

No. 20-\_\_\_\_  
(Related to No. 20A98)

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In the  
**Supreme Court of the United States**

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MIKE KELLY, U.S. Congressman; SEAN PARNELL; THOMAS A. FRANK;  
NANCY KIERZEK; DEREK MAGEE; ROBIN SAUTER; MICHAEL KINCAID; and  
WANDA LOGAN,

*Petitioners,*

v.

COMMONWEALTH OF PENNSYLVANIA; PENNSYLVANIA GENERAL  
ASSEMBLY; THOMAS W. WOLF, in his official capacity as Governor of the  
Commonwealth of Pennsylvania; and KATHY BOOCKVAR, in her official capacity  
as  
Secretary of the Commonwealth of Pennsylvania,

*Respondents.*

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**On Petition for A Writ of Certiorari  
to the Supreme Court of Pennsylvania**

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**APPENDIX TO PETITION FOR A WRIT OF CERTIORARI**

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## TABLE OF CONTENTS

### APPENDIX A

Order Granting Application for Extraordinary Jurisdiction,  
Vacating Commonwealth Court’s Order, and Dismissing  
Petition for Review with Prejudice, *Hon. Mike Kelly, et al. v.  
Commonwealth of Pennsylvania, et al.*, No. 68 MAP 2020  
(Pa. Nov. 28, 2020).....1a

### APPENDIX B

Order Denying Emergency Application for Stay, *Hon. Mike Kelly,  
et al. v. Commonwealth of Pennsylvania, et al.*, No. 68 MAP 2020  
(Pa. Dec. 3, 2020) .....16a

### APPENDIX C

Memorandum Opinion Setting Forth Basis for Court’s  
November 25, 2020 Order of an Emergency Preliminary Injunction,  
*Hon. Mike Kelly et al. v. Commonwealth of Pennsylvania, et al.*,  
No. 620 M.D. 2020 (Pa. Commw. Ct. Nov. 27, 2020).....17a

### APPENDIX D

Order Granting Preliminary Injunctive Relief, *Hon. Mike Kelly, et al.  
v. Commonwealth of Pennsylvania, et al.*, No. 620 M.D. 2020  
(Pa. Commw. Ct. Nov. 25, 2020) .....30a

### APPENDIX E

Petition for Review, *Hon. Mike Kelly, et al.  
v. Commonwealth of Pennsylvania, et al.*, No. 620 M.D. 2020  
(Pa. Commw. Ct. Nov. 21, 2020) .....32a

### APPENDIX F

Emergency Application for Stay of Court’s Order of November 28, 2020,  
*Hon. Mike Kelly, et al. v. Commonwealth of Pennsylvania, et al.*,  
*No. 68 MAP 2020* (Pa. Dec. 2, 2020) .....69a

### APPENDIX G

Motion for Emergency/Special Prohibitory Injunction, *Hon. Mike Kelly, et al.  
v. Commonwealth of Pennsylvania, et al.*, No. 620 M.D. 2020  
(Pa. Commw. Ct. Nov. 22, 2020) .....109a

APPENDIX H

Memorandum of Law in Support of Motion for Emergency/Special  
Prohibitory Injunction, *Hon. Mike Kelly, et al.*

*v. Commonwealth of Pennsylvania, et al.*, No. 620 M.D. 2020

(Pa. Commw. Ct. Nov. 22, 2020) .....119a

APPENDIX I

Response to Application for the Court to Exercise Extraordinary Jurisdiction,  
*Hon. Mike Kelly, et al. v. Commonwealth of Pennsylvania, et al.*,

*No. 68 MAP 2020* (Pa. Nov. 27, 2020) .....166a

APPENDIX J

U.S Constitution Article I, § 4, clause 1.....237a

U.S Constitution Article II, § 1, clause 2 .....237a

U.S Constitution Amendment I .....237a

U.S Constitution Amendment XIV .....237a

Pa. Constitution Article III, § 1 (1838) .....238a

Pa. Constitution Article VII, § 1.....239a

Pa. Constitution Article VII, § 4.....239a

Pa. Constitution Article VII, § 14.....239a

Pa. Constitution Article VII, § 19 (1957) .....240a

Pa. Constitution Article VIII, § 6 (1864).....240a

Pa. Constitution Article VIII, § 18 (1949).....240a

Pa. Constitution Article XI, § 1 .....241a

Act of October 31, 2019, P.L. 552, No. 77 .....242a

Act of March 27, 2020, P.L. No. 41, No. 12 .....311a

25 Pa. Stat. § 2602(z.6) .....336a

3 U.S.C. § 15.....342a

3 U.S.C. § 16.....343a

APPENDIX K

Pa. Dep't State, 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 (Oct. 28, 2020, Version 1.0).....345a

Pa. Dep't State, Statewide Return and Recount Directive and Procedures  
(Nov. 1, 2020).....348a

APPENDIX L

Pa. Dep't State, Unofficial Returns.....353a



# APPENDIX A

0001a

## IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

THE HONORABLE MIKE KELLY, SEAN	:	No. 68 MAP 2020
PARNELL, THOMAS A. FRANK, NANCY	:	
KIERZEK, DEREK MAGEE, ROBIN	:	
SAUTER, MICHAEL KINCAID, AND	:	
WANDA LOGAN	:	
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	:	
v.	:	
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
PENNSYLVANIA GENERAL ASSEMBLY,	:	
HONORABLE THOMAS W. WOLF, KATHY	:	
BOOCKVAR	:	
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APPEAL OF: COMMONWEALTH OF	:	
PENNSYLVANIA, HONORABLE THOMAS	:	
W. WOLF, KATHY BOOCKVAR	:	

### ORDER

#### PER CURIAM

**AND NOW**, this 28<sup>th</sup> day of November, 2020, pursuant to 42 Pa.C.S. § 726,<sup>1</sup> we **GRANT** the application for extraordinary jurisdiction filed by the Commonwealth of Pennsylvania, Governor Thomas W. Wolf, and Secretary of the Commonwealth Kathy Boockvar (“Commonwealth”), **VACATE** the Commonwealth Court’s order preliminarily enjoining the Commonwealth from taking any further action regarding the certification of the results of the 2020 General Election, and **DISMISS WITH PREJUDICE** the petition

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<sup>1</sup> Section 726 provides that “[n]otwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.” 42 Pa.C.S. § 726.

## 0002a

for review filed by the Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, and Wanda Logan (“Petitioners”). All other outstanding motions are **DISMISSED AS MOOT**.

Petitioners filed the petition for review in Commonwealth Court on November 21, 2020, setting forth a facial challenge to those provisions of Act 77 of 2019,<sup>2</sup> establishing universal mail-in voting in the Commonwealth of Pennsylvania. Petitioners sought a declaration that the aforementioned provisions were unconstitutional and void *ab initio*, and injunctive relief prohibiting the certification of the results of the General Election held on November 3, 2020. As a remedy, Petitioners sought to invalidate the ballots of the millions of Pennsylvania voters who utilized the mail-in voting procedures established by Act 77 and count only those ballots that Petitioners deem to be “legal votes.” Alternatively, Petitioners advocated the extraordinary proposition that the court disenfranchise all 6.9 million Pennsylvanians<sup>3</sup> who voted in the General Election and instead “direct[] the General Assembly to choose Pennsylvania’s electors.” Petition for Review at 24.

Upon consideration of the parties’ filings in Commonwealth Court, we hereby dismiss the petition for review with prejudice based upon Petitioners’ failure to file their facial constitutional challenge in a timely manner. Petitioners’ challenge violates the doctrine of laches given their complete failure to act with due diligence in commencing their facial constitutional challenge, which was ascertainable upon Act 77’s enactment. It is well-established that “[l]aches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another.” *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998).

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<sup>2</sup> Act of October 31, 2019, P.L. 552, No. 77 (“Act 77”).

<sup>3</sup> See Pennsylvania Department of State, Unofficial Returns, available at: <https://www.electionreturns.pa.gov/> (last visited Nov. 27, 2020).

## 0003a

The want of due diligence demonstrated in this matter is unmistakable. Petitioners filed this facial challenge to the mail-in voting statutory provisions more than one year after the enactment of Act 77. At the time this action was filed on November 21, 2020, millions of Pennsylvania voters had already expressed their will in both the June 2020 Primary Election and the November 2020 General Election and the final ballots in the 2020 General Election were being tallied, with the results becoming seemingly apparent. Nevertheless, Petitioners waited to commence this litigation until days before the county boards of election were required to certify the election results to the Secretary of the Commonwealth. Thus, it is beyond cavil that Petitioners failed to act with due diligence in presenting the instant claim. Equally clear is the substantial prejudice arising from Petitioners' failure to institute promptly a facial challenge to the mail-in voting statutory scheme, as such inaction would result in the disenfranchisement of millions of Pennsylvania voters.<sup>4</sup>

Accordingly, we grant the application for extraordinary jurisdiction, vacate the Commonwealth Court's order preliminarily enjoining the Commonwealth from taking any further action regarding the certification of the results of the 2020 General Election, and dismiss with prejudice Petitioners' petition for review. All other outstanding motions are dismissed as moot.

Justice Wecht files a concurring statement.

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

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<sup>4</sup> While the Commonwealth also relies upon Section 13(3) of Act 77, providing for a 180-day period in which constitutional challenges may be commenced, given our reliance upon the doctrine of laches, we do not speak to this basis for dismissal.

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

THE HONORABLE MIKE KELLY, SEAN : No. 68 MAP 2020  
PARNELL, THOMAS A. FRANK, NANCY :  
KIERZEK, DEREK MAGEE, ROBIN :  
SAUTER, MICHAEL KINCAID, AND :  
WANDA LOGAN :

v. :

COMMONWEALTH OF PENNSYLVANIA, :  
PENNSYLVANIA GENERAL ASSEMBLY, :  
HONORABLE THOMAS W. WOLF, KATHY :  
BOOCKVAR :

APPEAL OF: COMMONWEALTH OF :  
PENNSYLVANIA, HONORABLE THOMAS :  
W. WOLF, KATHY BOOCKVAR :

**CONCURRING STATEMENT**

**JUSTICE WECHT**

**Filed: November 28, 2020**

I join the Court’s order because I wholeheartedly agree that, whatever the merits of Petitioners’ claims regarding the constitutionality of Act 77,<sup>1</sup> their request for retrospective relief as to the 2020 General Election is barred by the doctrine of laches. I write separately to explain my view as to the limited relief available when courts are faced with a wholesale challenge to the results of an election.

As today’s order aptly notes, “[l]aches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an

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<sup>1</sup> Act of October 31, 2019, P.L. 552, No. 77.

## 0005a

action to the prejudice of another.” *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998) (citing *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988); see also *Costello v. United States*, 365 U.S. 265, 282 (1961); cf. *Sprague*, 550 A.2d at 188 (“He who seeks equity must do equity.”). Whether laches should apply is a fact-specific question to be determined case by case. See *Leedom v. Thomas*, 373 A.2d 1329, 1332 (Pa. 1977). A respondent who resorts to laches must establish two elements: First, the party must demonstrate a lack of diligence on behalf of the claimant. In that regard, “[t]he test is not what the plaintiff knows, but what he might have known by the use of the means of information within his reach with the vigilance the law requires of him.” *Taylor v. Coggins*, 90 A. 633, 635 (Pa. 1914). Second, the respondent must show an “injury or material prejudice” resulting from that delay. *Gabster v. Mesaros*, 220 A.2d 639, 641 (Pa. 1966).

Traditionally, “the defendant bears the burden to demonstrate that enforcing the plaintiff’s rights would be inequitable under the circumstances.” *Sernovitz v. Dershaw*, 127 A.3d 783, 791 (Pa. 2015). In the context of a challenge to the results of an election, however, due consideration must also be accorded to the rights of those voters who cast ballots in good faith reliance upon the laws passed by their elected representatives. See *Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 243 (6th Cir. 2011) (“To disenfranchise citizens whose only error was relying on [state] instructions . . . [is] fundamentally unfair.”). Given the impracticality of joining as essential parties the millions of Pennsylvanians whose votes Petitioners seek to discard here, the judiciary must consider their interests when balancing the equities. Cf. *Delisle v. Boockvar*, 234 A.3d 410, 411 (Pa. 2020) (*per curiam*) (Wecht, J., concurring) (“[I]t cannot be gainsaid that there is no *post hoc* remedy sufficient to cure the arbitrary deprivation of the ‘right of

suffrage,’ which ‘is a fundamental matter in a free and democratic society.’” (quoting *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964)).<sup>2</sup>

Respondents’ recitations lay bare Petitioners’ want of diligence in this case. Petitioners could have brought this action at any time between October 31, 2019, when Governor Wolf signed Act 77 into law, and April 28, 2020, when this Court still retained exclusive jurisdiction over constitutional challenges to it. See Act 77 § 13(2)-(3). The claims then could have been adjudicated finally before the June primary, when no-excuse mail-in voting first took effect under Act 77—and certainly well before the General Election, when millions of Pennsylvania voters requested, received, and returned mail-in ballots for the first time. Petitioners certainly knew all facts relevant to their present claims during that entire period. Indeed, “the procedures used to enact [Act 77] were published in the Legislative Journal and available to the public” since at least October 2019. See *Stilp*, 718 A.2d at 294. Likewise, “[t]he provisions of the Constitution that the [General Assembly] purportedly violated were also readily available.” See *id.* And yet, Petitioners did nothing.<sup>3</sup> Petitioner Wanda Logan ran and lost in a special election in February after

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<sup>2</sup> See also Richard L. Hasen, *Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown*, 62 Wash. & Lee L. Rev. 937, 998 (2005) (“Courts should see it as in the public interest in election law cases to aggressively apply laches so as to prevent litigants from securing options over election administration problems.”).

<sup>3</sup> Even worse, at least one Petitioner actively encouraged his supporters to cast mail-in ballots for him in his bid for Congress. See Ryan Deto, *Sean Parnell is suing Pa. over mail-in voting, even though he praised mail-in voting earlier this year*, PITTSBURGH CITY PAPER (Nov. 21, 2020), <https://www.pghcitypaper.com/pittsburgh/sean-parnell-is-suing-pa-over-mail-in-voting-even-though-he-praised-mail-in-voting-earlier-this-year/Content?oid=18413927>.

certain aspects of Act 77 took effect.<sup>4</sup> And not only she, but U.S. Representative Mike Kelly and congressional candidate Sean Parnell also participated in the 2020 primary elections under Act 77, as modified by Act 12,<sup>5</sup> in June of this year.<sup>6</sup> But it occurred to none of them to challenge the constitutionality of Act 77 before then, or indeed before participating in and contemplating the results of the 2020 General Election.

Because “[a]n election is the embodiment of the popular will, the expression of the sovereign power of the people,” *In re Wheelock’s Contested Election*, 82 Pa. 297, 299 (1876), any request to invalidate its results must meet a high evidentiary threshold. See *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988) (“The voiding of a state election ‘is a drastic if not staggering’ remedy.”) (citation omitted). Extraordinary claims demand extraordinary proof. To that end, it is well-settled that to annul an election in this Commonwealth “requires proof of fraud or other unlawful practices of such magnitude and so interwoven with the casting and counting of the votes as to obviously deprive the election returns of all validity.” See *Winograd v. Coombs*, 20 A.2d 315, 316 (Pa. 1941); *cf. Appeal of Zupsic*, 670 A.2d 629, 638 (Pa. 1996); *In re Ayre*, 134 A. 477, 478 (Pa. 1926) (“To warrant throwing out the vote of an entire district[,] the disregard of the law must be so fundamental as to render it impossible to separate the lawful from the unlawful votes.”).

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<sup>4</sup> See Act 77 §§ 14, 15 (instructing that the Act “shall apply to elections held on or after April 28, 2020,” but providing that all but two sections “shall take effect immediately”).

<sup>5</sup> Act of March 27, 2020, P.L. 41, No. 12.

<sup>6</sup> Parnell lost in the General Election to incumbent U.S. Representative Conor Lamb.

## 0008a

Petitioners cannot carry their enormous burden. They have failed to allege that even a single mail-in ballot was fraudulently cast or counted. Notably, these Petitioners sought to intervene in a federal lawsuit in which the campaign of President Donald J. Trump—an ostensible beneficiary of Petitioners’ efforts to disenfranchise more than one-third of the Commonwealth’s electorate—explicitly disclaimed any allegation of fraud in the conduct of Pennsylvania’s General Election. *See Donald J. Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania*, No. 20-3371 (3d Cir. Nov. 27, 2020), slip op. at 2 (“[A]s [Trump Presidential Campaign] lawyer Rudolph Giuliani stressed, the Campaign ‘doesn’t plead fraud. . . . [T]his is not a fraud case.’” (quoting Mot. To Dismiss Hr’g Tr. 118:19-20, 137:18)). The absence of fraud allegations from this matter—not to mention actual evidence of fraud—alone is fatal to Petitioners’ claims.

More importantly, though, there is no basis in law by which the courts may grant Petitioners’ request to ignore the results of an election and recommit the choice to the General Assembly to substitute its preferred slate of electors for the one chosen by a majority of Pennsylvania’s voters. The United States Constitution’s Presidential Electors Clause commands that “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” U.S. CONST. art. II, § 1, cl. 2. While the method of appointment varies somewhat by State,<sup>7</sup> *see McPherson v. Blacker*, 146 U.S. 1, 25-26 (1892) (describing alternative “method[s] of appoint[ing]” presidential electors), our General Assembly “direct[ed]” the “Manner” of appointing

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<sup>7</sup> Most notably, Maine and Nebraska allocate their electors by congressional district, with the winner of the States’ popular vote receiving two additional “bonus” electors.



Pennsylvania's electors by popular vote nearly a century ago pursuant to its broad lawmaking power.<sup>8</sup>

Unchanged since its enactment in 1937, Article XV of the Election Code<sup>9</sup> prescribes the prevailing method of selecting the Commonwealth's electors:

At the general election to be held in the year 1940, and every fourth year thereafter, there shall be elected by the qualified electors of the Commonwealth, persons to be known as electors of President and Vice-President of the United States, and referred to in this act as presidential electors, equal in number to the whole number of senators and representatives to which this State may be entitled in the Congress of the United States.

25 P.S. § 3191.<sup>10</sup> The Code further describes the electors' constitutional duties:

The electors *chosen, as aforesaid*, shall assemble at the seat of government of this Commonwealth, at 12 o'clock noon of the day which is, or may be, directed by the Congress of the United States,<sup>[11]</sup> and shall then and there perform the duties enjoined upon them by the Constitution and laws of the United States.

*Id.* § 3192 (emphasis added). Lastly, the Code outlines the electors' power to replace a member of their delegation due to that member's death or "fail[ure] to attend at the seat

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<sup>8</sup> Significantly, among the first election laws adopted by our Legislature in October 1788, following the Commonwealth's ratification of the U.S. Constitution the previous December, was one providing for the popular election of presidential electors on a general ticket with congressional representatives. See 1 THE DOCUMENTARY HISTORY OF THE FIRST FEDERAL ELECTIONS, 1788-1790 at 281, 299-302 (Merrill Jensen & Robert A. Becker, eds., 1990).

<sup>9</sup> Act of June 3, 1937, P.L. 1333, art. I, § 101, *codified as amended at* 25 P.S. §§ 2600-3591.

<sup>10</sup> As far as ascertaining the specific identities of the electors, the Code elsewhere provides for their nomination by "[t]he nominee of each political party for the office of President of the United States." 25 P.S. § 2878.

<sup>11</sup> Federal law provides that "[t]he electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct." 3 U.S.C. § 7. This year, electors shall meet in Harrisburg on December 14, 2020.

of government at the time appointed by law,” *id.* § 3193, and also establishes their entitlement to a *per diem* to compensate for travel expenses, *id.* § 3194 (providing for “the sum of three dollars for every day spent in traveling to, remaining at, and returning from the place of meeting aforesaid, and . . . mileage at the rate of three cents per mile to and from his home”).

Conspicuously absent from the Election Code are any mechanisms by which to circumvent these procedures so as to permit the General Assembly to substitute its preferred slate of electors for that “elected by the qualified electors of the Commonwealth.” *Id.* § 3191. Thus, any effort to alter that “method of appointment,” *McPherson*, 146 U.S. at 25, at this late stage would require the adoption of new law in accordance with constitutional mandates, including presentment of the legislation to the governor to sign or veto. See PA. CONST. art. III, § 9; *Wolf v. Scarnati*, 233 A.3d 679, 687 (Pa. 2020); *cf. Smiley v. Holm*, 285 U.S. 355, 367-68 (1932) (holding “that the exercise of the authority” to regulate federal elections conferred upon state legislatures by the federal Constitution “must be in accordance with the method which the state has prescribed for legislative enactments,” including observance of “the veto power”); *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 807-08 (2015).<sup>12</sup>

In any event, even if the Legislature were inclined to intervene, Petitioners’ efforts would be futile with respect to the foregoing election regardless. Congress has declared

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<sup>12</sup> Moreover, taken to its logical end, Petitioners’ plea to “prohibit[] [Respondents] from certifying the results of the General Elections which include mail-in ballots,” Pet. for Review at 24, if accepted, necessarily would bar the certification of every election that took place on November 3—including half of the Pennsylvania Senate, the full membership of the Pennsylvania House of Representatives (and Representative Kelly’s own election to the United States House for that matter). Given the quorum quandary such a move would precipitate, it is unclear how the General Assembly—whose members are set to begin “[t]heir term of service” on December 1, PA. CONST. art. II, § 2—could possibly be reconstituted in time to select an alternate slate of electors by the federal “safe harbor” deadline of December 8, see 3 U.S.C. § 5, absent the election certifications that Petitioners seek to block.

that each State’s method “for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State” must have been established “*by laws enacted prior to the day fixed for the appointment of the electors*”—*i.e.*, before November 3, 2020. See 3 U.S.C. § 5 (emphasis added). Accordingly, to persist in seeking to overturn the result of any election by legislative putsch is a fool’s errand—and an arguably unconstitutional one at that. See PA. CONST. art. I, § 5 (“Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”).

Having delayed this suit until *two* elections were conducted under Act 77’s new, no-excuse mail-in voting system, Petitioners—several of whom participated in primary elections under this system without complaint—play a dangerous game at the expense of every Pennsylvania voter. Petitioners waived their opportunity to challenge Act 77 before the election, choosing instead to “lay by and gamble upon receiving a favorable decision of the electorate.” *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973) (*en banc*). Unsatisfied with the results of that wager, they would now flip over the table, scattering to the shadows the votes of millions of Pennsylvanians. It is not our role to lend legitimacy to such transparent and untimely efforts to subvert the will of Pennsylvania voters.<sup>13</sup> Courts should not decide elections when the will of the voters is clear.

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<sup>13</sup> See *Koter v. Cosgrove*, 844 A.2d 29, 33 (Pa. Cmwlth. 2004) (“The continuing and efficient operation of government is dependent upon the prompt resolution of election contests. Our system depends upon the timely certification of a winner.”).

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

THE HONORABLE MIKE KELLY, SEAN : No. 68 MAP 2020  
PARNELL, THOMAS A. FRANK, NANCY :  
KIERZEK, DEREK MAGEE, ROBIN :  
SAUTER, MICHAEL KINCAID, AND :  
WANDA LOGAN :

v. :

COMMONWEALTH OF PENNSYLVANIA, :  
PENNSYLVANIA GENERAL ASSEMBLY, :  
HONORABLE THOMAS W. WOLF, :  
KATHY BOOCKVAR :

APPEAL OF: COMMONWEALTH OF :  
PENNSYLVANIA, HONORABLE :  
THOMAS W. WOLF, KATHY BOOCKVAR :

**CONCURRING AND DISSENTING STATEMENT**

**CHIEF JUSTICE SAYLOR**

**Filed: November 28, 2020**

I agree with the majority that injunctive relief restraining certification of the votes of Pennsylvanians cast in the 2020 general election should not have been granted and is unavailable in the present circumstances. As the majority relates, there has been too much good-faith reliance, by the electorate, on the no-excuse mail-in voting regime created by Act 77 to warrant judicial consideration of the extreme and untenable



remedies proposed by Appellees.<sup>1</sup> Accordingly, I join the *per curiam* Order to the extent that it vacates the preliminary injunction implemented by the Commonwealth Court.<sup>2</sup>

That said, there is a component of Appellees' original complaint, filed in the Commonwealth Court, which seeks declaratory relief and is unresolved by the above remedial assessment. Additionally, I find that the relevant substantive challenge raised by Appellees presents troublesome questions about the constitutional validity of the new mail-in voting scheme.<sup>3</sup>

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<sup>1</sup> *Accord Donald J. Trump for President, Inc. v. Sec'y Commonwealth of Pa*, No. 20-3371, *slip op.* at 21 (3d Cir. Nov. 27, 2020) (relating that “the public interest strongly favors finality, counting every lawful voter’s vote, and not disenfranchising millions of Pennsylvania voters who voted by mail”). See *generally* LAWRENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 599, 600 (3d ed. 2000) (explaining that there is no “general principle that all constitutional violations must be remediable in the courts” and that “it is simply untenable that there must be a judicial remedy for every constitutional violation” (quoting *Webster v. Doe*, 486 U.S. 592, 613, 108 S. Ct. 2047, 2059 (1988) (Scalia, J., dissenting)); RICHARD H. FALLON, JR. & DANIEL J. MELTZER, *NEW LAW, NON-RETROACTIVITY, AND CONSTITUTIONAL REMEDIES*, 104 *HARV. L. REV.* 1731, 1786 (1991) (describing rights without “individually effective remedies” as a “fact of our legal tradition”).

<sup>2</sup> The only caveat is that I would do so in the direct appeal proceedings and without a special grant of extraordinary jurisdiction. See *infra*.

<sup>3</sup> Appellees explain that early decisions of this Court interpreted the phrase “offer to vote,” as it appears in the provisions of the Pennsylvania Constitution governing public elections, to require in-person voting as an element of suffrage, subject only to exceptions delineated in the Constitution itself. See PA. CONST., art. VII §1 (discussing the qualification of Pennsylvania electors in terms of the election district “where he or she shall *offer to vote*” (emphasis added)); *Chase v. Miller*, 41 Pa. 403, 419 (1982) (“To ‘offer to vote’ by ballot is to present oneself, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it.”); *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. 131, 136-37 (1924) (discussing constitutionally-prescribed exceptions to in-person voting). Appellants’ answer appears to be that times have changed, even if a governing provision of the Constitution has not. See Brief for Appellants at 23 (“Both [the *Chase* and *Lancaster County* decisions] based their holdings on a fear of absentee voting that (continued...)”).

One of Appellants' main responses is that the citizenry, and perhaps future generations, are forever bound by the Legislature's decision to insert, into Act 77 itself, a 180-day time restriction curtailing challenges to the substantive import of the enactment. See Act of Oct. 31, 2019, P.L. 552, No. 77, §13(3). However, I find this assessment to be substantially problematic.<sup>4</sup> Further, as Appellees observe, ongoing amendments to an unconstitutional enactment so insulated from judicial review may have a compounding effect by exacerbating the disparity between what the Constitution requires and the law as it is being enforced. Thus, Appellees raise a colorable challenge to the viability of this sort of limitation, which can result in effectively amending the Constitution via means other those which the charter itself sanctions. See PA. CONST., art. XI (Amendments).

To the degree that Appellees wish to pursue this challenge in the ordinary course, upon the realization that their proposed injunctive remedies will be considered no further, I would allow them to do so in the Commonwealth Court upon a remand. In this regard, relative to the declaratory component of the request for relief, I also would not invoke the doctrine of laches, since the present challenge arises in the first election cycle in which no-excuse mail-in voting has been utilized. Moreover, "laches and

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(...continued)

no longer exists, and is not reflected in other current, constitutional voting practices provided for by the Election Code." To the degree that Act 77's time limitation on judicial review would be deemed itself to violate the Constitution, see *infra*, I believe the resolution of the underlying substantive controversy merits close review.

<sup>4</sup> Notably, this Court has otherwise previously rejected the Legislature's attempt to impose time limitations on challenges to legislation that do not themselves comport with constitutional norms. See, e.g., *Glen-Gery Corp. v. ZHB of Dover Twp.*, 589 Pa. 135, 155, 907 A.2d 1033, 1044-45 (2006).

## 0015a

prejudice can never be permitted to amend the Constitution.” *Sprague v. Casey*, 520 Pa. 38, 47, 550 A.2d 184, 188 (1988).

Consistent with my position throughout this election cycle, I believe that, to the extent possible, we should apply more ordinary and orderly methods of judicial consideration, since far too much nuance is lost by treating every election matter as exigent and worthy of this Court’s immediate resolution. In this respect, I would honor the Commonwealth Court’s traditional role as the court of original and original appellate jurisdiction for most election matters. Finally, I am decidedly against yet another award of extraordinary jurisdiction at the Secretary’s behest.

Justice Mundy joins this Concurring and Dissenting Statement.



**APPENDIX B**

**0016a**

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

THE HONORABLE MIKE KELLY, SEAN : No. 68 MAP 2020  
PARNELL, THOMAS A. FRANK, NANCY :  
KIERZEK, DEREK MAGEE, ROBIN :  
SAUTER, MICHAEL KINCAID, AND :  
WANDA LOGAN :

v.

COMMONWEALTH OF PENNSYLVANIA, :  
PENNSYLVANIA GENERAL ASSEMBLY, :  
HONORABLE THOMAS W. WOLF, KATHY :  
BOOCKVAR :

APPEAL OF: COMMONWEALTH OF :  
PENNSYLVANIA, HONORABLE THOMAS :  
W. WOLF, KATHY BOOCKVAR :

**ORDER**

**PER CURIAM**

**AND NOW**, this 3rd day of December, 2020, the Emergency Application for Stay of this Court’s Order of November 28, 2020 is **DENIED**.

A True Copy Elizabeth E. Zisk  
As Of 12/03/2020

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

# APPENDIX C

Filed 11/27/2020 Commonwealth Court

## 0017a

### IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Honorable Mike Kelly, Sean	:	
Parnell, Thomas A. Frank, Nancy	:	
Kierzek, Derek Magee, Robin	:	
Sauter, Michael Kincaid, and Wanda	:	
Logan,	:	
	:	
Petitioners	:	
	:	
	:	
v.	:	No. 620 M.D. 2020
	:	
	:	
Commonwealth of Pennsylvania,	:	
Pennsylvania General Assembly,	:	
Honorable Thomas W. Wolf,	:	
Kathy Boockvar,	:	
	:	
Respondents	:	

**BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge**

***OPINION NOT REPORTED***

**MEMORANDUM OPINION  
BY JUDGE McCULLOUGH**

**FILED: November 27, 2020**

As this Court’s November 25, 2020, Order of an Emergency Preliminary Injunction has been appealed to the Pennsylvania Supreme Court, this opinion shall set forth the basis for said Order and shall also satisfy the requirements of Rule 1925 of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 1925. The overarching consideration for the emergency preliminary injunction pending the evidentiary hearing scheduled for November 27, 2020 is the compelling exigencies raised in this case which are of statewide and national concern. Petitioners raise matters that go to the core of the electoral process and involve the constitutionality of how the citizens of this Commonwealth may cast their votes, not only for the

offices sought by Petitioners, but also, for the office of president and vice president of the United States of America as well as statewide, regional and local offices.

On November 21, 2020, the Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, Michael Kincaid, and Wanda Logan (collectively, Petitioners), filed a Complaint for Declaratory and Injunctive Relief in this Court against the Commonwealth of Pennsylvania, the Pennsylvania General Assembly, the Honorable Thomas W. Wolf, and Kathy Boockvar (collectively, Respondents), which this Court indicated it would treat as a petition for review addressed to the Court's original jurisdiction (Petition). In the Petition, Petitioners allege that the Act of October 31, 2019, P.L. 552, No. 77 (Act 77), which added and amended various absentee and mail-in voting provisions in the Pennsylvania Election Code (Election Code),<sup>1</sup> is unconstitutional and void *ab initio* because it purportedly contravenes the requirements of the Pennsylvania Constitution. Petitioners allege that Article VII, section 14 of the Pennsylvania Constitution provides two exclusive mechanisms by which a qualified elector may cast his or her vote in an election: (1) by submitting his or her vote *in propria persona* at the polling place on election day; and (2) by submitting an absentee ballot, but only if the qualified voter satisfies the conditions precedent to meet the requirements of one of the four, limited exclusive circumstances under which absentee voting is authorized under the Pennsylvania constitution. (Petition, ¶16.) Petitioners allege that mail-in voting in the form implemented through Act 77 is an attempt by the legislature to fundamentally overhaul the Pennsylvania voting system and permit universal, no-excuse, mail-in voting absent any constitutional authority. *Id.*, ¶17. Petitioners argue that in order to amend the Constitution, mandatory procedural

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<sup>1</sup> Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

requirements must be strictly followed. Specifically, pursuant to Article XI, Section 1, a proposed constitutional amendment must be approved by a majority vote of the members of both the Pennsylvania House of Representatives and Senate in two consecutive legislative sessions, then the proposed amendment must be published for three months ahead of the next general election in two newspapers in each county, and finally it must be submitted to the qualified electors as a ballot question in the next general election and approved by a majority of those voting on the amendment. According to Petitioners, the legislature did not follow the necessary procedures for amending the Constitution before enacting Act 77 which created a new category of mail-in voting; therefore, the mail-in ballot scheme under Act 77 is unconstitutional on its face and must be struck down. *Id.*, ¶¶27, 35-37. As relief, Petitioners seek, *inter alia*, a declaration and/or injunction that prohibits Respondents from certifying the November 2020 General Election results, which include mail-in ballots that are permitted on a statewide basis and are allegedly improper because Act 77 is unconstitutional.

On November 22, 2020, Petitioners filed a Motion for Emergency/Special Prohibitory Injunction (Emergency Motion), and a Memorandum of Law in Support of the Emergency Motion. In the Emergency Motion, Petitioners seek to enjoin Respondents from taking official action to tabulate, compute, canvass, certify, or otherwise finalize the results of the November 3, 2020 General Election. They submit that this Court must intervene immediately in order to prevent irreparable injury from the resulting wrongs of an election conducted pursuant to an unconstitutional and invalid mail-in ballot voting scheme (Motion at 2.) They claim their right to relief is clear and they are likely to succeed on the merits because they have showed that a substantial legal question must be

resolved to determine the rights of the parties. They contend that the Pennsylvania Constitution requires voting to take place in person, subject only to specified absentee voting exceptions. They point out that Article VII, Section 14 provides the *only* such exceptions to the *in propria persona* voting requirement of the Pennsylvania Constitution, in four specific circumstances. It states:

(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.

(b) For purposes of this section, “municipality” means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.

PA. CONST. Art. VII, § 14.

Petitioners argue that outside of the aforementioned prescribed situations, the Constitution does not provide a mechanism for the legislature to allow for expansion of absentee voting. Consequently, Act 77 is illegal and void *ab initio* because it attempts to expand the constitutionally-established exceptions to *in propria persona* voting requirements. (Motion at 30-31.) According to Petitioners, Act 77 did this by creating a false distinction between the existent “absentee voting”

and “mail-in voting” – and “absentee voting” is only constitutionally authorized under the four limited circumstances specifically delineated in Section 14.

Petitioners contend that without an immediate temporary injunction, Pennsylvania’s electoral votes will be cast, electors will be appointed and this Court will lose any authority to provide relief to Petitioners. *Id.* at 22. Petitioners argue that greater injury will result from allowing the certification of election results pursuant to an unconstitutional no excuse mail-in voting scheme than from prohibiting it. Specifically, they contend that no voters will be disenfranchised by the result of a slight delay in certifying the results. Conversely, they argue, if the limited injunction is not granted, the harm to all Pennsylvanians is irreparable because they will suffer the fruits of an unconstitutional election. *Id.* at 24.

By order of November 22, 2020, this Court observed that Petitioners had not properly served the Petition upon the Respondents, directed service of the Petition and the Court’s order in accordance with Rule 1514 of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 1514, and further directed that Petitioners file proof of service thereof with the Prothonotary by 10:00 a.m. Monday, November 23, 2020. Upon the filing of the proof of service, the Court scheduled an expedited telephonic status conference with all counsel of record and unrepresented parties for November 23, 2020, at 3:00 p.m. when this status conference convened in the matter, the Secretary of the Commonwealth and the Governor had not certified the results of the November 5, 2020 general election. Indeed, during the course of the status conference counsel for Respondents stated to this Court that the Secretary was only in the process of certifying the results of the election.

Following the status conference with counsel, the Court entered an order on November 23, 2020, directing Respondents to file Preliminary Objections, directing the DNC Services Corporation/Democratic National Committee (Proposed Intervenor)<sup>2</sup> to file an *amicus curiae* brief in support of its proposed Preliminary Objections filed with the Court, and further directing Petitioners to file answers and briefs in opposition to the Preliminary Objections. The parties were asked specifically to address the application of Section 13(1), (2) and (3) of Act 77, and whether a party is permitted to challenge the constitutionality of Act 77 in any court subsequent to the expiration of the 180 days. (Per Curiam Order, November 23, 2020 at 1.)

Pursuant to the Court's November 23, 2020 order, the Pennsylvania General Assembly filed its Preliminary Objections and a Memorandum of Law in Support thereof, and Secretary Kathy Boockvar (Secretary), the Honorable Thomas W. Wolf, and the Commonwealth of Pennsylvania (collectively, Executive Respondents), together filed Preliminary Objections and a brief in support thereof. Proposed Intervenor has filed an *amicus* brief in support of its Preliminary Objections.

By order of November 24, 2020, this Court, upon further consideration of Petitioners' Emergency Motion, ordered Respondents to file and serve answers to Petitioners' Emergency Motion, and directed that Proposed Intervenor may file a brief as *amicus curiae* in opposition to Petitioners' Emergency Motion, by 12:30 p.m. on the same date. Petitioners complied with the Court's order and filed answers

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<sup>2</sup> On November 23, 2020, the DNC Services Corporation/Democratic National Committee (Proposed Intervenor), sought leave to intervene in this matter. As of the filing of this memorandum opinion, the Court has not yet ruled upon Proposed Intervenor's motion for leave to intervene. The Court notes, however, that Proposed Intervenor filed proposed Preliminary Objections to the Petition with this Court on November 23, 2020.

and briefs in opposition to the General Assembly's and Executive Respondents' Preliminary Objections. The General Assembly and Executive Respondents have filed their respective answers to Petitioners' Emergency Motion, and Executive Respondents also filed a brief in opposition to the Emergency Motion. Finally, Proposed Intervenor filed an *amicus curiae* brief in opposition to Petitioners' Motion.<sup>3</sup> The Petitioners' Emergency Motion was thus ripe for disposition by order and opinion.

However, the very next morning after the status conference, on November 24, 2020, the Executive Respondents filed a brief with an appended Press Release dated 11/24/20 from the Department of State (Executive Respondents' Br. in Op. to Motion for Emergency Injunction, Exhibit A.) The Press Release stated that "Following certification of the presidential vote submitted by all 67 counties late Monday, [the Secretary] today certified the results of the November 3 election in Pennsylvania for president and vice president of the United States." *Id.*

The Press Release as well as Respondents' briefs, assert that certification only occurred regarding the results for president and vice president. Based on this information in the Press Release, Respondents argue the entire dispute is moot. A review of the Department's website did not contain any additional information regarding the status of the certification process, nor the entry of any formal public record of such certification. Also, nothing was entered regarding certification of the election results.

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<sup>3</sup> The Court notes that proposed *amici curiae* Christine Todd Whitman, John Danforth, Lowell Weicker, Constance Morella, Christopher Shays, Carter Phillips, Stuart Gerson, Donald Ayer, John Bellinger III, Edward J. Larson, Michael Stokes Paulsen, Alan Charles Raul, Paul Rosenzweig, Robert Shanks, Stanley Twardy, Keith E. Whittington, and Richard Bernstein (Proposed *Amici Curiae*), have filed an Application for Leave to File Amicus Brief in opposition to Petitioners' Motion (Application). Proposed *Amici Curiae* have attached a brief in opposition to Petitioners' Motion as Exhibit 1 to their Application.



On November 25, 2020, Petitioners responded to Executive Respondents' Brief in Opposition to Motion for Emergency Injunction and Press Release by filing a Supplemental Application for Emergency Relief, which raises additional compelling concerns and questions of fact in support of their underlying Petition for Review regarding the formal requirements and status of the certification process, and whether Respondents might have short-circuited the certification process to purportedly avert this Courts' determination on the merits by declaring victories in the presidential and vice presidential elections, while leaving certification of the elections for the other offices for another time. Petitioners' Supplemental Application for Emergency Relief also raise the issue of whether the results of an election can be certified piecemeal. It is also noted Petitioners alleged that notwithstanding Respondents' Press Release, the dispute was not moot because the certification process for the presidential and vice presidential elections had not been perfected because there were additional steps that need to be completed, including: issuance of commissions to persons elected, pursuant to 25 P.S. § 3160; issuance of certificates election, and transmission of such certificates to the Speaker of the House of Representatives of the United States, in the case of the election of representatives in Congress, pursuant to 25 P.S. § 3163; issuance of certificates of election to the persons elected members of the Senate and House of Representatives of the Commonwealth, and presentation of the several returns of the same elections before the senate and House of Representatives pursuant to 25 P.S. § 3164; delivery of the returns of elections for Auditor General and State Treasurer to the President of the Senate, so that they be "declared elected thereto," the making and filing of certificates for all such elections, the issuance of commissions for all such elections, and the issuance of commissions for each election of Judge of every court, pursuant

to 25 P.S. § 3165; issuance of certificates of election to successful candidates of elections pursuant to 25 P.S. § 2621; delivery of certificates of election for each presidential and vice presidential elector pursuant to 25 P.S. § 3166 (Petitioners' Supplemental Application for Emergency Relief at 4.)

Accordingly, in careful consideration of the exigencies and time constraints in this matter of statewide and national import, and the longstanding constitutional mandate that every citizen of this Commonwealth is entitled to no less than a fair and free election, it was necessary to preliminarily enjoin, on an emergency and temporary basis, Executive Respondents from undertaking any other actions with respect to the certification of the results of the presidential and vice presidential elections, if indeed anything else needs to be done, pending an evidentiary hearing to ascertain the facts of this matter and to determine if the dispute is moot.

Inasmuch as the Secretary had not certified the remaining results of the 2020 general election, it was also necessary to enjoin, on an emergency and preliminary basis, any attempt to certify these results as well. In light of the factual, constitutional and legal issues raised, it was incumbent upon the Court to immediately enter such emergency preliminary injunction to maintain the status quo and ensure that all of the parties and the citizens of the Commonwealth of Pennsylvania were not denied their right to a fair and free election.

Based upon the record before it, this Court has sufficient grounds to enjoin Respondents from further certification activities on an **emergency preliminary basis**, pending the results of the evidentiary hearing it had scheduled for this date, after which the Court would have determined if a preliminary injunction

should issue.<sup>4</sup> Since the Court is sitting in equity it has the power to fashion such relief as it is vitally important that the status quo be preserved pending further judicial scrutiny. *Com. ex rel. Corbett v. Snyder*, 977 A.2d 28, 43 (Pa. Cmwlth. 2009). (“[t]he purpose of preliminary injunctive relief is to maintain the status quo until the case can be investigated and adjudicated.”)

There is no harm to Respondents by the relief fashioned by this Court. The “Safe Harbor” provision of 3 U.S.C. §5 does not expire until December 8, 2020, and the Electoral College does not vote for president and vice president until December 14, 2020. Additionally, Petitioners appear to have established a likelihood to succeed on the merits because Petitioners have asserted the Constitution does not provide a mechanism for the legislature to allow for expansion of absentee voting without a constitutional amendment. Petitioners appear to have a viable claim that the mail-in ballot procedures set forth in Act 77 contravene Pa.

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<sup>4</sup> FNA preliminary injunction may issue only upon the showing of six *essential* prerequisites, described as follows:

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages . . . . Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings . . . . Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct . . . . Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits . . . . Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity . . . . Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.

*Reed v. Harrisburg City Council*, 927 A.2d 698, 702-03 (Pa. Cmwlth. 2007).

