has worked to modernize our election process, allowing mail-in voting and expanding the time frame for when mail-in ballots can be requested and received. This resolution developed out of the House of Representatives focus on improving the conduct of elections and making recommendations for future elections.³⁷

Unfortunately, the intention of the resolution was mischaracterized. There were strong objections from Democrats and some interest groups that were concerned about the subpoena power of the panel.³⁸ Due to the timing of the imminent election and the flood of misconceptions, it was decided the resolution would be removed from the voting schedule for the remainder of the legislative session.³⁹ Nevertheless, the House of Representatives remains committed to ensuring the security and safety of our elections.

2020 General Election

During the general election, county officials increased staff and some began using high-speed scanners and other means to quickly process mail-in ballots.⁴⁰ The Wolf Administration also announced it was providing counties with personal protective equipment for poll workers including masks, face shields and hand sanitizer, as well as marking tape to help with social distancing and other supplies.⁴¹

³⁵ House of Representatives Republican Committee Bill Summary. HB 2626. 9/2/20.

<https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/HB2626P4335.pdf>

³⁶ LDPC. House Resolution 1032 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=H&type=R&bn=1032>

³⁷ House of Representatives Republican Committee Resolution Summary. HR 1032. 9/30/20.

<https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/HR1032P4432.pdf>

³⁸ Previti, Emily. "Pa. lawmakers face off over investigative election panel critics fear will disrupt voting already underway." WITF. October 1, 2020. <https://www.witf.org/2020/10/01/pa-lawmakers-face-off-over-investigative-election-panel-critics-fear-will-disrupt-voting-already-underway/>

³⁹ Parish, Marley. "House Majority Leader Benninghoff drops election oversight resolution from voting agenda." Centre Daily Times. October 9, 2020. <https://www.centredaily.com/news/politics-government/election/article246345130.html>

⁴⁰ Capital-Star staff. "Map: How Pa. counties plan to count 3.1 million mail-in ballots." Pennsylvania Capital-Star. October 30, 2020. <https://www.penncapital-star.com/election-2020/map-how-pa-counties-plan-to-count-3-1-million-mail-ballots/>

⁴¹ Governor Wolf Press Release. September 24, 2020. <https://www.governor.pa.gov/newsroom/governor-wolf-discusses-covid-19-mitigation-and-government-reform/>

The general election also saw a record number of mail-in and absentee ballots cast. According to the Department of State dashboard, as of November 12 there were 9,091,371 registered voters in Pennsylvania while 2,643,485 mail-in and absentee ballots were cast in this election. At that time, the dashboard also showed that 1,711,192 registered Democrats cast mail-in and absentee ballots and 627,302 registered Republicans cast mail-in and absentee ballots.⁴² Provisional ballots numbered over 100,000.⁴³

Joint Resolutions, Vetoed Legislation, and Additional Legislation

Joint Resolutions

A Joint Resolution is a bill that proposes an amendment to the Constitution of the Commonwealth of Pennsylvania. Because such legislation proposes a constitutional amendment, the bill must pass both chambers in identical form, in consecutive legislative sessions before it can be placed on the ballot as a referendum. Two such measures addressing election reform measures passed during the 2019-2020 legislative session.

Senate Bill 133⁴⁴ **Reforming the Process of Electing the Lieutenant Governor** (*passed in 2019-2020 legislative session*). Pamphlet Laws Resolution No. 1

The bill proposes an amendment to the Constitution of the Commonwealth of Pennsylvania to eliminate the current process for electing a Lieutenant Governor and replaces it with a mechanism that will allow candidates for Governor to select their own running mates. A candidate may not seek election to the offices of Governor and Lieutenant Governor simultaneously.

As a proposed constitutional amendment, this legislation must pass each chamber of the General Assembly in two consecutive sessions and then must be presented to the voters for adoption.

The bill passed the House with bipartisan support (130-67) on December 18, 2019, and was filed in the Office of the Secretary of the Commonwealth as Pamphlet Laws Resolution No. 1 on February 3, 2020.

⁴² Pennsylvania Department of State Dashboard. November 12, 2020. <https://www.votespa.com/About-Elections/Pages/Counting-Dashboard.aspx>

⁴³ Department of State Press Release. November 11, 2020. <https://www.media.pa.gov/pages/state-details.aspx?newsid=432>

⁴⁴ LDPC. Senate Bill 133 Regular Session 2019-2020. <https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0133>

Senate Bill 413⁴⁵ Election Reforms: Justices, Judges and Justices of the Peace (*passed in 2019-2020 legislative session*). Pamphlet Laws Resolution No. 2

The bill proposes an amendment to the Constitution of the Commonwealth of Pennsylvania to amend Article V §15 (b) to remove the requirement that justices, judges and justices of the peace seeking retention be presented on a separate ballot. The bill also amends Article VII §14 to remove the qualifications necessary for an elector to vote by absentee ballot, and to add language to this section to require: “a law under this subsection may not require a qualified elector to physically appear at a designated polling place on the day of the election.”⁴⁶

As a proposed constitutional amendment, this legislation must pass each chamber of the General Assembly in two consecutive sessions and then must be presented to the voters for adoption.

The bill was amended in the House and passed unanimously (202-0) on April 21, 2020. The bill was filed in the Office of the Secretary of the Commonwealth as Pamphlet Laws Resolution No. 2 on April 29, 2020.

Legislation Vetoed by the Governor

Senate Bill 48⁴⁷ Voting Machine Decertification and Replacement (*Vetoed by the Governor on July 5, 2019. Veto No. 3.*⁴⁸)

This legislation would have addressed the unfunded mandate the Governor created through his unilateral decision to decertify all voting systems (referenced earlier in this report). The bill would have authorized the Pennsylvania Economic Development Financing Authority to issue bonds for up to \$90 million to provide funding for counties to replace voting systems.

In addition, the bill would have prohibited the Commonwealth from decertifying voting systems in 50% or more of the state’s counties unless the General Assembly is notified of the plan for replacing the voting systems at least 180 days prior to decertification; established a Voting System Decertification Commission to review and make recommendations regarding the plan to replace voting systems; extended timelines for making application for, marking and submitting an absentee ballot; eliminated the straight-party voting option; and reduced the number of back-up ballots that counties must print for each election.⁴⁹

⁴⁵ LDPC. Senate Bill 413 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0413>

⁴⁶ House of Representatives Republican Committee Bill Summary. SB 413. 4/20/20.

<https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/SB0413P1653.pdf>

⁴⁷ LDPC. Senate Bill 48 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0048>

⁴⁸ Veto Message by the Governor. July 5, 2019.