Const. Article VII Section 14 as the plain language of that constitutional provision is at odds with the mail-in provisions of Act 77. Since this presents an issue of law which has already been thoroughly briefed by the parties, this Court can state that Petitioners have a likelihood of success on the merits of its Pennsylvania Constitutional claim.

Without the emergency relief ordered by this Court, there would be the likelihood of irreparable harm to Petitioners. As to Petitioner Kelly, although it appears that he gained the most votes in the election for the office he seeks, that result has yet to be certified. Further, he may suffer irreparable harm prospectively should he seek election to public office in the future. If what may be an unconstitutional mail-in voting process remains extant, such mail-in ballots may make the difference as to whether he is successful or not.

As to Petitioners Parnell and Logan, mail-in ballots may have made the difference as to whether they have won or lost their respective elections. Hence, their fates may well turn upon the constitutionality of Act 77. The other voters in this case assert their constitutional voting rights as citizens of Pennsylvania would be irreparably harmed.

Conversely, since the relief ordered by the Court is on an emergency basis, Respondents face no irreparable harm. In any event, the matter of irreparable harm would have been assessed at the evidentiary hearing.

The relief ordered by this Court is also in the public interest. Any claim that the voters of this Commonwealth are disenfranchised by this Court's order are spurious. The Order at issue does nothing more than preserve the status quo pending further and immediate review. That being said, this Court is mindful that one of the alternative reliefs noted by Petitioners would cause the

disenfranchisement of the nearly seven million Pennsylvanians who voted in the 2020 General Election. Specifically, Respondents claim that a temporary stay would disenfranchise voters as the legislature would appoint the electors to the Election College. However, as noted, the legislature is not authorized to appoint the electors to the Electoral College until December 8, the “Federal Safe Harbor” date for certifying results for presidential electors. The Court agrees it would be *untenable* for the legislature to appoint the electors where an election has already occurred, *if* the majority of voters who did not vote by mail entered their votes in accord with a constitutionally recognized method, as such action would result in the disenfranchisement of every voter in the Commonwealth who voted in this election – not only those whose ballots are being challenged due to the constitutionality of Act 77. However, this is not the only equitable remedy available in a matter which hinges upon upholding a most basic constitutional right of the people to a fair and free election. Hence, Respondents have not established that greater harm will result in providing emergency relief, than the harm suffered by the public due to the results of a purportedly unconstitutional election.<sup>5</sup>

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<sup>5</sup> The U.S. Supreme Court has addressed various circumstances concerning disenfranchisement of votes. For instance, it has held the right to vote is foundational to our Republic and this fundamental right “can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). *Reynolds*, which established the “one person, one vote” doctrine, is the seminal case on voter dilution. Under this concept, a mail-in voting process that would exceed the limits of absentee voting prescribed in Pa. Const. Article VII sec 14 could be construed as violating the “one person one vote.” In that event, the sheer magnitude of the number of mail-in ballots would not be a basis to disregard not only this provision of the Pennsylvania Constitution but also the “one person, one vote” doctrine established by *Reynolds*, one of the bedrock decisions of the U.S. Supreme Court.

For all of the above reasons, the Court respectfully submits that the emergency preliminary injunction was properly issued and should be upheld pending an expedited emergency evidentiary hearing

s/ Patricia A. McCullough  
PATRICIA A. McCULLOUGH, Judge

# APPENDIX D

0030a

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Honorable Mike Kelly, Sean	:	
Parnell, Thomas A. Frank, Nancy	:	
Kierzek, Derek Magee, Robin	:	
Sauter, Michael Kincaid, and Wanda	:	
Logan,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 620 M.D. 2020
	:	
	:	
Commonwealth of Pennsylvania,	:	
Pennsylvania General Assembly,	:	
Honorable Thomas W. Wolf,	:	
Kathy Boockvar,	:	
	:	
Respondents	:	

### ORDER

NOW, November 25, 2020, upon consideration of Petitioners’ Motion for Emergency/Special Prohibitory Injunction (Emergency Motion), the subsequent filings by the parties, and the new allegations raised in Petitioners’ Supplemental Application for Emergency Relief filed at 11:42 p.m. on November 24, 2020 (Supplemental Emergency Application), it is hereby preliminarily ordered and decreed as follows:

1. As to the Supplemental Emergency Application, to the extent that there remains any further action to perfect the certification of the results of the 2020 General Election (the “Election”) for the offices of President and Vice President of the United States of America, Respondents are preliminarily enjoined from doing so, pending an evidentiary hearing to be held on **Friday, November 27, 2020 at 11:30 am via WebEx.**
2. As to the Emergency Motion, filed on November 22, 2020, inasmuch as Respondents, based on their Press Release and briefs, have not undertaken certification of any of the other results of the Election, Respondents are preliminarily enjoined from certifying the remaining results of the Election, pending the evidentiary hearing on **Friday, November 27, 2020 at 11:30 am via WebEx.**

## APPENDIX D

3. Respondents shall file and serve an Answer and Memorandum of Law in opposition to the Supplemental Emergency Application by 3:00 p.m. TODAY, November 25, 2020.
4. A scheduling order concerning the evidentiary hearing will follow.

/s/ Patricia A. McCullough  
PATRICIA A. McCULLOUGH, Judge



# APPENDIX E

**0032a**

Received 11/21/2020 4:00:02 AM Commonwealth Court of Pennsylvania

Filed 11/21/2020 4:00:00 AM Commonwealth Court of Pennsylvania  
620 MD 2020

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,  
SEAN PARNELL, THOMAS A.  
FRANK, NANCY KIERZEK, DEREK  
MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA  
LOGAN,

Plaintiffs,

v.

COMMONWEALTH OF  
PENNSYLVANIA, PENNSYLVANIA  
GENERAL ASSEMBLY,  
HONORABLE THOMAS W. WOLF,  
KATHY BOOCKVAR,

Defendants.

Docket No. \_\_\_ M.D. 2020

### **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Filed on behalf of Plaintiffs,  
The Honorable Mike Kelly, Sean  
Parnell, Thomas A. Frank, Nancy  
Kierzek, Derek Magee, Robin Sauter,  
Michael Kincaid, and Wanda Logan

Counsel of Record for Plaintiffs:

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# APPENDIX E

0033a

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY, SEAN  
PARNELL, THOMAS A. FRANK, NANCY  
KIERZEK, DEREK MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA LOGAN

Plaintiffs,

v.

Docket No. \_\_\_ M.D. 2020

COMMONWEALTH OF PENNSYLVANIA,  
PENNSYLVANIA GENERAL ASSEMBLY,  
HONORABLE THOMAS W. WOLF, KATHY  
BOOCKVAR,

Defendants.

### NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. TIDS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

# APPENDIX E

**0034a**

MidPenn Legal Services  
213-A North Front Street  
Harrisburg, Pennsylvania 17101  
(717) 232-0581

and

Dauphin County Lawyer Referral Service  
Dauphin County Bar Association  
213 North Front Street  
Harrisburg, Pennsylvania 17101  
(717) 232-7536

# APPENDIX E

0035a

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY, SEAN  
PARNELL, THOMAS A. FRANK, NANCY  
KIERZEK, DEREK MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA LOGAN,

Plaintiff,

v.

Docket No. \_\_\_\_ M.D. 2020

COMMONWEALTH OF PENNSYLVANIA,  
PENNSYLVANIA GENERAL ASSEMBLY,  
HONORABLE THOMAS W. WOLF, KATHY  
BOOCKVAR,

Defendants.

### **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs the Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, and Wanda Logan, hereby files the following Complaint against defendants, the Commonwealth of Pennsylvania, and in support thereof avers as follows:

#### **Introduction**

1. This is an action seeking a declaration that the universal mail-in ballot provisions of a law called Act 77 (Act of October 31, 2019, P.L. 552, No. 77 (“Act 77”)); *see also* 25 Pa.Stat. §§ 3146.6(c), 3150.16(c)) are unconstitutional and an injunction prohibiting certification of the results of the November 3, 2020 election

# APPENDIX E

## 0036a

in Pennsylvania and/or requiring any such certification to be rescinded, and for other appropriate relief. Act 77 is the most expansive and fundamental change to the Pennsylvania voting code, implemented illegally, to date. Under the Act, and the mail-in ballot scheme it implements, any and all qualified electors are eligible to vote by mail, and no justification needs to be provided. As with prior historical attempts to illegally expand mail-in voting by statute, which have been struck down going as far back as the Military Absentee Ballot Act of 1839, Act 77 is another illegal attempt to override the limitations on absentee voting prescribed in the Pennsylvania Constitution, without first following the necessary procedure to amend the constitution to allow for the expansion.

### Parties

2. Plaintiff the Honorable Mike Kelly (hereinafter “Representative Kelly”) is an adult individual who is a qualified registered elector residing in Butler County, a member of the Republican Party, and the United States Representative for the 16th Congressional District of Pennsylvania. Representative Kelly was recently re-elected to represent the 16th Congressional District, which includes all of Erie, Crawford, Mercer, and Lawrence counties, as well as part of Butler County. Representative Kelly constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code Section 102(a) and

# APPENDIX E

## 0037a

(t), 25 P.S. § 2602(a) & (t). Representative Kelly brings this suit in his capacity as a candidate for federal office and a private citizen.

3. Plaintiff Sean Parnell is an adult individual who is a registered qualified elector residing in Allegheny County, a member of the Republican Party, and a candidate for U.S. Representative for the 17th Congressional District of Pennsylvania, which includes all of Beaver County, and parts of Butler and Allegheny counties. Mr. Parnell constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code Section 102(a) and (t), 25 P.S. § 2602(a) & (t). Mr. Parnell brings this suit in his capacity as a candidate for federal office and a private citizen.

4. Plaintiff Wanda Logan is an adult individual who is a registered qualified elector residing Philadelphia County, Pennsylvania, a member of the Republican Party, and a candidate for the Pennsylvania House of Representatives for the 190th district. Ms. Logan constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code section 102(a) and (t), 25 P.S. § 2602(a) & (t). Ms. Logan brings this suit in her capacity as a candidate for state office and a private citizen.

5. Plaintiff Thomas A. Frank is an adult individual who is a registered qualified elector residing in Erie County, Pennsylvania. Mr. Frank constitutes a

# APPENDIX E

## 0038a

“qualified elector” as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Mr. Frank brings this suit in his capacity as a private citizen.

6. Plaintiff Nancy Kierzek is an adult individual who is a registered qualified elector residing in Erie County, Pennsylvania. Ms. Kierzek constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Ms. Kierzek brings this suit in her capacity as a private citizen.

7. Plaintiff Derek Magee is an adult individual who is a registered qualified elector residing in Mercer County, Pennsylvania. Mr. Magee constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Mr. Magee brings this suit in his capacity as a private citizen.

8. Plaintiff, Michael Kincaid is an adult individual who is a registered qualified elector residing in Allegheny County, Pennsylvania. Mr. Kincaid constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Mr. Kincaid brings this suit in his capacity as a private citizen.

9. Plaintiff, Robin Sauter is an adult individual who is a registered qualified elector residing in Mercer County, Pennsylvania. Ms. Sauter constitutes a “qualified elector” as that term is defined in Election Code Section 102(t), 25 P.S. § 2602(t). Ms. Sauter brings this suit in her capacity as a private citizen.

# APPENDIX E

## 0039a

10. Defendant the Commonwealth of Pennsylvania has its capital located in Harrisburg, Pennsylvania.

11. Defendant the Pennsylvania General Assembly is the state legislature for the Commonwealth of Pennsylvania and is comprised of the State House and State Senate. The General Assembly convenes in the State Capitol building in Harrisburg, Pennsylvania.

12. The U.S. Constitution provides that the Legislatures of each state shall direct the manner for appointing electors for President and Vice President. The General Assembly is named as a party who would be at least partially responsible for implementing the relief Plaintiffs seek.

13. Defendant, the Honorable Thomas W. Wolf (hereinafter, "Governor Wolf"), is the Governor of the Commonwealth of Pennsylvania with a principal office address at Office of the Governor, 508 Main Capitol Building, Harrisburg, Pennsylvania 17120. Governor Wolf is responsible for enumerating and ascertaining the number of votes given for the election of presidential electors, causing certificates of election to be delivered to presidential electors, signing bills into law, issuing writs of election, and general superintendence over the executive branch of government.

14. Defendant, Kathy Boockvar (hereinafter, "Secretary Boockvar"), is the Secretary of the Commonwealth of Pennsylvania with a principal office



# APPENDIX E

## 0040a

address at 302 N Office Building, Harrisburg, PA 17120. Secretary Boockvar is charged with the general supervision and administration of Pennsylvania's elections and election laws; tabulating, computing, canvassing, and certifying the votes cast for candidates for state and federal office; delivering to the President of the Senate the returns for certain elections; and other related responsibilities.

### Jurisdiction

15. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 761(a)(1) (“Against the Commonwealth government, including any officer thereof, acting in his official capacity”).

### Material Facts

#### **I. Background**

16. Article VII of the Pennsylvania Constitution (“Pennsylvania Constitution”) provides two exclusive mechanisms by which a qualified elector may cast his or her vote in an election: 1) by submitting his or her vote *in propria persona* at the polling place on election day; and 2) by submitting an absentee ballot, but only if the qualified voter satisfies the conditions precedent to meet the requirements for one of the four limited, exclusive circumstances under which absentee voting is authorized under the Pennsylvania Constitution (Art. VII, § 14).

# APPENDIX E

## 0041a

17. Mail-in voting, in the form implemented through Act 77 is an attempt by the legislature to fundamentally overhaul the Pennsylvania voting system and permit universal, no-excuse, mail-in voting absent any constitutional authority.

18. The Pennsylvania Constitution since 1838 has required voting to be *in propria persona* (in person), “at the election” (polling place), in the county in which an eligible voter resides.

19. This principle has been upheld by the Pennsylvania Supreme Court in several cases going back to the first major attempt to expand absentee voting in 1864.

20. Over time, exceptions to in-person voting have been added to the Pennsylvania Constitution through constitutional amendments, which includes specific exceptions for military personnel, disabled veterans, religious observations, and other circumstances.

21. 1967 marked the first of several recent attempts to amend the Pennsylvania Constitution in order to expand the exceptions for which absentee voting would be allowed, beyond the previously identified classes of active military and veterans.

22. In 1967, the legislature went through the formal procedure for amending the Pennsylvania Constitution.

# APPENDIX E

## 0042a

23. The 1967 amendment resulted in the addition of Article VII, Section 14, which holds the current provision outlining the limited circumstance under which an elector is permitted to vote without being present at the polling location – “absentee voting.” Pa. Const. Art. VII, § 14.

24. After following the constitutionally mandated procedure for properly amending the constitution in 1967, the legislature then enacted election code provisions that allowed for absentee ballots to be cast in the four (4) exclusive circumstances authorized under Article VII, Section 14.

25. Article XI, Section 1 of the Pennsylvania Constitution establishes the mandatory procedural requirements that must be strictly followed in order to amend the Constitution.

26. Pursuant to Article XI, Section 1, a proposed constitutional amendment must be approved by a majority vote of the members of both the Pennsylvania House of Representatives and Senate in two consecutive legislative sessions, then the proposed amendment must be published for three months ahead of the next general election in two newspapers in each county, and finally it must be submitted to the qualified electors as a ballot question in the next general election and approved by a majority of those voting on the amendment.

# APPENDIX E

## 0043a

27. Similar to previous absentee voting legislation found to be unconstitutional under Pennsylvania law, the legislature did not follow the necessary procedures for amending the constitution before enacting Act 77.

28. In 2019, the legislature recognized that there was no constitutional authority for the no-excuse mail-in voting scheme that it desired to implement through Act 77, and concurrently initiated the process of proposing an amendment to the constitution in order to amend the constitutional provisions concerning absentee voting to allow for no excuse mail-in voting.

29. However, pursuant to the Pennsylvania Constitution, Article XI, §1, an amendment to the Constitution must be approved by a majority of the members of both the Senate and House of Representatives in two separate legislative sessions, then submitted as a ballot question to be voted on by the electors.

30. If, after approval by two legislative sessions, a majority of the electors then vote to approve the proposed constitutional amendment, only then will the amendment take effect.

31. Although Act 77 has the effect of attempting to amend the Pennsylvania Constitution, it never went through the procedural requirements for such an amendment and has no legal effect.

32. Neither Act 77 nor the contemporaneous proposed constitutional amendment initiated by the legislature have been approved by a majority vote of

# APPENDIX E

## 0044a

both the House and Senate in two consecutive legislative sessions, nor has either been submitted to the qualified electors as a ballot question and approved by a majority vote of the citizens.

33. Despite the lack of constitutional authority to pass a universal mail-in voting scheme – a scheme which far eclipses any previously conscribed absentee voting scheme – the legislature proceeded to implement Act 77 anyway, in direct contravention of the Pennsylvania Constitution.

34. Put differently, the legislature first recognized their constitutional constraints and the need to amend the constitution in order to enact mail-in voting, sought to amend the constitution to lawfully allow for the legislation they intended to pass, and subsequently abandoned their efforts to comply with the constitution and instead enacted Act 77 irrespective of their actual knowledge that they lacked the legal authority to do so unless and until the proposed constitutional amendment was ratified by approval of a majority of the electors voting on the proposed amendment.

35. The mail-in ballot scheme under Act 77 is therefore unconstitutional on its face and must be struck down as void *ab initio*.

### **II. The In-Progress Efforts to Amend the Pennsylvania Constitution to Allow No Excuse Absentee Voting**

36. In 2019, the Pennsylvania General Assembly again began the process for amending Article VII, Section 14 of the Pennsylvania Constitution; this time in

# APPENDIX E

## 0045a

order to permit absentee voting for all voters through Senate Bill 411, 2019 (later incorporated into Senate Bill 413).

37. The legislative history of the proposed amendment recognizes that “Pennsylvania’s current Constitution restricts voters wanting to vote by absentee ballot to [specific] situations...” The amendment proposes to “eliminate these limitations, empowering voters to request and submit absentee ballots for any reason – allowing them to vote early and by mail.” Senator Mike Folmer, et al., Senate Co-Sponsorship Memoranda (Jan. 29, 2019, 10:46 AM), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28056> (emphasis added).

38. Introduced on March 19, 2019, S.B. 413 as originally filed was a joint resolution proposing an amendment to the Pennsylvania Constitution related to judicial retention elections and contained nothing related to the constitution’s absentee voting provision.

39. The bill passed out of the Senate on October 22, 2019 and was sent to the House where it was referred to the House Committee on State Government a few days later.

40. On April 6, 2020, S.B. 413 was reported as amended from committee.

41. S.B. 413’s caption was changed from the introduced version which read: “A Joint Resolution proposing separate and distinct amendments to the

# APPENDIX E

## 0046a

Constitution of the Commonwealth of Pennsylvania, further providing for tenure of justices, judges and justices of the peace,” to “A Joint Resolution proposing separate and distinct amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for tenure of justices, judges and justices of the peace; and **further providing for absentee voting.**” (emphasis added).

42. In its amended form with the added provisions seeking to amend the Pennsylvania Constitution’s absentee voting restrictions, S.B. 413 was passed by a majority of both Houses and filed with the Office of the Secretary of the Commonwealth on April 29, 2020.

43. S.B. 413 will need to be passed by a majority vote in both the Senate and House of Representatives in the next legislative session and then appear on the November 2021 general election ballot to be approved by a majority of the electors in order to be ratified and properly approved pursuant to the established procedures set forth under the Pennsylvania Constitution.

44. If properly approved and ratified by a majority of voters in 2021, S.B. 413 will amend Article VII, Section 14 as follows:

(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~~

# APPENDIX E

## 0047a

~~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. 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.~~

~~(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.~~

45. The General Assembly later went on to establish a “Select Committee on Election Integrity” to “investigate, review and make recommendations concerning the regulation and conduct of the 2020 general election.” Pa. H. Res. No. 1032, Printer’s No. 4432, Session of 2020 (Sep. 28, 2020), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=R&billNbr=1032&pn=4432>

46. The resolution establishing the committee noted that the “Commonwealth has traditionally only allowed absentee voting by individuals with a statutorily defined excuse to do so, such as a physical disability or absence from their municipality on election day.” *Id.* (emphasis added).

47. It further notes that “[b]efore the enactment of Act 77 of 2019, for an individual to vote absentee in this Commonwealth, the individual must have provided a permissible reason to do so....” *Id.*

48. It is expressly acknowledged that Act 77 of 2019, “created a new category of mail-in voting ... [whereby] mail-in voters do not have to provide a



# APPENDIX E

## 0048a

customary reason to vote by mail and are able to return their ballots several days later than had traditionally been allowed.” *Id.*

49. As with every other amendment to the Pennsylvania Constitution, S.B. 413 faces additional hurdles and requirements imposed by the Pennsylvania Constitution before it becomes law, and its changes have any valid, legally binding effect.

50. A majority of the Pennsylvania Senate and House of Representatives will each need to vote to approve the proposed constitutional amendment again in the upcoming 2020-2021 Session.

51. If the General Assembly again passes the proposed amendment in that session, it will then need to be published publicly in two newspapers in each county for the three months prior to the 2021 general election, and presented to the voters as a ballot question.

52. Pennsylvania voters will have the final say on whether to approve the proposed constitutional amendment that seeks to establish no-excuse mail-in/absentee voting as a constitutionally authorized method of voting in Pennsylvania elections for the very first time.

53. Unless and until the procedures for proposing and approving such an amendment are strictly complied with, the only lawful and constitutional methods of voting in Pennsylvania are in-person voting and absentee voting for those who

# APPENDIX E

## 0049a

qualify for one of the four exclusive, limited circumstances under which absentee voting is constitutionally authorized under Article VII, Section 14.

### III. Act 77 of 2019

54. On October 31, 2019, Governor Wolf signed Act 77 of 2019 into law, which implemented sweeping reforms to the elections process in Pennsylvania.

55. Among other changes, Act 77 “create[ed] a new option to vote by mail without providing an excuse”; allowed voters to request and submit mail-in or absentee ballots up to 50 days before an election; and established a semi-permanent mail-in and absentee ballot voter list. *See, e.g.*, Press Release, Governor Wolf Signs Historic Election Reform Bill Including New Mail-in Voting, Governor Tom Wolf (Oct. 31, 2019).

56. In effect, Act 77 created an entire class of electors who are shown to have received a mail-in ballot, despite never actually receiving a mail-in ballot.

57. There is similarly a whole class of voters who received unsolicited or unrequested mail-in ballots that never voted via mail-in ballot and never intended to vote by mail.

58. The Election Code, as amended by Act 77, does not provide voters any meaningful method of disputing a mail-in or absentee ballot that has been submitted in their name, even where a ballot is improperly submitted by another individual.

# APPENDIX E

## 0050a

59. Even under circumstances where a voter is absolutely certain that he or she did not submit a mail-in ballot, if the voting records suggest that such a ballot has purportedly been received from that voter, the voter is effectively deprived of their right to cast a vote as a direct and proximate result of the enactment of Act 77.

60. But for the mail-in voting scheme created under Act 77, enacted in direct contravention of Article VII, Section 14 of the Pennsylvania Constitution, the same voter would be entitled to exercise their fundamental constitutional right to vote and would be entitled to cast a ballot when they appeared in person at the polls on election day.

#### **IV. The November 3, 2020 General Elections**

61. Voting at the Pennsylvania General Election (the “General Election”) was held on November 3, 2020.

62. The November 3, 2020, General Election was administered by Pennsylvania election officials pursuant to Act 77, which included allowing for universal, no-excuse mail-in ballots to be counted, in violation of the Pennsylvania Constitution.

63. The process of certifying the returns and results of the General Election is currently underway.

# APPENDIX E

## 0051a

64. Should the Commonwealth fail to make a choice for presidential and vice-presidential electors at the General Elections, the electors may be appointed on a subsequent day in such manner as the Pennsylvania General Assembly may direct. *See* 3 U.S.C. § 2.

### COUNT I Declaratory Judgment

65. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

66. Act 77 is illegal and void *ab initio* because it attempts to vastly expand the exceptions to *in propria persona* voting requirements beyond what is presently authorized under the Pennsylvania Constitution.

67. No legislative enactment may contravene the requirements of the Pennsylvania Constitution.

68. In order to be a “qualified elector,” and therefore generally entitled to vote, the Pennsylvania Constitution requires the following:

1. 18 years of age.
2. A Citizen of the United States for at least one month.
3. Residence in Pennsylvania for the 90 days immediately preceding the election.
4. Residence in the “election district where he or she *shall offer to vote* at least 60 days immediately preceding the election ....”

Pa. Const. Art. VII, § 1 (emphasis added).

# APPENDIX E

## 0052a

69. To “offer to vote” by ballot is to present one’s self, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it, not to send a ballot by mail.

70. Article VII, Section 5 of the Pennsylvania Constitution also prescribes that “[a]ll elections by the citizens shall be by ballot or by such other method as may be prescribed by law: **Provided, [t]hat secrecy in voting be preserved.**” Pa. Const. Art VII, § 5 (emphasis added).

71. In Pennsylvania, the secrecy provision remains part of our fundamental law.

72. Article VII, Section 14 of the Pennsylvania Constitution provides exemptions to the *in propria persona* voting requirements of the Pennsylvania Constitution, for four specific circumstances:

(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.

(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.

# APPENDIX E

## 0053a

Pa. Const. Art. VII, § 14.

73. The Pennsylvania Constitution does not provide a mechanism for the Legislature to allow for absentee voting lacking those circumstances described in Article VII, Section 14.

74. Act 77 unconstitutionally expands the scope of absentee voting permitted by the Pennsylvania Constitution to all voters.

75. Newly-created 25 P.S., Chapter 14, Article XIII-D, § 3510 (25 Pa.Stat. § 3150.11) states:

§ 3150.11. Qualified mail-in electors.

(a) General rule.-- A qualified mail-in elector shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.

(b) Construction.-- The term "qualified mail-in elector" shall not be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition in section 102(t).

76. Absentee voting is defined in 25 P.S., Chapter 14, Article 13. 3146.1 (25 Pa.Stat. § 3146.1), which outlines a variety of categories of eligibility that are each consistent with Article VII, Section 14 of the Pennsylvania Constitution.

77. In enacting Act 77, the Legislature created a fictitious distinction between the pre-existing "Absentee Voting" and newly created "Mail-In Voting."

78. In reality, there is no distinction except that Mail-In Voting is simply Absentee Voting without any of the inconvenient conditions precedent that the

# APPENDIX E

## 0054a

Pennsylvania Constitution requires in order for someone to be permitted to cast a ballot without being physically present at the polls on election day.

79. In other words, Absentee Voting is only Constitutionally authorized under the four limited circumstances specifically delineated under Article VII, Section 14, whereas Act 77 opens Absentee Voting to any and all other qualified voters in the Commonwealth who do not meet the constitutional requirements for Absentee Voting, without excuse or limitation, and simply relabels the voting mechanism as “Mail-In Voting” as opposed to “Absentee Voting.”

80. Taking an inartful twist such as simply renaming the mechanism yields a distinction without a difference.

81. The Legislature further attempted to disguise the obvious redundancy between Mail-In Voting and Absentee Voting by refusing to add “Mail-In Voting” to 25 P.S. Article XIII (which governs “Voting By Qualified Absentee Elector) and instead created a new Article (25 P.S. Article XIII-D, “Voting By Qualified Mail-In Electors).

82. By doing this, it appears the Legislature intended to obscure that the two are the same, except that Absentee Voters are required to satisfy additional conditions mandated by the Pennsylvania Constitution whereas Mail-In Voters are not.

# APPENDIX E

## 0055a

83. The goal is clear: vastly expand Absentee Voting and remove all conditions precedent and requirements to make it a universal voting mechanism, while obscuring the fact that such voting method would violate the Pennsylvania Constitution and could only be properly enacted through a Constitutional Amendment.

84. However, renaming a vast, unconstitutional expansion of Absentee Voting as “Mail-In Voting” cannot, and does not, make the conduct valid or effective as a matter of law.

85. The authority vested in the Legislature to pass general laws concerning the manner in which voters can vote by absentee ballot is explicitly (and inherently) limited only to the four enumerated circumstances where absentee voting is authorized.

86. Therefore, any attempt to expand the definition of an absentee voter conflicts with and exceeds the authority established by the Pennsylvania Constitution, and a Constitutional Amendment is required in order for such an expansion to have any legal effect.

87. Section 11 of Act 77 also contains a non-severability clause, which requires that the entire act be rendered void if certain provisions of Act 77 are held invalid. *See* Act of October 31, 2019, P.L. 552, No. 77, at Section 11 (“Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of



# APPENDIX E

## 0056a

this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.”). Several of the provisions noted in the non-severability clause of Act 77 include changes to the Election Code relating to no-excuse mail-in voting; including Section 8, which contains most of the provisions for the new mail-in voting system. *Id.* at Section 8. Because Section 8 and other sections of Act 77 containing provisions for the mail-in ballot system are invalid, Act 77 must be struck down in its entirety.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter a declaratory judgment declaring unconstitutional and void *ab initio* the Act 77 provisions that created a new option to vote by mail without providing an excuse, declaring Act 77 void in its entirety due to Act 77’s non-severability clause, declaring invalid any certification of results that include the tabulation of unauthorized votes, including mail-in ballots which did not meet the Constitutional requirements, awarding Plaintiffs’ reasonable costs and expenses of this action, including attorneys’ fees and costs and granting such further legal and equitable relief as this Court deems just and proper.

### **COUNT II Prohibitory Injunction**

88. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

**There is no adequate redress at law.**

# APPENDIX E

## 0057a

89. The harm caused by Act 77's allowance of improper mail-in ballots cannot adequately be compensated by damages or otherwise be adequately redressed at law.

90. If the requested relief is not granted, Defendants will continue to wrongfully count and certify improper mail-in ballots that are not permitted under the Pennsylvania Constitution.

91. Refusing injunctive relief will result in greater harm than granting it.

92. There would be no harm in requiring Defendants to refrain from certifying improper mail-in ballots, or to rescind any such certification.

93. The harm in denying the requested injunctive relief and allowing Defendants to continue to wrongfully count and certify improper mail-in ballots is clearly greater than any harm Defendants could suggest from granting the requested relief.

### **Injunction will restore the status quo.**

94. An injunction will restore the status quo as it existed prior to Defendants' unlawful actions.

95. There is a clear right to relief and a likelihood of success on the merits.

96. Plaintiffs have a clear right to relief on the merits, including a clear right to preliminary mandatory and prohibitive injunctive relief.

# APPENDIX E

0058a

97. To the extent that the public interest is impacted, it will be served rather than harmed by granting the injunction.

98. The proposed injunctive relief is narrowly tailored and restores the status quo as it existed prior to Defendants' wrongful conduct.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the General Elections which include mail-in ballots which Defendants improperly permitted on a statewide basis; prohibits Defendants from certifying the results of the General Elections which include the tabulation of unauthorized votes, including mail-in ballots which did not meet the Constitutional requirements and, instead, compels Defendants to certify the results of the election based solely on the legal votes or, alternatively, directs that the Pennsylvania General Assembly choose Pennsylvania's electors; award Plaintiffs' reasonable costs and expenses of this action, including attorneys' fees and costs; and provide such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted,



\_\_\_\_\_  
Gregory H. Teufel  
Brandon M. Shields

*Attorneys for Plaintiffs*

# APPENDIX E

0059a

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY, SEAN  
PARNELL, THOMAS A. FRANK, NANCY  
KIERZEK, DEREK MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA LOGAN

Plaintiffs,

v.

Docket No. \_\_\_ M.D. 2020

COMMONWEALTH OF PENNSYLVANIA,

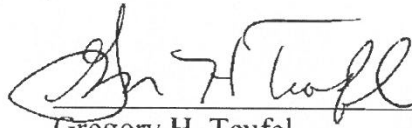
Defendants.

### NOTICE TO PARTICIPATE

TO: Josh Shapiro, Esq.  
Attorney General  
Office of the Attorney General  
1600 Strawberry Square  
Harrisburg, PA 17120

If you intend to participate in this proceeding in the Commonwealth Court of Pennsylvania, you must serve and file a notice of or application for intervention under Pa.R.A.P. 1531 within thirty days.

Date: November 21, 2020



Gregory H. Teufel  
Brandon M. Shields

*Attorneys for Plaintiffs*

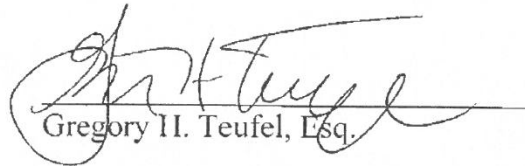
# APPENDIX E

0060a

## CERTIFICATE OF COMPLIANCE

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

Date: November 21, 2020



Gregory H. Teufel, Esq.

# APPENDIX E

0061a

## VERIFICATION

The Honorable Mike Kelly, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020

\_\_\_\_\_  
The Honorable Mike Kelly


# APPENDIX E

0062a

## VERIFICATION

Sean Parnell, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020

  
Sean Parnell (Nov 20, 2020 22:45 EST)  
Sean Parnell

# APPENDIX E

0063a

## VERIFICATION

Thomas A. Frank, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020



Thomas A. Frank



# APPENDIX E

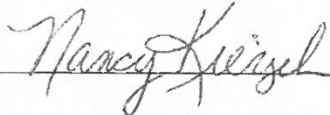
0064a

## VERIFICATION

Nancy Kierzek, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20,  
2020

\_\_\_\_\_

A handwritten signature in cursive script, reading "Nancy Kierzek", is written over a horizontal line.

Nancy Kierzek

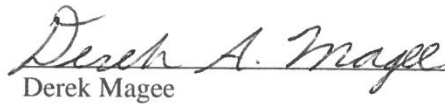
# APPENDIX E

0065a

## VERIFICATION

Derek Magee, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020

  
Derek Magee


# APPENDIX E

0066a

## VERIFICATION

Robin Sauer, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020

  
Robin Sauer

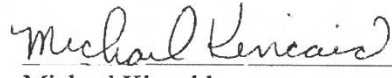
# APPENDIX E

0067a

## VERIFICATION

Michael Kincaid, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

Date: November 20, 2020

 11-20-2020  
Michael Kincaid

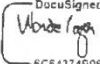
# APPENDIX E

## 0068a

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### VERIFICATION

Wanda Logan, the undersigned individual, deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief; and further that these averments are made subject to the penalties of 18 Pa.Cons.Stat. §4904, relating to unsworn falsification to authorities.

DocuSigned by:  
  
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Date: November 20, 2020

\_\_\_\_\_  
Wanda Logan

# APPENDIX F

0069a

Received 12/2/2020 12:30:15 PM Supreme Court Middle District

Filed 12/2/2020 12:30:00 PM Supreme Court Middle District  
68 MAP 2020

## IN THE SUPREME COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,  
SEAN PARNELL, THOMAS A.  
FRANK, NANCY KIERZEK,  
DEREK MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA  
LOGAN,

Petitioners,

v.

COMMONWEALTH OF  
PENNSYLVANIA, PENNSYLVANIA  
GENERAL ASSEMBLY,  
HONORABLE THOMAS W. WOLF,  
and KATHY BOOCKVAR,

Respondents.

Docket No. 68 MAP 2020

### **EMERGENCY APPLICATION FOR STAY OF COURT'S ORDER OF NOVEMBER 28, 2020**

Filed on behalf of Petitioners,  
The Honorable Mike Kelly, Sean  
Parnell, Thomas A. Frank, Nancy  
Kierzek, Derek Magee, Robin  
Sauter, Michael Kincaid, and  
Wanda Logan

Counsel of Record for Petitioners:

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**EMERGENCY APPLICATION FOR STAY OF COURT'S ORDER  
OF NOVEMBER 28, 2020**

Petitioners, the Honorable Mike Kelly, Sean Parnell, Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter, Michael Kincaid, and Wanda Logan, by and through their undersigned counsel, jointly submit this Emergency Application for Stay of this Court's Order of November 28, 2020 ("the Order"), pending the filing and disposition of a Petition for Writ of Certiorari in the Supreme Court of the United States. It would be reasonable for this Court to stay its vacatur of the Commonwealth Court's preliminary injunction until the Supreme Court of the United States can make a determination on Petitioners' petition for a writ of certiorari. To the extent that the actions prohibited by the vacated Commonwealth Court preliminary injunction have already taken place, Petitioners request an injunction to restore the status quo ante, compelling Respondents to nullify any such actions already taken, until the Supreme Court of the United States can make a determination on Petitioners' petition for a writ of certiorari.

**ARGUMENT**

On an application for stay pending appeal, the movant must (1) "make a substantial case on the merits," (2) "show that without the stay, irreparable injury will be suffered," and (3) that "the issuance of the stay will

not substantially harm other interested parties in the proceedings and will not adversely affect the public interest.” *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 573 A.2d 1001, 1003 (1990); see also *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (enunciating similar considerations for stay applications to the U.S. Supreme Court). All of these elements are met here.

**I. Petitioners are likely to succeed on appeal.**

There is, at a minimum, a “reasonable probability” that the Supreme Court of the United States will take the Petitioners’ appeal and a “fair prospect” that it will reverse this Court’s decision. See *Hollingsworth*, 558 U.S. at 190 (enunciating stay standards). This Court’s decision violates Petitioners due process rights and rights to petition under the Fourteenth and First Amendments to the U.S. Constitution and also does not reach the critical issue that Pennsylvania’s General Assembly exceeded its powers by unconstitutionally allowing no-excuse absentee voting, including for federal offices, in the November 3, 2020 General Election (“the Election”). The opinion below forecloses any means of remedying Petitioners’ injuries.

**A. The power delegated to the Pennsylvania General Assembly by the U.S. Constitution to determine the manner of holding federal elections and select presidential electors is constrained by restrictions imposed by the Pennsylvania Constitution.**



The U.S. Constitution delegates the power to determine the manner of holding federal elections and to select presidential electors in Pennsylvania to the Pennsylvania General Assembly. Article I, § 4, clause 1 (“Elections Clause”), of the U.S. Constitution provides:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Article II, § 1, Clause 2 (“Electors Clause”) of the U.S. Constitution provides:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

In exercising those delegated powers, the General Assembly is constrained by restrictions imposed onto it by the Pennsylvania Constitution. See *McPherson v. Blacker*, 146 U.S. 1, 25 (1892) (“What is forbidden or required to be done by a state is forbidden or required of the legislative power under the state constitutions as they exist.”); *Smiley v. Holm*, 285 U.S. 355, 369 (1932) (citing *McPherson* and noting that state legislatures are constrained by restrictions imposed by state constitutions on their exercise of the lawmaking power, even when enacting election laws pursuant to U.S.

Constitutional authority); *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 808 (2015) (holding that redistricting is a legislative function to be performed in accordance with a state constitution's prescriptions for lawmaking, which may include referendums).

When a state legislature violates its state constitution, purportedly in furtherance of its plenary authority to regulate federal elections and appoint electors, it also violates the U.S. Constitution. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., Scalia J., Thomas, J., concurring).

**1. In-Person voting is a criterion for qualifying to vote under the Pennsylvania Constitution, subject only to specified absentee voting exceptions.**

Article I, § 4 and Article II, § 1 of the U.S. Constitution grant plenary authority to state legislatures to enact laws that govern the conduct of elections. Yet, while the "legislature may enact laws governing the conduct of elections[,]... 'no legislative enactment may contravene the requirements of the Pennsylvania or United States Constitutions.'" *Kauffman v. Osser*, 441 Pa. 150, 157, 271 A.2d 236, 240 (Pa. 1970) (Cohen, J. dissenting) (citations omitted).

At issue here is the Pennsylvania General Assembly's attempt, and success if the Supreme Court of the United States should not hear this case, in implementing by legislation a no-excuse absentee voting system for state and federal elections that violates the Pennsylvania Constitution and U.S. Constitution. Under 158-year-old Pennsylvania Supreme Court precedent, voting in-person at the election in the district for which a voter is registered is a qualification for voting under the Pennsylvania Constitution. See Pa. Const. Art. VII, § 1; *Chase v. Miller*, 41 Pa. 403, 418-19 (1862); *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. 131, 134-35, 126 A. 199 (1924) (hereinafter *Lancaster City*).

The current Pennsylvania Constitution sets out the following qualifications for voting: (1) 18 years of age or older; (2) citizen of the United States for at least one month; (3) has residence in Pennsylvania for the 90 days immediately preceding the election; and (4) has residence in the "election district where he or she **shall offer to vote** at least 60 days immediately preceding the election ...." Pa. Const. Art. VII, § 1 (emphasis added). "For the orderly exercise of the right resulting from these qualifications ... the Legislature must prescribe necessary regulations .... But this duty and right inherently imply that such regulations are to be subordinate to the right .... As a corollary of this, no constitutional

qualification of an elector can in the least be abridged, added to, or altered by legislation or the pretence of legislation.” *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, 201 (Pa. 1924).

To “offer to vote” by ballot, is to present oneself, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it. The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil. We cannot be persuaded that the constitution ever contemplated any such mode of voting, and we have abundant reason for thinking that to permit it would break down all the safeguards of honest suffrage. The constitution meant, rather, that the voter, in propria persona, should offer his vote in an appropriate election district, in order that his neighbours might be at hand to establish his right to vote if it were challenged, or to challenge if it were doubtful.

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Our Constitution and laws treat the elective franchise as a sacred trust.... All of which the [1839 act] reverses and disregards, and opens a wide door for most odious frauds, some of which have come under our judicial cognizance.

*Chase*, 41 Pa. at 418-425 (1862); *Lancaster City*, 281 Pa. 134-35

(upholding the same).

Article VII, § 14(a) provides the only such exceptions to the *in propria persona* voting requirement of the Pennsylvania Constitution, in four specific circumstances. It states:

(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.

Pa. Const. Art. VII, § 14(a). Outside of these four enumerated exceptions, the Pennsylvania Constitution prohibits absentee voting.

2. **Act 77 is illegal and void ab initio because the General Assembly does not have the authority to enact legislation in contravention of the powers delegated to it by the Pennsylvania and U.S. Constitutions.**

“The Legislature can confer the right to vote only upon those designated by the fundamental law, and subject to the limitations therein fixed.” *Lancaster City*, 281 Pa. at 137 (citation omitted). Act 77 unconstitutionally expands the scope of absentee voting to all voters in contravention of the Pennsylvania Constitution. Act 77, as amended, defines a “qualified mail-in elector” as “a qualified elector.” 25 Pa. Stat. § 2602(z.6). A “qualified elector” is “any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, shall obtain such qualifications before the

next ensuing election.” *Id.* § 2602(t). In short, Act 77 qualifies all electors as mail in electors.

Moreover, newly created 25 Pa. Stat. § 3150.11 states:

Qualified mail-in electors.

(a) General rule.-- A qualified mail-in elector shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.

(b) Construction.-- The term “qualified mail-in elector” shall not be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition in section 102(t).

Separately, absentee voting is defined in 25 Pa. Stat. § 3146.1, which outlines a variety of categories of eligibility that are each consistent with Article VII, § 14 of the Pennsylvania Constitution. *See also* 25 Pa. Stat. § 2602(w) (defining 14 types of qualified absentee electors). While Act 77 purports to create a distinction between the existent “absentee voting” and “mail-in voting,” there is no distinction – except that mail-in voting is simply absentee voting without any of the inconvenient conditions precedent that the Pennsylvania Constitution requires.<sup>1</sup>

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<sup>1</sup>. In an attempt to create the distinction between absentee and mail-in, the Pennsylvania General Assembly defined “qualified mail-in elector” as a “qualified elector who is not a qualified absentee elector.” The definitional distinction is non-yielding because there is no longer any functional purpose to applying for an absentee ballot.

This Court in *Chase v. Miller* struck down unconstitutional military absentee voting during the Civil War. Pennsylvania was one of the first states in the nation to allow for absentee voting, originating with the Military Absentee Act of 1813, which allowed “members of the state militia and those in the service of the United States to vote as long as the company the soldier was serving was more than two miles from his polling place on election day.” John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J.L. Reform 483, 497 (2003). At the time the Military Absentee Act was passed, the Pennsylvania Constitution imposed no restrictions with regard to absentee voting. However, in 1838, Pennsylvania amended its constitution to require voters to “reside in the election district where he offers to vote, ten days immediately preceding such election.” *Id.* (citing Pa. Const. Art. III, § 1 (1838)). This created a conflict with the Military Absentee Act as re-enacted in 1839, which allowed for absentee voting, and the newly amended Pennsylvania Constitution, which no longer did. *Id.*

In the 1861 election, Pennsylvania soldiers voted under the Military Absentee Act of 1839, and legal challenges came soon after. In 1862, this Court decided *Chase v. Miller*, analyzing the constitutionality of the Military Absentee Ballot Act of 1839 under the Pennsylvania Constitution. This

Court held that the act was unconstitutional because the purpose of the 1838 constitutional amendment was to require in-person voting in the election district where a voter resided at least 10 days before the election. *Chase*, 41 Pa. at 418-19.

Following this Court's invalidation of the 1839 Military Absentee Voting Act, the Pennsylvania General Assembly amended the Pennsylvania Constitution (in 1864) to include, for the first time, a provision allowing for absentee voting by active military personnel. See Josiah Henry Benton, *Voting in the Field: A Forgotten Chapter of the Civil War*, at 199 (1915). From 1864 to 1949, only qualified electors engaged in actual military service were permitted to vote by absentee ballot under the Pennsylvania Constitution. Pa. Const. Art. VIII, § 6 (1864). However, this limitation did not prevent the legislature from, again, attempting to pass unconstitutional legislation to expand absentee voting.

In 1924, this Court decided *Lancaster City*, striking down as unconstitutional the Act of May 22, 1923 (P.L. 309; Pa. St. Supp. 1924, §9775a1, *et seq.*), providing civilians the right to vote by absentee ballot. Quoting *Chase*, this Court reaffirmed *Chase's* analysis of the Pennsylvania Constitution's in-person voting requirements. *Lancaster City*, 281 Pa. at 135. This Court held the Act of May 22, 1923 unconstitutional because the



Pennsylvania Constitution still required electors to “offer to vote” in the district where they reside, and that those eligible to “vote other than by personal presentation of the ballot” were specifically named in the Constitution (i.e., active military). *Id.* at 136-37. The Court relied on two primary legal principles in its ruling:

[1] ‘In construing particular clauses of the Constitution it is but reasonable to assume that in inserting such provisions the convention representing the people had before it similar provisions in earlier Constitutions, not only in our own state but in other states which it used as a guide, and in adding to, or subtracting from, the language of such other Constitutions the change was made deliberately and was not merely accidental.’ *Com v. Snyder*, 261 Pa. 57, 63, 104 Atl. 494, 495.

\* \* \*

[2] The old principle that the expression of an intent to include one class excludes another has full application here.... ‘The residence required by the Constitution must be within the election district where the elector attempts to vote; hence a law giving to voters the right to cast their ballot at some place other than the election district in which they reside [is] unconstitutional.’

*Id.* The Court went further to note that “[h]owever laudable the purpose of the act of 1923, it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.” *Id.* at 138. This principle was affirmed between 1864 and 1924 in many other states with

similar constitutional provisions, both with regard to absentee voting by regular citizens as well as by soldiers away from home. *Id.* (citations omitted).

**3. Article VII, § 1 and § 4 of the Pennsylvania Constitution have not materially changed since this Court struck down legislation unconstitutionally expanding mail-in voting in *Lancaster City*.**

While the Pennsylvania Constitution has been amended many times, for purposes not relevant here, since *Lancaster City*, the determinative constitutional provisions relied upon by *Chase and Lancaster City* remain either entirely unchanged, or materially so. Previously numbered Article VIII, § 1, and Article VIII, § 8, those provisions are now found in the Pennsylvania Constitution as Article VII, § 1, and Article VII, § 4. Article VII, Section 4 remains **exactly** the same as it did when the 1924 case was decided. See Pa. Const. Art. VII, § 4 (“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.”). Article VII, § 1 has only distinctly changed in three ways since the 1924 case: (1) the voting age requirement was changed to 18, from 21; (2) the state residency requirement was lowered from 1 year, to 90 days; and (3) Clause 3 of Article VII, § 1 was amended to allow a Pennsylvania resident who moves to another Pennsylvania county within 60 days of an election to vote in their previous

county of residence. Pa. Const. Art. VII, § 1. None of these changes to Article VII, Section 1 have any material importance to the case at hand and were not relevant to this Court's decision in *Lancaster County*. The Pennsylvania Constitution thus remains, for all purposes relevant to the holding in *Lancaster City*, unchanged since 1924 with regard to the qualifications and requirements for voting at an election. *Chase* and *Lancaster City* are not only instructive to this case, but indeed are determinative as still-valid, precedential case law on the issues in question.

**a. Post-World-War-II and the modern absentee voting provision in the Pennsylvania Constitution**

In 1949, the Pennsylvania Constitution was amended to also allow bedridden or hospitalized war veterans the ability to vote absentee. Pa. Const. Art. VIII, § 18 (1949). In 1957, the Pennsylvania General Assembly began the process of amending the constitution to allow civilian absentee voting in instances where unavoidable absence or physical disability prevented them from voting in person. See *In re General Election, November 3, 1964*, 423 Pa. 504, 508, 224 A.2d 197 (1966). Because of the restrictions and safeguards under Article XI, the 1957 amendment to the constitution did not go into effect until 1960. *Id.* The constitutional amendment effectively expanded eligibility for absentee voting to include

only two categories of qualified electors: (1) those who on election day would be absent from their municipality of residence because of their duties, occupation, or business; and (2) those who are unable to attend their proper polling place because of illness or physical disability. Pa. Const. Art. VII, § 19 (1957).

Issues arose immediately with the canvassing and computation of ballots under the newly expanded absentee voting system, and any challenges to absentee ballots that were rejected by the board of elections resulted in the challenged ballots being placed with ballots that were not challenged, making it impossible to correct upon a subsequent determination that the decision to reject the challenge was incorrect. *See In re General Election, November 3, 1964*, 423 Pa. 504, 509. In response, “the legislature added further amendments by the Act of August 13, 1963, P.L. 707, 25 Pa. Stat. § 3146.1 et seq. (Supp. 1965)” to require the board of elections to mark any ballot that was disputed as “challenged,” hold a hearing on the objections, and the decision was opened up to review by the court of common pleas in the county involved. *Id.* Until all challenges were resolved, the board of elections was required to desist from canvassing and computing all challenged ballots to avoid the possible mixing of valid and invalid ballots. *Id.* In 1967 following the Constitutional Convention, the

Pennsylvania Constitution was reorganized and Article VII, § 19 was renumbered to Article VII, § 14.

On November 5, 1985, the citizens of Pennsylvania approved another amendment to Article VII, § 14 of the Pennsylvania Constitution, which added religious observances to the list of permissible reasons for requesting an absentee ballot (the “1985 Amendment”). The 1985 Amendment began as HB 846, PN 1963, which would have amended the Pennsylvania Election Code to provide absentee ballots for religious holidays and for the delivery and mailing of ballots. See Pa. H. Leg. J. No. 88, 167th General Assembly, Session of 1983, at 1711 (Oct. 26, 1983) (considering HB 846, PN 1963, entitled “An Act amending the ‘Pennsylvania Election Code,’ ... further providing for absentee ballots for religious holidays and for the delivery and mailing of ballots.”). In doing so, the Pennsylvania General Assembly recognized that because the Pennsylvania Constitution specifically delineates who may receive an absentee ballot, a constitutional amendment was necessary to implement these changes. HB 846, PN 1963 was thus changed from a statute to a proposed amendment to the Pennsylvania Constitution. *Id.* (statement of Mr. Itkin) (“[T]his amendment is offered to alleviate a possible problem with respect to the legislation. The bill would originally amend the Election Code

to [expand absentee balloting] .... Because it appears that the Constitution talks about who may receive an absentee ballot, we felt it might be better in changing the bill from a statute to a proposed amendment to the Pennsylvania Constitution.”).

On November 4, 1997, the citizens of Pennsylvania approved another amendment to Article VII, § 14 of the Pennsylvania Constitution, which expanded the ability to vote by absentee ballot to qualified voters that were outside of their *municipality of residence* on election day; where previously absentee voting had been limited to those outside of their *county of residence* (the “1997 Amendment”). Pa. H. Leg. J. No. 31, 180th General Assembly, Session of 1996 (May 13, 1996) (emphasis added). The legislative history of the 1997 Amendments recognized the long-known concept that there existed only two forms of voting: (1) in-person, and (2) absentee voting and that the 1997 Amendment would not change the status quo; namely that “people who do not work outside the municipality [or county] or people who are ill and who it is a great difficulty for them to vote but it is not impossible for them to vote, so they do not fit in the current loophole for people who are too ill to vote but for them it is a great difficulty to vote, they cannot vote under [the 1997 Amendment].” *Id.* at 841 (statement of Mr. Cohen).

Because the Pennsylvania Constitution has not been amended, pursuant to Article XI, to allow for no-excuse mail-in voting, the legislative efforts to authorize no-excuse mail-in voting are fatally defective and inherently unconstitutional, having no lawful basis or effect. See, e.g., *Kremer v. Grant*, 529 Pa. 602, 613, 606 A.2d 433, 439 (1992) (“[T]he failure to accomplish what is prescribed by Article XI infects the amendment process with an incurable defect”); *Sprague v. Cortes*, 636 Pa. 542, 568, 145 A.3d 1136, 1153 (2016) (holding that matters concerning revisions of the Pennsylvania Constitution require “the most rigid care” and demand “[n]othing short of literal compliance with the specific measures set forth in Article XI.”) (citation omitted). This amounts to a violation of both the Pennsylvania Constitution and the U.S. Constitution, the latter which, while granting the General Assembly plenary authority to enact laws governing the conduct of elections and for the appointment of electors, does not allow the General Assembly to violate the Pennsylvania Constitution in doing so.

**B. This Court violated Petitioners’ First and Fourteenth Amendment rights by depriving petitioners of their right to vote in lawful elections and right to petition, without the requisite due process**

At least with respect to federal elections, this Court was not free to deny the Petitioners any practical means of remedying their injuries that were caused by the Pennsylvania General Assembly implementing no-

excuse absentee balloting in Pennsylvania by means of a statute rather than a Pennsylvania Constitutional amendment. A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). It is an opportunity which must be granted at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Central to the principle of due process is a requirement that an individual be allowed a fair hearing before the government may deprive him or her of a protected interest. See *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985).

This Court has held that the right of access to judicial proceedings is a component of the right to petition government for a redress of grievances and is constitutionally protected. See *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition." (citations omitted)). Consistently, the U.S. Supreme Court has reviewed such deprivation of access to the courts under a Due Process Clause, and Equal Protection framework. See, e.g., *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Ortwein v. Schwab*, 410 U.S. 656 (1973); but see *Sosna v. Iowa*, 419 U.S. 393



(1975) (declining to apply *Boddie* the restriction of access did not amount to a “total deprivation”).

In *Boddie*, the U.S. Supreme Court found that the collection of fees and costs required to bring an action for divorce was in violation of the Fourteenth Amendment’s due process guarantee. The U.S. Supreme Court noted that access to the courts is seldom an element of due process because courts are “not usually the only available, legitimate means of resolving private disputes.” *Boddie*, 401 U.S. at 375. The U.S. Supreme Court explained that where a “judicial proceeding becomes the only effective means of resolving the dispute at hand and denial of a defendant's full access to that process raises grave problems for its legitimacy.” *Id.* at 376. The U.S. Supreme Court concluded: "In short, ‘within the limits of practicability, a state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause.’” *Id.* at 377. (internal citations omitted). Weighing the burden of the fees, with the countervailing justifications for the fee, the U.S. Supreme Court concluded that none of the government considerations (recouping costs and preventing frivolous litigation) were “sufficient to override the interest of these plaintiff-appellants.” *Id.* at 381. When a state fails to correct a violation of the state’s constitution in the context of federal

elections and fails to provide any avenue for relief for federal election challengers, it violates the U.S. Constitution.

**1. This Court foreclosed any and all meaningful review of Petitioners' claims.**

This Court foreclosed any and all meaningful review of the Petitioners' claims *both before and after* the Election. Under controlling Pennsylvania law, Petitioners were foreclosed from challenging Act 77 prior to the Election occurring due to a lack of standing. See *Kauffman v. Osser*, 441 Pa. 150, 271 A.2d 236 (Pa. 1970) (appellants interest in not having their in person votes diluted by absentee ballots claimed to be unconstitutional had no standing prior to election because their interests were “too remote and too speculative”); see also *In re Gen. Election 2014*, 111 A.3d 785 (Pa. Commw. Ct. 2015) (appellants assumption that allegedly invalid absentee ballots would vote in a way that would cause dilution of appellants' votes was unwarranted and could not afford a basis for standing).

*Kauffman* involved a challenge substantially similar to that brought by Petitioners in the instant case. Plaintiffs in *Kauffman*, *inter alia*, challenged provisions of legislation expanding absentee voting as being violative of Article 7, § 14 of the Pennsylvania Constitution; the challenge was brought prior to an election taking place. In upholding the lower court's dismissal for

lack of standing, this Court held that “the interest of appellants is not peculiar to them, is not direct, and is too remote and too speculative to afford them, either in their individual capacities or in their claimed class representative capacity, a standing to attack these statutory provisions.” *Kauffman*, 441 Pa. at 157. The only conceivable way to make this harm adequately non-speculative and factually supported, under *Kauffman*, would be to wait for an election to take place. Unfortunately, as the instant case has shown, when the standing would otherwise be met – when harm crosses the realm of speculative – laches is always a reliable crutch to lean on. Thus, under controlling Pennsylvania law Petitioners were *required to wait* until after the election to gain standing. And while Petitioners promptly brought this action after the Election – as soon as they reasonably could hire counsel and identify the constitutional infirmities of Act 77 – the court below disingenuously “retreat[ed] behind the facade” of the amorphous doctrine of laches in order to deny Petitioners their day in court. *Id.* at 159.

The decision of the court below denied Applicants access to judicial relief indefinitely, without adequate process and without deciding the issue of declaratory relief on the merits. *Kelly v. Commonwealth*, Civ. Action No. 68 MAP 2020 (Pa. Nov. 28, 2020) (per curiam). Applicants plead for declaratory relief in asking for Act 77 to be declared unconstitutional, as

well as injunctive relief in asking to prohibit the Executive Respondents from including no-excuse absentee ballots in the final, certified results of the Election. The Commonwealth Court granted a preliminary injunction pending an evidentiary hearing, finding that Partitioners demonstrated a likelihood of success on the merits. Before such hearing could be held, the Supreme Court exercised its powers of extraordinary jurisdiction giving the court original and final jurisdiction over the controversy.

Petitioners were foreclosed from bringing their claims in any judicial forum after the Election when this Court refused to consider Petitioners' claims as to both the prior and continuing harms resulting from an unconstitutional Act 77 that remains standing law in Pennsylvania. Instead, the court dismissed Petitioners' claims, with prejudice, on the purported basis of laches. App. p3. This Court went so far as to dismiss with prejudice Petitioners' claim for prospective declaratory relief as to future elections. *Id.*

Thus, *res judicata* attaches to the claims, and Petitioners may not raise them in any other court. In the meantime, Act 77 remains in effect and unconstitutional, and Petitioners continue to suffer their harms without any ability to obtain relief. Should Petitioners want to raise the issue of constitutionality of Act 77 in 2021, in anticipation of the November 2022 election, *res judicata* would bar Petitioners from raising same facial

constitutional challenges to Act 77. Notably, there are no countervailing government interests that necessitate barring any further challenge on these issues by Applicants. Obviously, Judicial economy is a compelling interest for *res judicata*, generally, but that cannot justify barring Applicants from reaching the merits of their challenge to a law that will continue to harm them. Petitioners were denied any opportunity to have their claims heard, in violation of their federal due process rights and petition rights.

**C. This Court erred in finding laches and the U.S. Supreme Court may review the error because significant federal interests are at stake and the decision does not amount to adequate and independent state grounds.**

This Court's application of laches was erroneous and is subject to review by the U.S. Supreme Court because significant federal interests are at issue. "The present case concerns not only a federally-created right but a federal right for which the sole remedy is in equity." *Holmberg v. Ambrecht*, 327 U.S. 392, 395 (1946) (citations omitted). Unlike the situation where a court is situated in diversity jurisdiction and deciding an entirely state-law matter, as presented in *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945), in this action the U.S. Supreme Court has "no duty ... to approximate as closely as may be State law in order to vindicate without discrimination a right derived solely from a State." *Holmberg*, 327 U.S. at 395. Rather, the duty here is that "of federal courts, sitting as national courts throughout the

country, to apply their own principles in enforcing an equitable right” created under the U.S. Constitution. *Id.*

“[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.” *Bush v. Gore*, 531 U.S. 98, 112 (2000) (Rehnquist, C.J., Scalia J., Thomas, J., concurring) (citation omitted). Article I, § 4, and Article II, § 1 of the U.S. Constitution impose duties and powers on the legislature of each state, as does a state’s own constitution by the contours through which it provides the lawmaking power. “A significant departure from [this] legislative scheme ... presents a federal constitutional question.” *Id.* at 113. “[T]he text of the election law itself, and not just its interpretation by the courts of the States, takes on independent significance” in the U.S. Supreme Court’s review of such constitutional questions. *Id.* “Whether the state court has denied to rights asserted under local law the protection which the Constitution guarantees is a question upon which the petitioners are entitled to invoke the judgment of this Court.” *Broad River Power Co. v. South Carolina ex rel. Daniel*, 281 U.S. 537, 540 (1930) (citations omitted).

In determining its jurisdiction, the U.S. Supreme Court must ask "whether the question of laches is so intermingled with that of Federal right that the former cannot be considered an independent matter." *Moran v. Horsky*, 178 US 205, 208 (1900). This is so for state election laws governing the conduct of federal elections. "[T]he adequacy of state procedural bars to the assertion of federal questions,' we have recognized, is not within the State's prerogative finally to decide; rather, adequacy 'is itself a federal question.'" *Lee v. Kemna*, 534 U.S. 362, 375 (2002) (quoting *Douglas v. Alabama*, 380 U.S. 415, 422 (1965)); see also *Davis v. Wechsler*, 263 U.S. 22, 24 (1923) (Holmes, J.) ("Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.").

As a threshold matter, it is the duty of the U.S. Supreme Court "to ascertain, '... in order that constitutional guaranties may appropriately be enforced, whether the asserted non-federal ground independently and adequately supports the judgment.'" *N.A.A.C.P. v. Ala. ex. rel. Patterson*, 357 U.S. 449, 455 (1958) (citation omitted). Here, it does not. "[F]ederal jurisdiction is not defeated if the nonfederal ground relied on by the state

court is ‘without any fair or substantial support ....’” *Id.* at 454 (quoting *Ward v. Board of County Commissioners*, 253 U.S. 17, 22 (1920)).

“State procedural rules have been held insufficient to bar federal review if they are ‘not strictly or regularly followed,’ if they are ‘novel and unforeseeable,’ ... or if they impose undue burdens on the assertion of federal rights.” Roosevelt, Kermit III, *Light from Dead Stars: The Procedural Adequate and Independent State Ground Reconsidered*, 103 *Columbia L. Rev.* 1888, 1890 (citing *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964); Daniel J. Meltzer, *State Court Forfeitures of Federal Rights*, 99 *Harv. L. Rev.* 1128, 1137-45 (1986); *Douglas v. Alabama*, 380 U.S. 415, 422-23 (1965)). The reliance on laches by this Court is likewise insufficient to bar federal review.

The U.S. Supreme Court “ha[s] often pointed out that state procedural requirements which are not strictly or regularly followed cannot deprive [it] of the right to review.” *Barr*, 378 U.S. at 149 (citations omitted). Laches, as applied to the case below by this Court, is entirely inconsistent with that court’s consistent historical precedent and is contradicted by the court’s recent practices in hearing analogous, substantive constitutional challenges.

“Laches may bar a challenge to a statute based upon procedural deficiencies in its enactment.” *Stilp v. Hafer*, 553 Pa. 128, 718 A.2d 290,



294 (Pa. 1998). However, in *Stilp*, the court found that “Appellees concede[d] that laches may not bar a constitutional challenge to the substance of a statute ....” *Id.* The holding in *Stilp* contradicts this Court’s holding in the instant action. *Stilp* teaches that while the principle of laches may apply to a constitutional challenge on procedural grounds, it does not apply with respect to the substance of a statute. *Id.* (citing *Sprague v. Casey*, 520 Pa. 38, 550 A.2d 184 (1988) (stating that “laches and prejudice can never be permitted to amend the Constitution”)); see also *Wilson v. School Distr. of Philadelphia*, 328 Pa. 225, 195 A. 90 (Pa. 1937).

Petitioners’ constitutional claims are substantive, and therefore cannot be defeated by laches. Unlike *Stilp* where the plaintiffs argued that a bill was not referred to the appropriate committee, and that the bill was not considered for the requisite number of days, here Petitioners argue that the substance of Act 77 directly contravenes the Pennsylvania Constitution. See App. pp.50-55, ¶¶ 65-87. Petitioners make no challenge to the procedural mechanisms through which Act 77 was passed – e.g., bicameralism and presentment – but rather, what is substantively contained within the legislative vehicle that became Act 77. The Pennsylvania General Assembly attempted to unconstitutionally expanded absentee voting through Act 77, despite constitutional limitations to such expansion.

Act 77 itself is not a constitutional amendment, which would be the type of procedural laches challenge raised by the Executive-Respondents (and would fail in any case). Such a patent and substantive violation of the state Constitution cannot be barred by the mere passage of time – “To so hold would establish a dangerous precedent, the evil effect of which might reach far beyond present expectations.” *Wilson*, 195 A. at 99. Amending the constitution to expand a protected and fundamental right is not a mere procedural step, but rather one of substance.

Even assuming *arguendo* that laches could apply to retrospective relief in a substantive constitutional challenge, laches can only bar relief where “(1) a delay arising from Appellants' failure to exercise due diligence and (2) prejudice to the Appellees resulting from the delay” *Stilp*, 718 A.2d at 293 (citing *Sprague*, 550 A.2d at 187-88). In *Sprague*, the petitioner (an attorney), brought suit challenging the placing on an election ballot of two judges. *Sprague*, 550 A.2d 184. Respondents raised an objection based on laches because the petitioner waited 6.5 months from constructive notice that the judges would be on the ballot to bring suit. In evaluating the facts that the petitioner and respondents could have known through exercise of “due diligence,” the court found that while the petitioner was an attorney, and was therefore charged with the knowledge of the constitution and laws,

the respondents (the Governor, Secretary, and other Commonwealth officials) were also lawyers and similarly failed to seek timely relief. *Id.* at 188. In denying the laches defense, the court reasoned that “[t]o find that petitioner was not duly diligent in pursuing his claim would require this Court to ignore the fact that respondents failed to ascertain the same facts and legal consequences and failed to diligently pursue any possible action.” *Id.*

To be clear, a citizen with an actionable claim cannot just wait to file a grievance it is aware of. However, courts will generally “hold that there is a heavy burden on the [respondent] to show that there was a deliberate bypass of pre-election judicial relief.” *Toney v. White*, 488 F.2d 310, 315 (5th Cir. 1973). The Executive-Respondents were never required to meet that burden here. There is no evidence or reason to believe that Petitioners deliberately bypassed pre-election relief in the instant action. Unlike in *Sprague*, Petitioners here are not lawyers, they did not know, nor could they have been reasonably expected to know, that they had viable legal claims well-before the election occurred. With respect to the candidate-Petitioners, none are members of the state legislature, and none have responsibilities with respect Pennsylvania Election Code or its constitutionality.

Conversely, as in *Sprague*, Respondent Boockvar is an attorney, and should be charged with knowledge of the Constitution, and particular knowledge of the Election Code. In *Sprague*, the taxpayer's more than six-month delay in bringing an action challenging the election did not constitute laches thereby preventing the Commonwealth Court from hearing the constitutional claims. 550 A.2d at 188. Additionally, Respondent Pennsylvania General Assembly appears to have had knowledge of the constitutional issues involved and began the process of amending the constitution to allow no-excuse mail-in ballots. That process appears to be ongoing to this day. App. p.42, ¶¶ 28-30.<sup>2</sup>

In short, this Court charged Petitioners, who had no specialized knowledge, with failure to institute an action more promptly, while Respondents possessed extremely specialized knowledge, and failed to take any corrective actions. Petitioners did not hedge their bets, they simply brought an action within mere days of gaining enough information to know

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<sup>2</sup> If Act 77 is not declared unconstitutional, and if/when the amendment purporting to allow for no-excuse mail in voting is voted upon by the electorate, that ratification process will utilize the very no-excuse absentee voting the amendment seeks to authorize. In the meantime, the entire Pennsylvania electorate has been disenfranchised of their right to vote on amending their constitution to grant authorization for no-excuse voting by mail.

## 0100a

that they had been harmed by an unconstitutional election, as soon as they reasonably could have hired counsel to research and identify the constitutional issues and after they gained standing to bring their claims. They did not even wait for certified election results to confirm that they had been harmed. It could not have in any way served the Petitioners' interests in this matter to delay action for even one day. To suggest they did so deliberately is unsupported.

Respondents' collective failures in enacting Act 77 or to remedy its constitutional problems at any point puts the weight of any necessary curative disenfranchisement squarely on their shoulders. Laches is a shield to protect Respondents from gamesmanship, it is not a sword to use against harmed individuals to insulate Respondents' unconstitutional actions. It also bears noting that both *Chase* and *Lancaster City*, involved substantive constitutional challenges to legislation expanding absentee voting; the legislation challenged in *Chase* was enacted 23 years prior to its decision, 41 Pa. at 407 ("Act of 2d July 1839, § 155") and in *Lancaster City* the legislation was enacted one year and two months prior to its decision, 281 Pa. at 133 ("Act May 22, 1923 (P. L. 309; Pa. St. Supp. 1924, § 9775a1, et seq.)"). In both cases, the constitutionality of the legislation at issue was challenged after the election had occurred. In both cases, mail-in ballots that

## 0101a

violated the state constitution's prohibition were not counted. Meanwhile, this action challenges legislation passed in October 2019, see Act 77, amended by legislation in March 2020, see Act 12, and further amended through judicial edict, one and a half months prior to this action being commenced, by the same court refusing to hear this challenge, see *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. Sept. 17, 2020)). This Court arbitrarily applied a new, unique, and surprising version of the laches doctrine to the constitutional challenge in this case.

Further evidence of the irregular application of laches by this Court can be found by examining recent substantive constitutional challenges to legislative enactments in the state. This Court, as recently as 2018, decided a challenge to the state's congressional district plan brought **6 years, and multiple elections**, after the 2011 congressional redistricting map legislation had been enacted. See *League of Women Voters v. Commonwealth*, No. 159 MM 2017 (Pa. Feb. 7, 2018). On November 23, 2020, well after the election had already taken place, this Court heard another case regarding whether Act 77 required county boards of elections to disqualify absentee ballots (including no-excuse absentee ballots) based on the lack of a signature on the outer secrecy envelope. See *In re Canvass of Absentee and Mail-In Ballots*, Civ. Action No. 34 EAP 2020 (Pa. Nov. 23, 2020).

## 0102a

As in *N.A.A.C.P.*, here there is no “reconcil[ing] the procedural holding of the [Pennsylvania] Supreme Court in the present case with its past unambiguous holdings.” 357 U.S. 449, 455. Thus, not only is laches here an inadequate state ground for the U.S. Supreme Court to abstain review, but this Court’s application of the doctrine was used as an offensive sword against Petitioners, to avoid addressing the merits of a federal question of fundamental importance.

### **II. The equitable factors support a stay.**

An injunction in this case is essential to protect the integrity of the Election and prevent further irreparable harm to Petitioners’ federally protected rights. If a stay is not granted, the Executive-Respondents and electors will take further actions to certify the results of the Election, potentially limiting this Court’s and the Supreme Court of the United States’ ability to grant relief in the event of a decision on the merits in Petitioners’ favor. Granting emergency relief is also necessary to avoid irreparable injury to the voters of Pennsylvania and to the Petitioners from the resulting wrongs of an election conducted pursuant to an unconstitutional and invalid no-excuse absentee voting scheme.

**CONCLUSION**

For the foregoing reasons, this Court should stay its Order of November 28, 2020 pending the filing and disposition of a Petition for Writ of Certiorari in the Supreme Court of the United States.

Respectfully submitted,

OGC Law, LLC

/s/Gregory H. Teufel  
Gregory H. Teufel, Esq.  
*Attorney for Petitioners*



**CERTIFICATE OF COMPLIANCE**

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

Date: December 2, 2020

/s/Gregory H. Teufel  
Gregory H. Teufel

**CERTIFICATION OF COMPLIANCE WITH WORD COUNT LIMIT**

I certify that the EMERGENCY APPLICATION FOR STAY OF COURT'S ORDER OF NOVEMBER 28, 2020 is 7510 words as measured in accordance with Pennsylvania Rule of Appellate Procedure 2135.

Dated: December 2, 2020

/s/Gregory H. Teufel  
Gregory H. Teufel

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record on December 2, 2020 by this Court's electronic filing system.

/s/Gregory H. Teufel  
Gregory H. Teufel

IN THE SUPREME COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,  
*et al.*,

Petitioners,

Docket No. 68 MAP 2020

v.

COMMONWEALTH OF  
PENNSYLVANIA, *et al.*,

Respondents.

**[PROPOSED] ORDER GRANTING APPLICATION FOR STAY OF  
THIS COURT'S ORDER OF NOVEMBER 28, 2020**

**AND NOW**, this \_\_\_\_\_ day of December 2020, upon consideration of Petitioners' Emergency Application for Stay of Court's Order of November 28, 2020, it is hereby ORDERED that the Application is GRANTED. This Court's Order of November 28, 2020 is stayed pending the Petitioners' filing and disposition of a Petition for Writ of Certiorari in the Supreme Court of the United States.

BY THE COURT:

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J.

**0108a**

# APPENDIX G

Received 11/22/2020 5:15:01 PM Commonwealth Court of Pennsylvania  
**0109a**

Filed 11/22/2020 5:15:00 PM Commonwealth Court of Pennsylvania  
620 MD 2020

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,  
SEAN PARNELL, THOMAS A.  
FRANK, NANCY KIERZEK, DEREK  
MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA  
LOGAN,

Petitioners,

v.

COMMONWEALTH OF  
PENNSYLVANIA,

Respondents.

Docket No. 620 M.D. 2020

### **MOTION FOR EMERGENCY/SPECIAL PROHIBITORY INJUNCTION**

Filed on behalf of Petitioners,  
The Honorable Mike Kelly, Sean  
Parnell, Thomas A. Frank, Nancy  
Kierzek, Derek Magee, Robin Sauter,  
Michael Kincaid, and Wanda Logan

Counsel of Record for Petitioners:

Gregory H. Teufel  
Pa. Id. No. 73062  
OGC Law, LLC  
1575 McFarland Road, Suite 201  
Pittsburgh, PA 15228  
412-253-4622  
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[gteufel@ogclaw.net](mailto:gteufel@ogclaw.net)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY, Docket No. 620 M.D. 2020  
SEAN PARNELL, THOMAS A.  
FRANK, NANCY KIERZEK, DEREK  
MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA  
LOGAN,

Petitioners,

v.

COMMONWEALTH OF  
PENNSYLVANIA,

Respondents.

**MOTION FOR EMERGENCY/SPECIAL PROHIBITORY INJUNCTION**

Petitioners Mike Kelly, *et al.*, by and through their undersigned attorney respectfully move for the entry of an emergency/special prohibitory injunction and in support thereof states as follows:

1. Petitioners initiated this action by filing a verified Complaint for Declaratory and Injunctive Relief (“the Complaint”) on November 21, 2020, which is incorporated by reference as if fully set forth herein.
2. For the reasons set forth in the Complaint, and as further supported by Petitioners’ memorandum of law in support of this motion, Petitioners asks this

## 0111a

Honorable Court to enter the attached proposed order or grant such other or further relief as this Honorable Court deems proper.

### RELIEF REQUESTED

3. Petitioners seek emergency/special prohibitory injunctive relief as a result of Respondents' improper and unlawful conduct.

4. To obtain emergency/special prohibitory injunctive relief, a party must establish that: (1) relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages; (2) greater injury will occur from refusing to grant the injunction than from granting it; (3) the injunction will restore the parties to their status quo as it existed before the alleged wrongful conduct; (4) the petitioner is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the public interest will not be harmed if the injunction is granted. *Warehime v. Warehime*, 580 Pa. 201, 209-210, 860 A.2d 41, 46-47 (2004).

5. As more fully described in Petitioners' memorandum of law in support of this Motion, each prerequisite described in paragraph 4 has been satisfied.

6. If the requested relief is not granted, Petitioners will continue to suffer immediate and irreparable harm that cannot be adequately compensated by money damages.



## 0112a

7. Greater injury will occur from refusing to grant the injunction than from granting it; granting the injunction will restore the status quo as it existed prior to Respondents' unlawful and improper conduct and will not cause substantial harm to Respondents.

8. Granting the Emergency/Special Injunction will restore the parties to the status quo as it existed prior to Respondents' unlawful and wrongful conduct.

9. Petitioners' right to relief and likelihood of prevailing on the merits is clear.

10. The requested relief is narrowly tailored to abate the offending activity.

11. To the extent that the public interest is impacted, it will be served rather than harmed by granting the injunction.

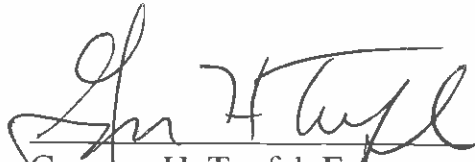
12. Emergency/special prohibitory injunctive relief is necessary to ensure Petitioners' are not permanently and irreparably harmed.

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WHEREFORE, Petitioners respectfully request that this Honorable Court enter an Order, substantially in the form of the proposed Order attached hereto, granting this Motion for Emergency/Special Prohibitory Injunction.

Respectfully submitted,

OGC Law, LLC

  
\_\_\_\_\_  
Gregory H. Teufel, Esq.  
*Attorney for Petitioners*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,  
SEAN PARNELL, THOMAS A.  
FRANK, NANCY KIERZEK, DEREK  
MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA  
LOGAN,

Docket No. \_\_\_\_ M.D. 2020

Petitioners,

v.

COMMONWEALTH OF  
PENNSYLVANIA,

Respondents.

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2020, upon due consideration of the foregoing Motion for Emergency/Special Prohibitory Injunction and any responses thereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court makes the following findings:
  - a. Petitioners possess a clear right to injunctive relief;
  - b. Injunctive relief will prevent immediate and irreparable harm to  
Petitioners;
  - c. Refusing injunctive relief will result in greater harm than granting  
it;

## 0115a

- d. Injunctive relief will not adversely affect the public interest; and
- e. The injunctive relief is narrowly tailored and restores the status quo as it existed before the Respondents' wrongful conduct.

2. Petitioners' Motion for Emergency/Special Prohibitory Injunction is GRANTED, and an Injunction is hereby entered as follows:

- a. Until further Order of this Court, Respondents shall be prohibited from taking official action to tabulate, compute, canvass, certify, or otherwise finalize the results of the November 3, 2020, General Election. Specifically, Respondents are prohibited from undertaking the following actions:

- i. Secretary Boockvar is enjoined from taking official action pursuant to 25 P.S. § 3159, 3160, 3163, 3164, 3165, 3166. Secretary Boockvar shall not receive, tabulate, compute, canvass, or lay before the Governor any certificate of election or the votes cast for any candidate or any question voted for by electors in the November 3, 2020, General Election. Further, Secretary Boockvar is enjoined from taking official action pursuant to 25 P.S. § 2621(f) "[t]o receive from county boards of elections the returns of primaries and elections, to canvass and compute the votes

## 0116a

cast for candidates and upon questions as required by the provisions of [the election code]; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections ....”

- ii. Governor Wolf is enjoined from taking official action pursuant to 25 P.S. § 3160, 3163, 3165, 3166. Governor Wolf shall not issue any commission resulting from the November 3, 2020, General Election. Governor Wolf shall not transmit the returns of the November 3, 2020 General Election to the President of the United States Senate or the Speaker of the House of Representatives.

3. This ORDER shall become effective as soon as Petitioners file legal tender of the United States or a bond with the Court in the amount of \$\_\_\_\_\_ naming the Commonwealth of Pennsylvania as obligee in accordance with Pa.R.Civ.P. 1531(b), which Petitioners shall do forthwith.

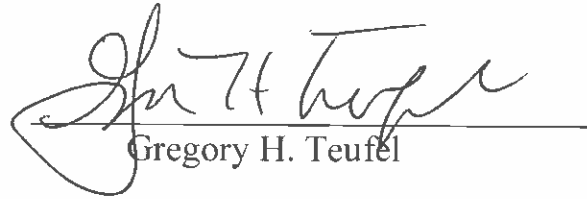
BY THE COURT:

\_\_\_\_\_, J.

CERTIFICATE OF COMPLIANCE

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

Date: November 22, 2020

  
Gregory H. Teufel

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a true and correct copy of the foregoing Motion for Emergency/Special Prohibitory Injunction via first class U.S. mail upon the following:

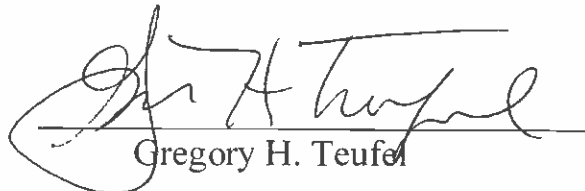
Commonwealth of Pennsylvania  
Office of the Attorney General  
1600 Strawberry Square  
Harrisburg, PA 17120

Kathy Boockvar  
Secretary of State  
302 N. Office Building  
Harrisburg, PA 17120

Pennsylvania General Assembly  
501 N. 3rd Street  
Harrisburg, PA 17120

Honorable Thomas W. Wolf  
Office of the Governor  
508 Main Capitol Building  
Harrisburg, PA 17120

Date: November 22, 2020

  
Gregory H. Teufel

# APPENDIX H

Received 11/22/2020 5:15:01 PM Commonwealth Court of Pennsylvania  
**0119a**

Filed 11/22/2020 5:15:01 PM Commonwealth Court of Pennsylvania  
620 MD 2020

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,  
SEAN PARNELL, THOMAS A.  
FRANK, NANCY KIERZEK, DEREK  
MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA  
LOGAN,

Petitioners,

v.

COMMONWEALTH OF  
PENNSYLVANIA, PENNSYLVANIA  
GENERAL ASSEMBLY,  
HONORABLE THOMAS W. WOLF,  
KATHY BOOCKVAR,

Respondents.

Docket No. 620 M.D. 2020

### **MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EMERGENCY/SPECIAL PROHIBITORY INJUNCTION**

Filed on behalf of Petitioners,  
The Honorable Mike Kelly, Sean  
Parnell, Thomas A. Frank, Nancy  
Kierzek, Derek Magee, Robin Sauter,  
Michael Kincaid, and Wanda Logan

Counsel of Record for Petitioners:

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[gteufel@ogclaw.net](mailto:gteufel@ogclaw.net)



**INTRODUCTION**

Act 77 is, the most expansive and fundamental change to the Pennsylvania election code to date, is flagrantly unconstitutional, and an affront to the protections set out in the Pennsylvania Constitution. Under the Act, and the mail-in ballot scheme it implements, any and all qualified electors are eligible to vote by mail, with no justification required. That scheme is a clear violation of Article VII of the Pennsylvania Constitution. As with prior attempts to illegally expand mail-in voting by statute, which have been struck down going as far back as the Military Absentee Ballot Act of 1839, Act 77 is another illegal attempt to override the protective limitations on absentee voting prescribed in the Pennsylvania Constitution, without first following the necessary procedure to amend the Pennsylvania Constitution to allow for that expansion.

Article VII of the Pennsylvania Constitution provides two exclusive mechanisms by which an elector may cast a ballot : 1) offering your ballot in *propria persona* at the polling place on election day; and 2) exceptions to the first method limited to those persons qualifying under the limited absentee voting provision proscribed in the Pennsylvania Constitution. “Mail-in” voting, in the form implemented pursuant to Act 77 is an attempt by the legislature to fundamentally overhaul the Pennsylvania voting system and permit universal absentee voting (rebranded as “mail-in” voting) absent any constitutional authority.

Respondents, starting as soon as Monday, November 23, and in the coming days and weeks thereafter, will seek to certify the results of the November 3, 2020, General Election, which was undertaken pursuant to an unconstitutional, universal, no-excuse mail-in voting scheme. “However laudable the purpose of the act ... it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.” *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. 131, 137-38 (1924). This Court must intervene immediately in order to prevent further, irreparable injury from the resulting wrongs of an election conducted pursuant to an unconstitutional and invalid mail-in voting scheme.

**PROCEDURAL HISTORY**

Petitioners initiated this action by filing a verified Complaint Seeking Injunctive and Declaratory Relief (“the Complaint”) on November 21, 2020. The facts of this action as set forth in the Complaint are incorporated by reference as if fully set forth herein.

**FACTUAL BACKGROUND**

**I. History of Absentee Voting in Pennsylvania**

Pennsylvania has a lengthy history of allowing electors to vote at an election other than *in propria persona*; this is known colloquially, as well as defined by law, as “absentee voting.” Many aspects of absentee voting in Pennsylvania have

been subject to lawsuits over the past several months, yet, surprisingly, no litigant has raised, nor has any court addressed (from our research), the question of whether the expanded absentee voting system introduced by Act 77 of 2019 passes constitutional muster. We do so here.

A. ***Chase v. Miller* struck down unconstitutional military absentee voting during the Civil War.**

Pennsylvania was one of the first states to allow for absentee voting, originating with the Military Absentee Act of 1813, which allowed “members of the state militia and those in the service of the United States to vote as long as the company the soldier was serving was more than two miles from his polling place on election day.” John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J.L. Reform 483, 497 (2003). At the time the Military Absentee Act was passed, the Pennsylvania Constitution imposed no restrictions with regard to absentee voting. However, in 1838, Pennsylvania amended its constitution to require voters to “reside in the election district where he offers to vote, ten days immediately preceding such election.” *Id.* (citing Pa. Const. of 1838, Art. III, § 1 (1838)). This created a conflict with the Military Absentee Act as re-enacted in 1839, which allowed for absentee voting, and the newly amended Pennsylvania Constitution, which no longer did. *Id.*

In the 1861 election, Pennsylvania soldiers voted under the 1839 act, and legal challenges came soon after. In 1862, the Pennsylvania Supreme Court decided the case *Chase v. Miller*, 41 Pa. 403, which dealt with the constitutionality of 1839 military absentee voting act under the 1838 version of the Pennsylvania Constitution. The Court held that the act was unconstitutional because the purpose of the 1838 amendment to the Pennsylvania Constitution was to require in-person voting in the election district where a voter resided at least 10 days before the election. *Id.* at 418-19.

The second section of [the 1838 amendment] requires all popular elections to be by ballot. To ‘offer to vote’ by ballot, is to present oneself with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it. **The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil.** We cannot be persuaded that the constitution ever contemplated any such mode of voting, and we have abundant reason for thinking that to permit it would break down all the safeguards of honest suffrage. The constitution meant, rather, that the voter, *in propria persona*, should offer his vote in an appropriate election district, in order that his neighbours might be at hand to establish his right to vote if it were challenged, or to challenge if it were doubtful.

\* \* \*

[Regarding the 1839 act,] [i]t is scarcely possible to conceive of any provision and practice that could, at so many points, offend the cherished policy of Pennsylvania in respect to suffrage. Our Constitution and laws treat the

elective franchise as a sacred trust.... All of which the [1839 act] reverses and disregards, and opens a wide door for most odious frauds, some of which have come under our judicial cognizance.

*Id.* at 419-25 (emphasis added in bold). The Court also noted that the Pennsylvania legislature carelessly avoided discussing the constitutionality of the 1839 act before its passage; although, it noted that “instances of even more careless legislation are not uncommon.” *Id.* at 417.