<https://ldpc6.legis.state.pa.us/cfdocs/legis/cl/public/ViewVetoMessage.cfm?sessyr=2019&sessInd=0&billbody=S&billtype=B&billnbr=48&pn=1080&vetonbr=3>

⁴⁹ House of Representatives Republican Committee Bill Summary. SB 48. 6/27/19.

<https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/SB0048P1080.pdf>

The bill was amended in the House and passed with bipartisan support (111-88) on June 27, 2019. The bill was vetoed by the Governor on July 5, 2019.

Senate Bill 1027⁵⁰ **Various Measures Including the Report on the 2020 General Primary Election** (*Vetoed by the Governor on May 29, 2020. Veto No. 8.*⁵¹)

This legislation proposed to amend the Administrative Code of 1929 as it relates to the State Geospatial Coordinating Board; extend the expiration date for certain temporary regulations; amend the process for the issuance of death certificates by a local registrar; require a report on implementation of the 2020 General Primary Election; add a new article relating to COVID-19 emergency statutory and regulatory suspensions and waivers; add a new article relating to COVID-19 debt cost reduction review; extend the expiration date for certain surcharge and fees; and add a new article pertaining to protected licensed operations during emergency.⁵²

The bill was passed in the House (109-93) on May 28, 2020. The bill was vetoed by the Governor on May 29, 2020. Similar provisions relating to the report on the implementation of the 2020 general primary election were eventually enacted into law (Act 35 of 2020).

Legislation Passed in the House

House Bill 633⁵³ **Electronic Filing of Campaign Finance Reports** (*Passed the House unanimously (195-0) on May 14, 2019*)

The bill amends the Election Code to allow candidates and political committees who file campaign finance reports with the Secretary of the Commonwealth (Secretary) to file reports electronically using the electronic filing system that has been developed by the Secretary.⁵⁴

⁵⁰ LDPC. Senate Bill 1027 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=1027>

⁵¹ Veto Message by the Governor. May 29, 2020.

<https://ldpc6.legis.state.pa.us/cfdocs/legis/cl/public/ViewVetoMessage.cfm?sessyr=2020&sessInd=0&billbody=S&billtype=B&billNbr=1027&pn=1729&vetonbr=8>

⁵² House of Representatives Republican Committee Bill Summary. SB 1027. 5/28/20.

<https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/SB1027P1729.pdf>

⁵³ LDPC. House Bill 633 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=0633>

⁵⁴ House of Representatives Republican Committee Bill Summary. HB 633. 5/14/19.

<https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/HB0633P1806.pdf>

House Bill 2407⁵⁵ Simplifying Notices on Absentee and Mail-in Ballots (*Passed the House unanimously (201-0) on July 14, 2019*)

The bill amends the Election Code requiring the Secretary of the Commonwealth to prescribe the text and manner by which the notice shall be printed on an absentee ballot and a mail-in ballot. Current law requires that the absentee ballots and mail-in ballots contain an official notice explaining the procedure for voting in person if the absentee ballot or mail-in ballot is not timely received by the county board of elections.⁵⁶

⁵⁵ LDPC. House Bill 2407 Regular Session 2019-2020.

<https://ldpc6.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=2407>

⁵⁶ House of Representatives Republican Committee Bill Summary. HB 2407. 6/17/20.

<https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/HB2407P3557.pdf>

Department of State Election Guidance and the Impact on Election Reform

Department of State Election Guidance

Throughout the pandemic, the Wolf Administration has continuously relied upon the use of guidance, recommendations, directives and executive orders. Of particular interest, are those that address the election process including the administrative side, electronic voting, absentee and alternative voting, certification, electronic voting systems, polling places, provisional balloting, poll watchers and registrations. The directives released relating to the election process are summarized below.

Act 77 Guidance

- **Permanent Voter List Guidance.**⁵⁷ This guidance outlines the process for voters on the permanent mail-in or absentee voter lists when applying for absentee or mail-in ballots.

Act 12 Guidance

- **Guidance on Election Operations During COVID-19.**⁵⁸ The Department of State released guidance on Election Operations During COVID-19 on April 28 (which was later updated on October 14). The department noted the pandemic was impacting the conduct of elections and daily operations and offered guidance including recommendations by health experts, and assist in integrating these conditions and recommendations into the election process in Pennsylvania. Such recommendations impacted public meetings, staffing, voting services including registration and ballot applications, access to the Statewide Uniform Registration of Electors, poll worker training, polling places and voter considerations.
- **Guidelines for Staffing Polling Places for 2020 Primary Election.**⁵⁹ The Department of State indicated these guidelines would enable county boards of elections to “*carry out Act 12 consolidations and protect public health by limiting the number of individuals staffing polling places on election day...*” These guidelines included requiring counties to

⁵⁷ Pennsylvania Department of State. Pennsylvania Permanent Voter Guidance. March 5, 2020. https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_PermanentVoters_guidance_1_0.pdf

⁵⁸ Pennsylvania Department of State. Election Operations During COVID-19. October 14, 2020. https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Election%20Operations%20During%20COVID_General.pdf

⁵⁹ Pennsylvania Department of State. Guidelines for Staffing Polling Places for 2020 Primary Elections. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Polling-Place-Consolidation-and-Poll-Worker-Staffing-COVID-Guidelines.pdf>

fill poll-worker vacancies immediately without court order; if a county determines an individual serving in another role was trained to be a machine inspector, the individual could be used to serve in that capacity for this election; eliminating duplication of duties or roles to temporarily allow consolidation of poll worker tasks; temporarily providing for consolidated election boards; analyzing and determining how poll workers are needed; and addressing 60% reductions of polling places and consolidation of poll worker staffing plans.

- **For Building Administrators and Proprietors: Use of Facilities as Polling Places during COVID-19.**⁶⁰ This guidance addressed concerns for property owners or managers of buildings or facilities, such as Election Day precautions (urging the following of Governor Wolf’s order⁶¹ to wear masks), encouraging people to vote by mail or early in person, post-election day cleaning protocols, locations appropriate for use as polling places, and statutory considerations such as using public buildings for polling locations.

Administrative

- **Absentee and Mail-in Return Guidance.**⁶² This guidance informs each county how it should establish a ballot return and collection plan prior to each election. Under this guidance, a ballot return and collection plan includes: ballot return site design and requirements, ballot collection and chain of custody procedures, and processing collected ballots.
- **Examination of Absentee and Mail-in Ballot Return Envelopes.**⁶³ This guidance addresses recording the date, return method and ballot status for returned ballots, and examination of the declaration on ballot return envelopes. Within these guidelines, the department states, *“if the voter’s declaration on the return envelope is blank, that ballot return envelope must be set aside and not counted.”*

⁶⁰ Pennsylvania Department of State. For Building Owners & Administrators: Use of Facilities as Polling Places during COVID-19. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Polling-Places-During-COVID-Guidance.pdf>

⁶¹ Pennsylvania Department of State. Order of the Secretary of the Pennsylvania Department of Health Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations. April 19, 2020. <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf>

⁶² Pennsylvania Department of State. Pennsylvania Absentee and Mail-in Ballot Return Guidance. August 19, 2020. https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_BallotReturn_Guidance_1.0.pdf

⁶³ Pennsylvania Department of State. Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes. September 11, 2020. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf>

- **Guidance Concerning Civilian Absentee and Mail-in Ballot Procedures.**⁶⁴ This guidance addresses mail-in and civilian absentee balloting, requesting an absentee or mail-in ballot, delivery of mail-in and absentee ballot materials, return of ballots by voters, and absentee and mail-in voting processes for county election officials. Within these guidelines, the department states, *“third-person delivery of absentee or mail-in ballots is not permitted...”*
- **Pennsylvania Guidance for Mail-in and Absentee Ballots Received from the United States Postal Service after 8:00 p.m. on Tuesday, November 3, 2020.**⁶⁵ These guidelines stipulate that all ballots delivered by the USPS and received between 8 p.m. on November 3 and 5 p.m. November 6 shall be kept separate and segregated from all other ballots. The county shall not pre-canvass or canvass any mail-in or civilian absentee ballots received between 8 p.m. on November 3 and 5 p.m. November 6 until further direction is received. They are to be kept secure, safe and in a sealed container separate from other voted ballots. Lastly, for every ballot delivered by the USPS between 8 p.m. on November 3 and 5 p.m. November 6 each county board shall maintain an accurate log.
- **Canvassing Segregated Mail-In and Civilian Absentee Ballots Received by Mail after 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 P.M. On Friday, November 6, 2020.**⁶⁶ This guidance is a significant, last minute change to those issued on October 28. One of the major changes to this directive is the canvassing procedures. Now, the county board of *“elections shall canvass segregated absentee and mail-in ballots received after 8:00 P.M. on Tuesday November 3, 2020 and before 5:00 P.M. on Friday, November 6, 2020 as soon as possible upon receipt of the ballots and within the period specified by law for the canvass. The canvass meeting shall continue until all segregated absentee and mail-in ballots have been canvassed.”*

⁶⁴ Pennsylvania Department of State. Guidance Concerning Civilian Absentee and Mail-in Ballot Procedures. September 28, 2020.

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Guidance%20Civilian%20Absentee%20and%20Mail-In%20Ballot%20Procedures.pdf>

⁶⁵ Pennsylvania Department of State. Pennsylvania Guidance for Mail-in and Absentee Ballots Received from the United States Postal Service after 8:00 pm on Tuesday, November 3, 2020. October 28, 2020.

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/2020-10-28-Segregation-Guidance.pdf>

⁶⁶ Pennsylvania Department of State. Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 PM on Friday, November 6, 2020. November 1, 2020. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>

Electronic Voting- Use, Implementation and Operation

- **Directive Concerning the Use, Implementation, and Operation of Electronic Voting Systems by the County Board of Elections.**⁶⁷ These are established guidelines dating back to June 9, 2011.
- **Directive Concerning Purchase of Voting Systems on or After 2/9/2018.**⁶⁸ This ensures machines purchased provide a voter-verifiable paper ballot or a voter-verifiable paper record of the votes cast by a voter.
- **Directive on Logic & Accuracy Testing.**⁶⁹ This directive addresses pre-election logic and accuracy testing prior to every election that is conducted.

Voting Advisories and Guides

- **Voter Identification Requirements.**⁷⁰ These guidelines have been in place since May of 2015.
- **Guidance on Voter Intimidation.**⁷¹ Issued in October 2020, these guidelines outline federal and state laws and the penalties for voter intimidation and discriminatory conduct. They also provide examples of voter intimidation and discriminatory conduct as well as how to report such conduct.
- **Guidance on Rules in Effect at Polling Places.**⁷² This guidance has been in effect since October 2016 and includes such matters as firearms, police officers, electronic devices, election materials and challenges to vote.

⁶⁷ Pennsylvania Department of State. Directive Concerning the Use, Implementation and Operation of Electronic Voting Systems by the County Board of Elections. June 9, 2011.

<https://www.dos.pa.gov/VotingElections/Documents/Elections%20Division/Administration/directive%20concerning%20the%20use.pdf>

⁶⁸ Pennsylvania Department of State. Directive Concerning the Purchase of Electronic Voting Systems. February 9, 2018.

https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Directive%20Concerning%20Purchase%20of%20Voting%20Systems_02.09.2018.pdf

⁶⁹ Pennsylvania Department of State. Directive on Logic & Accuracy Testing. September 14, 2020.

https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_Directive_Logic_Accuracy.pdf

⁷⁰ Pennsylvania Department of State. Voter Identification Requirements. May 2015.

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Voter%20ID%20Guidance%2020150506.pdf>

⁷¹ Pennsylvania Department of State. Guidance on Voter Intimidation and Discriminatory Conduct. October 2020.

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Voter%20Intimidation%20Guidance%2010.14.16.pdf>

⁷² Pennsylvania Department of State. Guidance on Rules in Effect at the Polling Place. October 2016.

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20GUIDANCE%20ON%20RULES%20IN%20EFFECT%20AT%20THE%20POLLING%20PLACE%20ON%20ELECTION%20DAY%2010-16.pdf>

Absentee and Alternative Voting

- **Voting Procedures for the Elderly and Handicapped.**⁷³ This outlines the procedures to assure compliance with the federal Voting Accessibility for the Elderly and Handicapped Act and other laws assuring voting rights.

Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) Compliance Measures

- **Protocol.**⁷⁴ These guidelines describe the policies and procedures the Department of State will follow and direct the county board of elections to follow for every general election to assure compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

Voting System Certification

- **Directive concerning the conduct of electronic voting system examinations by the Commonwealth of Pennsylvania issued by the Secretary of the Commonwealth.**⁷⁵ This directive was required by Act 150 of 2002 and revised on June 12, 2018.

⁷³ Commonwealth of Pennsylvania Department of State. Procedures to Assure Compliance with the Voting Accessibility for the Elderly and Handicapped Act and Other Laws Assuring the Voting Rights of Individuals with Disabilities and Language Needs.