Following the Pennsylvania Supreme Court’s invalidation of the 1839 military absentee voting act, Pennsylvania introduced an amendment to its constitution in 1864 to include for this first time a provision allowing for absentee voting by active military personnel. *See* Josiah Henry Benton, *Voting in the Field: A Forgotten Chapter of the Civil War*, at 199 (1915). The legislature passed the amendment in two successive sessions, in 1863, and again on April 23, 1864, and the amendment was approved by the citizens of Pennsylvania in August 1864. Prior to the August approval of the amendment, on April 1, 1864, the Legislature was attempting to pass a soldier’s voting bill that would have implemented absentee voting laws in accordance with what the constitutional provision would have allowed if passed. The legislature sought the Attorney General’s opinion on the constitutionality of passing this legislation before the constitutional amendment was approved by the voters. The Attorney General opined that it “would not be

constitutional to pass a law before the Constitution was amended so as to allow it.”

*Id.* at 200.

**B. *In re Contested Election in Fifth Ward of Lancaster City* struck down unconstitutional civilian absentee voting legislation.**

From 1864 to 1949, only qualified electors engaged in actual military service were permitted to vote by absentee ballot under the Pennsylvania Constitution. Pa. Const. Art. VIII, § 6 (1864). However, this limitation did not prevent the Pennsylvania Legislature from, again, attempting to pass unconstitutional legislation to expand absentee voting. In 1924, the Pennsylvania Supreme Court decided *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. 131, striking down as unconstitutional Act May 22, 1923 (P.L. 309; Pa. St. Supp. 1924, §9775a1, et seq.), an act providing civilians the right to vote by absentee ballot. Quoting *Chase v. Miller*, 41 Pa. at 419, the Court reaffirmed the law that “[t]o offer to vote’ by ballot, is to present one’s self with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed to receive it. The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil.” *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. at 134. This principle was affirmed between 1864 and 1924 in many other states with similar constitutional provisions, both with regard to absentee voting by regular citizens as well as by soldiers away

from home. *Id.* at 135 (citing *Twitchell v. Blodgett*, 13 Mich. 127; *Bourland v. Hildreth*, 26 Cal. 161; *Day v. Jones*, 31 Cal. 261; *Opinion of the Judges*, 30 Conn. 591; *Opinion of the Judges*, 37 Vt. 665; *Opinion of the Justices*, 44 N. H. 633; *In re Opinion of Justices* [N.H.] 113 Atl. 293; *Clark v. Nash*, 192 Ky. 594, 234 S. W. 1, 19 A. L. R. 304). Very succinctly, the Court concluded that the civilian absentee ballot act was unconstitutional because the Pennsylvania Constitution still required electors to “offer to vote” in the district where they reside, and that those eligible to “vote other than by personal presentation of the ballot” were specifically named in the Constitution (i.e., active military). *Id.* at 136-37. The Court relied on two primary legal principles in its ruling:

[1] ‘In construing particular clauses of the Constitution it is but reasonable to assume that in inserting such provisions the convention representing the people had before it similar provisions in earlier Constitutions, not only in our own state but in other states which it used as a guide, and in adding to, or subtracting from, the language of such other Constitutions the change was made deliberately and was not merely accidental.’ *Com v. Snyder*, 261 Pa. 57, 63, 104 Atl. 494, 495.

\* \* \*

[2] The old principle that the expression of an intent to include one class excludes another has full application here.... ‘The residence required by the Constitution must be within the election district where the elector attempts to vote; hence a law giving to voters the right to cast their ballot at some place other than the election district in which they reside [is] unconstitutional.’

*Id.* The Court went further to note the conflict that new mail-in ballot voting system would have with the new secrecy requirement now part of the Pennsylvania Constitution through an amendment in 1901:

It may well be argued that the scheme of procedure fixed by the act of 1923, for the receipt, recording, and counting of the votes of those absent, who mail their respective ballots, would end in the disclosure of the voters' intention prohibited by the amendment of 1901 to section 4 of article 8 of the Constitution, undoubtedly the result if but one vote so returned for a single district. Though this provision as to secrecy was likely added in view of the suggestion of the use of voting machines, yet the direction that privacy be maintained is now part of our fundamental law.

However laudable the purpose of the act of 1923, it cannot be sustained. *If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.*

*Id.* at 137-38 (emphasis added).

- C. **Article VII, Sections 1 and 4 of the Pennsylvania Constitution have not materially changed since the Court struck down similar legislation unconstitutionally expanding mail-in voting in *In re Contested Election in Fifth Ward of Lancaster City*.**

Article VII, Sections 1 and 4 of the Pennsylvania Constitution (previously numbered as Article VIII, Sections 1 and 4) remain materially the same as they did when the Court in *In re Contested Election in Fifth Ward of Lancaster City* struck down “Act May 22, 1923” (P. L. 309; Pa. St. Supp. 1924, § 9775a1, et seq.) and invalidated the illegal mail-in ballots cast thereunder. Article VII, Section 4



remains exactly the same as it did when the 1924 case was decided. Article VII, Section 1 has only distinctly changed in three ways since the 1924 case: (1) the voting age requirement was changed to 18, from 21; (2) the state residency requirement was lowered from 1 year, to 90 days; and (3) Clause 3 of Article VII, Section VII was amended to allow a Pennsylvania resident who moves to another County within 60 days of an election to vote in their previous county of residence. None of these changes to Article VII, Section 1 have any material importance to the case at hand and were not relevant to the Pennsylvania Supreme Court's decision in *In re Contested Election in Fifth Ward of Lancaster County*. Therefore, because the Pennsylvania Constitution remains, for all relevant purposes, unchanged since 1924 with regard to the qualifications and requirements for voting in an election, the Court's holding in that case is not only instructive to this case, but determinative.

**D. Post-World-War-II and the modern absentee voting provision in the Pennsylvania Constitution.**

In 1949, the Pennsylvania Constitution was amended to also allow bedridden or hospitalized war veterans the ability to vote absentee. Pa. Const. Art. 8, § 18 (1949). In 1957, the legislature began the process of amending the constitution to allow civilian absentee voting in instances where unavoidable absence or physical disability prevented them from voting in person. *See Absentee Ballots Case*, 423 Pa. 504, 508, 224 A.2d 197, 199-200 (1966). Because of the restrictions and

safeguards under Article XI, the 1957 amendment to the constitution did not go into effect until 1960. *Id.* The constitutional amendment effectively expanded eligibility for absentee voting to include only two categories of qualified electors: (1) those who on election day would be absent from their municipality of residence because of their duties, occupation, or business; and (2) those who are unable to attend their proper polling place because of illness or physical disability. Pa. Const. Art. 7, § 19 (1957).

Issues arose immediately with the canvassing and computation of ballots under the newly expanded absentee voting system, and any challenges to absentee ballots that were rejected by the board of elections resulted in the challenged ballots being placed with ballots that were not challenged to be counted, making it impossible to correct if it was later determined that the decision to reject the challenge was incorrect. *See Absentee Ballots Case*, 423 Pa. 504, 509, 224 A.2d 197, 200. In response, “the legislature added further amendments by the Act of August 13, 1963, P.L. 707, 25 Pa. Stat. § 3146.1 et seq. (Supp. 1965)” to require the board of elections to mark any ballot that was disputed as “challenged,” hold a hearing on the objections, and the decision was opened up to review by the court of common pleas in the county involved. *Id.* Until all challenges were resolved, the board of elections was required to desist from canvassing and computing all challenged ballots to avoid the possible mixing of valid and invalid ballots. *Id.* In

## 0130a

1967 following the Constitutional Convention, the Pennsylvania Constitution was reorganized and Article VII, Section 19 was renumbered to Article VII, Section 14.

On November 5, 1985, the citizens of Pennsylvania approved another amendment to Article VII, Section 14 of the Pennsylvania Constitution, which added religious observances to the list of permissible reasons for requesting an absentee ballot (the “1985 Amendment”). The 1985 Amendment began as HB 846, PN 1963, which would have amended the Pennsylvania Election Code to provide absentee ballots for religious holidays and for the delivery and mailing of ballots. *See* Pa. H. Leg. J. No. 88, 167th General Assembly, Session of 1983, at 1711 (Oct. 26, 1983) (considering HB 846, PN 1963, entitled “An Act amending the ‘Pennsylvania Election Code,’ ... further providing for absentee ballots for religious holidays and for the delivery and mailing of ballots.”). However, the legislative history recognized that because the Pennsylvania Constitution specifically delineates who may receive an absentee ballot, a constitutional amendment was necessary to implement these changes. HB 846, PN 1963 was thus changed from a statute to a proposed amendment to the Pennsylvania Constitution. *Id.* (statement of Mr. Itkin) (“[T]his amendment is offered to alleviate a possible problem with respect to the legislation. The bill would originally amend the Election Code to [expand absentee balloting] .... Because it appears that the Constitution talks about who may receive an absentee ballot, we felt it might be

better in changing the bill from a statute to a proposed amendment to the Pennsylvania Constitution.”).

On November 4, 1997, the citizens of Pennsylvania approved another amendment to Article VII, Section 14 of the Pennsylvania Constitution, which expanded the ability to vote by absentee ballot to qualified voters that were outside of their *municipality of residence* on election day; where previously absentee voting had been limited to those outside of their *county of residence* (the “1997 Amendment”). See Pa. H. Leg. J. No. 31, 180th General Assembly, Session of 1996 (May 13, 1996) The legislative history of the 1997 Amendments recognized the long-known concept that there existed only two forms of voting: (1) in-person, and (2) absentee voting and that the 1997 Amendment would not change the status quo; namely that “people who do not work outside the municipality [or county] or people who are ill and who it is a great difficulty for them to vote but it is not impossible for them to vote, so they do not fit in the current loophole for people who are too ill to vote but for them it is a great difficulty to vote, they cannot vote under [the 1997 Amendment].” *Id.* at 841 (statement of Mr. Cohen).

**II. The 2019 no excuse absentee voting constitutional amendment is still a work in progress.**

In 2019, the Pennsylvania General Assembly again began the process for amending Article 7, Section 14 of the Pennsylvania Constitution; this time in order to permit absentee voting for all voters. Senate Bill 411, 2019 (Senate Bill 411 was

## 0132a

later incorporated into Senate Bill 413). The legislative history of the proposed amendment recognizes that “Pennsylvania’s current Constitution restricts voters wanting to vote by absentee ballot to [specific] situations....”. Senator Mike Folmer, *et al.*, Senate Co-Sponsorship Memoranda (Jan. 29, 2019, 10:46 AM), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28056>. The amendment proposes to “eliminate these limitations, empowering voters to request and submit absentee ballots for any reason – **allowing them to vote early and by mail.**” *Id.* (emphasis added).

Introduced on March 19, 2019, S.B. 413 as originally filed was a joint resolution proposing an amendment to the Pennsylvania Constitution related to judicial retention elections and contained nothing related to the constitution’s absentee voting provision. *See Bill Information – History, Senate Bill 413; Regular Session 2019-2020*, Pa. General Assembly, [https://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?year=2019&sind=0&body=S&type=B&bn=413](https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2019&sind=0&body=S&type=B&bn=413). The bill passed out of the Senate on October 22, 2019 and was sent to the House where it was referred to the House Committee on State Government a few days later. On April 6, 2020, S.B. 413 was reported as amended from committee. *Id.* Its caption was changed from the introduced version which read: “A Joint Resolution proposing separate and distinct amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for tenure of

## 0133a

justices, judges and justices of the peace,” to “A Joint Resolution proposing separate and distinct amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for tenure of justices, judges and justices of the peace; and further providing for absentee voting.” See S.B. No. 413, Printer’s No. 1624, 203rd General Assembly, Session of 2019 (Apr. 6, 2020) (underlining added).

In its amended form with the added provisions seeking to amend the Pennsylvania Constitution’s absentee voting restrictions, S.B. 413 was passed by a majority of both Houses and filed with the Office of the Secretary of the Commonwealth on April 29, 2020. See *Bill Information – History, Senate Bill 413; Regular Session 2019-2020*, Pa. General Assembly, [https://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?syyear=2019&sind=0&body=S&type=B&bn=413](https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syyear=2019&sind=0&body=S&type=B&bn=413). S.B. 413 will need to be passed by a majority vote in both the Senate and House of Representatives in the next legislative session and then appear on the November 2021 general election ballot to be approved by a majority of the electors in order to be ratified and properly approved pursuant to the established procedures set forth under the Pennsylvania Constitution. See Pa. Const. Art. XI, § 1. If properly approved and ratified by a majority of voters in 2021, S.B. 413 will amend Article VII, Section 14 as follows:

- (a) The Legislature shall, by general law, provide a manner in which, and the time and place at which,

## 0134a

~~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. 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.~~

~~(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.~~

S.B. No. 413, Printer's No. 1624, 203rd General Assembly, Session of 2019, at 3 (Apr. 6, 2020) (removing strikethrough text and inserting bolded text).

The General Assembly later went on to establish a "Select Committee on Election Integrity" to "investigate, review and make recommendations concerning the regulation and conduct of the 2020 general election." *See* H. Res. 1032, Printer's No. 4432, 204th General Assembly, Session of 2019, at 3 (Sept. 28, 2020). The resolution establishing the committee noted that the "**Commonwealth has traditionally only allowed absentee voting by individuals with a statutorily defined excuse to do so, such as a physical disability or absence from their municipality on election day.**" *Id.* at 1 (emphasis added). It further notes that

“[b]efore the enactment of Act 77 of 2019, for an individual to vote absentee in this Commonwealth, the individual must have provided a permissible reason to do so....” *Id.* It is expressly acknowledged that Act 77 of 2019, “created a new category of mail-in voting ... [whereby] mail-in voters do not have to provide a customary reason to vote by mail and are able to return their ballots several days later than had traditionally been allowed.” *Id.* at 2.

As with every other amendment to the Pennsylvania Constitution, S.B. 413 faces additional hurdles and requirements imposed by the Pennsylvania Constitution before it becomes law and its changes have any valid, legally binding effect.<sup>1</sup> A majority of the Pennsylvania Senate and House of Representatives will each need to pass the constitutional amendment again in the upcoming 2020-2021 Session. If the General Assembly again passes the proposed amendment in that session, it will then be published publicly and presented to voters as a ballot question in 2021. Pennsylvania voters will have the final say on whether no-excuse mail-in/absentee voting will for the first time become a legal method of voting in Pennsylvania elections.

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1. It is worth noting that, even in light of the ongoing COVID-19 pandemic, the legislature chose not to use the “emergency amendment” process in the Pennsylvania Constitution that provides for an expedited amendment process. *See Pa. Const. Art. XI, § 1 (a)-(b).*



**III. Recent Unconstitutional Attempts to Expand Absentee Voting in Pennsylvania**

**A. Act 77 of 2019**

On October 31, 2019, Governor Wolf signed Act 77 of 2019 into law, which implemented sweeping reforms to the elections process in Pennsylvania. Among other changes, Act 77 “create[ed] a new option to vote by mail without providing an excuse”; allowed voters to request and submit mail-in or absentee ballots up to 50 days before an election; and established a semi-permanent mail-in and absentee ballot voter list. *See, e.g.,* Press Release, *Governor Wolf Signs Historic Election Reform Bill Including New Mail-in Voting*, Governor Tom Wolf (Oct. 31, 2019), <https://www.governor.pa.gov/newsroom/governor-wolf-signs-election-reform-bill-including-new-mail-in-voting/>.

**B. Act 12 of 2020**

On March 27, 2020, Governor Wolf signed Act 12 into law, *see* Act of Mar. 27, 2020, Section 1, P.L. No. 41, No. 12 (hereinafter “Act 12”), which made further significant changes to the Pennsylvania Election Code, which included *inter alia*:

- Amending the definition of “qualified mail-in elector” to delete the exclusion of “qualified absentee elector” in its definition. The only type of individuals now excluded from the definition are “person[s]

specifically prohibited from being a qualified absentee elector undersection 1301.” *Id.* Section 1.

- Eliminating penalties for applying for the incorrect kind of ballot (e.g., applying for absentee when mail-in was appropriate, vice-versa). *Id.* Section 8.
- Establishing the Pennsylvania Election Law Advisory Board to study the Election Code and other election matters and provide recommendations. *Id.* Section 15.
- Allowing for a 60% reduction in the number of polling places in each county and allowed for multiple polling places to be located in the same building. *Id.* Section 16.
- Postponing the date of the 2020 Primary Election to June 2, 2020. *Id.*

## ARGUMENT

### I. Standard for Granting a Preliminary Injunction.

A preliminary injunction’s purpose is to preserve the status quo and to prevent imminent and irreparable harm that might occur before the merits of a case can be heard and determined. *Ambrogi v. Reber*, 932 A.2d 969, 976 (Pa. Super. 2007), *Walter v. Stacy*, 837 A.2d 1205, 1209 (Pa. Super. 2003).

Pennsylvania Law is well settled regarding the prerequisites that must be established by the movant in order to obtain a Preliminary Injunction. “There are

six ‘essential prerequisites’ that a party must establish prior to obtaining preliminary injunctive relief. The party must show: 1) ‘that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages’; 2) ‘that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings’; 3) ‘that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct’; 4) ‘that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits’; 5) ‘that the injunction it seeks is reasonably suited to abate the offending activity’; and, 6) ‘that a preliminary injunction will not adversely affect the public interest.’ *Warehime v. Warehime*, 580 Pa. 201, 209-210, 860 A.2d 41, 46-47 (2004) (citing, *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount Inc.*, 573 Pa. 637, 828 A.2d 995, 1002 (2003)). Additionally, the Court may enter an *ex parte* injunction if the moving party can demonstrate that “immediate and irreparable injury will be sustained before notice can be given or a hearing held.” Pa. R. Civ. P. 1531(a); *Commonwealth ex rel. Costa v. Boley*, 441 Pa. 495, 272 A.2d 905, 909 (1971).

**II. The Injunction Is Necessary to Prevent Immediate and Irreparable Harm to the Petitioners That Cannot Be Otherwise Adequately Compensated by Damages.**

The injunction in this case is necessary to prevent Petitioners from suffering the permanent, irreparable harm of an illegal election conducted pursuant to unconstitutional laws. As an initial matter, the Supreme Court has consistently held that, “[w]hen the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.” *Pennsylvania Public Utility Commission v. Israel*, 356 Pa. 400, 406, 52 A.2d 317, 321 (1947); *see also Council 13, AFSCME v. Casey*, 141 Pa. Cmwlth. 199, 595 A.2d 670 (1991). An illegal action, should it be allowed to continue, is an irreparable harm. *Milk Marketing Board v. United Dairy Farmers Co-op Association*, 450 Pa. 497, 299 A.2d 191 (1973) (plurality) (affirming issuance of a preliminary injunction and finding irreparable harm because Petitioners violated state statute by selling milk below the minimum prices mandated by state law); *Pennsylvania Public Utility Commission v. Israel*, 356 Pa. 400, 52 A.2d 317 (1947) (affirming issuance of a preliminary injunction on the basis that Petitioners violated a state statute requiring taxicabs to have a certificate of public convenience); *Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28 (Pa. Cmwlth. 2009) (affirming issuance of a preliminary injunction

and finding that irreparable harm was presumed where there was a credible violation of the consumer protection law).

The same kind of irreparable harm, as a matter of law, has been found in instances where legislative acts that are preempted or not in accordance with a higher authority. *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1180 (Pa. Cmwlth. Ct. 2016). In *Firearm*, the Court found that a town ordinance that violated state statutory law constituted irreparable injury.

“[R]egardless of the persuasiveness of the Township's argument, [] binding case law mandates that the Ordinance is preempted by section 6120(a) of the UFA and, therefore, the Township's enactment of the same violates the UFA. Thus, issuance of a preliminary injunction is necessary to prevent immediate and irreparable harm, *i.e.*, the continued statutory violation.” *Id.*

“When an alleged deprivation of a constitutional right is involved ... most courts hold that no further showing of irreparable injury is necessary.” *Bullock v. Carney*, 806 F. App'x 157, 160 (3d Cir. 2020) (quoting 11A Charles Alan Wright & Arthur P. Miller, *Fed. Prac. & Proc.*, § 2948.1 (3d ed. Apr. 2012 update)).

Accordingly, the per se irreparable harm as a matter of law standard need be applied in situations where legislation is in violation of the Pennsylvania Constitution. Here the General Assembly enacted a law -Act 77 - that is clearly in violation of the Pennsylvania Constitution. Should the court find, based on the

## 0141a

facts laid out in the Complaint and the arguments set out below, that it is at least likely that a violation of the Pennsylvania Constitution occurred, then the inquiry should end there – immediate and irreparable harm is found as a matter of law.

In the alternative, should the Court not find irreparable harm as a matter of law, the irreparable harm prong is nonetheless satisfied because the November 3, 2020, General Election was conducted pursuant to unconstitutional legislation; a failure by the court to enjoin early certification of those derivatively unconstitutional results (which to this point include mail-in ballots), would strip the court of the ability to redress the harm suffered by Petitioners and all Pennsylvanians. Once elections are certified and electors are appointed, the court's ability to undo such certification and provide redressability for the November 3, 2020, General Election becomes impossible.

For presidential and vice-presidential elections, states must choose their electors “at least six days before the time fixed for the meeting of electors” in order to meet the federal “safe harbor” deadline. 3 U.S.C. § 5. For the 2020 General Election, electors must be chosen by December 8, 2020, in order to ensure that they are able to meet and vote at the time prescribed by law – December 14, 2020, at 12:00 PM – and have that vote counted in Congress. Once such votes are cast by the presidential and vice-presidential electors, this court would lose any authority to provide relief to Petitioners, and Petitioners would have no other forum in which

to have their claims redressed. At a minimum, the Secretary and Governor should be enjoined from certifying and appointing presidential and vice-presidential electors until this Court is able to issue a decision on the merits of this action.

Although no similar deadline exists with regard to United States House of Representatives election , it is unlikely that the Court would be able to provide relief once the returns of these races have been certified and the Governor has transmitted those returns to the Speaker of the House of Representatives pursuant to 25 Pa. Stat. § 3163. Similarly, with respect to General Assembly elections, there is no certification deadline, however, pursuant to the Pennsylvania Constitution the new General Assembly is seated on December 1<sup>st</sup> after which, relief would be impracticable. Pa. Const. Art. II, Sec, 2.

The failure of an election to choose electors, must be resolved subsequently by the legislature prior to the appointment of electors “in such a manner as the legislature of such State may direct.” 3 U.S.C. § 2. Thus, the determination of a failure in the election must be resolved prior to the Secretary exercising her authority to certify the elections, prior to the Governor issuing commissions for the Electors, and prior to the Electors submitting their votes for the Electoral College. Without an immediate temporary injunction, therefore, relief becomes impossible, and the harm is rendered irreparable. Finally, should this litigation, and the subsequent appellate process, continue past December 14th – the date that the

Electors cast their votes– the court would have no power in law or in equity to undue the resulting wrongs.

**III. Greater injury would result from allowing certification of election results conducted pursuant to an unconstitutional mail-in voting scheme than from prohibiting it.**

The second prerequisite to the issuance of a preliminary injunction is that the party requesting the injunction must show that greater injury would result from refusing an injunction than from granting it and concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. *The York Grp., Inc. v. Yorktowne Caskets, Inc.*, 924 A.2d 1234, 1244 (Pa. Super. 2007). This requirement is satisfied here as well.

The injunction requested is temporary and will only prevent the Secretary and Governor from performing certain ministerial actions far in advance of the statutory deadlines set in Federal Law (December 8<sup>th</sup> for certification of electors, December 14<sup>th</sup> for casting of electoral votes) or the Pennsylvania Constitution (December 1<sup>st</sup> for General Assembly to take office). Should the Court ultimately find for the Respondents, the only harm suffered by the Respondents is a slight delay of certification of results, a largely procedural step that benefits Respondents in no way if done early. Conversely, if the limited injunction is not granted, Respondents harm becomes irreparable, and Petitioners, along with all Pennsylvanians, must permanently suffer the fruits of an unconstitutional election.



Juxtaposing the harms, it becomes clear that the lack of injury from a short delay to a procedural mechanism for the sake of preserving any form of redressability for Petitioners is a favorable outcome for all parties involved.

**IV. Granting the Preliminary Injunction Will Maintain the Status Quo and Prevent Respondents from Inflicting Permanent Damage Through Their Illegal Conduct.**

The sole object of a preliminary injunction is to preserve the subject of the controversy in the condition in which it is when the order is made, it is not to subvert, but to maintain the existing status until the merits of the controversy can be fully heard and determined. *Chipman ex rel. Chipman v. Avon Grove School Dist.*, 841 A.2d 1098, 1101 (Pa. Cmwlth. 2004.) (citing *Little Britain Township Appeal*, 651 A.2d 606 (Pa. Cmwlth. 1994)). “The status quo to be maintained by a preliminary injunction is the last actual, peaceable and lawful noncontested status which preceded the pending controversy.” *Valley Forge Historical Soc’y v. Washington Memorial Chapel*, 493 Pa. 491, 501, 426 A.2d 1123, 1129 (Pa. 1981).

To be clear, the harm suffered by Petitioners is not simply that of being subject to unconstitutional legislation, though that is a cognizable harm under the law. The realized harm is the resulting wrongs of conducting the November 3, 2020, General Election pursuant to unconstitutional legislation. Prior to the November 3, 2020, General Election taking place, there were no results to be certified – indeed certification would be logically impossible, as no results yet

existed. As it stands at the time of the submission of this motion, the returns and results of the November 3, 2020, elections have also not been certified, and, consequently, electors have not yet been appointed. Thus, a narrow window exists in which a properly tailored injunction issued by this court will preserve the status quo as it existed prior to the wrongful conduct at issue. Such an injunction would preserve Petitioners' rights and allow the court adequate time to decide the presented questions of law, while retaining the ability to meaningfully redress the harm. Moreover, as mentioned above, such an injunction would in no way prejudice Respondents. If injunctive relief is not granted, and a final hearing on the merits is not immediately scheduled, Petitioners will be robbed of their ability to see their harms redressed.

The requested injunctive relief in this matter is appropriate because it will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Consequently, the third prerequisite necessary to the grant of preliminary injunctive relief has been satisfied.

**V. Act 77 is a Clear Violation of the Constitution and the Pennsylvania Supreme Court has Previously Struck Down Similar Laws and Set Aside Illegal Mail-in Ballots, Thus Petitioners are Likely to Prevail on the Merits.**

The fourth prerequisite to the issuance of a preliminary injunction is that the Petitioners must show that the activity they seek to restrain is actionable, that their

right to relief is clear, and that the wrong is manifest, or, in other words, must show that they are likely to prevail on the merits.

To establish a, “clear right to relief,” the party seeking an injunction need not prove the merits of the underlying claim, but need only show that substantial legal questions must be resolved to determine the rights of the respective parties. *Walter v. Stacy*, 837 A.2d 1205, 1209 (Pa. Super. 2003) (quoting, *Chmura v. Deegan*, 581 A.2d 592, 593 (Pa. Super. 1990)); *see also*, *Ambrogi v. Reber*, 932 A.2d 969, 976 (Pa. Super. 2007) (citing *Walter*, 837 A.2d at 1209 (“[T]he party seeking an injunction is not required to prove that he will prevail on his theory of liability, but only that there are substantial legal questions that the trial court must resolve to determine the rights of the parties.”)).

**A. The Pennsylvania Constitution require voting to take place in person, subject only to specified absentee voting exceptions.**

Article I, Section 4 and Article II, Section 1 of the U.S. Constitution grant plenary authority to state legislatures to enact laws that govern the conduct of elections. Yet, while the “legislature may enact laws governing the conduct of elections[,],... ‘no legislative enactment may contravene the requirements of the Pennsylvania or United States Constitutions.’” *Kauffman v. Osser*, 441 Pa. 150, 157-58 ( (1970) (Cohen, J. dissenting) (citing *Winston v. Moore*, 244 Pa. 447, 91 A. 520 (1914), and quoting *Shankey v. Staisey*, 436 Pa. 65, 68-69, cert denied 396 U.S. 1038 (1970)); *see also*, *e.g.*, *Smiley v. Holm*, 285 U.S. 355, 369 (noting that

state Legislatures are constrained by restrictions imposed by state constitutions on their exercise of the lawmaking power, even when enacting election laws pursuant to U.S. Constitutional authority).

Article VII, Section 1 of the Pennsylvania Constitution outlines the authorities under which the Pennsylvania legislature enacts election laws. As the Pennsylvania Supreme Court has noted, in evaluating absentee voting legislation, one must first look at what requirements the constitution places on qualifying to be an elector in Pennsylvania. “For the orderly exercise of the right resulting from these qualifications ... the Legislature must prescribe necessary regulations .... But this duty and right inherently imply that such regulations are to be subordinate to the right .... As a corollary of this, no constitutional qualification of an elector can in the least be **abridged, added to, or altered** by legislation or the pretence of legislation.” *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. 131, 135-36 (Pa. 1924) (emphases added).

The current Pennsylvania Constitution sets out the following qualifications for voting: (1) 18 years of age or older; (2) citizen of the United States for at least one month; (3) has residence in Pennsylvania for the 90 days immediately preceding the election; and (4) has residence in the “election district where he or she *shall offer to vote* at least 60 days immediately preceding the election ....” Pa. Const. Art. VII, § 1 (emphasis added). As held by the Pennsylvania Supreme Court

in *Chase v. Miller*, 41 Pa. at 418-19, and *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. at 134-35, “To ‘offer to vote’ by ballot is to present one’s self, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it. The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil.” The Pennsylvania Constitution has not been amended to change or eliminate this qualification since *Chase*. Therefore, in-person voting remains a requirement under law, unless otherwise exempt by the constitution.

In addition to Article VII, Section 1, the language of Article VII, Section 5 also provides for certain voting requirements that as a general matter can only be accomplished in person. Section 5 prescribes that “[a]ll elections by the citizens shall be by ballot or by such other method as may be prescribed by law: ***Provided, [t]hat secrecy in voting be preserved.***” Pa. Const. Art VII, § 5 (emphasis added). The secrecy requirement is determinative. Between 1888 and the early 20th Century, most states adopted secret ballot laws (also known as the “Australian ballot”) in response to growing concern about widespread fraud and coercion in elections. See John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J.L. Reform 483, 486 (2003). Secret ballots have four significant characteristics:

1) the ballots were printed and distributed at public expense; 2) they contained the names of all the candidates duly nominated by law, either by party convention or the petition of voters (a “blanket ballot”); **3) they were distributed only by election officers at the polling place (“exclusive” or “official ballot”)** and **4) there were detailed provisions for compartments and other physical arrangements to ensure secrecy in casting the vote.”**

*Id.* at 488 (emphasis added).

In Pennsylvania, the secrecy provision remains “part of our fundamental law.” *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. at 138. mail-in voting, in the extreme form implemented by Act 77, inherently does not meet the historical standards of the constitution’s secrecy requirements and provides little other protections to ensure that “secrecy in voting” is preserved. Therefore, absent specific constitutional exceptions, the Legislature is bound by the in person voting requirement.

Article VII, Section 14 provides the only such exceptions to the *in propria persona* voting requirement of the Pennsylvania Constitution, in four specific circumstances. It states:

(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

## 0150a

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.

(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.

Pa. Const. Art. VII, § 14. Importantly, outside the aforementioned prescribed situations, the constitution does not provide a mechanism for the Legislature to allow for expansion of absentee voting.

**B. Act 77 is illegal and void ab initio because it attempts to expand the exceptions to *in propria persona* voting requirements beyond what the Pennsylvania Constitution currently allows.**

“The Legislature can confer the right to vote only upon those designated by the fundamental law, and subject to the limitations therein fixed.” *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. at 137 (citing *McCafferty v. Guyer*, 59 Pa. 109). Act 77 unconstitutionally expands the scope of absentee voting permitted by the Pennsylvania Constitution to all voters.

Act 77, as amended, defines a “qualified mail-in elector” as “a qualified elector.” 25 Pa. Stat. § 2602(z.6). A “qualified elector” is “any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by

## 0151a

continued residence in his election district, shall obtain such qualifications before the next ensuing election.” *Id.* § 2602(t). In short, Act 77 qualifies all electors as mail in electors.

Moreover, newly-created 25 Pa. Stat., Chapter 14, Article XIII-D, § 3510 (25 Pa. Stat. § 3150.11) states:

§ 3150.11. Qualified mail-in electors.

(a) General rule.-- A qualified mail-in elector shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.

(b) Construction.-- The term “qualified mail-in elector” shall not be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition in section 102(t).

Separately, absentee voting is defined in 25 Pa. Stat., Chapter 14, Article 13.3146.1 (25 Pa. Stat. § 3146.1), which outlines a variety of categories of eligibility that are each consistent with Article VII, Section 14 of the Pennsylvania Constitution. *See also* 25 Pa. Stat. § 2602(w) (defining 14 types of qualified absentee electors).

Act 77 created a false distinction between the existent “absentee voting” and “mail-in voting”. Taking an inartful twist such as simply renaming the mechanism yields a distinction without a difference. The Legislature subverted the limitations in Section 14 by creating a fictitious distinction between the pre-existing “absentee voting” and the newly created “mail-in voting.” In reality, there is no distinction



## 0152a

except that mail-in voting is simply absentee voting without any of the inconvenient conditions precedent that the constitution requires in order for someone to be permitted to cast a ballot without being physically present at the polls on election day.

Absentee voting is only Constitutionally authorized under the four limited circumstances specifically delineated under Section 14, whereas Act 77 opens absentee voting to all other qualified voters in the Commonwealth who do not meet the constitutional requirements for absentee voting, without excuse or limitation, and simply relabels the voting mechanism as “mail-in voting” as opposed to “absentee voting.” Taking an inartful twist such as simply renaming the mechanism yields a distinction without a difference.

The Legislature further attempted to disguise the obvious redundancy between mail-in voting and absentee voting by refusing to add “mail-in voting” to 25 Pa. Stat., Art. XIII (which governs “Voting By Qualified Absentee Elector”) and instead created a new Article (25 Pa. Stat. Art. XIII-D, “Voting By Qualified Mail-In Electors”). By doing this, it appears the Legislature intended to obscure that the two are one in the same, except that absentee voters are required to satisfy additional conditions mandated by the Pennsylvania Constitution whereas mail-in voters are not. The goal is clear: vastly expand absentee voting and remove all conditions precedent and requirements to make it a universal voting mechanism,

while obscuring the fact that such voting method would violate the Pennsylvania Constitution and could only be properly enacted through a Constitutional Amendment. However, renaming a vast, unconstitutional expansion of absentee voting as “mail-in voting” does not, and cannot make the conduct valid or effective as a matter of law.<sup>2</sup>

Controlling Pennsylvania Supreme Court precedent makes clear that where a particular Constitutional provision provides for a specific mechanism of action, any attempt by the Legislature to alter or include a different procedure is unconstitutional. *South Newton Township Electors v. South Newton Township Supervisor, Bouch*, 575 Pa. 670, 675 (2003). Conversely, the Pennsylvania Constitution may also specifically reserve to the Legislature the authority to determine the procedural mechanisms by which the Constitutional mandates are carried out, thereby allowing the Legislature to impose conditions or requirements not established under the Pennsylvania Constitution. *Id.*

The Supreme Court has previously focused on whether the Pennsylvania Constitution establishes exclusive grounds for achieving a particular act or result, and has held that “impracticality” or unfairness of the more rigid procedure in the

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2. In a haphazard attempt to create the distinction between absentee and mail-in, the legislature defined “qualified mail-in elector” as a “qualified elector who is not a qualified absentee elector.” Again, the definitional distinction is non-yielding because there is no longer any functional purpose to applying for an absentee ballot.

Constitution is no reason to preserve a conflicting legislation. *Id.* at 677. Here, the Pennsylvania Constitution provides for two exclusive methods of voting: (1) in-person, and (2) by absentee, which is exclusively permitted under the four above-described circumstances. “No principle is more firmly imbedded in our law than that when the Constitution expressly provides a single method for accomplishing a particular purpose that method is exclusive.” *Citizens Committee to Recall Rizzo v. Board of Elections of City and County of Philadelphia*, 470 Pa. 1, 34 (1976) (citing *Com. Ex rel Smillie v. McElwee*, 327 Pa. 148, 158-159 (1937)). The mail-in scheme functions to make the exclusive absentee ballot structure into an all-inclusive one.

Challenges to unconstitutionally enacted mail-in voting legislation date as far back as *Chase v. Miller* in 1864, where the Pennsylvania Supreme Court struck down the Military Absentee Voting act of 1839 for violating the 1838 Pennsylvania Constitution that contained no absentee voting provision. *See generally Chase v. Miller*, 41 Pa. 403 (1862) After the Pennsylvania Constitution was amended to allow for military absentee voting, the Pennsylvania Supreme Court again struck down a civil absentee voting act in the 1924 case *In re Contested Election in Fifth Ward of Lancaster City* for attempting to grant civilians the right to absentee voting in violation of the strict limitations set out by the constitution. *See generally* 281 Pa. 131 (1924). In *Kaffuman v. Osser*, the Court

dealt with a request for declaratory relief regarding legislation that expanded the eligibility for absentee voting to “qualified electors and their spouses while on ‘vacations’ ....” 441 Pa. at 153. While the majority declined to reach the merits based on standing issues in that case, the dissent was clear in its interpretation of the Pennsylvania Constitution’s limitations on voting other than in-person on election day:

The statute is [] a clear and unconscionable violation of the Pennsylvania Constitution, which the majority condones and I must condemn. Absent a constitutional amendment, such enactment cannot constitutionally stand.

This is such a clear constitutional violation and such an open invitation to fraud that the justice and the sanctity of the ballot demand a remedy.... We should reach the issues here and not retreat behind the facade of standing. If there is to be judicial protection of the sanctity of the ballot from unconstitutional exercise of legislative authority in establishing voting procedures, standing should be permitted and the issues determined.

*Kauffman*, 441 Pa. at 157-59 (citations omitted).

**C. The General Assembly was fully aware that a constitutional amendment was necessary to implement the election code changes included in Act 77.**

Unlike Act 77 (S.B. 421), which was introduced in March 2019 and passed in October of 2019, the corresponding proposed Constitutional Amendment (also introduced in March of 2019) was debated and edited until April of 2020. Article XI, Section 1 of the Constitution of Pennsylvania requires amendments to be

## 0156a

passed by majority vote in both the House and Senate in two separate legislative sessions, then published and advertised for three consecutive months in two different newspapers in each county ahead of the next general election, and finally submitted as a ballot question during the general election to be voted on by the qualified voters. Pa. Const. Art. XI, § 1. Only if a majority of the qualified voters vote to approve the proposed constitutional amendment, after strict compliance with the procedural prerequisites established under Article XI, Section 1, is the proposed constitutional amendment ratified and legally effective. *See Pa. Const., Art. XI, §1.*

There can be no good faith dispute that the proposed amendment necessary to authorize the Legislature's desired mail-in voting scheme has not been fully ratified, as the proposed amendment still needs to be approved a second time by the legislature, as well as voted on by Pennsylvania voters. *See Pa. Const. Art. XI, § 1* (stating the procedure necessary for a constitutional amendment to become effective). Likewise, there can be no genuine dispute or disagreement over the fact that Act 77 was enacted in blatant violation and disregard of Article VII, Section 14 of the Pennsylvania Constitution and the universal mail-in voting scheme enacted by the Legislature under color of law and fervently promoted by the Secretary is unconstitutional and void *ab initio*. In order to pass any law authorizing no-excuse mail-in voting or otherwise modifying or expanding the

availability of absentee voting in any capacity, the Legislature was required to first follow and strictly adhere to the non-negotiable constitutional procedures for amending the Pennsylvania Constitution, which was not done here.

Moreover, if the Legislature felt compelled to enact universal no-excuse mail-in voting due to unanticipated circumstances caused by the COVID-19 pandemic and could not amend the constitution quickly enough for the 2020 Primary Election, the Pennsylvania Constitution expressly provides for emergency amendments for exactly this type of scenario. *See Pa. Const., Art. XI, § 1; see also Act 12, Act of Mar. 27, 2020, Section 1, P.L. No. 41, No. 12, at Section 16* (moving ahead the 2020 primary election date to June 2020). Despite the Pennsylvania Constitution expressly establishing a process for shortcutting the lengthy and purposefully burdensome amendment process under emergency circumstances, the Legislature neglected this lawful mechanism entirely and instead attempted to enact substantial constitutional amendments aimed at fundamentally overhauling Pennsylvania's voting system by enacting a general law.

The legislative statement made for the pre-cursor legislative vehicle to S.B. 413 (S.B. 411) stated that:

Pennsylvania's current Constitution restricts voters wanting to vote by absentee ballot to situations where . . . 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.’ We propose to amend the Constitution to eliminate these limitations, empowering voters to request and submit absentee ballots for any reason – allowing them to vote early and by mail.”

Senator Mike Folmer, *et al.*, Senate Co-Sponsorship Memoranda (Jan. 29, 2019, 10:46 AM),

[https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=](https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28056)

[S&SPick=20190&cosponId=28056](https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28056). Notably, the Legislature itself uses the terms

“absentee voting” and “voting by mail” interchangeably, demonstrating the lack of

functional distinction between the two. The very purpose of the proposed

amendment is the same as Act 77: permitting universal mail-in voting, without the

need for any excuse or condition. Article VII, Section 14 of the Constitution does

not authorize universal mail-in voting, thus it is indisputable that a constitutional

amendment must first be passed and ratified by the qualified voters in strict

compliance with Article XI before any voter could cast a valid and lawful ballot

without being physically present at the polls on election day or meeting the

conditions precedent to qualify as an absentee voter under Article VII, Section 14.

*See, e.g. Cortes*, 636 Pa. at 571 (all proposed constitutional amendments must be

## 0159a

submitted to and approved by the qualified electors). The Legislature admits this by acting to change the Constitution concurrently with passing Act 77 and creating, among other laws, 25 Pa. Stat. § 3150.11.

Absentee voting and mail-in ballots are distinct only in name, and in that the latter is the former without the limitations the Constitution imposes. Both textual interpretation and policy dictate the Act 77 is duplicative of 25 Pa. Stat. Article 13 (governing absentee electors). Otherwise, absentee voting is strictly more onerous than the new “mail-in voting.” Act 77 circumvents the Pennsylvania Constitution. The practical realities and extremely onerous amendment process make the course of events almost understandable, in light of the powerful, albeit misguided, approach to increase voter participation. But what must be remembered, and repeated, is that the constitutional amendment process is onerous for precisely the situation where legislation attempts a broad, sweeping change to the processes surrounding fundamental rights. To reject the onerous, inefficient nature of an amendment process is to reject the very ability of a constitution to protect any right.

Because the Legislature failed to strictly comply with the requirements of Article XI, the efforts to amend the Constitution to improperly authorize universal mail-in voting are fatally defective and inherently unconstitutional, having no lawful basis or effect. *Sée, e.g., Kremer v. Grant*, 529 Pa. 602, 613, 606 A.2d 433,



439 (1992) (“[T]he failure to accomplish what is prescribed by Article XI infects the amendment process with an incurable defect”); *Sprague v. Cortes*, 636 Pa. 542, 568, 145 A.3d 1136, 1153 (2016) (holding that matters concerning revisions of the Pennsylvania Constitution require “the most rigid care” and demand “[n]othing short of literal compliance with the specific measures set forth in Article XI.”) (quoting *Commonwealth ex rel. Schnader v. Beamish*, 309 Pa. 510, 164 A. 615, 616-17 (Pa. 1932)). “However laudable the purpose of the act..., it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.” *In re Contested Election in Fifth Ward of Lancaster City*, 281 Pa. at 137-38. The fifth requirement for Preliminary Injunction is thus met, as Petitioners show a clear likelihood of success on the merits.

**VI. An Injunction Against Respondents is Reasonably Necessary to Prevent Irreparable Harm.**

The fifth prerequisite necessary for granting preliminary injunctive relief is that the moving party must show that the injunction it seeks is reasonably necessary to prevent irreparable harm. Pennsylvania courts sitting in equity have jurisdiction to prevent the continuance of acts prejudicial to the interest of individual rights, including the authority to enjoin the wrongful acts where monetary damages are inadequate. *The York Grp., Inc.*, 924 A.2d, at 1244 (Pa. Super. 2007).