<https://www.dos.pa.gov/VotingElections/Documents/Elections%20Division/Administration/Voting%20Procedures%20for%20the%20Elderly%20and%20Handicapped.pdf>

⁷⁴ Commonwealth of Pennsylvania Department of State. Procedures to Assure Compliance with the Uniformed and Overseas Citizens Absentee Voting Act and Related Provisions of the Pennsylvania Election Code for Every General Election (Military & Overseas Voters Protocol).

<https://www.dos.pa.gov/VotingElections/Documents/Elections%20Division/Administration/protocol%20%20%20%20%208%2019%2012.pdf>

⁷⁵ Secretary of the Commonwealth. Directive Concerning the Conduct of Electronic Voting System Examinations by the Commonwealth of Pennsylvania Issued by the Secretary of the Commonwealth. June 12, 2018.

<https://www.dos.pa.gov/VotingElections/Documents/Voting%20Systems/Directives/Directive%20to%20Vendors%20v06122018.pdf>

Electronic Voting Systems (EVS) Procedures

- **Guidance Concerning Electronic Voting System Security.**⁷⁶ These guidelines outline procedures in preparation and configuration of election management software and precinct voting systems. This addresses networks, backups, password and permissions management, voting system security, unofficial canvass on election night, file transfer from vendors, and pre-election logic and accuracy testing (which echoes the directive issued on this on September 14, 2020).
- **Use of Emergency Paper Ballots.**⁷⁷ This was issued in 2008.
- **Election Results Reporting and Ballot Definition Directive.**⁷⁸ This directive was intended to implement a uniform reporting structure for all counties and their voting system vendor to account for all voting methods. This expanded since Act 77, which allows all voters to request and cast a mail-in ballot. Issues addressed include ballot definition requirements, reporting requirements and critical reporting.

Polling Place

- **Guidance Concerning Voter Privacy at the Polling Place.**⁷⁹ Issued on March 11, 2020, it summarizes the statutory requirements related to voter privacy and outlines the Secretary's guidance to ensure conformance. They address the layout of the polling place, check-in station, voting stations, canning/exit stations, and poll worker education to ensure privacy is maintained.

⁷⁶ Pennsylvania Department of State. Guidance on Electronic Voting System Preparation and Security. October 13, 2020.

https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_Guidance%20Electronic%20Voting%20System%20Security.pdf

⁷⁷ Pennsylvania Department of State. Emergency Paper Ballots. August 2008.

https://www.dos.pa.gov/VotingElections/Documents/Elections%20Division/Administration/Use%20of%20emergency_paper_ballots.pdf

⁷⁸ Pennsylvania Department of State. Pennsylvania Election Results Reporting and Ballot Definition Directive. August 27, 2020.

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

⁷⁹ Pennsylvania Department of State. Guidance Concerning Voter Privacy at the Polling Place. March 11, 2020.

https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_Guidance%20Concerning%20oter%20Privacy%20at%20the%20Polling%20Place_1.0.pdf

Provisional Balloting

- **Provisional Ballot Guidance.**⁸⁰ This guidance addresses the issuance, voting and examination of provisional ballots and was released on October 21, 2020. The guidance includes provisional voting reasons, absentee and mail-in voting, the process for the voter, the process for poll workers, and the process for county election officials.

Poll Watchers

- **Guidance Concerning Poll Watchers and Authorized Representatives.**⁸¹ Released on October 28, 2020, this guidance addresses the role of poll watchers at polling place, and the role of authorized representatives at the pre-canvass and canvass of ballots. Included are poll watcher qualifications, what poll watchers can do at the polling place, what they cannot do at the polling place, authorized representatives and county election offices, satellite offices and ballot return sites.

Voter Registration

- **HAVA-matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications.**⁸² This directive clarifies and specifies legal processes relating to HAVA-matching of drivers' license numbers (or PennDOT ID card numbers) and Social Security numbers when voters submit new voter registration applications or an application to reactivate a canceled record.

⁸⁰ Pennsylvania Department of State. Pennsylvania Provisional Voting Guidance. October 21, 2020. https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_ProvisionalBallots_guidance_1.0.pdf

⁸¹ Pennsylvania Department of State. Guidance Concerning Poll Watchers and Authorized Representatives. October 28, 2020. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Poll%20Watcher%20Guidance%20Final%2010-6-2020.pdf>

⁸² Pennsylvania Department of State. Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers for Voting Registration Applications. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/HAVA%20Matching%20Directive%20018.pdf>

Miscellaneous

- **Statewide Return and Recount Directive and Procedures.**⁸³ Effective November 1, 2020, this directive addresses the transmittal of returns on election night, computation and reporting of unofficial general returns, recount order by the Secretary, conducting the recount, recording the results of the recount and transmitting the record results of the recount to the Secretary.

Conflicting Directives

The large number of guidance documents issued by the Department of State, the close proximity of many of these to the November 3 election date, and the conflicting nature of certain guidance issued contributed to confusion among counties and voters.

Initially, one directive addressing mail-in and absentee ballots received from the United States Postal Service issued on October 28, indicated ballots received after 8 p.m. on Tuesday, November 3, 2020, would be segregated; however, on November 1, 2020, the directive was significantly changed so as to instruct counties to canvass those ballots as soon as possible upon receipt.⁸⁴ The latest issued directive states, *“The county board of elections shall canvass segregated absentee and mail-in ballots received after 8:00 P.M. on Tuesday November 3, 2020, and before 5:00 P.M. on Friday, November 6, 2020 as soon as possible upon receipt of the ballots and within the period specified by law for the canvass. The canvass meeting shall continue until all segregated absentee and mail-in ballots have been canvassed.”*

This change drew the attention of United States Supreme Court Justice Alito (also discussed below under “Lawsuits”). On October 28, 2020, Justice Alito, joined by Justice Thomas and Justice Gorsuch, noted that *“we have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate ballots received between 8:00 p.m. on November 3, 2020, and 5:00 p.m. on November 6, 2020.”* On November 6, 2020, Justice Alito issued an order for counties to segregate ballots and ballot counts for those ballots received after 8 p.m. on Election Day, explaining that:

⁸³ Pennsylvania Department of State. Statewide Return and Recount Directive and Procedures. November 1, 2020. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/2020-11-01-StatewideReturnRecountDirective.pdf>

⁸⁴ Pennsylvania Department of State. Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 PM on Friday, November 6, 2020.” Page 2. November 1, 2020. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>

Until today, this Court was not informed that the guidance issued on October 28, which had an important bearing on the question whether to order special treatment of the ballots in question, had been modified.