## 0161a

The injunction Petitioners seek is reasonably suited to abate the offending activity. A preliminary injunction at this point would merely prevent the fruits of an unconstitutional election from becoming “final,” thereby preserving Petitioners’ ability to continue to seek permanent relief from this court. The remedy requested in the instant motion is narrowly tailored to prevent immediate and irreparable harm to Petitioners that has been caused by an election perpetrated pursuant to an unconstitutional election code.

Petitioners, and the entire Pennsylvania electorate, were subject to an unconstitutional election code leading up to and through the November 3, 2020, General Election. Indeed, Petitioners continue to remain subject to such unconstitutional laws. Act 77 was enacted without regard for the Pennsylvania Constitution, nor for the protections granted therein. It is without question: a simple delay in the certification of the election results that in no way harms Respondents is more than reasonably necessary to provide the court with time to review and make a decision on the merits.

If injunctive relief is granted, the Petitioners’ remedy will be preserved. The preliminary injunction requested would not last longer than necessary under the circumstance, but only until the rights of the parties could be determined by a full and final hearing on the merits. In the case at bar, there is no doubt that grant of the requested preliminary injunctive relief is reasonably suited to abate the offending

activity until the matter can be fully adjudicated. For the reasons as set forth herein, the fifth prerequisite necessary for granting preliminary injunctive relief has been satisfied by Petitioners.

**VII. The Public Interest Will be Served by Preventing the Premature Certification of Election Results that Includes Illegal Mail-in Ballots.**

The sixth and final prerequisite that must be satisfied before a preliminary injunction may be ordered is that the party seeking an injunction must show that the injunction will not adversely affect the public interest. The Respondents' actions constitute a flagrant attempt to deny the electorate the protections afforded to it by the Pennsylvania Constitution. Respondents' actions represent a concerted effort to subvert the Pennsylvania Constitution, especially in light of their tacit acknowledgement that the Constitution required amendment, their attempt to make such amendment, and their abandonment of such efforts.

“Among the factors that a court must weigh in deciding whether or not to grant a preliminary injunction is the effect such a preliminary injunction would have on the public interest.” *Philadelphia v. District Council 33*. AFSCME, 528 Pa. 355, 364, 598 A.2d 256, 260 (Pa. 1991). See also, *Allegheny Anesthesiology Associates v. Allegheny General Hosp.*, 826 A.2d 886, 893 (Pa. Super. 2003) (harm to the public is an additional consideration in the issuance or denial of a preliminary injunction).

## 0163a

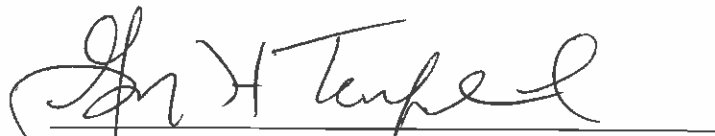
In the instant matter, there exists no evidence to support a claim that the issuance of a preliminary injunction will in any way harm the public interest. Rather, the public interest will be served well by granting injunctive relief because there is no greater public interest than that of an electorate exercising its right to a free, fair, and lawful election. That public interest will not be harmed by a temporary delay in certification while the Court decides the questions of law raised by the instant action. The public interest strongly favors issuance of injunctive relief.

### CONCLUSION:

As all six of the prerequisites for injunctive relief are satisfied and the issuance of a preliminary injunction is reasonable and necessary. As a result, Petitioners' motion should be granted.

Respectfully submitted,

OGC Law, LLC



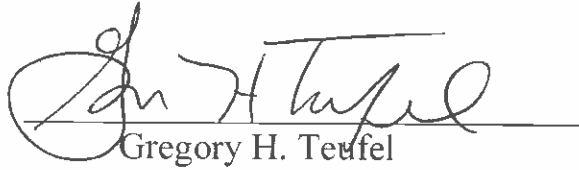
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Gregory H. Teufel, Esq.  
*Attorney for Petitioners*

CERTIFICATE OF COMPLIANCE

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

Date: November 22, 2020

  
Gregory H. Teufel

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a true and correct copy of the foregoing Memorandum of Law in Support of Petitioners' Motion for Emergency/Special Prohibitory Injunction via first class U.S. mail upon the following:

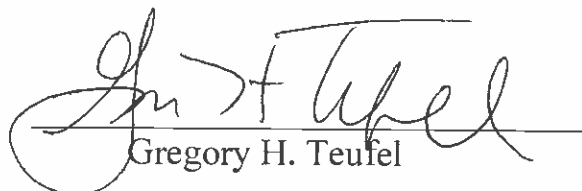
Commonwealth of Pennsylvania  
Office of the Attorney General  
1600 Strawberry Square  
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Kathy Boockvar  
Secretary of State  
302 N. Office Building  
Harrisburg, PA 17120

Pennsylvania General Assembly  
501 N. 3rd Street  
Harrisburg, PA 17120

Honorable Thomas W. Wolf  
Office of the Governor  
508 Main Capitol Building  
Harrisburg, PA 17120

Date: November 22, 2020

  
Gregory H. Teufel

# APPENDIX I

0166a

Received 11/27/2020 7:31:59 AM Supreme Court Middle District

Filed 11/27/2020 7:31:00 AM Supreme Court Middle District  
68 MAP 2020

## IN THE SUPREME COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,  
SEAN PARNELL, THOMAS A.  
FRANK, NANCY KIERZEK,  
DEREK MAGEE, ROBIN SAUTER,  
MICHAEL KINCAID, and WANDA  
LOGAN,

Petitioners,

v.

COMMONWEALTH OF  
PENNSYLVANIA, PENNSYLVANIA  
GENERAL ASSEMBLY,  
HONORABLE THOMAS W. WOLF,  
and KATHY BOOCKVAR,

Respondents.

Docket No. 68 MAP 2020

### **RESPONSE TO APPLICATION FOR THE COURT TO EXERCISE EXTRAORDINARY JURISDICTION**

Filed on behalf of Petitioners,  
The Honorable Mike Kelly, Sean  
Parnell, Thomas A. Frank, Nancy  
Kierzek, Derek Magee, Robin  
Sauter, Michael Kincaid, and  
Wanda Logan

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## INTRODUCTION

Act 77 (Act of October 31, 2019, P.L. 552, No. 77 (“Act 77”)), the most expansive and fundamental change to the Pennsylvania election code to date, is unconstitutional. Under Act 77’s no excuse mail-in ballot scheme, any and all qualified electors are eligible to vote by mail, with no justification required. Beginning with the Military Absentee Ballot Act of 1839, this Court has consistently rejected attempts to expand mail-in voting by statute – uniformly holding that a constitutional amendment is required to expand mail-in voting. Act 77 is the Commonwealth’s latest attempt to override the protective limitations on absentee voting proscribed by Pennsylvania’s Constitution, as interpreted by this Court over the last one hundred and eighty-one years. This Court should not deviate from the clear and predictable standard that it has established.

This Court’s decisions regarding Article VII of the Pennsylvania Constitution make clear that there are two, and only two, constitutionally permissible mechanisms by which an elector may cast a ballot : 1) offering your ballot *in propria persona* at the polling place on election day; and 2) exceptions to the first method limited to those persons qualifying under the absentee voting provision in Article VII, § 14 of the Pennsylvania Constitution.



## 0168a

As with prior attempts to illegally expand mail-in voting by statute, which have been struck down by this Court going as far back as the Military Absentee Ballot Act of 1839, Act 77 is another illegal attempt to override the limitations on absentee voting without first following the necessary procedure to amend the Pennsylvania Constitution. Respondents have at least begun the steps necessary to certify the results of the November 3, 2020, General Elections (“the General Elections”), which was undertaken pursuant to an unconstitutional, universal, no-excuse mail-in voting scheme. Absent intervention by this Court, Respondents will complete the process of certifying the results of an election conducted in a manner which this Court has repeatedly rejected.

The Commonwealth Court wisely began to intervene with preliminary injunctive relief in order to prevent irreparable injury from the resulting wrongs of an election conducted pursuant to an unconstitutional and invalid mail-in voting scheme. This Court or the Commonwealth Court should make that relief permanent and strike down Act 77 as unconstitutional. Petitioners do not oppose the application of the Commonwealth of Pennsylvania, Governor Thomas W. Wolf, and Secretary of the Commonwealth Kathy Boockvar (“the Executive-Respondents”) for this Court to exercise extraordinary jurisdiction, should the Court find it

appropriate. Regardless of the procedural posture, for the reasons stated herein, Petitioners urge this Court to either grant the relief Petitioners requested, or such other or further relief as this Court may deem proper, or allow the Commonwealth Court to do so.

### **PROCEDURAL HISTORY**

The procedural history set forth in Petitioners' Response to Jurisdictional Statement is incorporated by reference as if fully set forth herein.

### **MATERIAL FACTS**

#### **I. Background**

In 2019, the Pennsylvania legislature desired to implement no-excuse mail-in voting and initiated the process of proposing an amendment to the Pennsylvania Constitution to allow for no excuse mail-in voting. Petition ¶ 28. Pursuant to the Pennsylvania Constitution, Article XI, §1, an amendment to the Constitution must be approved by a majority of the members of both the Senate and House of Representatives in two separate legislative sessions, then submitted as a ballot question to be voted on by the electors. If, after approval by two legislative sessions, a majority of the electors then vote to approve the proposed constitutional amendment, only then will the amendment take effect.

## 0170a

The proposed constitutional amendment initiated by the legislature have been approved by a majority vote of both the House and Senate in two consecutive legislative sessions, nor has either been submitted to the qualified electors as a ballot question and approved by a majority vote of the citizens. Petition ¶ 32. The legislature proceeded to implement Act 77 anyway, in direct contravention of the Pennsylvania Constitution. Petition ¶ 33.

### **II. The In-Progress Efforts to Amend the Pennsylvania Constitution to Allow No Excuse Absentee Voting**

In 2019, the Pennsylvania General Assembly began the process for amending Article VII, § 14 of the Pennsylvania Constitution in order to drastically expand absentee voting – permitting all voters to do so without an excuse. Senate Bill 411, 2019 (later incorporated into Senate Bill 413). Petition ¶ 36. The legislative history of the proposed amendment recognizes that “Pennsylvania’s current Constitution restricts voters wanting to vote by absentee ballot to [specific] situations...” Senator Mike Folmer, et al., Senate Co-Sponsorship Memoranda (Jan. 29, 2019, 10:46 AM),

<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?number=S&SPick=20190&cosponId=28056>. Petition ¶ 37. The amendment

proposes to “eliminate these limitations, empowering voters to request and

## 0171a

submit absentee ballots for any reason – allowing them to vote early and by mail.” *Id.*

Introduced on March 19, 2019, S.B. 413 as originally filed was a joint resolution proposing an amendment to the Pennsylvania Constitution related to judicial retention elections and contained nothing related to the constitution’s absentee voting provision. Petition ¶ 38. The Senate passed the bill on October 22, 2019 and it was sent to the House where it was referred to the House Committee on State Government a few days later. Petition ¶ 39. On April 6, 2020, S.B. 413 was reported as amended from committee. Petition ¶ 40. S.B. 413’s caption was changed from the introduced version which read: “A Joint Resolution proposing separate and distinct amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for tenure of justices, judges and justices of the peace,” to “A Joint Resolution proposing separate and distinct amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for tenure of justices, judges and justices of the peace; and **further providing for absentee voting.**” (emphasis added). Petition ¶ 41.

In its amended form with the added provisions seeking to amend the Pennsylvania Constitution’s absentee voting restrictions, S.B. 413 was

## 0172a

passed by a majority of both Houses and filed with the Office of the Secretary of the Commonwealth on April 29, 2020. Petition ¶ 42. S.B. 413 will need to be passed by a majority vote in both the Senate and House of Representatives in the next legislative session and then appear on the November 2021 general election ballot to be approved by a majority of the electors in order to be ratified and properly approved pursuant to the established procedures set forth in the Pennsylvania Constitution. If properly approved and ratified by a majority of voters in 2021, S.B. 413 will amend Article VII, § 14 in part as follows:

(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. **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.**

Petition ¶ 44.

The General Assembly later went on to establish a “Select Committee on Election Integrity” to “investigate, review and make recommendations

## 0173a

concerning the regulation and conduct of the 2020 general election.” Pa. H. Res. No. 1032, Printer’s No. 4432, Session of 2020 (Sep. 28, 2020), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=R&billNbr=1032&pn=4432>. Petition ¶ 45. The resolution establishing the committee noted that the “Commonwealth has traditionally only allowed absentee voting by individuals with a statutorily defined excuse to do so, such as a physical disability or absence from their municipality on election day.” *Id.* It further notes that “[b]efore the enactment of Act 77 of 2019, for an individual to vote absentee in this Commonwealth, the individual must have provided a permissible reason to do so....” *Id.* It is expressly acknowledged that Act 77 of 2019, “created a new category of mail-in voting ... [whereby] mail-in voters do not have to provide a customary reason to vote by mail and are able to return their ballots several days later than had traditionally been allowed.” *Id.*

Article XI, § 1 of the Constitution of Pennsylvania requires amendments to be passed by majority vote in both the House and Senate in two separate legislative sessions and submitted as a ballot question during the general election to be voted on by the qualified voters. Pa. Const. Art. XI, § 1. Only if a majority of the qualified voters vote to approve

the proposed constitutional amendment is the proposed constitutional amendment ratified and legally effective. See Pa. Const., Art. XI, §1.

The Pennsylvania Constitution also expressly provides for emergency amendments. See Pa. Const., Art. XI, § 1; see *also* Act 12, Act of Mar. 27, 2020, § 1, P.L. No. 41, No. 12, at § 16. The Legislature neglected this lawful mechanism entirely and instead attempted to bypass amending the Pennsylvania Constitution by fundamentally overhauling Commonwealth's voting system through the enactment of a general law.

### **III. Act 77 of 2019**

On October 31, 2019, Governor Wolf signed Act 77 of 2019 into law, which implemented sweeping reforms to the elections process in Pennsylvania. Petition ¶ 54. Among other changes, Act 77 “create[ed] a new option to vote by mail without providing an excuse”; allowed voters to request and submit mail-in or absentee ballots up to 50 days before an election; and established a semi-permanent mail-in and absentee ballot voter list. See, e.g., Press Release, Governor Wolf Signs Historic Election Reform Bill Including New Mail-in Voting, Governor Tom Wolf (Oct. 31, 2019). Petition ¶ 55. In passing Act 77 without first amending the Pennsylvania Constitution, Respondents disenfranchised the entire Pennsylvania electorate, who were entitled to a constitutionally mandated

vote on whether to make this sweeping change to widespread no excuse mail-in voting before it was implemented.

#### **IV. The November 3, 2020 General Elections**

Voting at the Pennsylvania General Elections was held on November 3, 2020. Petition ¶ 61. The General Elections were administered by Pennsylvania election officials pursuant to Act 77, which included allowing for universal, no-excuse mail-in ballots to be filled out, collected and counted, in violation of the Pennsylvania Constitution. Petition ¶ 62. The process of certifying the returns and results of the General Elections is currently underway. Petition ¶ 63.

#### **SCOPE AND STANDARD OF REVIEW**

The Executive-Respondents Application for the Court to Exercise Extraordinary Jurisdiction (“the Application”) seeks to have this Court reverse the November 25 Order of the Commonwealth Court and sustain the Preliminary Objections of the Respondents. The standard of review of the grant or denial of a preliminary injunction is whether the trial court abused its discretion or committed an error of law. See *Buffalo Twp. V. Jones*, 813 A.2d 659 n. 4 (Pa. 2002). In considering preliminary objections, this Court must consider as true all well-pleaded material facts set forth in the petitioner's petition and all reasonable inferences that may be drawn



from those facts. *Mulholland v. Pittsburgh National Bank*, 174 A.2d 861, 863 (Pa. 1961). Preliminary objections should be sustained only in cases clear and free from doubt that the facts pleaded are legally insufficient to establish a right to relief. *Werner v. Zazyczny*, 681 A.2d 1331 (Pa. 1996).

### **COUNTERSTATEMENT OF QUESTIONS INVOLVED**

1. Should the Court assume immediate jurisdiction over this action pursuant to its Extraordinary Jurisdiction?

Suggested answer: Petitioners do not oppose this.

2. Are Petitioners entitled to injunctive relief?

Suggested answer: Yes.

3. Should the relief requested in the Petition be granted?

Suggested answer: Yes.

### **ARGUMENT**

#### **I. The Executive-Respondents' Preliminary Objection 1 should be overruled because Petitioners have standing.**

Preliminary Objection 1 should be overruled because Petitioners have standing. In general, to have standing, a party must have an interest in the controversy that is distinguishable from the interest shared by other citizens that is substantial, direct and immediate. *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988). In this case, each Petitioner has such an interest in the controversy.

Petitioner Sean Parnell is an adult individual who is a registered qualified elector residing in Allegheny County, and a candidate for U.S. Representative for the 17th Congressional District of Pennsylvania, which includes all of Beaver County, and parts of Butler and Allegheny counties. Mr. Parnell constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code § 102(a) and (t), 25 Pa.Stat. § 2602(a) & (t). Mr. Parnell brings this suit in his capacity as a candidate for federal office and a private citizen. Petition ¶ 3. It was not alleged in the Petition, but could easily be alleged in an amended Petition<sup>1</sup> or be found through judicial notice based on public election results that, if Respondents are permitted to certify the results of the November 3, 2020 General Elections including mail-in ballots that do not meet the Pennsylvania Constitutional requirements, then Mr. Parnell’s opponent will be certified as the winner of his congressional race, but if only the constitutionally permitted ballots are included in the certification, the Mr. Parnell would have the most votes of any candidate in his congressional race.

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<sup>1</sup> It is not clear how to go about amending a Petition for Review in this unusual procedural context. Petitioners hereby request leave to amend their Petition for Review to add the additional allegations described in this Section I of the Argument, and also request leave to join the presidential electors as parties to this action, to the extent they have been selected and they are now necessary parties in order to enjoin Respondents’ unconstitutional actions from completion.

## 0178a

Petitioner Wanda Logan is a registered qualified elector residing Philadelphia County, Pennsylvania and a candidate for the Pennsylvania House of Representatives for the 190th district. Ms. Logan constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code § 102(a) and (t), 25 Pa.Stat. § 2602(a) & (t). Ms. Logan brings this suit in her capacity as a candidate for state office and a private citizen. Petition ¶ 4. It was not alleged in the Petition, but could easily be alleged in an amended Petition or be found through judicial notice based on public election results that, if Respondents are permitted to certify the results of the November 3, 2020 General Elections including mail-in ballots that do not meet the Pennsylvania Constitutional requirements, then Ms. Logan’s opponent will be certified as the winner of her Pennsylvania House race, but if only the constitutionally permitted ballots are included in the certification, the Ms. Logan would have the most votes of any candidate in her race.

Petitioner the Honorable Mike Kelly (hereinafter “Representative Kelly”) is a qualified registered elector residing in Butler County and the United States Representative for the 16th Congressional District of Pennsylvania. Representative Kelly was recently re-elected to represent the 16th Congressional District, which includes all of Erie, Crawford,

## 0179a

Mercer, and Lawrence counties, as well as part of Butler County.

Representative Kelly constitutes both a “candidate” and a “qualified elector” as those terms are defined in Election Code § 102(a) and (t), 25 Pa.Stat. § 2602(a) & (t). Representative Kelly brings this suit in his capacity as a candidate for federal office and a private citizen. Petition ¶ 2. It was not alleged in the Petition, but could easily be alleged in an amended Petition that, if Respondents are permitted to certify the results of the November 3, 2020 General Elections including mail-in ballots that do not meet the Pennsylvania Constitutional requirements, then one or more candidates for whom Representative Kelly voted would lose their races, but if only the constitutionally permitted ballots are included in the certification, then more of the candidates for whom Representative Kelly voted would have the most votes of any candidate in their races.

Petitioners Thomas A. Frank, Nancy Kierzek, Derek Magee, Robin Sauter and Michael Kincaid are all registered qualified electors residing in Erie, Mercer, and Allegheny Counties, Pennsylvania. All of them are “qualified electors” as that term is defined in Election Code § 102(t), 25 Pa.Stat. § 2602(t). All of them bring this suit in their capacities as a private citizens. Petition ¶ 5-9. It was not alleged in the Petition, but could easily be alleged in an amended Petition that, if Respondents are permitted to certify

the results of the November 3, 2020 General Elections including mail-in ballots that do not meet the Pennsylvania Constitutional requirements, then candidates for whom they voted would lose their races, but if only the constitutionally permitted ballots are included in the certification, then more of the candidates for whom they voted would have the most votes of any candidate in their races.

Accordingly, all of the Petitioners have substantial, direct and immediate interests in whether Respondents are permitted to certify the results of the November 3, 2020 General Elections including mail-in ballots that do not meet the Pennsylvania Constitutional requirements and those interests are distinguishable from the interests shared by other citizens. Therefore, Petitioners meet the normal standing criteria.

Moreover, although to have standing a party must ordinarily have an interest in the controversy that is distinguishable from the interest shared by other citizens that is substantial, direct and immediate, there are certain cases that warrant the grant of standing even where the interest at issue “arguably is not substantial, direct and immediate.” *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988) (citing, *inter alia*, *Application of Biester*, 409 A.2d 848, 852 (Pa. 1979)). “[A]lthough many reasons have been advanced for granting standing to taxpayers, the fundamental reason for granting

## 0181a

standing is simply that otherwise a large body of governmental activity would be unchallenged in the courts.” *Biester*, 409 A.2d at 852 (citation omitted).

The *Biester* Court elaborated on the benefit of granting standing under such circumstances, holding that:

The ultimate basis for granting standing to taxpayers must be sought outside the normal language of the courts. Taxpayers' litigation seems designed to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement.... Such litigation allows the courts, within the framework of traditional notions of 'standing,' to add to the controls over public officials inherent in the elective process the judicial scrutiny of the statutory and constitutional validity of their acts.

*Biester*, 487 Pa. at 443 n.5 (citation omitted); see also *Consumer Party of Pennsylvania v. Commonwealth*, 507 A.2d 323, 328 (Pa. 1986) (same).

Other factors to be considered include that issues are likely to escape judicial review when those directly and immediately affected are actually beneficially as opposed to adversely affected; the appropriateness of judicial relief; the availability of redress through other channels; and the existence of other persons better situated to assert claims, for example. *Sprague*, 550 A.2d at 187 (citations omitted).

In *Sprague*, the petitioner challenged placing one seat on the Supreme Court and one on the Superior Court on the general election

ballot. *Id.* at 186. An election to fill Supreme Court and Superior Court offices may not be placed on the ballot during a general election because the Pennsylvania Constitution mandated that all judicial officers were to be elected at the municipal election next proceeding the commencement of their respective terms. *Id.* at 186. Under those circumstances, the Court specifically held that if standing were not granted, “the election would otherwise go unchallenged,” that “[j]udicial relief is appropriate because the determination of the constitutionality of the election is a function of the courts,” and that “redress through other channels is unavailable.” *Id.* (citing *Zemprelli v. Daniels*, 496 Pa. 247, 436 A.2d 1165 (1981); and *Hertz Drivurself Stations, Inc. v. Siggins*, 359 Pa. 25, 58 A.2d 464 (1948)).

Here, as in *Sprague*, if standing were not granted, the November 3, 2020, General Election would otherwise go unchallenged; redress through other channels is unavailable because those directly and immediately affected are actually beneficially as opposed to adversely affected; and the only persons better situated to assert the claims at issue are possibly the Respondents, who did not choose to institute legal action. Determination of the constitutionality of the election remains a function of the courts and granting standing would add judicial scrutiny of the statutory and

constitutional validity of the acts of public officials to the controls over public officials inherent in the elective process.

The case of *In re Gen. Election 2014 Kauffman*, 111 A.3d 785 (Pa. Commw. Ct. 2015) is distinct from the case at bar. In that case, the Commonwealth Court quashed an appeal of objectors who challenged an order granting an emergency application for absentee ballots because the objectors were not parties in the proceedings before the trial court and, thus, did not have standing. *Id.* The objectors claimed they had standing because they were registered voters in the relevant area and they had an interest in seeing that the Election Code was obeyed and that absentee ballots were prevented from affecting the outcome of the election. *Id.* at 792. The election at issue had not yet occurred and it was speculative for the objectors to suggest that five absentee ballots might affect the outcome of the election. *Id.* at 793. Quoting *Kauffman v. Osser*, 271 A.2d 236 (Pa. 1970), the Commonwealth Court highlighted “assumption” in the following:

Basic in appellants’ position is the *assumption* that those who obtain absentee ballots, by virtue of statutory provisions which they deem invalid, will vote for candidates at the November election other than those for whom the appellants will vote and thus will cause a dilution of appellants’ votes. This assumption, unsupported factually, is unwarranted and cannot afford a sound basis upon which to afford appellants a standing to maintain this action.

*In re Gen. Election 2014 Kauffman*, 111 A.3d. at 793.



Unlike in that case, here Petitioners have already been affected by the allowance of mail-in ballots that do not meet the Pennsylvania Constitutional requirements or will be if those ballots are included in the certified results. The harms they allege are not based on speculation or assumption. Accordingly, this Court should determine that the Petitioners have standing to maintain this action and overrule Preliminary Objection 1.

**II. The Executive-Respondents' Preliminary Objection 2 should be overruled because statutes cannot limit the time within which their constitutionality can be challenged.**

The Executive-Respondents' Preliminary Objection 2 should be overruled because statutes cannot limit the time within which their constitutionality can be challenged. The suggestion that Petitioners would ever be precluded from challenging the constitutionality of a statute because of a provision included in that statute would be an interpretation that is both "absurd," 1 Pa.Cons.Stat. § 1922(1), and violative of "the Constitution of the United States [and] this Commonwealth". *Id.* § 1922(3). As noted in *William Penn School District v. Pa. Dep't of Ed.*, 170 A.2d 412, 418 (Pa. 2017):

It is settled beyond peradventure that constitutional promises must be kept. Since *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 2 L.Ed. 60 (1803), it has been well-established that the separation of powers in our tripartite system of government typically depends upon judicial review to check acts or omissions by the other branches in derogation of constitutional

requirements. That same separation sometimes demands that courts leave matters exclusively to the political branches. Nonetheless, “[t]he idea that any legislature ... can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions.” *Smyth v. Ames*, 169 U.S. 466, 527, 18 S.Ct. 418, 42 L.Ed. 819 (1898).

(emphasis added); see also *Robinson Twp., Wash. Cty. v. Commonwealth*, 83 A.3d 901, 927 (Pa. 2013) (“[I]t is the province of the Judiciary to determine whether the Constitution or laws of the Commonwealth require or prohibit the performance of certain acts.”). While consistent with and pursuant to the Pennsylvania Constitution the Legislature can set the jurisdiction of the court, it has no authority to limit the window of time in which the constitutionality of a law can be challenged.

Section 13 of Act 77 would also be invalidated by future amendments to the Pennsylvania Election Code, such as occurred with Act 12 of 2020. See Act of Mar. 27, 2020, § 1, P.L. No. 41, No. 12 (hereinafter “Act 12”). Act 12, *inter alia*, amended § 1302, which is noted in Act 77 as being subject to the 180-day exclusive jurisdiction period. Respondent’s reading of § 13 of Act 77 would limit any judicial review of the constitutionality of changes made to Act 77 by Act 12 to a period of 1 month (*i.e.*, from March 27, 2020 to April 28, 2020). Taking Respondents’ argument to the extreme, if the provisions noted in § 13 of Act 77 were to be amended again at some

time in the future, Respondents' interpretation of the 180-day window would effectively preclude judicial review of any amendment to those provisions because such review would not be within the 180-day initial window ending on April 28, 2020. To deny voters and candidates a forum for addressing violations to their constitutional rights would be an "absurd" and "unreasonable" reading of the statute, as well as an unconstitutional reading. 1 Pa.Cons.Stat. § 1922(1), (3). Accordingly, the Executive Petitioners' Preliminary Objection 2 should be overruled.

**III. The Executive Petitioners' Preliminary Objection 3 should be overruled because this Court has jurisdiction.**

The Executive Petitioners' Preliminary Objection 3 should be overruled because the Commonwealth Court had jurisdiction. This is not an action to resolve an election dispute. This is an action to challenge the constitutionality of Act 77 and to enjoin unconstitutional actions taken pursuant thereto. The Executive-Respondents attempt to characterize this as an action to resolve an election dispute recognized under the Election Code, to then assert that any such actions must be grounded in statutory provisions for the resolution of election disputes.

There are no provisions in the election dispute statutes for addressing unconstitutional election codes or laws. The Election Code provides no relevant procedure applicable to this type of action and does not preclude

this Court's jurisdiction to hear constitutional challenges to laws and to provide equitable relief. See *William Penn School District v. Pa. Dep't of Ed.*, 170 A.2d 412, 418 (Pa. 2017) ("The idea that any legislature ... can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions."

*Smyth v. Ames*, 169 U.S. 466, 527, 18 S.Ct. 418, 42 L.Ed. 819 (1898)).

Accordingly, this Court should overrule the Executive-Respondents' Preliminary Objection 3.

**IV. Preliminary Objection 4 should be overruled because the Executive-Respondents cannot meet their burden of establishing a laches defense.**

Preliminary Objection 4 should be overruled because the Executive-Respondents cannot meet their burden of establishing a laches defense. Inconsistently, the Executive-Respondents simultaneously claim that Petitioners were not particularly harmed, such that they lacked standing, but also that they should have brought this action sooner, before the general election occurred and, consequently, before the harms to Petitioners from the unconstitutional mail-in voting became a reality. Had Petitioners brought an action sooner, the Executive-Respondents would have no doubt instead contended that the harms the Petitioners claim are

merely speculative. For the same reason that the objectors did not have standing in *In re Gen. Election 2014 Kauffman*, 111 A.3d 785 (Pa. Commw. Ct. 2015), Petitioners also lacked standing to assert their claims until after they were harmed by the general election and the vote totals were announced. Petitioners brought an action within mere days of being harmed by an unconstitutional election as soon as they reasonably could have hired counsel and identify the constitutional issues after they gained standing to bring their claims. The Executive-Respondents' standing argument negates their argument that Petitioners sat on their rights for a year.

Although “laches may bar a challenge to a statute based upon procedural deficiencies in its enactment.” *Stilp v. Hafer*, 718 A.2d 290, 294 (Pa. 1998), in *Stilp*, this Court found that “Appellees concede[d] that laches may not bar a constitutional challenge to the substance of a statute. . .” *Id.* Indeed, the holding in *Stilp* stands in the face of the Executive Respondent’s argument, holding that while the principle of laches may apply when a constitutional challenge is on procedural grounds, it does not apply with respect to the substance of a statute. *Id.* (citing *Sprague v. Casey*, 520 Pa. 38, 550 A.2d 184 (1988) (Stating that “laches and prejudice

can never be permitted to amend the Constitution.”)); *see also Wilson v. School Distr. of Philadelphia*, 195 A. 90 (Pa. 1937).

Petitioners constitutional claim is purely substantive, and therefore cannot be defeated by laches. Unlike *Stilp* where the plaintiffs argued that a bill was not referred to the appropriate committee, and that the bill was not considered for the requisite number of days, *Stilp*, 718 A.2d at fn. 1, here Petitioners argue that the substance of Act 77 directly contravenes the Pennsylvania Constitution. See Petition ¶¶ 65-87. Petitioners make no challenge to the procedural mechanisms through which Act 77 was passed – *e.g.*, bicameralism and presentment – but rather, what is substantively contained within the legislative vehicle that became Act 77. The Pennsylvania General Assembly attempted to unconstitutionally expanded absentee voting through Act 77, despite limitations to such expansion. Act 77 itself is not a constitutional amendment, which would be the type of procedural laches challenge raised by the Executive-Respondents (and would fail in any case). Such a patent and substantive violation of the Constitution cannot be barred by the mere passage of time – “To so hold would establish a dangerous precedent, the evil effect of which might reach far beyond present expectations.” *Wilson*, 195 A. at 99. Amending the

constitution to expand a protected and fundamental right is not a mere procedural step, but rather one of substance.

The Executive-Respondents admitted that laches would not apply to prospective relief pursued by petitioner. See Application, Exhibit A, p. 19, fn 4. Even assuming *arguendo* that laches can apply to retrospective relief of a substantive constitutional challenge, the Executive-Respondents' Preliminary Objection 4 should still be overruled. Laches can only bar relief where "the complaining party is guilty of want of due diligence in failing to promptly institute the action to the prejudice of another." *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988). The two elements of laches are "(1) a delay arising from Appellants' failure to exercise due diligence and (2) prejudice to the Appellees resulting from the delay." *Stilp v. Hafer*, 718 A.2d 290, 293 (Pa. 1998) (citing *Sprague*, 550 A.2d at 187-88)

*Sprague* is on point. In *Sprague*, the petitioner, an attorney, brought suit challenging the placing on a ballot of two judges. *Id.* Respondents raised an objection based on laches because petitioner waited 6.5 months from constructive notice that the judges would be on the ballot to bring suit. In evaluating the facts that petitioner and respondents could have known through exercise of "due diligence," the court found that while petitioner was an attorney, and was therefore charged with the knowledge of the

constitution, the respondents (the Governor, Secretary, and other Commonwealth officials) were also lawyers and similarly failed to apply for timely relief. *Id.* at 188. This Court, in denying the laches defense, reasoned that “[t]o find that petitioner was not duly diligent in pursuing his claim would require this Court to ignore the fact that respondents failed to ascertain the same facts and legal consequences and failed to diligently pursue any possible action.” *Id.* To be clear, a citizen with an actionable claim cannot just wait to file a grievance it is aware of. However, courts will generally “hold that there is a heavy burden on the [respondent] to show that there was a deliberate bypass of pre-election judicial relief.” *Toney v. White*, 488 F.2d 310, 315 (5th Cir. 1973). The Executive-Respondents have not met that burden here, and instead pretend that the burden is on Petitioners to disprove laches.

There is not the slightest evidence or reason to believe that Petitioners deliberately bypassed pre-election relief in the instant action, and the Executive-Respondents have not pointed to any. Unlike in *Sprague*, Petitioners here are not lawyers, they did not actually, nor could they have known with reasonable diligence the arguments presented before this Court in the instant action. With respect to the candidate-Petitioners, none have participated in state legislature, and none have



responsibilities with respect Pennsylvania Election Code or its constitutionality.

Conversely, as in *Sprague*, Respondent Boockvar is an attorney, and should be charged with knowledge of the Constitution, and particular knowledge of the Election Code. In *Sprague*, the taxpayer's more than six month delay in bringing an action challenging the election did not constitute laches thereby preventing the Commonwealth Court from hearing the constitutional claims. 550 A.2d at 188. Additionally, Respondent Pennsylvania General Assembly appears to have had knowledge of the constitutional issues involved and began the process of amending the constitution to allow no excuse mail-in ballots, which process appears to be still ongoing. Petition ¶¶ 28-30.<sup>2</sup>

In short, the Executive-Respondents want this Court to charge Petitioners, who had no specialized knowledge, with failure to institute an action more promptly, while Respondents possessed extremely specialized knowledge, and failed to take any corrective actions. Petitioners did not

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<sup>2</sup> If that process proceeds and the amendment is placed on the ballot, and Act 77 is not declared unconstitutional, then Pennsylvania voters could someday cast no excuse ballots by mail to decide whether to allow no excuse voting by mail. In the meantime, all Pennsylvania voters were disenfranchised of their right to vote on such an amendment prior to institution of widespread no excuse voting by mail.

hedge their bets, they simply brought an action within mere days of being harmed by an unconstitutional election, as soon as they reasonably could have hired counsel and identify the constitutional issues after they gained standing to bring their claims. It could not have in any way served the Petitioner's interests in this matter to delay action for even one day. To suggest they did so deliberately is ridiculous and unsupported.

In light of Respondents' collective failures in enacting and enforcing Act 77, they should have acted; that they did not do so puts the weight of any necessary curative disenfranchisement squarely on their shoulders. Laches is a shield to protect respondents from gamesmanship, it is not a sword to use against harmed individuals to insulate Respondents' unconstitutional actions.

Finally, Respondents reliance on *In re Contest of Election for Off. of City Treas. from Seventh Legis. Dist. (Wilkes-Barre City) of Luzerne County*, 162 A.2d 363, 365-66 (Pa. 1960) for the premise that voters should not be disenfranchised because of "errors or wrongful acts of election officers" is misplaced in this context. *In re Contest*, stands for the proposition that disenfranchisement of voters is not necessary because "[s]ociety's weapon against election frauds is the power to arrest those that violate the Code." *Id.* That however is not the case, where the code itself is

illegally and unconstitutionally promulgated. Where, as is the case here, the illegality is of an unconstitutional nature, intervention is necessary. *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994) (If the district court finds a constitutional violation, it will have authority to order a special election, whether or not it is able to determine what the results would have been in the absence of that violation.). Accordingly, this Court should determine that the Respondents have not met their burden in establishing a laches defense and overrule Preliminary Objection 4.

**V. The Executive-Respondents' Preliminary Objection 5 should be overruled because the Petition states a valid claim.**

The Executive-Respondents' Preliminary Objection 5 should be overruled because the Petition states a valid claim.

**A. The Pennsylvania Constitution requires voting to take place in person, subject only to specified absentee voting exceptions.**

Article I, § 4 and Article II, § 1 of the U.S. Constitution grant plenary authority to state legislatures to enact laws that govern the conduct of elections. Yet, while the “legislature may enact laws governing the conduct of elections[,]... ‘no legislative enactment may contravene the requirements of the Pennsylvania or United States Constitutions.’” *Kauffman v. Osser*, 271 A.2d 236, 240 (Pa. 1970) (Cohen, J. dissenting) (citing *Winston v. Moore*, 91 A. 520 (1914), and quoting *Shankey v. Staisey*, 257 A.2d 897,

898, cert denied 396 U.S. 1038 (1970)); *see also, e.g., Smiley v. Holm*, 285 U.S. 355, 369 (1932) (noting that state Legislatures are constrained by restrictions imposed by state constitutions on their exercise of the lawmaking power, even when enacting election laws pursuant to U.S. Constitutional authority).

Article VII, § 1 of the Pennsylvania Constitution outlines the authorities under which the Pennsylvania legislature enacts election laws. This Court, in evaluating absentee voting legislation, first looks at the Pennsylvania Constitution's requirements on qualifying to be an elector in Pennsylvania. "For the orderly exercise of the right resulting from these qualifications ... the Legislature must prescribe necessary regulations .... But this duty and right inherently imply that such regulations are to be subordinate to the right .... As a corollary of this, no constitutional qualification of an elector can in the least be **abridged, added to, or altered** by legislation or the pretence of legislation." *In re Lancaster City*, 126 A. at 201 (emphases added).

The current Pennsylvania Constitution sets out the following qualifications for voting: (1) 18 years of age or older; (2) citizen of the United States for at least one month; (3) has residence in Pennsylvania for the 90 days immediately preceding the election; and (4) has residence in

the “election district where he or she ***shall offer to vote*** at least 60 days immediately preceding the election ....” Pa. Const. Art. VII, § 1 (emphasis added). As held by this Court in *Chase*, 41 Pa. at 418-19, and *Lancaster City*, 126 A. at 200:

To “offer to vote” by ballot is to present one’s self, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it. The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil.

The Pennsylvania Constitution has not been amended to change or eliminate this qualification since *Chase*. Therefore, in-person voting remains a requirement under law, unless otherwise exempt by the Pennsylvania Constitution.

Article VII, § 14(a) provides the only such exceptions to the *in propria persona* voting requirement of the Pennsylvania Constitution, in four specific circumstances. It states:

(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.

Pa. Const. Art. VII, § 14(a). Outside of those four situations, this Court's precedents do not provide a mechanism for the Legislature to allow for expansion of absentee voting.

**B. Act 77 is illegal and void ab initio because it attempts to expand the exceptions to *in propria persona* voting requirements beyond what the Pennsylvania Constitution currently allows.**

“The Legislature can confer the right to vote only upon those designated by the fundamental law, and subject to the limitations therein fixed.” *Lancaster City*, 281 Pa. at 137 (citing *McCafferty v. Guyer*, 59 Pa. 109). Act 77 unconstitutionally expands the scope of absentee voting permitted by the Pennsylvania Constitution to all voters.

Act 77, as amended, defines a “qualified mail-in elector” as “a qualified elector.” 25 Pa.Stat. § 2602(z.6). A “qualified elector” is “any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, shall obtain such qualifications before the next ensuing election.” *Id.* § 2602(t). In short, Act 77 qualifies all electors as mail in electors.

Moreover, newly-created 25 Pa.Stat. § 3150.11 states:

## 0198a

Qualified mail-in electors.

(a) General rule.-- A qualified mail-in elector shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.

(b) Construction.-- The term “qualified mail-in elector” shall not be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition in section 102(t).

Separately, absentee voting is defined in 25 Pa.Stat. § 3146.1, which outlines a variety of categories of eligibility that are each consistent with Article VII, § 14 of the Pennsylvania Constitution. See *also* 25 Pa.Stat. § 2602(w) (defining 14 types of qualified absentee electors).

Act 77 purported to create a distinction between the existent “absentee voting” and “mail-in voting”. Taking an inartful twist such as simply renaming the mechanism yields a distinction without a difference. The General Assembly subverted the limitations in Article VII, § 14 by creating a fictitious distinction between the pre-existing “absentee voting” and the newly created “mail-in voting.” There is no distinction except that mail-in voting is simply absentee voting without any of the inconvenient conditions precedent that the Pennsylvania Constitution requires in order

for someone to be permitted to cast a ballot without being physically present at the polls on election day.<sup>3</sup>

This Court in *Chase v. Miller* struck down unconstitutional military absentee voting during the Civil War. Pennsylvania was one of the first states to allow for absentee voting, originating with the Military Absentee Act of 1813, which allowed “members of the state militia and those in the service of the United States to vote as long as the company the soldier was serving was more than two miles from his polling place on election day.”

John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J.L. Reform 483, 497 (2003). At the time the Military Absentee Act was passed, the Pennsylvania Constitution imposed no restrictions with regard to absentee voting.

However, in 1838, Pennsylvania amended its constitution to require voters to “reside in the election district where he offers to vote, ten days immediately preceding such election.” *Id.* (citing Pa. Const. of 1838, Art. III, § 1 (1838)). This created a conflict with the Military Absentee Act as re-

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3. In an attempt to create the distinction between absentee and mail-in, the legislature defined “qualified mail-in elector” as a “qualified elector who is not a qualified absentee elector.” Again, the definitional distinction is non-yielding because there is no longer any functional purpose to applying for an absentee ballot.



enacted in 1839, which allowed for absentee voting, and the newly amended Pennsylvania Constitution, which no longer did. *Id.*

In the 1861 election, Pennsylvania soldiers voted under the Military Absentee Act 1839, and legal challenges came soon after. In 1862, this Court decided *Chase v. Miller*, 41 Pa. 403. The Court analyzed the Military Absentee Act of 1839 and its conflict with new (as of 1838) Pennsylvania Constitution. This Court held that the act was unconstitutional because the purpose of the 1838 amendment to the Pennsylvania Constitution was to require in-person voting in the election district where a voter resided at least 10 days before the election. *Id.* at 418-19.

The second section of [the 1838 amendment] requires all popular elections to be by ballot. To 'offer to vote' by ballot, is to present oneself with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it. **The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil.** We cannot be persuaded that the constitution **ever contemplated any such mode of voting, and we have abundant reason for thinking that to permit it would break down all the safeguards of honest suffrage.** The constitution meant, rather, that the voter, *in propria persona*, should offer his vote in an appropriate election district, in order that his neighbours might be at hand to establish his right to vote if it were challenged, or to challenge if it were doubtful.

\* \* \*

## 0201a

[Regarding the 1839 act,] [i]t is scarcely possible to conceive of any provision and practice that could, at so many points, offend the cherished policy of Pennsylvania in respect to suffrage. Our Constitution and laws treat the elective franchise as a sacred trust.... All of which the [1839 act] reverses and disregards, and opens a wide door for most odious frauds, some of which have come under our judicial cognizance.

*Id.* at 419-25 (emphasis added in bold). This Court also noted that the Pennsylvania legislature carelessly avoided discussing the constitutionality of the 1839 act before its passage; although, it noted that “instances of even more careless legislation are not uncommon.” *Id.* at 417.