Another example of a conflicting directive occurred when Secretary Boockvar provided last-minute guidance directing counties to contact voters whose mail-in or absentee ballots were incorrectly completed so those voters could vote on a provisional ballot. The directive states, *“If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by the sixth calendar day following the canvassing, or on or before Thursday, November 12.”*⁸⁵ The late release of this guidance resulted in inconsistent application of provisional ballots and incomplete ballot remedies across the Commonwealth as some counties directly contacted voters to cast a provisional ballot and others did not.

Finally, there was a conflicting directive relating to naked ballots. This directive, the Pennsylvania Guidance for Missing Official Election Ballot Envelopes, was issued on August 19, 2020. At that time, the department indicated it was their position that naked ballots should be counted pursuant to the Pennsylvania Election Code. Subsequent to the Pennsylvania Supreme Court decision in Pa. Democratic Party v. Boockvar on September 17, the department issued Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures on September 28, 2020, which included a description of the opinion and its effect and provided that a county board of elections should set aside ballots without the secrecy envelope.

These conflicting guidance documents and the confusion experienced by counties and voters resulted in litigation, as detailed further in this document.

⁸⁵ Pennsylvania Department of State. Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 PM on Friday, November 6, 2020.” Page 3. November 1, 2020. <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>

Lawsuits

While not all-inclusive, below is a summary of many of the cases and decisions that arose surrounding various issues involving the 2020 Election in Pennsylvania. These cases are before the United States Supreme Court, the United States District Courts for the various districts in Pennsylvania, the Pennsylvania Supreme Court, and the Pennsylvania Commonwealth Court.

Summary of Lawsuits related to the 2020 Election

Pa. Democratic Party v. Boockvar – United States Supreme Court

(now captioned under different case names at the U.S. Supreme Court)

In Pa. Democratic Party, the Pennsylvania Supreme Court disregarded the evidentiary record developed in a sister case (Crossey, discussed below) and ruled as follows:

- The “Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their offices including drop boxes.”
- The “received-by” deadline should be *extended by three days past Election Day* for ballots postmarked by 8 p.m. on Election Day and there should be a presumption of timely mailing for ballots without a legible postmark or proof of service.
- County boards of election were not required “to implement a ‘notice and opportunity to cure’ procedure” for mailed ballots.
- The “secrecy envelope provision” concerning mailed ballots was “mandatory.” Further, the “mail-in elector’s failure to comply with such requisite by enclosing the ballot in the secrecy envelope renders the ballot invalid.”
- “The poll watcher residency requirement does not violate the state or federal constitutions.”

An application for a stay to the United States Supreme Court was denied.

The Republican Party, and House/Senate Republicans (Speaker/Leader and President Pro Tempore/Leader), filed petitions for a writ of certiorari (appeals) to the United States Supreme Court concerning extension of the “received-by” deadline for absentee and mail-in ballots as well as the postmark presumption.

A motion for expedited consideration was denied, however, Justice Alito, joined by Justices Gorsuch and Thomas, noted that “there is a strong likelihood that the State Supreme Court decision violates the Federal Constitution.”

An emergency application for injunction was filed and the United States Supreme Court issued an order. The order noted that the Court had not been “informed that the [Secretary’s] guidance issued on October 28, which had an important bearing on the question whether to order special treatment of the ballots in question, had been modified.” Further, the order required ballots received during the extension of the “received-by” deadline be segregated and, if they had been counted, to be counted separately.

Crossey v. Boockvar – Pennsylvania Supreme Court

The petitioners in this case sought numerous changes to Pennsylvania’s election laws.

The Speaker/Majority Leader of the House, and the President Pro Tempore/Majority Leader of the Senate, sought and were granted intervention as parties.

The Pennsylvania Supreme Court directed Commonwealth Court Judge Leavitt to create an evidentiary record and make recommendations to the Supreme Court within a 10-day period. In short, Judge Leavitt’s “Recommended Findings of Fact and Conclusions of Law” recommended against any court action and specifically included the following:

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.

....

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. The fact that voters have the responsibility to obtain a ballot and return it by 8 p.m. on 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.

In response, the PA Supreme Court ruled as follows:

- The request for an extension of the deadline by which absentee or mail-in ballots must be received, currently 8 p.m. on Election Day, was dismissed as moot since it was addressed in the Pa. Democratic Party v. Boockvar case.
- The request for prepaid postage on absentee and mail-in ballots was dismissed as moot since the Department of State provided funding for that purpose to the counties.
- The request for third parties to be involved in the return of absentee and mail-in ballots was denied as illegal under Commonwealth law.

In his concurring and dissenting opinion in Crossey, Chief Justice Saylor explained that, based on the evidentiary record developed by Commonwealth Court Judge Leavitt, he would have ruled on the request to extend the “received-by” deadline for absentee and mail-in ballots in this case.

Hamm v. Boockvar was filed in the Commonwealth Court of Pennsylvania. It concerned the practice of allowing invalidly submitted absentee and mail-in ballots to be “cured” by voting provisional ballots. The Commonwealth Court ordered that provisional ballots cast under these circumstances (where the voter’s absentee or mail-in ballot had been timely received by the county boards of elections) be segregated and secured pending the process under the Election Code to review and challenge provisional ballots.

Disability Rights Pa. v. Boockvar was filed in the Pennsylvania Supreme Court’s original jurisdiction pursuant to Act 77. It concerned an extension of the “received by” deadline for absentee and mail-in ballots in both the primary and the general election as well as other associated relief. The Petition and Application for Injunctive Relief were denied with prejudice and, as a result, requests to intervene by House and Senate parties were denied as moot.

Delisle v. Boockvar – This Commonwealth Court case, focused on Philadelphia, Delaware and Montgomery counties, sought to extend the “received by” deadline for absentee and mail-in ballots for seven days. An application for a preliminary injunction was denied and an application for expedited consideration of the preliminary injunction was dismissed as moot. An application to intervene by House parties was pending when petitioners discontinued the action without prejudice.

NAACP v. Boockvar – Filed in Commonwealth Court, this court case questioned a number of subjects that were part of Act 12 (only applicable to the 2020 primary election) but alleged that they could be re-enacted for the 2020 general election. The court case focused on ensuring a sufficient number of polling places, mailing notice of changes in polling places, early voting for the general election, increasing access to vote by mail (sending mail-in ballot applications to all registered voters), allowing the use of drop boxes, providing an opportunity to cure signature mismatches and requiring polling places to use hand-marked paper ballots for the 2020 general election. House and Senate parties were granted intervention. Preliminary injunctive relief was denied. Preliminary objections were granted, including a demurrer by the Speaker and Majority

Leader of the House. A notice of appeal to the Pennsylvania Supreme Court was filed and then the case was discontinued.

League of Women Voters v. Boockvar – This case was filed in the U.S. District Court for the Eastern Dist. Pa. Fed. Ct. It challenged the requirement for signature matching concerning signatures on the declaration (part of the outer envelope for absentee and mail-in ballots). The request was for uniform standards, training and a notice/opportunity to cure faulty signatures (as well as costs and fees). This case was voluntarily dismissed.

In re November 3, 2020 General Election – This case, brought by the Pennsylvania Secretary of the Commonwealth and accepted by the Pennsylvania Supreme Court under its Kings Bench Power, sought a declaratory judgment that there was no requirement for counties to engage in signature matching concerning signatures on the declaration (part of the outer envelope for absentee and mail-in ballots). Requests by House and Senate parties to intervene were denied. The Pennsylvania Supreme Court determined that signature matching, and third-party challenges based on signature matching, were unavailable. It left open, however, rejection of ballots for the wrong signature, (“This comparison process operates to eliminate ballots of voters who have provided a different name entirely than that which appears on these lists.”) or wrong address/name.

Trump v. Boockvar – While there are a number of cases captioned “Trump v. Boockvar,” this one, filed in the United States District Court for the Western District of Pennsylvania (2:20-cv-009966-NR), originally concerned a number of issues related to absentee and mail-in ballots. These included: Mandating secrecy envelopes, challenging the poll watcher residency requirement as unconstitutional, requiring nondisabled voter to return absentee/mail-in ballots to county election boards OR mandating notice/site criteria for drop off points similar to polling places, and requiring collection of mail-in/absentee ballots at county election board office/monitored drop boxes. The judge originally abstained under the Pullman doctrine (allowing state courts to decide state law). In the end, after the complaint had been amended, the judge determined that: plaintiffs lacked standing, and even if they had standing, their claims (requiring signature analysis, prohibiting drop boxes and challenging the county poll watcher residency requirements) would fail on the merits.

In re: Canvassing Observation – The Pennsylvania Commonwealth Court reversed the Philadelphia Court of Common Pleas and remanded to the trial court to order that candidates, watchers or candidate representatives be permitted to attend canvassing procedures as outlined in

the Election Code and that they be permitted to observe “all aspects of the canvassing process within 6 feet” which adhere to COVID-19 guidelines. An appeal was filed to the Pennsylvania Supreme Court. An application to intervene by the Speaker and Majority Leader of the House of Representatives was summarily denied and the Pennsylvania Supreme Court, overruling the Commonwealth Court, determined that simply allowing observers “in the room,” regardless of whether they could clearly see the activities many yards away, was sufficient.

Barnette v. Lawrence – Filed in the United States District Court for the Eastern District of Pennsylvania, the complaint concerned declaratory and injunctive relief regarding Montgomery County’s pre-canvassing (inspection) of ballots for errors, giving voters an opportunity to cure. Barnette withdrew her motion for a temporary restraining order in light of the hearing scheduled in Hamm (also discussed in this section). Barnette filed notice of voluntary dismissal.

Donald J. Trump for President v. Boockvar – This case, filed in Commonwealth Court, concerned Secretary Boockvar’s unilateral guidance to extend the time frame for receipt of proof of identification for absentee or mail-in ballots until November 12 (an extra 3 days). In response to an application for injunctive relief, the Court ordered:

- Ballots for which identification is received and verified on November 10, 11 and 12 shall be segregated (in addition to the segregation of ballots in the Pa. Democratic Party case).
- Segregated ballots shall not be counted until further order of the Court.
- The injunctive relief will last until a final determination on the merits of the case.
- The Secretary was directed to transmit the order to all county boards of election.

Parnell v. Allegheny County Board of Elections - Filed in the United States District Court for the Western District of Pennsylvania, this case concerned approximately 28,000 incorrect ballots mailed to voters. The negotiated settlement (consent order) included: (1) initial and corrected ballots were to be sorted/segregated/preserved; (2) initial and corrected ballots were to be kept in separate portions of locked ballot room; (3) No pre-canvassing or canvassing of initial or corrected ballots until after 5 p.m. on the Friday after the General Election; (4) If only one ballot (initial or corrected) was returned, that ballot would be counted to the extent the sender was eligible to vote for offices on that ballot. If both the initial and corrected ballot were returned, the corrected ballot would be counted and the initial ballot would remain unopened and would be segregated and securely stored; (5) Initial and corrected ballots would be subject to observation during processing similar to other absentee or mail in ballots; and (6) the Court relinquished jurisdiction absent violation of the consent order.

Bognet v. Commonwealth – The 3rd Circuit Court of Appeals decision, involving a case filed by a congressional candidate and four voters challenging the Pennsylvania Supreme Court’s three day extension of the “received by” deadline and the postmark presumption, resulted in the following:

1. An Electors Clause challenge, similar to an Elections Clause challenge, concerns an injury to the General Assembly and, as a result, private individuals do not have standing to bring a lawsuit.
2. The private individuals did not have standing to bring an Equal Protection challenge in these circumstances.
3. The District Court appropriately denied relief “out of concern for the settled expectations of voters and election officials” (Purcell).

Trump Campaign v. Boockvar – Filed in the U.S. District Court for the Middle District of Pennsylvania, defendants included the Secretary of the Commonwealth as well as the county boards of elections for Allegheny, Centre, Chester, Delaware, Montgomery, Northampton and Philadelphia counties. The original complaint concerned certain counties providing a notice and opportunity to cure errors in absentee and mail-in ballots as well as restrictions on observations during the pre-canvassing and canvassing of absentee and mail-in ballots. Subsequent amended complaints made changes to the questions at issue as well as the relief requested. The Senate Republican Caucus filed an *amicus curiae* brief which focused on the historical background of secrecy in voting and the Pennsylvania Supreme Court’s order that absentee and mail-in ballots without a secrecy envelope should be discarded. After the first amended complaint had reduced the claims involved to Equal Protection and Elections/Electors Clause claims involving notice and an opportunity to cure ballot errors, the Speaker and Majority Leader of the House joined the Senate Republican *amicus*. The case has continued to evolve since that time, with changes to the counsel representing the Trump campaign as well as the claims and relief requested. The Court issued an order and opinion on November 21, 2020, denying a request to file a second amending complaint, dismissing the first amended complaint with prejudice, addressing other pending questions and directing that the case file be closed.