Following this Court’s invalidation of the 1839 Military Absentee Voting Act, the legislature proposed amendment to the Pennsylvania Constitution in 1864 to include for this first time a provision allowing for absentee voting by active military personnel. See Josiah Henry Benton, *Voting in the Field: A Forgotten Chapter of the Civil War*, at 199 (1915). The legislature passed the amendment in two successive sessions, in 1863, and again on April 23, 1864, and the amendment was approved by the citizens of Pennsylvania in August 1864. Prior to the August approval of the amendment, on April 1, 1864, the Legislature was attempting to pass a soldier’s voting bill that would have implemented absentee voting laws in accordance with what the constitutional provision would have allowed if

## 0202a

passed. The legislature sought the Attorney General's opinion on the constitutionality of passing this legislation before the constitutional amendment was approved by the voters. The Attorney General opined that it "would not be constitutional to pass a law before the Constitution was amended so as to allow it." *Id.* at 200.

From 1864 to 1949, only qualified electors engaged in actual military service were permitted to vote by absentee ballot under the Pennsylvania Constitution. Pa. Const. Art. VIII, § 6 (1864). However, this limitation did not prevent the legislature from, again, attempting to pass unconstitutional legislation to expand absentee voting. In 1924, this Court decided *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, striking down as unconstitutional Act May 22, 1923 (P.L. 309; Pa. St. Supp. 1924, §9775a1, *et seq.*), an act providing civilians the right to vote by absentee ballot. Quoting *Chase v. Miller*, 41 Pa. at 419, this Court reaffirmed the law that "[t]o offer to vote' by ballot, is to present one's self with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed to receive it. The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicil." *Lancaster City*, 126 A. 200. This principle was affirmed

## 0203a

between 1864 and 1924 in many other states with similar constitutional provisions, both with regard to absentee voting by regular citizens as well as by soldiers away from home. *Id.* (citing *Twitchell v. Blodgett*, 13 Mich. 127; *Bourland v. Hildreth*, 26 Cal. 161; *Day v. Jones*, 31 Cal. 261; *Opinion of the Judges*, 30 Conn. 591; *Opinion of the Judges*, 37 Vt. 665; *Opinion of the Justices*, 44 N.H. 633; *In re Opinion of Justices* [N.H.] 113 Atl. 293; *Clark v. Nash*, 192 Ky. 594, 234 S.W. 1, 19 A.L.R. 304). The Court held the civilian absentee ballot act unconstitutional because the Pennsylvania Constitution still required electors to “offer to vote” in the district where they reside, and that those eligible to “vote other than by personal presentation of the ballot” were specifically named in the Constitution (i.e., active military). *Id.* at 136-37. The Court relied on two primary legal principles in its ruling:

[1] ‘In construing particular clauses of the Constitution it is but reasonable to assume that in inserting such provisions the convention representing the people had before it similar provisions in earlier Constitutions, not only in our own state but in other states which it used as a guide, and in adding to, or subtracting from, the language of such other Constitutions the change was made deliberately and was not merely accidental.’ *Com v. Snyder*, 261 Pa. 57, 63, 104 Atl. 494, 495.

\* \* \*

[2] The old principle that the expression of an intent to include one class excludes another has full

application here.... ‘The residence required by the Constitution must be within the election district where the elector attempts to vote; hence a law giving to voters the right to cast their ballot at some place other than the election district in which they reside [is] unconstitutional.’

*Id.* The Court went further to note:

However laudable the purpose of the act of 1923, it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.

*Id.* at 138.

Because the Legislature failed to strictly comply with the requirements of Article XI, the efforts to amend the Constitution to improperly authorize universal mail-in voting are fatally defective and inherently unconstitutional, having no lawful basis or effect. *See, e.g., Kremer v. Grant*, 529 Pa. 602, 613, 606 A.2d 433, 439 (1992) (“[T]he failure to accomplish what is prescribed by Article XI infects the amendment process with an incurable defect”); *Sprague v. Cortes*, 636 Pa. 542, 568, 145 A.3d 1136, 1153 (2016) (holding that matters concerning revisions of the Pennsylvania Constitution require “the most rigid care” and demand “[n]othing short of literal compliance with the specific measures set forth in Article XI.”) (*quoting Commonwealth ex rel. Schnader v. Beamish*, 64 A. 615, 616-17 (Pa. 1932)). “However laudable the purpose of the act..., it

cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done.” *Lancaster City*, 281 Pa. at 137-38.

**C. Article VII, §§ 1 and 4 of the Pennsylvania Constitution have not materially changed since this Court struck down legislation unconstitutionally expanding mail-in voting in *Lancaster City*.**

Article VII, §§ 1 and 4 of the Pennsylvania Constitution (previously numbered as Article VIII, §§ 1 and 4) remain materially the same as they were when this Court in *Lancaster City* struck down “Act May 22, 1923” (P. L. 309; Pa. St. Supp. 1924, § 9775a1, *et seq.*) and invalidated the illegal mail-in ballots cast thereunder. The current language of Article VII, § 4 remains identical to the language this Court interpreted in *Lancaster City*. Article VII, §1 has been altered in three ways since the 1924 case: (1) the voting age requirement was changed to 18, from 21; (2) the state residency requirement was lowered from 1 year, to 90 days; and (3) Clause 3 of Article VII, § VII was amended to allow a Pennsylvania resident who moves to another County within 60 days of an election to vote in their previous county of residence. These changes to Article VII, § 1 are not relevant to the Court’s reasoning in *Lancaster City*. Pennsylvania Constitution’s remains, for all relevant purposes, unchanged since 1924 with regard to the

qualifications and requirements for voting in an election. Respondents' actions in passing Act 77 without first amending the Constitution directly contravene binding precedent and it is respectfully submitted that this Court should invalidate the Act.

**D. Post-World-War-II and the modern absentee voting provision in the Pennsylvania Constitution.**

In 1949, the Pennsylvania Constitution was amended to also allow bedridden or hospitalized war veterans the ability to vote absentee. Pa. Const. Art. 8, § 18 (1949). In 1957, the legislature began the process of amending the constitution to allow civilian absentee voting in instances where unavoidable absence or physical disability prevented them from voting in person. See *Absentee Ballots Case*, 423 Pa. 504, 508, 224 A.2d 197, 199-200 (1966). Because of the restrictions and safeguards under Article XI, the 1957 amendment to the constitution did not go into effect until 1960. *Id.* The constitutional amendment effectively expanded eligibility for absentee voting to include only two categories of qualified electors: (1) those who on election day would be absent from their municipality of residence because of their duties, occupation, or business; and (2) those who are unable to attend their proper polling place because of illness or physical disability. Pa. Const. Art. 7, § 19 (1957).

## 0207a

Issues arose immediately with the canvassing and computation of ballots under the newly expanded absentee voting system, and any challenges to absentee ballots that were rejected by the board of elections resulted in the challenged ballots being placed with ballots that were not challenged to be counted, making it impossible to correct if it was later determined that the decision to reject the challenge was incorrect. See *Absentee Ballots Case*, 423 Pa. 504, 509, 224 A.2d 197, 200. In response, “the legislature added further amendments by the Act of August 13, 1963, P.L. 707, 25 Pa.Stat. § 3146.1 et seq. (Supp. 1965)” to require the board of elections to mark any ballot that was disputed as “challenged,” hold a hearing on the objections, and the decision was opened up to review by the court of common pleas in the county involved. *Id.* Until all challenges were resolved, the board of elections was required to desist from canvassing and computing all challenged ballots to avoid the possible mixing of valid and invalid ballots. *Id.* In 1967 following the Constitutional Convention, the Pennsylvania Constitution was reorganized and Article VII, § 19 was renumbered to Article VII, § 14.

On November 5, 1985, the citizens of Pennsylvania approved another amendment to Article VII, § 14 of the Pennsylvania Constitution, which added religious observances to the list of permissible reasons for



## 0208a

requesting an absentee ballot (the “1985 Amendment”). The 1985 Amendment began as HB 846, PN 1963, which would have amended the Pennsylvania Election Code to provide absentee ballots for religious holidays and for the delivery and mailing of ballots. See Pa. H. Leg. J. No. 88, 167th General Assembly, Session of 1983, at 1711 (Oct. 26, 1983) (considering HB 846, PN 1963, entitled “An Act amending the ‘Pennsylvania Election Code,’ ...further providing for absentee ballots for religious holidays and for the delivery and mailing of ballots.”). However, the legislative history recognized that because the Pennsylvania Constitution specifically delineates who may receive an absentee ballot, a constitutional amendment was necessary to implement these changes. HB 846, PN 1963 was thus changed from a statute to a proposed amendment to the Pennsylvania Constitution. *Id.* (statement of Mr. Itkin) (“[T]his amendment is offered to alleviate a possible problem with respect to the legislation. The bill would originally amend the Election Code to [expand absentee balloting] .... Because it appears that the Constitution talks about who may receive an absentee ballot, we felt it might be better in changing the bill from a statute to a proposed amendment to the Pennsylvania Constitution.”).

On November 4, 1997, the citizens of Pennsylvania approved another amendment to Article VII, § 14 of the Pennsylvania Constitution, which expanded the ability to vote by absentee ballot to qualified voters that were outside of their *municipality of residence* on election day; where previously absentee voting had been limited to those outside of their *county of residence* (the “1997 Amendment”). See Pa. H. Leg. J. No. 31, 180th General Assembly, Session of 1996 (May 13, 1996) The legislative history of the 1997 Amendments recognized the long-known concept that there existed only two forms of voting: (1) in-person, and (2) absentee voting and that the 1997 Amendment would not change the status quo; namely that “people who do not work outside the municipality [or county] or people who are ill and who it is a great difficulty for them to vote but it is not impossible for them to vote, so they do not fit in the current loophole for people who are too ill to vote but for them it is a great difficulty to vote, they cannot vote under [the 1997 Amendment].” *Id.* at 841 (statement of Mr. Cohen).

**E. The Executive-Respondents’ attempts to distinguish or undermine this Court’s precedents are unavailing.**

The Executive-Respondents’ attempts to distinguish or undermine this Court’s precedents are unavailing. The Executive-Respondents refer to this Court’s precedents interpreting provisions of the Pennsylvania Constitution, which remain unchanged since those cases were decided, as

## 0210a

“outdated” and “not reflected in other current, constitutional voting practices provided by the Election Code.” See Application, Exhibit A, pp. 22-23.

Respondents argue that absentee balloting is more acceptable and less prone to fraud in modern times than it was in the past. They claim that this Court’s precedents “based their holdings on a fear of absentee voting that no longer exists, and is not reflected in other current, constitutional voting practices provided for by the Election Code.” See *Id.*

On the contrary, concerns regarding absentee voting persist to this day. For example, in a New York Times article entitled “Error and Fraud at Issue as Absentee Voting Rises,” Oct. 6, 2012, the author noted that, in the absentee system, “fraud and coercion have been documented to be real and legitimate concerns” because fraud is easier via mail. See Exhibit A attached hereto (also noting issues with “granny farming,” issues with buying and selling mail-in votes, and other serious issues with mail-in votes).

The Executive-Respondents’ argument that *Chase* and *Lancaster City* are “outdated” and “inapplicable” is unintelligible and stand in the face of the foundational principles of *stare decisis*. See Application, Exhibit A, p 22. As a preliminary matter, the Executive-Respondents correctly state that the holdings in *Chase* and *Lancaster City* interpret the language “offer to

vote” to require in person voting. Because the language “offer to vote” conspicuously remains in the Pennsylvania Constitution, the Executive-Respondents resign to arguing that the very meaning of that language, as interpreted by this Court, has somehow changed. In support of such an argument, they cite to vague historical context, and a shift in modern realities. See Application, Exhibit A, pp. 23-24.

The Executive-Respondents completely ignore the doctrine of *stare decisis*, well settled in this Court’s precedents, especially in the context of election law. This Court has held that “for purposes of stability and predictability that are essential to the rule of law ... the forceful inclination of courts should favor adherence to the general rule of abiding by that which has been settled.” *Shambach v. Bickhart*, 845 A. 2d 793, 807 (Pa. 2004) (J. Saylor concurring). Certainty and stability in the law is crucial, and unless blindly following *stare decisis* perpetuates error, precedent must be followed. See *Stilp v. Com.*, 905 A. 2d 918, 967 (Pa. 2006). Holdings, “once made and followed, should never be altered upon the changed views of new personnel of the court.” *In re Burt’s Estate*, 44 A.2d 670, 677 (Pa. 1945) (cited by *In re Paulmier*, 937 A. 2d 364 (Pa. 2007)). “*Stare decisis* simply declares that, for the sake of certainty, a conclusion reached in one case should be applied to those which follow, if the facts are substantially

## 0212a

the same, even though the parties may be different.” *Heisler v. Thomas Colliery Co.*, 118 A. 394, 395 (Pa. 1922).

The material facts of this case are not only substantially similar, but they are also identical - the terms “offer to vote” remains identical in today’s Pennsylvania Constitution to the Pennsylvania Constitution back in the times of *Chase* and *Lancaster City*. For the sake of consistency of law, the meaning must remain the same. This Court should consistently find that the term requires voting to be in person, absent some contravening language. Article 7, § 14 provides that contravening language, and does so specifically because of the limitation set by § 1. The Executive-Respondents cite no special justification that would justify injecting instability into settled law. Departure from the stringent principles of *stare decisis* requires special justification, and the Executive-Respondents have not identified a single one. See *Arizona v. Rumsey*, 467 U. S. 203, 212 (1984) (“Any departure from the doctrine of *stare decisis* demands special justification ...”).

Indeed, *Chase* and *Lancaster City* have been consistently upheld without any indication of perpetuating legal error. The idea that a change in times is reason to reinterpret language is risible, precisely because *stare decisis*, as a principle, was established to provide predictability and stability

## 0213a

through time. The Executive-Respondents fail to cite a single case for their historically relative definitional approach. The Executive-Respondents provide "little basis here for invoking the rare exception to *stare decisis* to disturb a long-settled matter." *See Shambach*, 845 A. 2d at 807.

Moreover, consistent amendments to Article VII demonstrate a necessity to provide specific constitutional authority for each expansion of methods of voting beyond *in propria persona* voting, because of the strict requirement for in person voting. The Executive-Respondents' interpretation of the relevant constitutional provisions, if correct, would have obviated the need for many such prior Pennsylvania Constitutional amendments. Indeed, absent such restriction, amendments allowing for Military voting and absentee voting under Article VII, § 14 would be redundant.

Yet, Executive-Respondents point to the Court's propensity to allow some latitude in the prescriptive language in some of these amendments as evidence that the language is entirely permissive. Specifically, the Executive-Respondents cite to the fact that spouses of military members were allowed to vote when the amendment only allowed for military members, and the legislature interpreting "duties, occupation or business" in Article VII, § 14 as inclusive of "teaching or education, vacations,

sabbatical leaves, and all other absences associated with the elector's duties, occupation or business, and also include an elector's spouse who accompanies the elector." Application, Exhibit A, pp. 24-25 (quoting 25 Pa.Stat. § 2602). Citing these minor variances – well within the interpretive confines of both amendments – the Executive-Respondents assert that “five decades of allowing absentee voting beyond the ‘specifically named’ categories of Article VII, § 14, suggests it would no longer be appropriate to follow *Lancaster City* by applying the maxim *expressio unius est exclusio alterius*.” *Id.* at p. 26.

Put simply, the Executive-Respondents argue that because some legislation does not adhere to the strictest interpretation of Article VII, § 14, the Pennsylvania General Assembly has free reign to interpret § 14 out of existence, as Act 77 does. The issue here, is an Act that classifies virtually everyone as an absentee voter, not a mere justifiable interpretation of some enumerated exception. The Court should resist the invitation to interpret § 14 out of existence.

Moreover, Respondents, reliance on *Kauffman v. Osser*, 271 A.2d 236 (Pa. 1970) is misguided at best. In *Kauffman*, the Plaintiffs brought a challenge to a law that allowed for absentee voting in situations where electors were on vacation on election day. Respondents state that “the

legislature believed these expansions to be constitutional, even contemporaneously with the finalization of the new constitution. And the Supreme Court rejected a challenge to some of these expansions when they were still young, albeit on standing grounds. *Kauffman v. Osser*, 441 Pa. 150 (1970).” First, not only did this Court base its holding in *Kauffman* on lack of standing, but also this Court did not analyze any part of the statute’s constitutionality, not even in a single sentence. No honest reading of the case would render a holding of constitutionality.

The Executive-Respondents’ desperate reliance on *Martin v. Haggerty*, 548 A.2d 371, 374-75 (Pa. Commw. Ct. 1988) and *Ray v. Commonwealth*, 276 A.2d 509 (Pa. 1971) fare no better. The Executive-Respondents draw the following conclusion from these cases: “More recent decisions suggest the legislature has broad powers to decide who may vote by absentee ballot.” First, *Martin* was decided by the Commonwealth Court, applying *Ray*. Therefore, only *Ray* is authoritative here. Second, and regardless, both decisions revolve around the definition of “qualified elector” specifically excluding incarcerated individuals. This Court found that the “Legislature has the power to define ‘qualified electors’ in terms of age and residency requirements, so it also has power to except persons ‘confined in a penal institution’ from the class of ‘qualified electors.’” *Ray*,



## 0216a

276 A.2d at 510. The power of the legislature to limit who can register to vote – *i.e.*, a qualified elector – is not the subject of the present litigation.

But the Executive-Respondents argue that “if the 1968 Constitution sets a floor for qualified electors in Article VII, § 1, then by the same logic it sets a floor for absentee voters in Article VII, § 14.” Application, Exhibit A, p. 27.

The incongruity of the comparison is outstanding. Article VII, § 1 clearly states that the limitations are “subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact,” providing discretion to the General Assembly to enact laws as they see fit. No similar discretionary language is present in Article VII, § 14. The comparison of different Sections, containing wholly different language is not instructive.

The Executive-Respondents cite no authority or interpretive principle for their argument that the change of the word from “may” in totally distinct earlier absentee provisions to “shall” in Article VII, § 14 “reflects the modern Pennsylvania Constitution’s grant of general discretion to set qualifications for absentee voting...” Application, Exhibit A, p. 28. How the Executive-Respondents can glean that an affirmative “shall” creates more discretion on the legislature is beyond comprehension.

Finally, in the three single lines dedicated to the Constitutional amendment that would have prevented this entire litigation if constitutionally passed, the Executive-Respondents argue that “[i]f anything, the General Assembly recognized that, as no challenges had been made to Act 77 within the prescribed time frame, it was likely constitutional and no amendment was necessary.” Application, Exhibit A, p. 28. Such conclusion is flawed both in fact and in logic. As to the former, because the legislature did not “abandon the quest” of amending the Constitution, the amendment passed and is slated to be voted on by electors, pursuant to Constitutional mandate, in November of 2021. As to the latter, there is no implication of a lack of constitutionality in the mere lack of a challenge. The way to change the Pennsylvania Constitution is through amendment, not reinterpretation contradictory to the original intent and meaning of its terms. Accordingly, the Executive-Respondents’ Preliminary Objection 5 should be overruled.

**VI. The standards for granting a preliminary and permanent injunctive relief are met in this case.**

The standard for granting a preliminary and permanent injunction are met in this case.

**A. Standard for Granting a Preliminary Injunction.**

A preliminary injunction's purpose is to preserve the status quo and to prevent imminent and irreparable harm that might occur before the merits of a case can be heard and determined. *Ambrogi v. Reber*, 932 A.2d 969, 976 (Pa. Super. 2007), *Walter v. Stacy*, 837 A.2d 1205, 1209 (Pa. Super. 2003). Pennsylvania Law is well settled regarding the prerequisites that must be established by the movant in order to obtain a Preliminary Injunction. "There are six 'essential prerequisites' that a party must establish prior to obtaining preliminary injunctive relief. The party must show: 1) 'that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages'; 2) 'that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings'; 3) 'that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct'; 4) 'that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits'; 5) 'that the injunction it seeks is reasonably suited to abate the offending activity'; and, 6) 'that a preliminary injunction will not

adversely affect the public interest.’ *Warehime v. Warehime*, 860 A.2d 41, 46-47 (Pa. 2004) (citing, *Summit Towne Centre. Inc, v. Shoe Show of Rocky Mount Inc.*, 828 A.2d 995, 1002 (Pa. 2003)).

**B. An Injunction Is Necessary to Prevent Immediate and Irreparable Harm to the Petitioners That Cannot Be Otherwise Adequately Compensated by Damages.**

The injunction in this case is necessary to prevent Petitioners from suffering the permanent, irreparable harm of an illegal election conducted pursuant to unconstitutional laws. As an initial matter, this Court has consistently held that, “[w]hen the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.” *Pennsylvania Public Utility Commission v. Israel*, 52 A.2d 317, 321 (Pa. 1947). An illegal action, should it be allowed to continue, is an irreparable harm. *Milk Marketing Board v. United Dairy Farmers Co-op Association*, 299 A.2d 191 (Pa. 1973) (plurality) (affirming issuance of a preliminary injunction and finding irreparable harm because Petitioners violated state statute by selling milk below the minimum prices mandated by state law); *Pennsylvania Public Utility Commission v. Israel*, 52 A.2d 317 (Pa. 1947) (affirming issuance of a preliminary injunction on the basis that Petitioners

violated a state statute requiring taxicabs to have a certificate of public convenience).

The same kind of irreparable harm, as a matter of law, has been found in instances where legislative acts were preempted or not in accordance with a higher authority. *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1180 (Pa. Commw. Ct. 2016). In *Firearm*, the court found that a town ordinance that violated state statutory law constituted irreparable injury. “[R]egardless of the persuasiveness of the Township's argument, [] binding case law mandates that the Ordinance is preempted by § 6120(a) of the UFA and, therefore, the Township's enactment of the same violates the UFA. Thus, issuance of a preliminary injunction is necessary to prevent immediate and irreparable harm, *i.e.*, the continued statutory violation.” *Id.* Accordingly, the *per se* irreparable harm as a matter of law standard should be applied in situations where legislation is in violation of the Pennsylvania Constitution.

Here the General Assembly enacted Act 77 in violation of the Pennsylvania Constitution. Should this Court find that it is at least likely that a violation of the Pennsylvania Constitution occurred, then the inquiry should end there – immediate and irreparable harm should be found as a matter of law. In the alternative, should the Court not find irreparable harm

## 0221a

as a matter of law, irreparable harm should be found because the November 3, 2020, General Election was conducted pursuant to unconstitutional legislation; a failure by the Court to enjoin early certification of those derivatively unconstitutional results (which to this point include mail-in ballots), would strip the Court of the ability to redress the harm suffered by Petitioners and all Pennsylvanians with respect to the presidential election. Once elections are certified and electors are appointed and cast their votes, the Court's ability to undo such certification and provide redressability for the November 3, 2020, presidential General Election becomes impossible.

For presidential and vice-presidential elections, states must choose their electors “at least six days before the time fixed for the meeting of electors” in order to meet the federal “safe harbor” deadline. 3 U.S.C. § 5. For the 2020 General Election, electors must be chosen by December 8, 2020, in order to ensure that they are able to meet and vote at the time prescribed by law – December 14, 2020, at 12:00 PM – and have that vote counted in Congress. Once such votes are cast by the presidential and vice-presidential electors, this Court would lose the ability to provide relief to Petitioners, and Petitioners would have no other forum in which to have their claims redressed.

## 0222a

Although no similar deadline exists with regard to United States House of Representatives election , it is unlikely that the Court would be able to provide relief once the returns of these races have been certified and the Governor has transmitted those returns to the Speaker of the House of Representatives pursuant to 25 Pa.Stat. § 3163. Similarly, with respect to General Assembly elections, there is no certification deadline, however, pursuant to the Pennsylvania Constitution the new General Assembly is seated on December 1<sup>st</sup> after which, relief would be impracticable. Pa. Const. Art. II, Sec, 2.

The failure of an election to choose electors, must be resolved subsequently by the legislature prior to the appointment of electors “in such a manner as the legislature of such State may direct.” 3 U.S.C. § 2. Thus, the determination of a failure in the election must be resolved prior to the Secretary exercising her authority to certify the elections, prior to the Governor issuing commissions for the Electors, and prior to the Electors submitting their votes for the Electoral College. Without continuing the temporary injunction, therefore, relief will likely become impossible, and the harm would be rendered irreparable. Finally, should this litigation, and the subsequent appellate process, continue past December 14th – the date

that the Electors cast their votes– the Court would have no power in law or in equity to undue the resulting wrongs.

**C. Greater injury would result from allowing certification of election results conducted pursuant to an unconstitutional mail-in voting scheme than from prohibiting it.**

The second prerequisite to the issuance of a preliminary injunction is that the party requesting the injunction must show that greater injury would result from refusing an injunction than from granting it and concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. *The York Grp., Inc. v. Yorktowne Caskets, Inc.*, 924 A.2d 1234, 1244 (Pa. Super. 2007). This requirement is satisfied here as well.

The injunction requested is temporary and will only prevent the Secretary and Governor from performing certain ministerial actions far in advance of the statutory deadlines set in Federal Law (December 8<sup>th</sup> for certification of electors, December 14<sup>th</sup> for casting of electoral votes) or the Pennsylvania Constitution (December 1<sup>st</sup> for General Assembly to take office). Should the Court ultimately find for the Respondents, the only harm suffered by the Respondents is a slight delay of certification of results, a largely procedural step that benefits Respondents in no way if done early. This Court may take judicial notice that in the 2016 Presidential Election,



the results were certified, and the Certificates of Ascertainment were signed on December 12, 2016. See Department of State Certifies Presidential Election Results, available at

<https://www.media.pa.gov/pages/State-details.aspx?newsid=207>

(December 12, 2016). Conversely, if the limited injunction is not maintained, Respondents harm becomes irreparable, and Petitioners, along with all Pennsylvanians, must permanently suffer the fruits of an unconstitutional election and having been disenfranchised of their right to vote on adoption of a constitutional amendment before widespread no excuse mail-in voting was instituted. Juxtaposing the harms, it becomes clear that the lack of injury from a short delay to a procedural mechanism for the sake of preserving any form of redressability for Petitioners is a favorable outcome for all parties involved.

**D. Granting the Preliminary Injunction Will Maintain the Status Quo and Prevent Respondents from Inflicting Permanent Damage Through Their Illegal Conduct.**

The sole object of a preliminary injunction is to preserve the subject of the controversy in the condition in which it is when the order is made, it is not to subvert, but to maintain the existing status until the merits of the controversy can be fully heard and determined. *Chipman ex rel. Chipman v. Avon Grove School Dist.*, 841 A.2d 1098, 1101 (Pa. Commw. Ct. 2004.)

(citing *Little Britain Township Appeal*, 651 A.2d 606 (Pa. Commw. Ct. 1994)). “The status quo to be maintained by a preliminary injunction is the last actual, peaceable and lawful noncontested status which preceded the pending controversy.” *Valley Forge Historical Soc’y v. Washington Memorial Chapel*, 426 A.2d 1123, 1129 (Pa. 1981).

To be clear, the harm suffered by Petitioners is not simply that of being subject to unconstitutional legislation, though that is a cognizable harm under the law. The realized harm is the resulting wrongs of conducting the November 3, 2020, General Election pursuant to unconstitutional legislation. Prior to the November 3, 2020, General Election taking place, there were no results to be certified. As it stands now, it is not clear which steps in the process of certification of an election have and have not been completed, but clearly the electors have not yet voted. Thus, a narrow window exists in which a properly tailored injunction issued by this Court will preserve the status quo as it existed prior to the wrongful conduct at issue. Such an injunction would preserve Petitioners' rights and allow the court adequate time to decide the presented questions of law, while retaining the ability to meaningfully redress the harm. Moreover, as mentioned above, such an injunction would in no way prejudice Respondents. If injunctive relief is not granted, and a final hearing

on the merits is not immediately scheduled, Petitioners will be robbed of their ability to see their harms redressed.

The requested injunctive relief in this matter is appropriate because it will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Consequently, the third prerequisite necessary to the grant of preliminary injunctive relief has been satisfied.

**E. Act 77 is a Clear Violation of the Constitution and the Pennsylvania Supreme Court has Previously Struck Down Similar Laws and Set Aside Illegal Mail-in Ballots, Thus Petitioners are Likely to Prevail on the Merits.**

The fourth prerequisite to the issuance of a preliminary injunction is that the Petitioners must show that the activity they seek to restrain is actionable, that their right to relief is clear, and that the wrong is manifest, or, in other words, must show that they are likely to prevail on the merits.

To establish a, “clear right to relief,” the party seeking an injunction need not prove the merits of the underlying claim, but need only show that substantial legal questions must be resolved to determine the rights of the respective parties. *Walter v. Stacy*, 837 A.2d 1205, 1209 (Pa. Super. 2003) (quoting, *Chmura v. Deegan*, 581 A.2d 592, 593 (Pa. Super. 1990)); see also, *Ambrogi v. Reber*, 932 A.2d 969, 976 (Pa. Super. 2007) (citing *Walter*, 837 A.2d at 1209 (“[T]he party seeking an injunction is not required to prove that he will prevail on his theory of liability, but only that there are

substantial legal questions that the trial court must resolve to determine the rights of the parties.”)). For the reasons explained in Section V of the Argument above, Petitioners here have a clear right to relief.

**F. An Injunction Against Respondents is Reasonably Necessary to Prevent Irreparable Harm.**

The fifth prerequisite necessary for granting preliminary injunctive relief is that the moving party must show that the injunction it seeks is reasonably necessary to prevent irreparable harm. Pennsylvania courts sitting in equity have jurisdiction to prevent the continuance of acts prejudicial to the interest of individual rights, including the authority to enjoin the wrongful acts where monetary damages are inadequate. *The York Grp., Inc.*, 924 A.2d, at 1244 (Pa. Super. 2007).

The injunction Petitioners seek is reasonably suited to abate the offending activity. A preliminary injunction at this point would merely prevent the fruits of an unconstitutional election from becoming “final,” thereby preserving Petitioners’ ability to continue to seek permanent relief from this Court. The remedy requested in the instant motion is narrowly tailored to prevent immediate and irreparable harm to Petitioners that has been caused by an election perpetrated pursuant to an unconstitutional election code.

Petitioners, and the entire Pennsylvania electorate, were subject to an unconstitutional election code leading up to and through the November 3, 2020, General Election. Indeed, Petitioners continue to remain subject to such unconstitutional laws. Act 77 was enacted without regard for the Pennsylvania Constitution, nor for the protections granted therein. A brief delay in the certification of the election results that in no way harms Respondents is reasonably necessary to provide this Court with time to review and make a decision on the merits.

If preliminary injunctive relief is maintained, the Petitioners' remedy will be preserved. The preliminary injunction requested would not last longer than necessary under the circumstance, but only until the rights of the parties could be determined by a full and final hearing on the merits. The grant of the requested preliminary injunctive relief is reasonably suited to abate the offending activity until the matter can be fully adjudicated. For the reasons as set forth herein, the fifth prerequisite necessary for granting preliminary injunctive relief has been satisfied by Petitioners.

**VII. The Public Interest Will be Served by Preventing the Premature Certification of Election Results that Includes Illegal Mail-in Ballots.**

The sixth and final prerequisite that must be satisfied before a preliminary injunction may be ordered is that the party seeking an injunction

must show that the injunction will not adversely affect the public interest.

The Respondents' actions constitute an attempt to deny the electorate the protections afforded to it by the Pennsylvania Constitution. Respondents' actions represent a concerted effort to subvert the Pennsylvania Constitution, especially in light of their tacit acknowledgement that the Constitution required amendment, their attempt to make such amendment, and their abandonment of such efforts.

“Among the factors that a court must weigh in deciding whether or not to grant a preliminary injunction is the effect such a preliminary injunction would have on the public interest.” *Philadelphia v. District Council 33*. AFSCME, 528 Pa. 355, 364, 598 A.2d 256, 260 (Pa. 1991). See also, *Allegheny Anesthesiology Associates v. Allegheny General Hosp.*, 826 A.2d 886, 893 (Pa. Super. 2003) (harm to the public is an additional consideration in the issuance or denial of a preliminary injunction).

In the instant matter, any concerns of harm from brief delay are outweighed by the harm of proceeding with all of the certification steps and forever precluding meaningful review by this Court. This Court could reach a final decision on the merits in this case very quickly. The public interest will be served well by granting injunctive relief because there is no greater public interest than that of an electorate exercising its right to a free, fair,

and lawful election. That public interest will not be harmed by a temporary delay in certification while the Court decides the questions of law raised by the instant action. The public interest strongly favors issuance of injunctive relief.

**CONCLUSION**

For the foregoing reasons, this Court should maintain the preliminary injunctive relief provided by the Commonwealth Court until this Court can make a final decision on the merits, and upon such final decision, make that relief permanent and strike down Act 77 as unconstitutional.

Respectfully submitted,

OGC Law, LLC

/s/Gregory H. Teufel  
Gregory H. Teufel, Esq.  
*Attorney for Petitioners*

**CERTIFICATE OF COMPLIANCE**

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

Date: November 27, 2020

/s/Gregory H. Teufel  
Gregory H. Teufel



**CERTIFICATION OF COMPLIANCE WITH WORD COUNT LIMIT**

I certify that the RESPONSE TO APPLICATION FOR THE COURT TO EXERCISE EXTRAORDINARY JURISDICTION is 13,981 words as measured in accordance with Pennsylvania Rule of Appellate Procedure 2135.

Dated: November 27, 2020

/s/Gregory H. Teufel  
Gregory H. Teufel

**0233a**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record on November 27, 2020 by this Court's electronic filing system.

/s/Gregory H. Teufel  
Gregory H. Teufel

11/26/2020

As More Vote by Mail, Faulty Ballots Could Impact Elections - The New York Times

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The New York Times

<https://nyti.ms/R2EbF0>

## Error and Fraud at Issue as Absentee Voting Rises

By Adam Liptak

Oct. 6, 2012

TALLAHASSEE, Fla. — On the morning of the primary here in August, the local elections board met to decide which absentee ballots to count. It was not an easy job.

The board tossed out some ballots because they arrived without the signature required on the outside of the return envelope. It rejected one that said “see inside” where the signature should have been. And it debated what to do with ballots in which the signature on the envelope did not quite match the one in the county’s files.

“This ‘r’ is not like that ‘r,’” Judge Augustus D. Aikens Jr. said, suggesting that a ballot should be rejected.

Ion Sancho, the elections supervisor here, disagreed. “This ‘k’ is like that ‘k,’” he replied, and he persuaded his colleagues to count the vote.

Scenes like this will play out in many elections next month, because Florida and other states are swiftly moving from voting at a polling place toward voting by mail. In the last general election in Florida, in 2010, 23 percent of voters cast absentee ballots, up from 15 percent in the midterm election four years before. Nationwide, the use of absentee ballots and other forms of voting by mail has more than tripled since 1980 and now accounts for almost 20 percent of all votes.

Yet votes cast by mail are less likely to be counted, more likely to be compromised and more likely to be contested than those cast in a voting booth, statistics show. Election officials reject almost 2 percent of ballots cast by mail, double the rate for in-person voting.

“The more people you force to vote by mail,” Mr. Sancho said, “the more invalid ballots you will generate.”

Election experts say the challenges created by mailed ballots could well affect outcomes this fall and beyond. If the contests next month are close enough to be within what election lawyers call the margin of litigation, the grounds on which they will be fought will not be hanging chads but ballots cast away from the voting booth.

In 2008, 18 percent of the votes in the nine states likely to decide this year’s presidential election were cast by mail. That number will almost certainly rise this year, and voters in two-thirds of the states have already begun casting absentee ballots. In four Western states, voting by mail is the exclusive or dominant way to cast a ballot.

The trend will probably result in more uncounted votes, and it increases the potential for fraud. While fraud in voting by mail is far less common than innocent errors, it is vastly more prevalent than the in-person voting fraud that has attracted far more attention, election administrators say.

In Florida, absentee-ballot scandals seem to arrive like clockwork around election time. Before this year’s primary, for example, a woman in Hialeah was charged with forging an elderly voter’s signature, a felony, and possessing 31 completed absentee ballots, 29 more than allowed under a local law.

The flaws of absentee voting raise questions about the most elementary promises of democracy. “The right to have one’s vote counted is as important as the act of voting itself,” Justice Paul H. Anderson of the Minnesota Supreme Court wrote while considering disputed absentee ballots in the close 2008 Senate election between Al Franken and Norm Coleman.

Voting by mail is now common enough and problematic enough that election experts say there have been multiple elections in which no one can say with confidence which candidate was the deserved winner. The list includes the 2000 presidential election, in which problems with absentee ballots in Florida were a little-noticed footnote to other issues.

In the last presidential election, 35.5 million voters requested absentee ballots, but only 27.9 million absentee votes were counted, according to a study by Charles Stewart III, a political scientist at the Massachusetts Institute of Technology. He calculated that 3.9 million ballots requested by voters never reached them; that another 2.9 million ballots received by voters did not make it back to election officials; and that election officials rejected 800,000 ballots. That suggests an overall failure rate of as much as 21 percent.

Some voters presumably decided not to vote after receiving ballots, but Mr. Stewart said many others most likely tried to vote and were thwarted. “If 20 percent, or even 10 percent, of voters who stood in line on Election Day were turned away,” he wrote in the study, published in *The Journal of Legislation and Public Policy*, “there would be national outrage.”

THE MORNING: Make sense of the day’s news and ideas. David  
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<https://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html>

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*happening — and why it matters.*

The list of very close elections includes the 2008 Senate race in Minnesota, in which Mr. Franken's victory over Mr. Coleman, the Republican incumbent, helped give Democrats the 60 votes in the Senate needed to pass President Obama's health care bill. Mr. Franken won by 312 votes, while state officials rejected 12,000 absentee ballots. Recent primary elections in New York involving Republican state senators who had voted to allow same-sex marriage also hinged on absentee ballots.

There are, of course, significant advantages to voting by mail. It makes life easier for the harried, the disabled and the elderly. It is cheaper to administer, makes for shorter lines on election days and allows voters more time to think about ballots that list many races. By mailing ballots, those away from home can vote. Its availability may also increase turnout in local elections, though it does not seem to have had much impact on turnout in federal ones.

Still, voting in person is more reliable, particularly since election administrators made improvements to voting equipment after the 2000 presidential election.

There have been other and more controversial changes since then, also in the name of reliability and efficiency. Lawmakers have cut back on early voting in person, cracked down on voter registration drives, imposed identification requirements, made it harder for students to cast ballots and proposed purging voter rolls in a way that critics have said would eliminate people who are eligible to vote.

But almost nothing has been done about the distinctive challenges posed by absentee ballots. To the contrary, Ohio's Republican secretary of state recently sent absentee ballot applications to every registered voter in the state. And Republican lawmakers in Florida recently revised state law to allow ballots to be mailed wherever voters want, rather than typically to only their registered addresses.

"This is the only area in Florida where we've made it easier to cast a ballot," Daniel A. Smith, a political scientist at the University of Florida, said of absentee voting.

He posited a reason that Republican officials in particular have pushed to expand absentee voting. "The conventional wisdom is that Republicans use absentee ballots and Democrats vote early," he said.

Republicans are in fact more likely than Democrats to vote absentee. In the 2008 general election in Florida, 47 percent of absentee voters were Republicans and 36 percent were Democrats.

There is a bipartisan consensus that voting by mail, whatever its impact, is more easily abused than other forms. In a 2005 report signed by President Jimmy Carter and James A. Baker III, who served as secretary of state under the first President George Bush, the Commission on Federal Election Reform concluded, "Absentee ballots remain the largest source of potential voter fraud."

On the most basic level, absentee voting replaces the oversight that exists at polling places with something akin to an honor system.

"Absentee voting is to voting in person," Judge Richard A. Posner of the United States Court of Appeals for the Seventh Circuit has written, "as a take-home exam is to a proctored one."

## **Fraud Easier Via Mail**

Election administrators have a shorthand name for a central weakness of voting by mail. They call it granny farming.

"The problem," said Murray A. Greenberg, a former county attorney in Miami, "is really with the collection of absentee ballots at the senior citizen centers." In Florida, people affiliated with political campaigns "help people vote absentee," he said. "And help is in quotation marks."

Voters in nursing homes can be subjected to subtle pressure, outright intimidation or fraud. The secrecy of their voting is easily compromised. And their ballots can be intercepted both coming and going.

The problem is not limited to the elderly, of course. Absentee ballots also make it much easier to buy and sell votes. In recent years, courts have invalidated mayoral elections in Illinois and Indiana because of fraudulent absentee ballots.

Voting by mail also played a crucial role in the 2000 presidential election in Florida, when the margin between George W. Bush and Al Gore was razor thin and hundreds of absentee ballots were counted in apparent violation of state law. The flawed ballots, from Americans living abroad, included some without postmarks, some postmarked after the election, some without witness signatures, some mailed from within the United States and some sent by people who voted twice. All would have been disqualified had the state's election laws been strictly enforced.

In the recent primary here, almost 40 percent of ballots were not cast in the voting booth on the day of the election. They were split between early votes cast at polling places, which Mr. Sancho, the Leon County elections supervisor, favors, and absentee ballots, which make him nervous.

"There has been not one case of fraud in early voting," Mr. Sancho said. "The only cases of election fraud have been in absentee ballots."

# 0236a

11/26/2020

As More Vote by Mail, Faulty Ballots Could Impact Elections - The New York Times

Efforts to prevent fraud at polling places have an ironic consequence, Justin Levitt, a professor at Loyola Law School, told the Senate Judiciary Committee September last year. They will, he said, “drive more voters into the absentee system, where fraud and coercion have been documented to be real and legitimate concerns.”

“That is,” he said, “a law ostensibly designed to reduce the incidence of fraud is likely to increase the rate at which voters utilize a system known to succumb to fraud more frequently.”

## **Clarity Brings Better Results**

In 2008, Minnesota officials rejected 12,000 absentee ballots, about 4 percent of all such votes, for the myriad reasons that make voting by mail far less reliable than voting in person.

The absentee ballot itself could be blamed for some of the problems. It had to be enclosed in envelopes containing various information and signatures, including one from a witness who had to attest to handling the logistics of seeing that “the voter marked the ballots in that individual’s presence without showing how they were marked.” Such witnesses must themselves be registered voters, with a few exceptions.

Absentee ballots have been rejected in Minnesota and elsewhere for countless reasons. Signatures from older people, sloppy writers or stroke victims may not match those on file. The envelopes and forms may not have been configured in the right sequence. People may have moved, and addresses may not match. Witnesses may not be registered to vote. The mail may be late.

But it is certainly possible to improve the process and reduce the error rate.

Here in Leon County, the rejection rate for absentee ballots is less than 1 percent. The instructions it provides to voters are clear, and the outer envelope is a model of graphic design, with a large signature box at its center.

The envelope requires only standard postage, and Mr. Sancho has made arrangements with the post office to pay for ballots that arrive without stamps.

Still, he would prefer that voters visit a polling place on Election Day or beforehand so that errors and misunderstandings can be corrected and the potential for fraud minimized.

“If you vote by mail, where is that coming from?” he asked. “Is there intimidation going on?”

Last November, Gov. Rick Scott, a Republican, suspended a school board member in Madison County, not far from here, after she was arrested on charges including absentee ballot fraud.

The board member, Abra Hill Johnson, won the school board race “by what appeared to be a disproportionate amount of absentee votes,” the arrest affidavit said. The vote was 675 to 647, but Ms. Johnson had 217 absentee votes to her opponent’s 86. Officials said that 80 absentee ballots had been requested at just nine addresses. Law enforcement agents interviewed 64 of the voters whose ballots were sent; only two recognized the address.

Ms. Johnson has pleaded not guilty.

Election law experts say that pulling off in-person voter fraud on a scale large enough to swing an election, with scores if not hundreds of people committing a felony in public by pretending to be someone else, is hard to imagine, to say nothing of exceptionally risky.

There are much simpler and more effective alternatives to commit fraud on such a scale, said Heather Gerken, a law professor at Yale.

“You could steal some absentee ballots or stuff a ballot box or bribe an election administrator or fiddle with an electronic voting machine,” she said. That explains, she said, “why all the evidence of stolen elections involves absentee ballots and the like.”