Kelly v. Commonwealth – United States Congressman Mike Kelly and others filed a lawsuit in Commonwealth Court seeking declaratory and injunctive relief against the Commonwealth, Governor Wolf, Secretary Boockvar and the Pennsylvania General Assembly to challenge Act 77’s provisions regarding mail-in ballots as unconstitutional and prevent certification of the results of the November 3, 2020 general election. The challenge posits that Act 77, by expanding mail-in voting, violates provisions of Article VII of the Pennsylvania Constitution which allow only for in person voting or absentee voting under specific, delineated circumstances.

In Re: Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election –

The Pennsylvania Supreme Court agreed to exercise extraordinary jurisdiction over several Commonwealth Court cases concerning the following question:

Does the Election Code require county boards of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed their ballot's outer envelopes but did not handwrite their name, their address, and/or a date, where no fraud or irregularity has been alleged?

Post-Election/End of Session Accomplishments

As November 30 nears and the legislative session draws to a close, we continue to make every effort to review this election cycle, including:

- Speaker of the House Bryan Cutler sent a letter to Governor Wolf, requesting an audit of election results. In the letter, the Speaker stated: “*The uncertainty surrounding these interventions has cast an unnecessary cloud on the election process. That invites our people to question the results, regardless of which candidate or party may prevail.*”⁸⁶
- With bipartisan support, the House adopted House Resolution 1100, sponsored by Representative Jesse Topper.⁸⁷ This resolution was reported from the House State Government Committee on November 18 and was adopted by the House on November 19. The resolution designates the Legislative Budget and Finance Committee as the legislative agency to undertake a risk-limiting audit of the 2020 General Election. On November 23, 2020, the officers of the Legislative Budget and Finance Committee voted 2-1 against accepting House Resolution 1100.
- In order to act swiftly to address issues within the Pennsylvania Election Code during the 2021-2022 Legislative Session, Acting Majority Chairman Chair of the State Government Committee, Representative Seth Grove, submitted an extensive list of questions to the Pennsylvania Department of State and all 67 county board of elections to ascertain both how they administered the 2020 General Election and the issues they encountered in the administration of that election.
- The House State Government Committee scheduled an informational meeting with Dominion Voting Systems, a voting machine vendor used in the Commonwealth. Unfortunately, Dominion cancelled this meeting at the last minute.

⁸⁶ Speaker Bryan Cutler, 100th Legislative District. Pennsylvania House of Representatives. House Republican Caucus. November 6, 2020. <http://www.pahousegop.com/News/18519/Latest-News/Cutler-Calls-for-Full-Audit-of-2020-Election-Process>

⁸⁷ House of Representatives Republican Committee Bill Summary. HR 1100. 11/17/20. <https://ldpc6.legis.state.pa.us/WU01/LI/BI/BS/2019/0/HR1100P4611.pdf>

Conclusion

As this report reflects on the 2019-2020 Legislative Session, we see a legislative term filled with historic accomplishments and reforms relating to our Commonwealth's election laws. As our nation faced an international health crisis due to COVID-19, the General Assembly made every effort to ensure our Commonwealth could adhere to the principles of the Constitution and provide our citizens with a free and fair election.

However, in addition to the pandemic itself, we faced additional obstacles. Pennsylvania voters made historic use of mail-in ballots during this election cycle, a voting option that was completely new to voters and counties alike. Rulings by the Pennsylvania Supreme Court and guidance documents issued by the Pennsylvania Department of State created confusion and may have removed numerous safeguards provided by the Election Code. Unfortunately, these obstacles may have also undermined many Pennsylvanians' confidence in the fairness of this election.

We have a responsibility as legislators to ensure the integrity of the election process in this Commonwealth. As the Acting Majority Chairman of the House State Government Committee, it is my hope that we will take all we have learned during the 2019-2020 Legislative Session and embark on the 2021-2022 Legislative Session with every effort to continue to fulfill that obligation.

APPENDIX

Historical Look at Election Prosecution

While not providing an exhaustive list, below are cases and prosecutions of voter fraud in Pennsylvania shared by the Heritage Foundation dating back to 2016.⁸⁸

Year	Name	Case	Activity
2019	Harry Sandoe Maxwell	Criminal Conviction	Fraudulent Use of Absentee Ballots
Harry Maxwell of Delaware County confessed he would pick up girls and get them to sign absentee ballots in names of deceased voters. He pleaded guilty to one count of forgery, once count of false use of an absentee ballot, two counts of criminal conspiracy, and was sentenced to two years' probation and \$500 fine.			
Year	Name	Case	Activity
2018	Dolores Shaw	Diversion Program	Miscellaneous
Dolores Shaw, the Judge of Election at Philadelphia Poll 43-7, and three other election-board members were indicted after the 2017 special election for the 197 th District. They were accused of intimidating voters. In court, the witnesses testified they were not able to cast ballots for the candidate of their choice. Shaw received an accelerated rehabilitative disposition.			
Year	Name	Case	Activity
2018	Calvin Mattox	Criminal Conviction	Miscellaneous
Calvin Mattox, a Philadelphia election-board worker, pleaded guilty to a misdemeanor "qualification of election officials" charge. Mattox worked at Poll 43-7 despite not living in the ward as required. He and three other election-board members were indicted after the 2017 special election for the 197 th District. They were accused of intimidating voters. In court, the witnesses testified they were not able to cast ballots for the candidate of their choice. Mattox was sentenced to one year of probation and stripped of voting rights until 2022.			
Year	Name	Case	Activity
2018	Wallace Hill	Criminal Conviction	Miscellaneous
Wallace Hill, a translator at Philadelphia Poll 43-7, pleaded guilty to a charge of failure to perform duty. He and three other election-board members were indicted after the 2017 special election for the 197 th District. They were accused of intimidating voters. In court, the witnesses testified they were not able to cast ballots for the candidate of their choice. Hill was sentenced to 18 months of probation and stripped of voting rights until 2022.			