# APPENDIX J

## 0237a

### United States Constitution

#### U.S. Constitution Article I, § 4, clause 1

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

#### U.S. Constitution Article II, § 1, clause 2

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

#### U.S. Constitution Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

#### U.S. Constitution Amendment XIV

##### Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

##### Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the

## 0238a

Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

### Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

### Section 4

Debts of the Confederacy and claims not to be paid.] The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

### Section 5

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

## Pennsylvania Constitution

### Pa. Constitution Article III, § 1 (1838)

In elections by the citizens, every white freeman of the age of twenty-one years, having resided in the State one year, and in the election district where he offers to vote, ten days immediately proceeding such election, and within two years paid a State or county tax, which shall

## 0239a

have been assessed at least ten days before the election, shall enjoy the rights of an elector. But a citizen of the United States who had previously been a qualified voter of this State, and removed therefrom and returned, and who shall have resided in the election district, and paid taxes, as aforesaid, shall be entitled to vote after residing in the State six months: Provided, That white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the State one year and in the election district ten days, as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

### **Pa. Constitution Article VII, § 1**

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.

1. He or she shall have been a citizen of the United States at least one month.
2. He or she shall have resided in the State 90 days immediately preceding the election.
3. He or she shall have resided in the election district where he or she shall offer to vote at least 60 days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within 60 days preceding the election.

### **Pa. Constitution Article VII, § 4**

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.

### **Pa. Constitution Article VII, § 14**

(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



## 0240a

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.

(b) For purposes of this section, “municipality” means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.

### **Pa. Constitution Article VII, § 19 (1957)**

The Legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who may, on the occurrence of any election, be unavoidably absent from the State or county of their residence because of 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, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

### **Pa. Constitution Article VIII, § 6 (1864)**

Whenever any of the qualified electors of this Commonwealth shall be in actual military service, under a requisition from the President of the United States or by the authority of this Commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual place of election.

### **Pa. Constitution Article VIII, § 18 (1949)**

The General Assembly may, by general law, provide a manner in which, and the time and place at which, qualified war veteran voters, who may, on the occurrence of any election, be unavoidably absent from the State or county of their residence because of their being bedridden or hospitalized due to illness or physical disability contracted or suffered in connection with, or as a direct result of, their military service, may vote and for the return and canvass of their votes in the election district in which they respectively reside.

## **Pa. Constitution Article XI, § 1**

Amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately.

(a) In the event a major emergency threatens or is about to threaten the Commonwealth and if the safety or welfare of the Commonwealth requires prompt amendment of this Constitution, such amendments to this Constitution may be proposed in the Senate or House of Representatives at any regular or special session of the General Assembly, and if agreed to by at least two-thirds of the members elected to each House, a proposed amendment shall be entered on the journal of each House with the yeas and nays taken thereon and the official in charge of statewide elections shall promptly publish such proposed amendment in at least two newspapers in every county in which such newspapers are published. Such amendment shall then be submitted to the qualified electors of the Commonwealth in such manner, and at such time, at least one month after being agreed to by both Houses as the General Assembly prescribes.

(b) If an emergency amendment is approved by a majority of the qualified electors voting thereon, it shall become part of this Constitution. When two or more emergency amendments are submitted they shall be voted on separately.

## Pa. Acts

### Act of October 31, 2019, P.L. 552, No. 77

#### AN ACT

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

## 0243a

registration application, for appeals and for appeals to court of common pleas; in voting by qualified absentee electors, further providing for applications for official absentee ballots, for date of application for absentee ballot, for approval of application for absentee ballot, for absentee electors files and lists, for official absentee voters ballots, for delivering or mailing ballots, for voting by absentee electors, for canvassing of official absentee ballots and for public records; providing for voting by qualified mail-in electors; in returns of primaries and elections, further providing for manner of computing irregular ballots; providing for dissemination of information and for jurisdiction; removing references to the Traffic Court of Philadelphia; and making related repeals.

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

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

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

\* \* \*

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

\* \* \*

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

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

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

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

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

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

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

**Section 207. Requirements for Disapproval or Decertification of Voting Apparatuses.--(a) The Commonwealth may not disapprove or decertify a voting**

apparatus in 50% or more counties until the requirements of this section have been met.

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

(1) The reason for the disapproval or decertification.

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

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

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

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

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

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

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

# 0245a

## **notification of a transfer to the chair and minority chair of the Appropriations Committee of the Senate and the chair and minority chair of the Appropriations Committee of the House of Representatives.**

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

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

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

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

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

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

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

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

## 0246a

(1) 150 votes or fewer.

(2) 151 to 300 votes.

(3) 301 to 500 votes.

(4) 501 to 750 votes.

(5) 751 votes and over.

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

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

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

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

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

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

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

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

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

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Section 630.1. Affidavits of Candidates.--Each candidate for any State, county, city, borough, incorporated town, township, school district or poor district office, or for the office of United States Senator or Representative in Congress, selected as provided in section 630 of this act, shall file with the nomination certificate an affidavit stating-- (a) his residence, with street and number, if any, and his post-office address; (b) his election district, giving city, borough, town or township; (c) the name of the office for which he consents to be a candidate; (d) that he is eligible for such office; (e) that he will not knowingly violate any provision of this act, or of any law regulating and limiting election expenses and prohibiting corrupt practices in connection therewith; (f) unless he is a candidate for judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school board in a district where that office is elective or for the office of justice of the peace, that he is not a candidate for the same office of any party or political body other than the one designated in such certificate; (g) that he is aware of the provisions of section 1626 of this act requiring election and post-election reporting of campaign contributions and expenditures; and (h) that he is not a candidate for an office which he already holds, the term of which is not set to expire in the same year as the office subject to the affidavit.

Section 908. Manner of Signing Nomination Petitions; Time of Circulating.--Each signer of a nomination petition shall sign but one such petition for each office to be filled, and shall declare therein that he is a registered and enrolled member of the party designated in such petition: Provided, however, That where there are to be elected two or more persons to the same office, each signer may sign petitions for as many candidates for such office as, and no more than, he could vote for at the succeeding election. He shall also declare therein that he is a qualified elector of the county therein named, and in case the nomination is not to be made or candidates are not to be elected by the electors of the State at large, of the political district therein named, in which the nomination is to be made or the election is to be held. He shall add his [residence] **address where he is duly registered and enrolled**, giving city, borough or township, with street and number, if any, and shall legibly print his name and add the date of signing, expressed in words or numbers: Provided, however, That if the said political district named in the petition lies wholly within any city, borough or township, or is coextensive with same, it shall not be necessary for any signer of a nomination petition to state therein the city, borough or township of his residence. No nomination petition shall be circulated prior to the thirteenth Tuesday before the primary, and



no signature shall be counted unless it bears a date affixed not earlier than the thirteenth Tuesday nor later than the tenth Tuesday prior to the primary.

Section 909. Petition May Consist of Several Sheets; [Affidavit] **Statement** of Circulator.--Said nomination petition may be on one or more sheets, and different sheets must be used for signers resident in different counties. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one petition, and each sheet shall be numbered consecutively beginning with number one, at the foot of each page. In cases of petitions for delegate or alternate delegate to National conventions, each sheet shall contain a notation indicating the presidential candidate to whom he is committed or the term "uncommitted." Each sheet shall have appended thereto the [affidavit] **statement** of the circulator of each sheet, setting forth, **subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)**--(a) that he or she is a qualified elector **of the Commonwealth, who is** duly registered and enrolled as a member of the [designated party of the State, or of the political district, as the case may be, referred to] **party designated** in said petition, unless said petition relates to the nomination of a candidate for a court of common pleas, for the Philadelphia Municipal Court [or for the Traffic Court of Philadelphia] or for justice of the peace, in which event the circulator need not be a duly registered and enrolled member of the designated party; (b) his residence, giving city, borough or township, with street and number, if any; (c) that the signers thereto signed with full knowledge of the contents of the petition; (d) that their respective residences are correctly stated therein; (e) that they all reside in the county named in the [affidavit] **statement**; (f) that each signed on the date set opposite his name; and (g) that, to the best of [affiant's] **the circulator's** knowledge and belief, the signers are qualified electors and duly registered and enrolled members of the designated party of the State, or of the political district, as the case may be.

Section 910. Affidavits of Candidates.--Each candidate for any State, county, city, borough, incorporated town, township, ward, school district, poor district, election district, party office, party delegate or alternate, or for the office of United States Senator or Representative in Congress, shall file with his nomination petition his affidavit stating--(a) his residence, with street and number, if any, and his post-office address; (b) his election district, giving city, borough, town or township; (c) the name of the office for which he consents to be a candidate; (d) that he is eligible for such office; (e) that he will not knowingly violate any provision of this act, or of any law regulating and limiting nomination and election expenses and prohibiting corrupt

practices in connection therewith; (f) unless he is a candidate for judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school director in a district where that office is elective or for the office of justice of the peace that he is not a candidate for nomination for the same office of any party other than the one designated in such petition; (g) if he is a candidate for a delegate, or alternate delegate, member of State committee, National committee or party officer, that he is a registered and enrolled member of the designated party; (h) if he is a candidate for delegate or alternate delegate the presidential candidate to whom he is committed or the term "uncommitted"; (i) that he is aware of the provisions of section 1626 of this act requiring pre-election and post-election reporting of campaign contributions and expenditures; and (j) that he is not a candidate for an office which he already holds, the term of which is not set to expire in the same year as the office subject to the affidavit. In cases of petitions for delegate and alternate delegate to National conventions, the candidate's affidavit shall state that his signature to the delegate's statement, as hereinafter set forth, if such statement is signed by said candidate, was affixed to the sheet or sheets of said petition prior to the circulation of same. In the case of a candidate for nomination as President of the United States, it shall not be necessary for such candidate to file the affidavit required in this section to be filed by candidates, but the post-office address of such candidate shall be stated in such nomination petition.

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

(d) Nomination papers may be on one or more sheets and different sheets must be used for signers resident in different counties. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one nomination paper, and each sheet shall be numbered consecutively, beginning with number one (1) at the foot of each page. Each sheet shall have appended thereto the [affidavit] **statement** of some person, not necessarily a signer, and not necessarily the same person on each sheet, setting forth, **subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)**--[(1) that the affiant is a qualified elector of the State, or of the electoral district, as the case may be, referred to in the nomination paper;] (2) [his] **the person's** residence, giving city, borough or township with street and number, if any; (3) that the signers signed with full knowledge of the contents of the nomination paper; (4) that their respective residences are correctly stated therein; (5) that they all reside in the county named in the [affidavit] **statement**; (6) that each signed on the date set opposite his name; and (7) that, to the best of [affiant's] **the person's** knowledge

## 0250a

and belief, the signers are qualified electors of the State, or of the electoral district, as the case may be.

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

## 0251a

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

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

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

## 0252a

reviewed by the court upon an application to compel its reception as of the date when presented to the Secretary of the Commonwealth or such board. The application shall be made within two days of the time when such decision is announced. If the application is properly made, any judge of said court may fix a time and place for hearing the matter in dispute, of which notice shall be served with a copy of said application upon the Secretary of the Commonwealth or the county board of elections, as the case may be. At the time so fixed, the court, or any judge thereof assigned for the purpose, shall hear the case de novo. If after such hearing the said court shall find that the decision of the committee or the board was erroneous, it shall issue its mandate to the committee or board to correct its decision and to accept and file the nomination paper, petition or certificate. From any decision of the court an appeal may be taken within two days after the entry thereof. It shall be the duty of the said court to fix the hearing and to announce its decision within such period of time as will permit the Secretary of the Commonwealth or the county board of elections to permit the names of the candidates affected by the court's decision to be printed on the ballot, if the court should so determine.

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

Section 993. Filling of Certain Vacancies in Public Office by Means of Nomination Certificates and Nomination Papers.--(a) In all cases where a vacancy shall occur for any cause in an elective public office,

## 0253a

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

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

(b) In case of the death or withdrawal of any candidate nominated by a political body for an election, the committee named in the original nomination papers may nominate a substitute in his place by filing a substituted nomination certificate in the form and manner prescribed

# 0254a

by section nine hundred eighty of this act. In the case of a vacancy caused by the death of any candidate, said nomination certificate shall be accompanied by a death certificate properly certified. No substituted nomination certificate shall nominate any person who has already been nominated by any political party or by any other political body for any office to be filled at the ensuing November election, unless such person is a candidate for the office of judge of a court of common pleas, the Philadelphia Municipal Court [or the Traffic Court of Philadelphia,] or for the office of school director in districts where that office is elective or for the office of justice of the peace.

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

Official..... Primary Ballot.  
(Name of Party)

.....District,.....Ward, City of.....,  
County of....., State of Pennsylvania  
.....Primary election held on the.....day of....., 19...

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

President of the United States.  
(Vote for one)

John Doe  
Richard Roe  
John Stiles

United States Senator.  
(Vote for one)

John Doe  
Richard Roe  
John Stiles

Governor.  
(Vote for one)

John Doe  
Richard Roe  
John Stiles

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

John Doe

# 0255a

Richard Roe  
John Stiles

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

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

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

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

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

John Doe  
Richard Roe  
John Stiles

Member of State Committee.  
(Vote for one)

John Doe  
Richard Roe  
John Stiles

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

John Doe  
Richard Roe  
John Stiles

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



# 0256a

nomination petitions therefor) as many blank spaces as there are persons to be voted for, for such office, in which space the elector may insert, **by writing or stamping**, the name of any person whose name is not printed on the ballot as a candidate for such office. Opposite or under the name of each candidate, except candidates for the office of President of the United States and candidates for delegate or alternate delegate to a National Party Convention, who is to be voted for by the electors of more than one county, shall be printed the name of the county in which such candidate resides; and opposite or under the name of each candidate except candidates for delegate or alternate delegate to a National Party Convention who is to be voted for by the electors of an entire county or any congressional, senatorial or representative district within the county, shall be printed the name of the city, borough, township or ward, as the case may be, in which such candidate resides.

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Section 1003. Form of Official Election Ballot.--

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

## OFFICIAL BALLOT

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

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

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

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

# 0257a

pencil or blue, black or blue-black ink, in fountain pen or ball point pen; use the same pencil or pen for all markings you place on the ballot.

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

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

## Presidential Electors.

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

**For**

# 0258a

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

..... **Citizens**

United States Senator.

(Vote for one)

Richard Roe ..... Democratic

John Doe ..... Republican

Richard Stiles ..... Socialist

Governor.

(Vote for one)

Richard Roe ..... Democratic

John Doe ..... Republican

Richard Stiles ..... Socialist

Representatives in Congress,

..... District.

(Vote for one)

Richard Roe ..... Democratic

John Doe ..... Republican

Richard Stiles ..... Socialist

Senator in the General Assembly,

..... District.

(Vote for one)

John Doe ..... Democratic

Richard Roe ..... Republican

\* \* \*

(e) There shall be left at the end of the group of candidates for President and Vice-President of the United States under the title "Presidential Electors," as many blank spaces as there are presidential electors to be elected, in which spaces the elector may insert, **by writing or stamping**, the names of any individual candidates for presidential electors for whom he desires to vote. There shall also be left at the end of each group of candidates for each other office (or under the title of the office itself in case no candidates have been nominated therefor), as many blank spaces as there are persons to be voted for for such office, in which space the elector may insert the name of any person or persons whose name is not printed on the ballot as a candidate for such office.

\* \* \*

Section 1004. Form of Ballots; Printing Ballots; Stubs; Numbers.--  
From the lists furnished by the Secretary of the Commonwealth under

## 0259a

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

Section 1007. Number of Ballots to Be Printed; Specimen Ballots.--

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

**(1) the general primary election held in even-numbered years in which candidates for the office of President of the United States are not nominated in an amount of at least 10%**

## 0260a

**greater than the highest number of ballots cast in the election district in any of the previous three general primary elections at which candidates for the office of President of the United States were not nominated;**

**(2) the general primary election held in even-numbered years in which candidates for the office of President of the United States are nominated in an amount of at least 15% greater than the highest number of ballots cast in the election district in any of the previous three general primary elections at which candidates for the office of President of the United States were nominated;**

**(3) the municipal primary election held in odd-numbered years in an amount of at least 10% greater than the highest number of ballots cast in any of the previous three municipal primary elections in the election district;**

**(4) the general election held in even-numbered years in which candidates for the office of President of the United States are not elected in an amount of at least 10% greater than the highest number of ballots cast in the election district in any of the previous three general elections at which candidates for the office of President of the United States were not elected;**

**(5) the general election held in even-numbered years in which candidates for the office of President of the United States are elected in an amount of at least 15% greater than the highest number of ballots cast in the election districts in any of the previous three general elections at which candidates for the office of President of the United States were elected; and**

**(6) the municipal election held in odd-numbered years in an amount of at least 10% greater than the highest number of ballots cast in any of the previous three municipal elections in the election district.**

**(b) The county board of each county shall also, in addition to the number of ballots required to be printed for general distribution, maintain a sufficient supply of such ballots at the office of the county board for the use of absentee electors or mail-in electors and for the use of any district, the ballots for which may be lost, destroyed or stolen. They shall also cause to be printed on tinted paper, and without the facsimile endorsements, permanent binding or stubs, copies of the form of ballots provided for each polling place at each primary or election therein, which shall be called specimen ballots, and which shall be of the same size and form as the official ballots, and at each election they shall deliver to the election officers, in addition to the official ballots to be used at such election, a suitable supply of**

## 0261a

specimen ballots for the use of the electors. At each primary, a suitable supply of specimen ballots of each party shall be furnished.

Section 1008. Forms of Ballots on File and Open to Public Inspection; Ballots and Diagrams to Be Furnished to Candidates and Parties.--

(a) The county board of elections shall have on file in its office[, on and] after the Thursday [preceding] **before** each primary and election, open to public inspection, forms of the ballots and ballot labels[, with the names and such statements and notations as may be required by the provisions of this act, printed thereon, which shall be used in each election district within the county]. **The forms of the ballots and ballot labels shall be published on the county board's publicly accessible Internet website.**

(b) On the Thursday [preceding] **before** each primary, the county board shall, upon request made at their office, [there] deliver to each candidate whose name is printed on the ballot of any party, or to his authorized representative, without charge, three [specimen] **sample** ballots of such party for the entire district [in which such candidate is to be voted for, and the candidate may, at his own expense, have printed on different colored paper as many copies as he requires for conducting his campaign].

(c) On the Thursday [preceding] **before** each November election, the county board shall, upon request made at their office, [there] deliver to the county chairman or other authorized representative of each political party and political body in the county, without charge, two [specimen] **sample** ballots [or diagrams] for each election district within the county in which candidates of such party or political body are [to be voted for, and such political party or political body may, at its own expense, have printed on different colored paper as many copies as it requires for conducting its campaign.] **running for office.**

Section 1107. Requirements of Voting Machines.--No voting machine shall, upon any examination or reexamination, be approved by the Secretary of the Commonwealth, or by any examiner appointed by him, unless it shall, at the time, satisfy the following requirements:

\* \* \*

[(b) It shall permit each voter, at other than primary elections, to vote a straight political party ticket in one operation, and, in one operation, to vote for all the candidates of one political party for presidential electors, and, in one operation, to vote for all the candidates of one political party for every office to be voted for, except those offices as to which he votes for individual candidates.]

\* \* \*

Section 1110. Form of Ballot Labels on Voting Machines.--

\* \* \*

## 0262a

(h) The names of all candidates of a political party shall appear in the same row or column, and except in cases of names of presidential commitments of nominees for delegate or alternate delegate to political party National conventions no other names shall appear in the same row or column[, to the left or top of which shall be a straight party lever, by means of which an elector may, in one operation, vote for all the candidates of that political party for every office to be voted for]. Where the names of the delegate or alternate delegate and the presidential candidate he is supporting shall both appear, the print size of the name of the delegate or alternate delegate shall be equal to the size of the name of the particular presidential candidate to whom he is committed, or in the case where he is uncommitted, the word "uncommitted" shall appear in the same size print. The names of such candidates shall be arranged under or opposite the title of the office for which they are candidates, and shall appear in the order of the votes obtained by the candidate for Governor of the party nominated at the last gubernatorial election, beginning with the party obtaining the highest number of votes: Provided, however, That in the case of parties or bodies not represented on the ballot at the last gubernatorial election, the names of the candidates of such parties shall be arranged alphabetically, according to the party or body name. The names of all candidates of a political body shall appear in the same row or column, and, if the number of parties and bodies permits, each political body shall be entitled exclusively to a separate row or column[, with a straight party lever]. If, however, the number of political parties and political bodies renders it impossible or impracticable to so arrange the political bodies, in such case said bodies shall not be entitled to a separate row or column [and a straight party lever], but shall be listed by political appellations on the first left hand or top row, with the designating letter and number of the ballot label where their candidates may be found, together with the political appellations of other political bodies, whose candidates may be interspersed on the same row or column. Subject to the aforesaid limitations, the form and arrangement of ballot labels, as to the placing thereon of political bodies, shall be within the discretion of the county board.

\* \* \*

Section 1107-A. Requirements of Electronic Voting Systems.--No electronic voting system shall, upon any examination or reexamination, be approved by the Secretary of the Commonwealth, or by any examiner appointed by him, unless it shall be established that such system, at the time of such examination or reexamination:

\* \* \*

[(3) Permits each voter, at other than primary elections, to vote a straight political party ticket by one mark or act and, by one mark or

## 0263a

act, to vote for all the candidates of one political party for presidential electors and, by one mark or act, to vote for all the candidates of one political party for every office to be voted for, and every such mark or act shall be equivalent to and shall be counted as a vote for every candidate of the political party so marked including its candidates for presidential electors, except with respect to those offices as to which the voter has registered a vote for individual candidates of the same or another political party or political body, in which case the automatic tabulating equipment shall credit the vote for that office only for the candidate individually so selected, notwithstanding the fact that the voter may not have individually voted for the full number of candidates for that office for which he was entitled to vote.]

\* \* \*

Section 1109-A. Forms.--(a) \* \* \*

(2) The pages placed on the voting device shall be of sufficient number to include, following the listing of particular candidates, the names of candidates for any nonpartisan offices and any measures for which a voter may be qualified to vote on a given election day, provided further that for municipal, general or special elections, the first ballot page shall list in the order that such political parties are entitled to priority on the ballot, the names of such political parties [with designating arrows so as to indicate the voting square or position on the ballot card where the voter may insert by one mark or punch the straight party ticket of his choice].

\* \* \*

[(d) In partisan elections the ballot cards shall include a voting square or position whereby the voter may by one punch or mark record a straight party ticket vote for all the candidates of one party or may vote a split ticket for the candidates of his choice.]

\* \* \*

Section 1112-A. Election Day Procedures and the Process of Voting.--(a) In an election district which uses an electronic voting system in which votes are registered electronically, the following procedures will be applicable for the conduct of the election at the election district:

\* \* \*

(2) At [primary] **all** elections, the voter shall be able to vote for each candidate individually by the means provided. [At all other elections, he may vote for each candidate individually, or he may vote a straight political party ticket in one operation by operating the straight political party mechanism of the political party or political body of his choice. He may also, after having operated the straight party mechanism and before recording his vote, cancel the vote for any candidate of such political party or political body and may thereupon



## 0264a

vote for a candidate of another party, or political body for the same office.] The voter may also vote individually for or against a question submitted to the vote of the electors.

\* \* \*

(4) At any general election at which presidential electors are to be chosen, each elector shall be permitted to vote by one operation for all the presidential electors of a political party or political body. For each party or body nominating presidential electors, a ballot label shall be provided containing only the words "Presidential Electors," preceded by the names of the party or body and followed by the names of the candidates thereof for the Office of President and Vice-President, and the corresponding counter or registering device shall register votes cast for said electors when thus voted for collectively. If any elector desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or body, he may write or deposit a paper ballot prepared by himself in the receptacle provided in or on the voting device for that purpose, or he may list their names on the write-in ballot or envelope provided for that purpose. The voting device shall be so constructed that it will not be possible for any one voter to vote a straight party ticket for presidential electors and at the same time to deposit a ballot for presidential electors in a receptacle as [hereinabove] provided **in this section**. When the votes for presidential electors are counted, the votes appearing upon the counter or registering device corresponding to the ballot label containing the names of the candidates for President and Vice-President of any party or body shall be counted as votes for each of the candidates for presidential elector of such party or body, and thereupon all candidates for presidential elector shall be credited, in addition, with the votes cast for them upon the ballots deposited in the machine, as [hereinabove] provided **in this section**.

\* \* \*

(b) In an election district which uses an electronic voting system which utilizes paper ballots or ballot cards to register the votes, the following procedures will be applicable for the conduct of the election at the election district:

\* \* \*

(4) [If the voter desires to vote for every candidate of a political party or political body, except its candidates for offices as to which he votes for individual candidates in the manner hereinafter provided, he may make a cross (X) or check (✓) or punch or mark sense mark in the square opposite the name of the party or political body so marked, including its candidates for presidential electors, except for those

## 0265a

offices as to which he has indicated a choice for individual candidates of the same or another party or political body, by making a cross (X) or check (ˇ) or punch or mark sense mark opposite their names in the manner hereinabove provided, as to which offices his ballot shall be counted only for the candidates which he has thus individually marked, notwithstanding the fact that he made a mark in the party column, and even though in the case of an office for which more than one candidate is to be voted for, he has not individually marked for such office the full number of candidates for which he is entitled to vote.] If he desires to vote for the entire group of presidential electors nominated by any party or political body, he may make a cross (X) or check (ˇ) or punch or mark sense mark in the appropriate space opposite the names of the candidates for President and Vice-President of such party or body. If he desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or political bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or political body, or wholly of names of persons not in nomination by any party or political body, he shall insert, **by writing or stamping**, the names of the candidates for presidential electors for whom he desires to vote in the blank spaces provided therefor on the write-in ballot under the title of the office "Presidential Electors". In case of a question submitted to the vote of the electors, he may make a cross (X) or check (ˇ) or punch or mark sense mark in the appropriate square opposite the answer which he desires to give.

\* \* \*

Section 1113-A. Post Election Procedures.--\* \* \*

(d) In returning any votes cast for any person whose name is not printed on the official ballot, the election officers shall record any such names exactly as they were written[, stamped or applied to the ballot by sticker] **or stamped**.

\* \* \*

Section 3.1. The act is amended by adding an article to read:

### **ARTICLE XI-B**

#### **VOTING APPARATUS BONDS**

##### **Section 1101-B. Definitions.**

**The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:**

**"Account." The County Voting Apparatus Reimbursement Account established under section 1106-B.**

**"Authority." The Pennsylvania Economic Development Financing Authority.**

## 0266a

**"Bond."** Any type of revenue obligation, including a bond or series of bonds, note, certificate or other instrument, issued by the authority for the benefit of the department under this article.

**"Bond administrative expenses."** Expenses incurred to administer bonds as provided under the Financing Law, or as otherwise necessary to ensure compliance with applicable Federal or State law.

**"Bond obligations."** The principal of a bond and any premium and interest payable on a bond, together with any amount owed under a related credit agreement or a related resolution of the authority authorizing a bond.

**"Credit agreement."** A loan agreement, a revolving credit agreement, an agreement establishing a line of credit, a letter of credit or another agreement that enhances the marketability, security or creditworthiness of a bond.

**"Department."** The Department of State of the Commonwealth.

**"Election security equipment."** Information technology such as intrusion detection sensors and other infrastructure deployed to enhance the security of voting apparatus and election systems by detecting and reporting hacking attempts and other election security breaches.

**"Electronic voting system."** As defined in section 1101-A.

**"Financing Law."** The act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

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

**Section 1102-B. Bond issuance.**

(a) Declaration of policy.--The General Assembly finds and declares that funding the replacement of voting apparatuses, including interest, through the authority, is in the best interest of this Commonwealth.

(b) Authority.--Notwithstanding any other law, the following shall apply:

(1) The department may be a project applicant under the Financing Law and may apply to the authority for the funding of the replacement of voting apparatuses.

(2) The authority may issue bonds under the Financing Law, consistent with this article, to finance projects to fund the replacement of county voting apparatuses or to reimburse counties for their cost to purchase or enter into capital leases for voting apparatuses.

(3) Participation of an industrial and commercial development authority shall not be required to finance the replacement of voting apparatuses.

(c) Debt or liability.—

(1) Bonds issued under this article shall not be a debt or liability of the Commonwealth and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth.

(2) Bond obligations and bond administrative expenses shall be payable solely from revenues or money pledged or available for repayment as authorized under this article. This paragraph shall include the proceeds of any issuance of bonds.

(3) Each bond shall contain on its face a statement that:

(i) the authority is obligated to pay the principal or interest on the bonds only from the revenues or money pledged or available for repayment as authorized under this article;

(ii) neither the Commonwealth nor a county is obligated to pay the principal or interest; and

(iii) the full faith and credit of the Commonwealth or any county is not pledged to the payment of the principal of or the interest on the bonds.

Section 1103-B. Criteria for bond issuance.

(a) Determination.—If the department decertifies one or more voting apparatuses that are in use in any county of this Commonwealth, the department shall apply to the authority to issue bonds for reimbursements to each county for the cost of procuring new voting apparatuses.

(a.1) Issuance.—Bonds may be issued in one or more series, and each series may finance reimbursement grants to one or more counties.

(b) Terms.—

(1) The department, with the approval of the Office of the Budget, shall specify in its application to the authority:

(i) the maximum principal amount of the bonds for each bond issue; and

(ii) the maximum term of the bonds consistent with applicable law.

(2) The total principal amount for all bonds issued under this article may not exceed \$90,000,000.

(3) The term of the bonds issued under this article may not exceed 10 years from the respective date of original issuance.

(c) Expiration.—For the purpose of this article, authorization to issue bonds, not including refunding bonds, shall expire December 31, 2020.

**Section 1104-B. Issuance of bonds, security and sources of payments.**

(a) Issuance.—The authority shall consider issuance of bonds upon application by the department. Bonds issued under this article shall be subject to the provisions of the Financing Law, unless otherwise specified under this article.

(b) Service agreement authorized.—The authority and the department may enter into an agreement or service agreement to effectuate this article, including an agreement to secure bonds issued for the purposes under section 1102-B(b), pursuant to which the department shall agree to pay the bond obligations and bond administrative expenses to the authority in each fiscal year that the bonds or refunding bonds are outstanding in amounts sufficient to timely pay in full the bond obligations, bond administrative expenses and any other financing costs due on the bonds issued for the purposes under section 1102-B(b). The department's payment of the bond obligations, bond administrative expenses and other financing costs due on the bonds as service charges under an agreement or service agreement shall be subject to and dependent upon the appropriation of funds by the General Assembly to the department for payment of the service charges. The service agreement may be amended or supplemented by the authority and the department in connection with the issuance of any series of bonds or refunding bonds authorized under this section.

(c) Security.—Bond obligations and bond administrative expenses may be secured, for the benefit of the holders of the bonds and the obligees under credit agreements or the agreements under subsection (b), by pledge of a security interest in and first lien on the following:

(1) Money relating to the bonds held on deposit in any other fund or account under an instrument or agreement pertaining to the bonds, including bond reserves and interest income on the money.

(2) The security provided under this subsection shall not apply to money in any fund relating to arbitrage rebate obligations.

**Section 1105-B. Sale of bonds.**

The authority shall offer the bonds for sale by means of a public, competitive sale or by means of a negotiated sale based

on the authority's determination of which method will produce the most benefit to counties and the Commonwealth.

**Section 1106-B. Deposit of bond proceeds.**

The net proceeds of bonds, other than refunding bonds, exclusive of costs of issuance, reserves and any other financing charges, shall be transferred by the authority to the State Treasurer for deposit into a restricted account established in the State Treasury and held solely for the purposes under section 1102-B(b) to be known as the County Voting Apparatus Reimbursement Account. The department shall pay out the bond proceeds to the counties from the account in accordance with this article.

**Section 1107-B. Payment of bond-related obligations.**

For each fiscal year in which bond obligations and bond administrative expenses will be due, the authority shall notify the department of the amount of bond obligations and the estimated amount of bond administrative expenses in sufficient time, as determined by the department, to permit the department to request an appropriation sufficient to pay bond obligations and bond administrative expenses that will be due and payable in the following fiscal year. The authority's calculation of the amount of bond obligations and bond administrative expenses that will be due shall be subject to verification by the department.

**Section 1108-B. Commonwealth not to impair bond-related obligations.**

The Commonwealth pledges that it shall not do any of the following:

(1) Limit or alter the rights and responsibilities of the authority or the department under this article, including the responsibility to:

(i) pay bond obligations and bond administrative expenses; and

(ii) comply with any other instrument or agreement pertaining to bonds.

(2) Alter or limit the service agreement under section 1104-B(b).

(3) Impair the rights and remedies of the holders of bonds, until each bond issued at any time and the interest on the bond are fully met and discharged.

**Section 1109-B. (Reserved).**

**Section 1110-B. Personal liability.**

The members, directors, officers and employees of the department and the authority shall not be personally liable as

## 0270a

a result of good faith exercise of the rights and responsibilities granted under this article.

### Section 1111-B. Annual report.

No later than March 1 of the year following the first full year in which bonds have been issued under this article and for each year thereafter in which bond obligations existed in the prior year, the department shall submit an annual report to the chair and minority chair of the Appropriations Committee of the Senate, the chair and minority chair of the Appropriations Committee of the House of Representatives, the chair and minority chair of the State Government Committee of the Senate and the chair and minority chair of the State Government Committee of the House of Representatives providing all data available on bonds issued or existing in the prior year. The report shall include existing and anticipated bond principal, interest and administrative costs, revenue, repayments, refinancing, overall benefits to counties and any other relevant data, facts and statistics that the department believes necessary in the content of the report.

### Section 1112-B. Reimbursement of county voting apparatus expenses.

(a) Application.—A county may apply to the department to receive funding to replace the county's voting apparatuses or to reimburse the county's cost to purchase or lease by capital lease voting apparatuses. Each county shall submit an application for funding on a form containing information and documentation prescribed by the department no later than July 1, 2020.

(b) Documentation for prior purchase or lease.—If a county seeks reimbursement of the county's cost to purchase or lease by capital lease a voting apparatus that the county purchased or leased before the date that the county submits its application to the department, the county's application shall include documentation prescribed by the department to substantiate the county's cost to purchase or lease the voting apparatus, including copies of fully executed voting apparatus contracts, invoices and proof of payment to the vendor of the voting apparatus.

(c) Documentation for subsequent purchase or lease.—If a county seeks funding to purchase or lease by capital lease a voting apparatus that the county will purchase or lease after the date that the county submits its application to the department, the county's application shall include documentation prescribed by the department to substantiate

## 0271a

the county's estimate to purchase or lease the voting apparatus, including copies of fully executed voting apparatus contracts, bids or price quotes submitted to the county by voting apparatus vendors and other price estimates or cost proposals.

(d) Review.--The department shall review each county application on a rolling basis and shall either approve or deny each county's application within 90 days of the date the application is received by the department. A county may supplement or amend submitted applications during the 90-day review period in consultation with the department.

(e) Approval for prior purchase or lease.--If the department approves a county's application submitted under subsection (b), the department and the county shall enter into a written grant agreement through which the department shall reimburse the county at the amount determined under subsection (g).

(f) Approval for subsequent purchase or lease.--If the department approves a county's application under subsection (c), the department and the county shall enter into a written grant agreement through which the department will provide funding to reimburse the county's cost to purchase or lease a voting apparatus at the amount determined under subsection (g). The county shall hold the grant money in an account of the county that is separate from each other county account. The county shall deliver quarterly reports to the department of the voting apparatus costs paid from the grant money in a form prescribed by the department. The county shall return any unspent grant money to the department within 30 days of the expiration of the grant agreement.

(g) Payments.--

(1) A county shall only receive amounts under this section to the extent that the department has bond proceeds available in the account from which to make payments.

(2) Except as provided under paragraph (3), a county which submitted an application approved under subsection (e) or (f) shall receive 60% of the total amount submitted under subsection (b) or (c) which may be reimbursed or paid.

(3) If the total amount submitted by all counties under paragraph (2) exceeds the total amount available for reimbursement or payment, a county shall receive a portion of the amount available equal to the total amount submitted by the county under subsection (b) or (c) which may be reimbursed or paid, divided by the total amount submitted by



all counties under subsection (b) or (c) which may be reimbursed or paid.

(4) If any bond proceeds remain after the department has issued all reimbursements in accordance with paragraphs (1), (2) and (3), the department may utilize the remaining balance for grants for counties for the purchase and distribution to the counties of election security equipment. The department shall provide notice to each county no later than 30 days prior to receiving applications for grants under this paragraph.

(h) **Certification.**—A county shall only receive the reimbursement or funding under this article after making a certification to the department, the President pro tempore of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, the chair and minority chair of the Appropriations Committee of the Senate, the chair and minority chair of the Appropriations Committee of the House of Representatives, the chair and minority chair of the State Government Committee of the Senate and the chair and minority chair of the State Government Committee of the House of Representatives that the county has completed a program under 25 Pa.C.S. § 1901(b)(1) (relating to removal of electors) and mailed notices required under 25 Pa.C.S. § 1901(b)(3) within the prior 12 months. The certification shall include information on whether the county has undertaken a canvass under 25 Pa.C.S. § 1901(b)(2).

(i) **Department application.**—The department shall apply to the authority for funding under section 1102-B only if the department has approved county applications under this article which total at least \$50,000,000.

Section 3.2. Sections 1210(a.4)(1) and (5)(ii), 1215(b) and (c), 1216(d) and (f), 1222, 1223(a) and 1227(d) of the act are amended to read:

Section 1210. Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges.--\* \* \*

(a.4) (1) At all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot. Individuals who appear to vote shall be required to produce proof of identification pursuant to subsection (a) and if unable to do so shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote

## 0273a

shall be permitted to cast a provisional ballot. **An elector who appears to vote on election day having requested an absentee ballot or mail-in ballot and who is not shown on the district register as having voted an absentee ballot or mail-in ballot shall be permitted to cast a provisional ballot.**

\* \* \*

(5) \* \* \*

(ii) A provisional ballot shall not be counted if:

(A) either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;

(B) the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual;

(C) a provisional ballot envelope does not contain a secrecy envelope;

(D) in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; [or]

(E) in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot[.]; **or**

**(F) the elector's absentee ballot or mail-in ballot is timely received by a county board of elections.**

\* \* \*

Section 1215. Method of Marking Ballots and Depositing Same in Districts in Which Ballots are Used.--\* \* \*

(b) At primaries, the elector shall prepare his ballot in the following manner: He shall vote for the candidates of his choice for nomination or election, according to the number of persons to be voted for by him, for each office, by making a cross (X) or check (✓) mark in the square opposite the name of the candidate, or he may insert by

## 0274a

writing[,] **or** stamping [or sticker,] in the blank space provided therefor, any name not already printed on the ballot, and such insertion shall count as a vote without the making of a cross (X) or check (ˇ) mark. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots.**

(c) At elections, the elector shall prepare his ballot in the following manner: He may vote for the candidates of his choice for each office to be filled according to the number of persons to be voted for by him for each office, by making a cross (X) or check (ˇ) mark in the square opposite the name of the candidate, or he may insert by writing[,] **or** stamping [or sticker,] in the blank spaces provided therefor, any name not already printed on the ballot, and such insertion shall count as a vote without the making of a cross (X) or check (ˇ) mark. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots.** If he desires to vote for every candidate of a political party or political body, except its candidates for offices as to which he votes for individual candidates in the manner hereinafter provided, he may make a cross (X) or check (ˇ) mark in the square opposite the name of the party or political body of his choice in the party column on the left of the ballot, and every such cross (X) or check (ˇ) mark shall be equivalent to and be counted as a vote for every candidate of a party or political body so marked, including its candidates for presidential electors, except for those offices as to which he has indicated a choice for individual candidates of the same or another party or political body, by making a cross (X) or check (ˇ) mark opposite their names in the manner hereinabove provided, as to which offices his ballot shall be counted only for the candidates which he has thus individually marked, notwithstanding the fact that he made a mark in the party column, and even though in the case of an office for which more than one candidate is to be voted for, he has not individually marked for such office the full number of candidates for which he is entitled to vote. If he desires to vote for the entire group of presidential electors nominated by any party or political body, he may make a cross (X) or check (ˇ) mark in the appropriate square at the right of the names of the candidates for President and Vice-President of such party or body. If he desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or political bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or political body, or wholly of names of persons not in nomination by any party or political body, he shall insert, **by writing or stamping,** the names of the candidates for presidential electors for whom he desires to vote in the blank spaces

## 0275a

provided therefor under the title of the office "Presidential Electors." In case of a question submitted to the vote of the electors, he may make a cross (X) or check (✓) mark in the appropriate square opposite the answer which he desires to give.

\* \* \*

Section 1216. Instructions of Voters and Manner of Voting in Districts in Which Voting Machines are Used.--

\* \* \*

(d) At [primaries, he] **all elections, the elector** shall vote for each candidate individually by operating the key, handle, pointer or knob, upon or adjacent to which the name of such candidate is placed. [At elections, he may vote for each candidate individually by operating the key, handle, pointer or knob, upon or adjacent to which the names of candidates of his choice are placed, or he may vote a straight political party ticket in one operation by operating the straight political party lever of the political party or political body of his choice, if such machine has thereon a separate lever for all the candidates of the political body. He may also, after having operated the straight party lever, and before recording his vote, cancel the vote for any candidate of such political party or political body by replacing the individual key, handle, pointer or knob of such candidate, and may thereupon vote for a candidate of another party, or political body for the same office by operating the key, handle, pointer or knob, upon or adjacent to which the name of such candidate appears.] In the case of a question submitted to the vote of the electors, the elector shall operate the key, handle, pointer or knob corresponding to the answer which he desires to give.

\* \* \*

(f) At any general election at which presidential electors are to be chosen, each elector shall be permitted to vote by one operation for all the presidential electors of a political party or political body. For each party or body nominating presidential electors, a ballot label shall be provided containing only the words "Presidential Electors," preceded by the names of the party or body and followed by the names of the candidates thereof for the office of President and Vice-President, and the corresponding counter or registering device shall register votes cast for said electors when thus voted for collectively. If an elector desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or body, or wholly of names of persons not in nomination by any party or body, he may write or deposit a paper ballot prepared by himself in the receptacle provided in or on the machine for the purpose. The machine shall be so constructed that it

## 0276a

will not be possible for any one voter to vote a straight party ticket for presidential electors and at the same time to deposit a ballot for presidential electors in a receptacle as [hereinabove] provided **in this section**. When the votes for presidential electors are counted, the votes appearing upon the counter or registering device corresponding to the ballot label containing the names of the candidates for President and Vice-President of any party or body shall be counted as votes for each of the candidates for presidential elector of such party or body, and thereupon all candidates for presidential elector shall be credited, in addition, with the votes cast for them upon the ballots deposited in the machine, as [hereinabove] provided **in this section**.

\* \* \*

Section 1222. Count and Return of Votes in Districts in Which Ballots are Used.--

(a) As soon as all the ballots have been properly accounted for, and those outside the ballot box, as well as the "Voting Check List," numbered lists of voters and district register sealed, the election officers shall forthwith open the ballot box, and take therefrom all ballots therein, and at primaries, separate the same according to the party to which they belong. The ballots shall then be counted one by one, and a record made of the total number, and at primaries of the total number cast for each party. Then the judge, under the scrutiny of the minority inspector, or the minority inspector, under the scrutiny of the judge, in the presence of the other officers, clerks, and of the overseers, if any, and within the hearing and sight of the watchers outside the enclosed space, shall read aloud the names of the candidates marked or inserted upon each ballot (at primaries the ballots of each party being read in sequence), together with the office for which the person named is a candidate, and the answers contained on the ballots to the questions submitted, if any, and the majority inspector and clerks shall carefully enter each vote as read, and keep account of the same in ink in triplicate tally papers (triplicate tally papers for each party at primaries) to be provided by the county board of elections for that purpose, all three of which shall be made at the same time.[: Provided, That at all general, municipal and special elections, in entering each vote received by candidates at such election, it shall not be necessary to enter separate tally marks for each vote received by such candidates upon the ballots containing the same votes for the same names, commonly known, and in this act designated as "Straight Party Tickets" for such purpose straight party ticket votes shall be entered carefully as each straight party ticket vote is read on the triplicate tally sheets under the heading "Number of votes received upon the ..... straight party tickets." Upon completing the number of votes received by each straight party ticket, the number

## 0277a

so tallied for each party shall be entered numerically on the extreme right hand margin of each such tally paper.] All ballots, after being removed from the box, shall be kept within the unobstructed view of all persons in the voting room until replaced in the box. No person while handling the ballots shall have in his hand any pencil, pen, stamp or other means of marking or spoiling any ballot. The election officers shall forthwith proceed to canvass and compute the votes cast, and shall not adjourn or postpone the canvass or computation until it shall have been fully completed.