⁸⁸ The Heritage Foundation. Election Fraud Cases. <https://www.heritage.org/voterfraud/search?state=PA>

Year	Name	Case	Activity
2018	Thurman George	Criminal Conviction	Miscellaneous
<p>Thurman George, a Democrat election-board member and machine inspector at Philadelphia Poll 43-7, pleaded guilty to fraud by an election officer. He and three other election-board members were indicated after the 2017 special election for the 197th District. They were accused of intimidating voters. In court, the witnesses testified they were not able to cast ballots for the candidate of their choice. George was sentenced to five years of probation and stripped of voting rights until 2022.</p>			
Year	Name	Case	Activity
2017	Richard Cummings, Jr.	Diversion Program	False Registrations
<p>Richard Cummings moved from Westmoreland County to Allegheny County in 2009, but continued voting at his Westmoreland address through the 2016 election. He was charged with five counts of unlawful voting, and one count of unsworn falsification. He pleaded guilty and was sentenced to one year of probation.</p>			
Year	Name	Case	Activity
2016	Cheryl Ali	Criminal Conviction	Impersonation Fraud at Polls
<p>Cheryl Ali pleaded guilty to two misdemeanor charges: unlawful assistance in voting, and falsely holding the position of an election officer. In 2014, she voted on behalf of her mother. She also served as a machine inspector at a polling place even though she did not live in the ward. Cheryl was sentenced to one year of probation and stripped of voting rights for four years.</p>			
Year	Name	Case	Activity
2016	Robin Trainor, Laura Murtaugh	Criminal Conviction	Impersonating Fraud at the Polls
<p>Both were sentenced to one year of probation and stripped of voting rights for four years. Trainor, a judge of elections (who was disqualified as a public official), went into the voting booth with her husband and told him how to vote. She then spoke to Murtaugh (the minority elections inspector) and signed the election register under her son's name and cast a ballot in his name. Trainor pleaded guilty to failure to perform duty and falsely holding the position of an election officer, and Murtaugh pleaded guilty to failure to perform her duty.</p>			
Year	Name	Case	Activity
2016	Myron Cowher, Dmitry Kupershmidt	Criminal Conviction	Altering the Vote Count
<p>Both were found guilty of attempting to rig a May 2014 election in Wild Acres Lakes. Cowher approached the manager and asked him to provide him with ballots that were due to be mailed to property owners in the community for the purpose of filling out the ballots and guaranteeing victory for his preferred board of directors' candidates. He was arrested and convicted on 217 counts, including forgery, identity theft, and criminal conspiracy. Kupershmidt was found guilty on 190 counts.</p>			

Other Issues and Claims

During this election cycle, there have been reports of potential issues across the nation including within Pennsylvania. These include:

- On May 21, 2020, the United States Department of Justice announced Domenick Demuro was convicted for his role in accepting bribes to cast fraudulent ballots and certifying false voting results during the 2014, 2015, and 2016 primary elections in Philadelphia.⁸⁹
- On July 23, 2020, the United States Department of Justice charged former U.S. Congressman Michael “Ozzie” Myers (D-Pa) with conspiring to violate voting rights by fraudulently stuffing the ballot boxes for specific candidates in 2014, 2015 and 2016 primary elections; bribery of an election official; falsification or records; voting more than once in federal elections; and obstruction of justice. Myers, 77, of Philadelphia is charged with conspiring with the former Judge of Elections for the 39th Ward, 36th Division, Domenick Demuro.⁹⁰
- On September 21, 2020, the federal Department of Justice released a statement regarding U.S. Attorney Freed’s inquiry into reports of potential issues with mail-in ballots. The FBI worked with the PSED and recovered physical evidence in Luzerne County; however, further investigation found it to be human error.⁹¹

Several other allegations have been made concerning the integrity of the election, some of which are the subject of current litigation. These allegations include:

- In other states, alleged software issues relating to undercounting votes. These center around the use of Dominion Voting Systems equipment which is used in several Pennsylvania counties.⁹²
- Philadelphia Court decisions on the distance of poll watchers from the ballot counting process.⁹³

⁸⁹ The United States Department of Justice. Press Release. May 21, 2020. <https://www.justice.gov/opa/pr/former-philadelphia-judge-elections-convicted-conspiring-violate-civil-rights-and-bribery>

⁹⁰ The United States Department of Justice. Press Release. July 23, 2020. <https://www.justice.gov/opa/pr/former-congressman-charged-ballot-stuffing-bribery-and-obstruction>

⁹¹ Scolforo, Mark. “9 discarded ballots weren’t fraud, state election chief says. AP NEWS. September 30, 2020. <https://apnews.com/article/election-2020-donald-trump-state-elections-pennsylvania-elections-dccd3f68f7d533c3e2a1c571d5affa7b>

⁹² Nelson, Steven. “Michigan Republicans claim software issue undercounted Trump votes.” New York Post. November 6, 2020. <https://nypost.com/2020/11/06/michigan-gop-claims-software-issue-undercounted-trump-votes/>

⁹³ CBS3 Staff. “Philadelphia Court Decision: Poll Watchers Now Allowed Within 6 Feet of Ballot Counting at Pennsylvania Convention Center.” 3 CBS Philly. November 5, 2020. <https://philadelphia.cbslocal.com/2020/11/05/philadelphia-court-decision-poll-watchers-now-allowed-within-6-feet-of-ballot-counting-at-pennsylvania-convention-center/>

- Postal carriers charged with federal criminal charges for throwing away mail, including applications for mail-in ballots.⁹⁴
- A Pennsylvania man from Forty Fort filling out an application for an absentee ballot for his deceased mother.⁹⁵
- 1,600 deceased people in Allegheny County registered to vote in the election (subject of a lawsuit filed).⁹⁶
- Counties starting the pre-canvassing early and also giving voters who did not submit their ballots properly the opportunity to re-vote.⁹⁷
- Invalid ballots from four Pennsylvania counties were counted because they were not separated from lawful ballots.⁹⁸

⁹⁴ Tony Larussa and Paula Reed Ward. "2 Pittsburgh-area postal workers charged with throwing away mail." TRIB Live. October 14, 2020. <https://triblive.com/local/south-hills/2nd-local-postal-worker-suspended-for-allegedly-dumping-mail-in-trash/>

⁹⁵ Blackburne, Carolyn. "Man arrested for voter fraud in Luzerne County." WNEP 16. October 21, 2020. <https://www.wnep.com/article/news/local/luzerne-county/man-arrested-for-voter-fraud-in-luzerne-county/523-7fc4fd2f-9105-47e7-a510-2b5ff176ab2c>

⁹⁶ Breitbart. "Lawsuit: 1.6K Dead People Registered to Vote in Pittsburgh, Pennsylvania." <https://www.newsbreak.com/pennsylvania/pittsburgh/news/1517179015938/lawsuit-16k-dead-people-registered-to-vote-in-pittsburgh-pennsylvania>

⁹⁷ De Lea, Brittany. "Pennsylvania county under scrutiny as judge weighs in on claims ballots were canvassed early, changed: report." FOX NEWS. November 3, 2020. <https://www.foxnews.com/politics/pennsylvania-county-ballots-canvassed-changed>

⁹⁸ Binder, John. "True The Vote Lawsuit: Illegal Ballots Counted in Four Pennsylvania Counties." November 11, 2020. <https://www.breitbart.com/politics/2020/11/11/true-the-vote-lawsuit-illegal-ballots-counted-in-four-pennsylvania-counties/>