(b) When the vote cast for the different persons named upon the ballots and upon the questions, if any, appearing thereon, shall have been fully recorded in the tally papers and counted, the election officers shall duly certify to the number of votes cast for each person (upon the respective party tickets at primaries), and shall prepare in ink two (2) general returns, showing, in addition to the entries made thereon as aforesaid, the total number of ballots received from the county board (the total of each party at primaries), the number of ballots cast (the number of each party at primaries), the number of ballots (of each party at primaries) declared void, and the number of ballots spoiled and cancelled, and any blank ballots cast, as well as the votes cast for each candidate. At elections, the number of votes cast for each candidate by each political party or political body of which such candidate is a nominee shall be separately stated.[: Provided, That the number of votes received by each set of candidates upon "straight party tickets" shall be entered opposite the names of the respective candidates in a column immediately adjoining upon the left which column shall be of convenient width and shall be headed "number of votes received upon straight party tickets."] In an immediate column to the left thereto, the number of votes received by each candidate upon all ballots [other than "straight party tickets" including all ballots known as "split tickets"] shall be entered, such column to be of convenient width and shall be headed "number of votes [received other than upon straight party tickets." The number of votes received by each candidate as shown in the column headed "number of votes received upon straight party tickets" shall then be added, together with the number of votes received by each candidate as shown in the column headed "number of votes received other than upon straight party tickets" and thereupon, the] **received.** **The** total number of votes received by each candidate shall be entered in a column on the extreme right-hand side of the return sheets, which column shall be of convenient width and shall be headed "total number of votes."

Nothing in this section contained shall be construed to authorize or permit the canvassing, counting or tallying ballots with any less degree of strictness than otherwise required by law.[, the intention of this

## 0278a

section being to dispense with the individual tally marks only so far as the so-called "straight party tickets" are concerned, and all other operations of tallying, counting, canvassing and announcing the votes shall proceed as near as may be in accordance with the other provisions of this act.]

(c) In returning any votes cast for any person whose name is not printed on the ballot, the election officers shall record any such names exactly as they were written[,] or stamped [or applied to] **upon** the ballot [by sticker]. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots. A vote cast by means of a sticker or label affixed to a ballot or ballot card shall be void and may not be counted.**

Section 1223. What Ballots Shall Be Counted; Manner of Counting; Defective Ballots.--(a) No ballot which is so marked as to be capable of identification shall be counted. Any ballot that is marked in blue, black or blue-black ink, in fountain pen or ball point pen, or black lead pencil or indelible pencil, shall be valid and counted: Provided, That all markings on the ballot are made by the same pen or pencil. Any ballot marked by any other mark than an (X) or check (ˆš) in the spaces provided for that purpose shall be void and not counted: Provided, however, That no vote recorded thereon shall be declared void because a cross (X) or check (ˆš) mark thereon is irregular in form. [Any erasure, mutilation or defective marking of the straight party column at November elections shall render the entire ballot void, unless the voter has properly indicated his choice for candidates in any office block, in which case the vote or votes for such candidates only shall be counted.] Any erasure or mutilation in the vote in any office block shall render void the vote for any candidates in said block, but shall not invalidate the votes cast on the remainder of the ballot, if otherwise properly marked. Any ballot indicating a vote for any person whose name is not printed on the ballot, by writing[, stamping or sticker] **or stamping**, shall be counted as a vote for such person, if placed in the proper space or spaces provided for that purpose, whether or not an (X) or check (ˆš) is placed after the name of such person: Provided, however, That if such writing[, stamping or sticker] **or stamping** is placed over the name of a candidate printed on the ballot, it shall render the entire vote in said office block void. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots. A vote cast by means of a sticker or label affixed to a ballot or ballot card shall be void and may not be counted.** If an elector shall mark his ballot for more persons for any office than there are candidates to be voted for for such office, or if, for any reason, it may be

impossible to determine his choice for any office, his ballot shall not be counted for such office, but the ballot shall be counted for all offices for which it is properly marked. Ballots not marked, or improperly or defectively marked, so that the whole ballot is void, shall be set aside and shall be preserved with the other ballots.

\* \* \*

Section 1227. Canvass and Return of Votes in Districts in Which Voting Machines are Used.--\* \* \*

(d) The election officers, on the foregoing returns, shall record any votes which have been cast for a person whose name is not printed on the ballot labels, by means of an irregular ballot, as defined herein. In returning any such votes which have been written[,] or deposited [or affixed] upon receptacles or devices provided for the purpose, the election officers shall record any such names exactly as they were written[,] or deposited [or affixed].

Section 4. The act is amended by adding sections to read:

**Section 1231. Deadline for Receipt of Valid Voter Registration Application.--(a) Except as provided under subsection (b), each commission, commissioner and registrar or clerk appointed by the commission shall receive, during ordinary business hours and during additional hours as the commission prescribes, at the office of the commission and at additional places as the commission designates, applications from individuals who apply to be registered to vote as provided under 25 Pa.C.S. Pt. IV (relating to voter registration) who appear and claim that they are entitled to be registered as electors of a municipality.**

**(b) In the administration of voter registration, each commission shall ensure that an applicant who is a qualified elector is registered to vote in an election when the applicant has met any of the following conditions:**

**(1) In the case of voter registration with a motor vehicle driver's license application under 25 Pa.C.S. § 1323 (relating to application with driver's license application), if the valid voter registration application is received by the appropriate commission not later than fifteen days before the election.**

**(2) (Reserved).**

**(3) In the case of voter registration at a voter registration agency under 25 Pa.C.S. § 1325 (relating to government agencies), if the valid voter registration application is received by the appropriate commission not later than fifteen days before the election.**



(4) In any other case, if the valid voter registration application of the applicant is received by the appropriate commission not later than fifteen days before the election.

(c) (1) In the case of a special election within a congressional, senatorial or representative district held on a day other than the day of a primary, general or municipal election, the registration application forms shall not be processed in the wards and election districts comprising the district for the fifteen days prior to the special election for such election.

(2) No applications shall be received as follows:

(i) On Sundays.

(ii) On holidays.

(iii) On the day of the election.

(iv) During the fifteen days next preceding each general, municipal and primary election except as provided under subsection (b).

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

"Commission" shall mean a registration commission established under 25 Pa.C.S. § 1203 (relating to commissions).

"Commissioner" shall mean a member of a commission.

Section 1232. Appeals.—(a) An individual whose application to be registered has been denied under section 1231 or 25 Pa.C.S. Pt. IV (relating to voter registration) may file with the commission a petition to be registered, setting forth the grounds of the petition under oath or affirmation. The petition must be filed by the eighth day prior to an election.

(b) (1) The commission shall fix a time for a public hearing at its office not later than the fifth day prior to the election.

(2) The commission shall give the person responsible for the rejection forty-eight hours' notice of the hearing.

(3) At the hearing, a clerk, inspector of registration or qualified elector of the county may offer evidence as to why the petitioner should not be registered.

(4) The commission, if satisfied that the petitioner is entitled to be registered, shall direct registration.

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

"Commission" shall mean a registration commission established under 25 Pa.C.S. § 1203 (relating to commissions).

## 0281a

**Section 1233. Appeals to Court of Common Pleas.--(a) An applicant whose claim for registration under section 1231 and 25 Pa.C.S. Pt. IV (relating to voter registration) has been denied shall have standing to appeal an action of a commission to the appropriate court of common pleas.**

**(b) An appeal under subsection (a) must be made by the third day preceding an election.**

**(c) The appeal must request relief and specify the grounds for relief.**

**(d) Upon timely receipt of an appeal under this section, the court shall conduct a hearing.**

**(e) If the court finds that an injustice has been done, the court shall reverse or modify the ruling of the commission and issue appropriate injunctive relief.**

**(f) The following shall apply:**

**(1) Except as provided in paragraph (2), the court may award costs for the appeal to the prevailing party.**

**(2) Costs may not be assessed against a commission or a county.**

**(g) As used in this section, "commission" shall mean a registration commission established under 25 Pa.C.S. § 1203 (relating to commissions).**

Section 5. Section 1302(b), (c), (d), (e.1) and (i) of the act are amended and the section is amended by adding subsections to read:

Section 1302. Applications for Official Absentee Ballots.--\* \* \*

**(b) [The application] An application for a qualified elector under subsection (a) shall contain the following information: Home residence at the time of entrance into actual military service or Federal employment, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident of voting district, voting district if known, party choice in case of primary, name and, for a military elector, his stateside military address, FPO or APO number and serial number. Any elector other than a military elector shall in addition specify the nature of his employment, the address to which ballot is to be sent, relationship where necessary, and such other information as may be determined and prescribed by the Secretary of the Commonwealth. When such application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.**

**(b.1) An application for a qualified elector other than under subsection (a) shall contain the following information: Date of birth, length of time a resident of voting district, voting district if known, party choice in case of primary and name. The elector shall in addition specify the nature of his or her**

**employment, the address to which ballot is to be sent, relationship where necessary, and other information as may be determined and prescribed by the Secretary of the Commonwealth. When the application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.**

(c) [The application of any qualified elector, as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h), for an official absentee ballot in any primary or election may not be made over the signature of any person, other than the qualified elector or an adult member of his immediate family, as required in the preceding subsection.] A qualified absentee military or overseas elector, as defined by the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924), may submit his application for an official absentee ballot by [facsimile method if the original application is received prior to the election by the county election office. The absentee ballot of the qualified military or overseas elector shall not be counted unless the elector's original application is received prior to the election by the county election office. The facsimile] **electronic transmission method. The electronic transmission method shall not be acceptable for the official absentee ballot. As used in this subsection, "electronic transmission method" means any technology that can transmit a document or an image of a document via electronic or electromechanical means, including, but not limited to, facsimile method. An elector entitled to submit an application for an official absentee ballot under a method authorized under 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters) may submit an application using a method authorized under 25 Pa.C.S. Ch. 35, in addition to the methods authorized in this article.**

(d) The application of any qualified elector, as defined in preceding section 1301, subsections [(b)] **(a)** to (h), inclusive, for an official absentee ballot in any primary or election shall be signed by the applicant[.], **except that for electors under section 1301(a), an adult member of the applicant's immediate family may sign the application on the elector's behalf.**

\* \* \*

(e.1) Any qualified registered elector[, including any qualified bedridden or hospitalized veteran,] who is unable because of illness or physical disability to attend his polling place on the day of any primary or election or operate a voting machine and state distinctly and audibly that he is unable to do so as required by section 1218 of this act may, with the certification by his attending physician that he is permanently disabled, and physically unable to attend the polls or

## 0283a

operate a voting machine and make the distinct and audible statement required by section 1218 appended to the application hereinbefore required, be placed on a permanently disabled absentee ballot list file. An absentee ballot application shall be mailed to every such person [for each primary or election] **otherwise eligible to receive one, by the first Monday in February each year**, so long as he does not lose his voting rights by failure to vote as otherwise required by this act. Such person shall not be required to file a physician's certificate of disability with each application as required in subsection (e) of this section [but such person must submit a written statement asserting continuing disability every four years in order to maintain his eligibility to vote under the provisions of this subsection]. Should any such person lose his disability he shall inform the county board of elections of the county of his residence. **An absentee ballot application mailed to a voter under this section, which is completed and timely returned by the voter, shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year.**

\* \* \*

(i) **(1)** Application for official absentee ballots shall be on **physical and electronic** forms prescribed by the Secretary of the Commonwealth. The application shall state that [a voter] **an elector** who receives **and votes** an absentee ballot pursuant to section 1301 [and who, on election day, is capable of voting at the appropriate polling place must void the absentee ballot and vote in the normal manner at the appropriate voting place] **shall not be eligible to vote at a polling place on election day**. Such **physical application** forms shall be made freely available to the public at county board of elections, municipal buildings and at such other locations designated by the secretary. **Such electronic application forms shall be made freely available to the public through publicly accessible means**. No written application or personal request shall be necessary to receive **or access** the application forms. Copies **and records** of all completed **physical and electronic** applications for official absentee ballots shall be retained by the county board of elections.

**(2) Nothing in this act shall prohibit a private organization or individual from printing blank voter applications for absentee ballots or shall prohibit the use of such applications by another individual, provided the form, content and paper quality have been approved by the Secretary of the Commonwealth.**

\* \* \*

**(k) The Secretary of the Commonwealth may develop an electronic system through which all qualified electors may apply for an absentee ballot and request permanent absentee voter status under subsection (e.1), provided the system is able to capture a digitized or electronic signature of the applicant. A county board of elections shall treat any application or request received through the electronic system as if the application or request had been submitted on a paper form or any other format used by the county.**

Section 5.1. Sections 1302.1, 1302.2, 1302.3 heading, (a) and (c), 1303(d) and (e) and 1305(b) of the act are amended to read:

Section 1302.1. Date of Application for Absentee Ballot.--

(a) Except as provided in [subsections (a.1) and (a.2)] **subsection (a.3)**, applications for absentee ballots shall be received in the office of the county board of elections not earlier than fifty (50) days before the primary or election [and], **except that if a county board of elections determines that it would be appropriate to its operational needs, any applications for absentee ballots received more than fifty (50) days before the primary or election may be processed before that time. Applications for absentee ballots shall be processed if received** not later than five o'clock P.M. of the first Tuesday prior to the day of any primary or election.

[(a.1) Except as provided in subsection (a.2), in the event any elector otherwise qualified who is so physically disabled or ill on or before the first Tuesday prior to any primary or election that he is unable to file his application or who becomes physically disabled or ill after the first Tuesday prior to any primary or election and is unable to appear at his polling place or any elector otherwise qualified who because of the conduct of his business, duties or occupation will necessarily be absent from the municipality of his residence on the day of the primary or election, which fact was not and could not reasonably be known to said elector on or before the first Tuesday prior to any primary or election, the elector shall be entitled to an absentee ballot at any time prior to five o'clock P.M. on the first Friday preceding any primary or election upon execution of an Emergency Application in such form prescribed by the Secretary of the Commonwealth.

(a.2) In the event any elector otherwise qualified who becomes so physically disabled or ill between five o'clock P.M. on the first Friday preceding any primary or election and eight o'clock P.M. on the day of any primary or election that he is unable to appear at his polling place or any elector otherwise qualified who because of the conduct of his business, duties or occupation will necessarily be absent from the municipality of his residence on the day of the primary or election,

## 0285a

which fact was not and could not reasonably be known to said elector prior to five o'clock P.M. on the first Friday preceding any primary or election, the elector shall be entitled to an absentee ballot if the elector completes and files with the court of common pleas in the county in which the elector is qualified to vote an Emergency Application or a letter or other signed document, which includes the same information as is provided on the Emergency Application. Upon a determination that the elector is a qualified absentee elector under section 1301, the judge shall issue an absentee ballot to the elector.]

**(a.3) (1) The following categories of electors may apply for an absentee ballot under this subsection, if otherwise qualified:**

**(i) An elector whose physical disability or illness prevented the elector from applying for an absentee ballot before five o'clock P.M. on the first Tuesday prior to the day of the primary or election.**

**(ii) An elector who, because of the elector's business, duties or occupation, was unable to apply for an absentee ballot before five o'clock P.M. on the first Tuesday prior to the day of the primary or election.**

**(iii) An elector who becomes so physically disabled or ill after five o'clock P.M. on the first Tuesday prior to the day of the primary or election that the elector is unable to appear at the polling place on the day of the primary or election.**

**(iv) An elector who, because of the conduct of the elector's business, duties or occupation, will necessarily be absent from the elector's municipality of residence on the day of the primary or election, which fact was not and could not reasonably be known to the elector on or before five o'clock P.M. on the first Tuesday prior to the day of the primary or election.**

**(2) An elector described in paragraph (1) may submit an application for an absentee ballot at any time up until the time of the closing of the polls on the day of the primary or election. The application shall include a declaration describing the circumstances that prevented the elector from applying for an absentee ballot before five o'clock P.M. on the first Tuesday prior to the day of the primary or election or that prevent the elector from appearing at the polling place on the day of the primary or election, and the elector's qualifications under paragraph (1). The declaration shall be made subject to the provisions of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).**

## 0286a

**(3) If the county board of elections determines that the elector meets the requirements of this section, the board shall issue an absentee ballot to the elector.**

**(4) If the elector is unable to appear [in court] at the office of the county board of elections to receive the ballot, the [judge] board shall give the elector's absentee ballot to an authorized representative of the elector who is designated in writing by the elector. The authorized representative shall deliver the absentee ballot to the elector and return the completed absentee ballot, sealed in the official absentee ballot envelopes, to the office of the county board of elections, [who] which shall [distribute] retain the ballot, unopened, [to the absentee voter's election district] until the canvassing of all absentee ballots.**

**(5) Multiple people qualified under this subsection may designate the same person, and a single person may serve as the authorized representative for multiple qualified electors.**

**(6) If the elector is unable to appear [in court] at the office of the county board of elections or unable to obtain assistance from an authorized representative, the county board may provide an authorized representative or ask the judge [shall] of the court of common pleas in the county in which the elector is qualified to vote to direct a deputy sheriff of the county to deliver the absentee ballot to the elector if the elector is at a physical location within the county and return the completed absentee ballot, sealed in the official absentee ballot envelopes, to the county board of elections[, who shall distribute the ballots, unopened, to the absentee voter's respective election district]. If there is no authorized representative and a deputy sheriff is unavailable to deliver an absentee ballot under this section, the judge may direct a constable to make such delivery in accordance with the provisions of this section.**

**(7) In the case of an elector who requires assistance in marking the elector's ballot, the elector shall designate in writing the person who will assist in marking the ballot. Such person shall be otherwise eligible to provide assistance to electors eligible for assistance, and such person shall declare in writing that assistance was rendered. Any person other than the designee who shall render assistance in marking a ballot or any person rendering assistance who shall fail to execute a declaration shall be guilty of a violation of this act.**

**(8) No absentee ballot under this subsection shall be counted which is received in the office of the county board of elections later than [eight o'clock P.M. on the day of the primary or election] the deadline for its receipt as provided in section 1308(g).**

**(b) In the case of an elector whose application for an absentee ballot is received by the office of the county board of elections earlier**

## 0287a

than fifty (50) days before the primary or election, the application shall be held and processed upon commencement of the fifty-day period **or at such earlier time as the county board of elections determines may be appropriate.**

(c) In the case of an elector who is physically disabled or ill on or before the first Tuesday prior to a primary or election or becomes physically disabled or ill after the first Tuesday prior to a primary or election, such Emergency Application, letter or other signed document shall contain a supporting affidavit from his attending physician stating that due to physical disability or illness said elector was unable to apply for an absentee ballot on or before the first Tuesday prior to the primary or election or became physically disabled or ill after that period.

(d) In the case of an elector who is necessarily absent because of the conduct of his business, duties or occupation under the unforeseen circumstances specified in subsections (a.1) and (a.2), such Emergency Application, letter or other signed document shall contain a supporting affidavit from such elector stating that because of the conduct of his business, duties or occupation said elector will necessarily be absent from the municipality of his residence on the day of the primary or election which fact was not and could not reasonably be known to said elector on or before the first Tuesday prior to the primary or election.]

### Section 1302.2. Approval of Application for Absentee Ballot.--

(a) The county board of elections, upon receipt of any application filed by a qualified elector not required to be registered under preceding section 1301, shall ascertain from the information on such application, district register or from any other source that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked approved such approval decision shall be final and binding except that challenges may be made only on the ground that the applicant did not possess qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to [5:00 o'clock P.M. on the first Friday prior to the election.] **the applicable deadline for the absentee ballots to be received, as provided in section 1308(g).** When so approved, the county board of elections shall cause the applicant's name and residence (and at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilians Absentee Voters File as provided in section 1302.3, subsection (b): Providing, however, That no application of any qualified elector in military service shall be rejected for failure to include on [his] **the elector's** application any information if such



## 0288a

information may be ascertained within a reasonable time by the county board of elections.

(b) The county board of elections, upon receipt of any application filed by a qualified elector who is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting as provided under preceding section 1301, shall ascertain from the information on such application or from any other source that such applicant possesses all the qualifications of a qualified elector. If the board is satisfied that the applicant is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting and that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector prior to or concurrently with the time of voting. Such challenges must be made to the county board of elections prior to [5:00 o'clock P.M. on the first Friday prior to the election.] **the applicable deadline for the absentee ballots to be received, as provided in section 1308(g).** When so approved, the county board of elections shall cause the applicant's name and residence (and at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3 subsection (b).

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of preceding section 1301, shall determine the qualifications of such applicant by verifying the proof of identification and comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding, except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to [5:00 o'clock P.M. on the first Friday prior to the election.] **the applicable deadline for the absentee ballots to be received, as provided in section 1308(g).** When so approved, the registration commission shall cause an absentee voter's temporary registration card to be inserted in the district register on top of and along with the permanent registration

## 0289a

card. The absentee voter's temporary registration card shall be in the color and form prescribed in subsection (e) of this section:

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the insertion of the absentee voter's temporary registration card of any elector from the district register as set forth in section 1302.2 shall include only such applications and emergency applications as are received on or before the first Tuesday prior to the primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before [five o'clock P. M. on the first Friday prior to] **eight o'clock P.M. on the day of** the primary or election, the county board of elections shall determine the qualifications of such applicant by verifying the proof of identification and comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b). [In addition, the local district boards of elections shall, upon canvassing the official absentee ballots under section 1308, examine the voting check list of the election district of said elector's residence and satisfy itself that such elector did not cast any ballot other than the one properly issued to him under his absentee ballot application. In all cases where the examination of the local district board of elections discloses that an elector did vote a ballot other than the one properly issued to him under the absentee ballot application, the local district board of elections shall thereupon cancel said absentee ballot and said elector shall be subject to the penalties as hereinafter set forth.]

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval. For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the absentee ballot requiring the elector to provide proof of identification with the absentee ballot or the ballot will not be counted.

(e) The absentee voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the absentee voter's name and address and shall conspicuously contain the words "Absentee Voter." [Such card shall also contain the affidavit required by subsection (b) of section 1306.]

## 0290a

(f) Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 1302.3. Absentee **and Mail-in** Electors Files and Lists.--

(a) The county board of elections shall maintain at its office a file containing the duplicate absentee voter's temporary registration cards of every registered elector to whom an absentee ballot has been sent. Such duplicate absentee voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards **and the registration cards under section 1302.3-D** so filed shall constitute the Registered Absentee **and Mail-in** Voters File for the Primary or Election of (date of primary or election) and shall be kept on file for a period commencing the Tuesday prior to the day of the primary or election until the day following the primary or election or the day the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations.

\* \* \*

(c) Not less than five days preceding the election, the chief clerk shall prepare a list for each election district showing the names and post office addresses of all voting residents thereof to whom official absentee **or mail-in** ballots shall have been issued. Each such list shall be prepared in duplicate, shall be headed "Persons in (give identity of election district) to whom absentee **or mail-in** ballots have been issued for the election of (date of election)," and shall be signed by him not less than four days preceding the election. He shall post the original of each such list in a conspicuous place in the office of the county election board and see that it is kept so posted until the close of the polls on election day. He shall cause the duplicate of each such list to be delivered to the judge of election in the election district in the same manner and at the same time as are provided in this act for the delivery of other election supplies, and it shall be the duty of such judge of election to post such duplicate list in a conspicuous place within the polling place of his district and see that it is kept so posted throughout the time that the polls are open. Upon written request, he shall furnish a copy of such list to any candidate or party county chairman.

Section 1303. Official Absentee Voters Ballots.--\* \* \*

## 0291a

(d) In cases where there is not time to print on said ballots the names of the various candidates, the county board of elections shall print special write-in absentee ballots which shall be in substantially the form of other official absentee ballots except that such special write-in absentee ballots shall contain blank spaces only under the titles of such offices in which electors may insert, **by writing or stamping**, the names of the candidates for whom they desire to vote, and in such cases the county board of elections shall furnish to electors lists containing the names of all the candidates named in nomination petitions or who have been regularly nominated under the provisions of this act, for the use of such electors in preparing their ballots. Special write-in absentee ballots also shall include all constitutional amendments and other questions to be voted on by the electors.

(e) The official absentee voter ballot shall state that a voter who receives an absentee ballot pursuant to section 1301 **and whose ballot is not timely received** and who, on election day, is capable of voting at the appropriate polling place [must void the absentee ballot and vote in the normal manner at the appropriate voting place] **may only vote on election day by provisional ballot.**

Section 1305. Delivering or Mailing Ballots.--

\* \* \*

(b) **(1)** The county board of elections upon receipt and approval of an application filed by any elector qualified in accordance with the provisions of section 1301, subsections (i) to (l), inclusive, shall commence to deliver or mail official absentee ballots [on] **as soon as a ballot is certified and the ballots are available. While any proceeding is pending in a Federal or State court which would affect the contents of any ballot, the county board of elections may await a resolution of that proceeding but in any event, shall commence to deliver or mail official absentee ballots not later than** the second Tuesday prior to the primary or election. For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2(d) with the absentee ballot. As additional applications are received and approved **after the time that the county board of elections begins delivering or mailing official absentee and mail-in ballots**, the board shall deliver or mail official absentee ballots to such additional electors within forty-eight hours.

**(2)** Notwithstanding any other provisions of this act and notwithstanding the inclusion of a mailing address on an absentee or mail-in ballot application, a voter who presents the voter's own application for an absentee or mail-in ballot within the office of the county board of elections during regular

## 0292a

**business hours may request to receive the voter's absentee or mail-in ballot while the voter is at the office. This request may be made orally or in writing. Upon presentation of the application and the making of the request and upon approval under sections 1302.2 and 1302.2-D, the county board of elections shall promptly present the voter with the voter's absentee or mail-in ballot. If a voter presents the voter's application within the county board of elections' office in accordance with this section, a county board of elections may not deny the voter's request to have the ballot presented to the voter while the voter is at the office unless there is a bona fide objection to the absentee or mail-in ballot application.**

\* \* \*

Section 6. Section 1306(a) introductory paragraph and (1) and (b) of the act are amended and the section is amended by adding a subsection to read:

Section 1306. Voting by Absentee Electors.--(a) Except as provided in paragraphs [(1),] (2) and (3), at any time after receiving an official absentee ballot, but on or before [five o'clock P.M. on the Friday prior to] **eight o'clock P.M. the day of** the primary or election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Absentee Ballot." **This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.**

[(1) Any elector who submits an Emergency Application and receives an absentee ballot in accordance with section 1302.1(a.2) or (c) shall mark the ballot on or before eight o'clock P.M. on the day of the primary or election. This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.]

# 0293a

\* \* \*

(b) [In the event that any such elector, excepting an elector in military service or any elector unable to go to his polling place because of illness or physical disability, entitled to vote an official absentee ballot shall be in the municipality of his residence on the day for holding the primary or election for which the ballot was issued, or in the event any such elector shall have recovered from his illness or physical disability sufficiently to permit him to present himself at the proper polling place for the purpose of casting his ballot, such absentee ballot cast by such elector shall, be declared void.

Any such elector referred to in this subsection, who is within the municipality of his residence, must present himself at his polling place and shall be permitted to vote upon presenting himself at his regular polling place in the same manner as he could have voted had he not received an absentee ballot: Provided, That such elector has first presented himself to the judge of elections in his local election district and shall have signed the affidavit on the absentee voter's temporary registration card, which affidavit shall be in substantially the following form:

I hereby swear that I am a qualified registered elector who has obtained an absentee ballot, however, I am present in the municipality of my residence and physically able to present myself at my polling place and therefore request that my absentee ballot be voided.

.....

(Date)

.....  
(Local Judge of Elections)

.....  
(Signature of  
Elector)

An elector who has received an absentee ballot under the emergency application provisions of section 1302.1, and for whom, therefore, no temporary absentee voter's registration card is in the district register, shall sign the aforementioned affidavit in any case, which the local judge of elections shall then cause to be inserted in the district register with the elector's permanent registration card.]

**(1) Any elector who receives and votes an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted absentee ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted an absentee ballot to vote at the polling place.**

**(2) An elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote by provisional ballot under section 1210(a.4)(1).**

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

Section 7. Sections 1308 heading, (a), (b), (b.1), (d), (e), (f), (g)(1), (2), (3), (4) and (5) and (h) and 1309 of the act are amended to read:

Section 1308. Canvassing of Official Absentee Ballots **and Mail-in Ballots.**--(a) The county boards of election, upon receipt of official absentee ballots in [such] **sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D**, shall safely keep the [same] **ballots** in sealed or locked containers until they [distribute same to the appropriate local election districts in a manner prescribed by the Secretary of the Commonwealth.

Except as provided in section 1302.1(a.2), the county board of elections shall then distribute the absentee ballots, unopened, to the absentee voter's respective election district concurrently with the distribution of the other election supplies. Absentee ballots shall be canvassed immediately and continuously without interruption until completed after the close of the polls on the day of the election in each election district. The results of the canvass of the absentee ballots shall then be included in and returned to the county board with the returns of that district. Except as provided in section 1302.1(a.2) and subsection (g), no absentee ballot shall be counted which is received in the office of the county board of election later than five o'clock P.M. on the Friday immediately preceding the primary or November election.] **are to be canvassed by the county board of elections. An absentee ballot, whether issued to a civilian, military or other voter during the regular or emergency application period, shall be canvassed in accordance with subsection (g). A mail-in ballot shall be canvassed in accordance with subsection (g).**

(b) Watchers shall be permitted to be present when the envelopes containing official absentee ballots **and mail-in ballots** are opened and when such ballots are counted and recorded.

[(b.1) In all election districts in which electronic voting systems are used, absentee ballots shall be opened at the election district, checked for write-in votes in accordance with section 1113-A and then either hand-counted or counted by means of the automatic tabulation equipment, whatever the case may be.]

(d) Whenever it shall appear by due proof that any absentee elector **or mail-in elector** who has returned his ballot in accordance

## 0295a

with the provisions of this act has died prior to the opening of the polls on the day of the primary or election, the ballot of such deceased elector shall be rejected by the canvassers but the counting of the ballot of an **absentee elector or a mail-in elector** thus deceased shall not of itself invalidate any nomination or election.

[(e) At such time the local election board shall then further examine the declaration on each envelope not so set aside and shall compare the information thereon with that contained in the "Registered Absentee Voters File," the absentee voters' list and the "Military Veterans and Emergency Civilians Absentee Voters File." If the local election board is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee Voters File," the absentee voters' list and the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the local election board shall announce the name of the elector and shall give any watcher present an opportunity to challenge any absentee elector upon the ground or grounds (1) that the absentee elector is not a qualified elector; or (2) that the absentee elector was within the municipality of his residence on the day of the primary or election during the period the polls were open, except where he was in military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (3) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein the local election board shall mark "challenged" on the envelope together with the reason or reasons therefor, and the same shall be set aside for return to the county board unopened pending decision by the county board and shall not be counted. All absentee ballots not challenged for any of the reasons provided herein shall be counted and included with the general return of paper ballots or voting machines, as the case may be as follows. Thereupon, the local election board shall open the envelope of every unchallenged absentee elector in such manner as not to destroy the declaration executed thereon. All of such envelopes on which are printed, stamped or endorsed the words "Official Absentee Ballot" shall be placed in one or more depositories at one time and said depository or depositories well shaken and the envelopes mixed before any envelope is taken therefrom. If any of these envelopes shall contain any extraneous marks or identifying symbols other than the words "Official Absentee Ballot," the envelopes and the ballots contained therein shall be set aside and declared void. The local



## 0296a

election board shall then break the seals of such envelopes, remove the ballots and record the votes in the same manner as district election officers are required to record votes. With respect to the challenged ballots, they shall be returned to the county board with the returns of the local election district where they shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges and notice shall be given where possible to all absentee electors thus challenged and to every attorney, watcher or candidate who made such challenge. The time for the hearing shall not be later than seven (7) days after the date of said challenge. On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges and, in hearing the testimony, the county board shall not be bound by technical rules of evidence. The testimony presented shall be stenographically recorded and made part of the record of the hearing. The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any person aggrieved by the decision of the county board. Such appeal shall be taken, within two (2) days after such decision shall have been made, whether reduced to writing or not, to the court of common pleas setting forth the objections to the county board's decision and praying for an order reversing same. Pending the final determination of all appeals, the county board shall suspend any action in canvassing and computing all challenged ballots irrespective of whether or not appeal was taken from the county board's decision. Upon completion of the computation of the returns of the county, the votes cast upon the challenged official absentee ballots shall be added to the other votes cast within the county.]

(f) Any person challenging an application for an absentee ballot [or], an absentee ballot, **an application for a mail-in ballot or a mail-in ballot** for any of the reasons provided in this act shall deposit the sum of ten dollars (\$10.00) in cash with the [local election] **county** board, [in cases of challenges made to the local election board and with the county board in cases of challenges made to the county board for which he shall be issued a receipt for each challenge made,] which sum shall only be refunded if the challenge is sustained or if the challenge is withdrawn within five (5) days after the primary or election. If the challenge is dismissed by any lawful order then the deposit shall be forfeited. [All deposit money received by the local election board shall be turned over to the county board simultaneously with the return of the challenged ballots.] The county board shall deposit all deposit money in the general fund of the county.

Notice of the requirements of subsection (b) of section 1306 shall be printed on the envelope for the absentee ballot **or mail-in ballot**.

## 0297a

(g) (1) **(i)** An absentee ballot cast by any absentee elector as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h) [which is received in the office of the county board of elections after five o'clock P.M. on the Friday immediately preceding the election and no later than five o'clock P.M. on the seventh day following an election] shall be canvassed in accordance with this subsection if [the absentee ballot is postmarked no later than the day immediately preceding the election.] **the ballot is cast, submitted and received in accordance with the provisions of 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters).**

**(ii)** An absentee ballot cast by any absentee elector as defined in section 1301(i), (j), (k), (l), (m) and (n), an absentee ballot under section 1302(a.3) or a mail-in ballot cast by a mail-in elector shall be canvassed in accordance with this subsection if the absentee ballot or mail-in ballot is received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

(2) The county board of elections shall meet [on the eighth day following the election to canvass] **no earlier than the close of polls on the day of the election and no later than the third day following the election to begin canvassing** the absentee ballots **and mail-in ballots** received under this subsection and subsection (h)(2). **The canvass shall continue through the eighth day following the election.** One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots **and mail-in ballots** are canvassed. Representatives shall be permitted to challenge any absentee elector **or mail-in elector** in accordance with the provisions of paragraph (3).

(3) When the county board meets to canvass absentee ballots **and mail-in ballots** under paragraph (2), the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the "Registered Absentee **and Mail-in** Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File," whichever is applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee **and Mail-in** Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the county board shall announce the name of the elector and shall give any candidate representative or party representative present an opportunity to challenge any absentee elector **or mail-in elector** upon

## 0298a

the ground or grounds: (i) that the absentee elector **or mail-in elector** is not a qualified elector; or [(ii) that the absentee elector was within the municipality of his residence on the day of the primary or election during the period the polls were open, except where he was in the military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or] (iii) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein, the board shall mark "challenged" on the envelope together with the reasons therefor, and the same shall be set aside unopened pending final determination of the challenge according to the procedure described in paragraph (5).

(4) All absentee ballots **and mail-in ballots** not challenged for any of the reasons provided in paragraph (3) shall be counted and included with the returns of the applicable election district as follows[.]:

(i) The county board shall open the envelope of every unchallenged absentee elector **and mail-in elector** in such manner as not to destroy the declaration executed thereon.

(ii) If any of the envelopes on which are printed, stamped or endorsed the words "Official Absentee Ballot" **or "Official Mail-in Ballot"** contain any extraneous marks or identifying symbols, the envelopes and the ballots contained therein shall be set aside and declared void.

(iii) The county board shall then break the seals of such envelopes, remove the ballots and record the votes.

(5) With respect to the challenged ballots, they shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges, and notice shall be given where possible to all absentee electors **and mail-in electors** thus challenged and to every individual who made a challenge. The time for the hearing shall not be later than five (5) days after the date of the challenge. On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges, and, in hearing the testimony, the county board shall not be bound by the Pennsylvania Rules of Evidence. The testimony presented shall be stenographically recorded and made part of the record of the hearing.

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## 0299a

(h) For those absentee ballots **or mail-in ballots** for which proof of identification has not been received or could not be verified:

(1) If the proof of identification is received and verified by the county board of elections prior to the distribution of the absentee ballots to the local election districts, then the county shall distribute the absentee ballots for which proof of identification is received and verified, along with the other absentee ballots, to the absentee voter's respective election district. If the county board of elections does not receive or is not able to verify the proof of identification for an elector prior to the absentee ballots' being sent to the appropriate local election districts, the county board shall keep the absentee ballot and follow the procedures set forth in paragraph (2) or (3), whichever is applicable.]

(2) If the proof of identification is received and verified [after the absentee ballots have been distributed to the appropriate local election districts, but] prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots **and mail-in ballots** under this subsection in accordance with subsection (g)(2)[, unless the elector appeared to vote at the proper polling place for the purpose of casting a ballot, then the absentee ballot cast by that elector shall be declared void].

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot **or mail-in ballot** shall not be counted.

\* \* \*

Section 1309. Public Records.--**(a)** All official absentee ballots, files, applications for such ballots and envelopes on which the executed declarations appear, and all information and lists are hereby designated and declared to be public records and shall be safely kept for a period of two years, except that no proof of identification shall be made public, nor shall information concerning a military elector be made public which is expressly forbidden by the Department of Defense because of military security.

**(b) For each election, the county board shall maintain a record of the following information, if applicable, for each elector who makes application for an absentee ballot:**

- (1) The elector's name and voter registration address.**
- (2) The date on which the elector's application is received by the county board.**
- (3) The date on which the elector's application is approved or rejected by the county board.**
- (4) The date on which the county board mails or delivers the absentee ballot to the elector.**

(5) The date on which the elector's completed absentee ballot is received by the county board.

(c) The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within forty-eight hours.

Section 8. The act is amended by adding an article to read:

**ARTICLE XIII-D**

**VOTING BY QUALIFIED MAIL-IN ELECTORS**

**Section 1301-D. Qualified mail-in electors.**

(a) General rule.--The following individuals shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article:

(1) Any qualified elector who is not eligible to be a qualified absentee elector under Article XIII.

(2) (Reserved).

(b) Construction.--The term "qualified mail-in elector" shall not be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition in section 102(t).

**Section 1302-D. Applications for official mail-in ballots.**

(a) General rule.--A qualified elector under section 1301-D may apply at any time before any primary or election for an official mail-in ballot in person or on any official county board of election form addressed to the Secretary of the Commonwealth or the county board of election of the county in which the qualified elector's voting residence is located.

(b) Content.--The following shall apply:

(1) The qualified elector's application shall contain the following information:

(i) Date of birth.

(ii) Length of time a resident of voting district.

(iii) Voting district, if known.

(iv) Party choice in case of primary.

(v) Name.

(2) A qualified elector shall, in addition, specify the address to which the ballot is to be sent, the relationship where necessary and other information as may be determined by the Secretary of the Commonwealth.

(3) When an application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

(c) Signature required.--Except as provided in subsection (d), the application of a qualified elector under section 1301-D

## 0301a

for an official mail-in ballot in any primary or election shall be signed by the applicant.

(d) **Signature not required.**—If any elector entitled to a mail-in ballot under this section is unable to sign the application because of illness or physical disability, the elector shall be excused from signing upon making a statement which shall be witnessed by one adult person in substantially the following form:

I hereby state that I am unable to sign my application for a mail-in ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

(Mark)

(Date)

(Complete Address of Witness)

(Signature of Witness)

(e) **Numbering.**—The county board of elections shall number, in chronological order, the applications for an official mail-in ballot, which number shall likewise appear on the official mail-in ballot for the qualified elector. The numbers shall appear legibly and in a conspicuous place but, before the ballots are distributed, the number on the ballot shall be torn off by the county board of election. The number information shall be appropriately inserted and become a part of the Registered Absentee and Mail-in Voters File provided under section 1302.3.

(f) **Form.**—Application for an official mail-in ballot shall be on physical and electronic forms prescribed by the Secretary of the Commonwealth. The application shall state that a voter who receives and votes a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day. The physical application forms shall be made freely available to the public at county board of elections, municipal buildings and at other locations designated by the Secretary of the Commonwealth. The electronic application forms shall be made freely available to the public through publicly accessible means. No written application or personal request shall be necessary to receive or access the application forms. Copies and records of all completed physical and electronic applications for official mail-in ballots shall be retained by the county board of elections.

(g) **Permanent mail-in voting list.**—

## 0302a

(1) Any qualified registered elector may request to be placed on a permanent mail-in ballot list file. A mail-in ballot application shall be mailed to every person otherwise eligible to receive a mail-in ballot application by the first Monday in February each year, so long as the person does not lose the person's voting rights by failure to vote as otherwise required by this act. A mail-in ballot application mailed to a voter under this section, which is completed and timely returned by the voter, shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year.

(2) The Secretary of the Commonwealth may develop an electronic system through which all qualified electors may apply for a mail-in ballot and request permanent mail-in voter status under this section, provided the system is able to capture a digitized or electronic signature of the applicant. A county board of elections shall treat an application or request received through the electronic system as if the application or request had been submitted on a paper form or any other format used by the county.

**Section 1302.1-D. Date of application for mail-in ballot.**

(a) General rule.--Applications for mail-in ballots shall be received in the office of the county board of elections not earlier than 50 days before the primary or election, except that if a county board of elections determines that it would be appropriate to the county board of elections' operational needs, any applications for mail-in ballots received more than 50 days before the primary or election may be processed before that time. Applications for mail-in ballots shall be processed if received not later than five o'clock P.M. of the first Tuesday prior to the day of any primary or election.

(b) Early applications.--In the case of an elector whose application for a mail-in ballot is received by the office of the county board of elections earlier than 50 days before the primary or election, the application shall be held and processed upon commencement of the 50-day period or at such earlier time as the county board of elections determines may be appropriate.

**Section 1302.2-D. Approval of application for mail-in ballot.**

(a) Approval process.--The county board of elections, upon receipt of any application of a qualified elector under section 1301-D, shall determine the qualifications of the applicant by verifying the proof of identification and comparing the

## 0303a

information provided on the application with the information contained on the applicant's permanent registration card. The following shall apply:

(1) If the board is satisfied that the applicant is qualified to receive an official mail-in ballot, the application shall be marked "approved."

(2) The approval decision shall be final and binding, except that challenges may be made only on the grounds that the applicant did not possess the qualifications of a mail-in elector.

(3) Challenges must be made to the county board of elections prior to the applicable deadline for the mail-in ballots to be received, as provided in section 1308(g).

(4) When approved, the registration commission shall cause a mail-in voter's temporary registration card to be inserted in the district register on top of and along with the permanent registration card.

(5) The mail-in voter's temporary registration card shall be in the color and form prescribed under subsection (d).

(b) Duties of county boards of elections and registration commissions.—The duties of the county boards of elections and the registration commissions with respect to the insertion of the mail-in voter's temporary registration card of any elector from the district register as provided under this section shall include only the applications as are received on or before the first Tuesday prior to the primary or election.

(c) Notice.—In the event that an application for an official mail-in ballot is not approved by the county board of elections, the elector shall be notified immediately with a statement by the county board of the reasons for the disapproval. For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the mail-in ballot requiring the elector to provide proof of identification with the mail-in ballot or the ballot will not be counted.

(d) Temporary registration card.—The mail-in voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the mail-in voter's name and address and shall conspicuously contain the words "Mail-in Voter."

Section 1302.3-D. Mail-in electors files and lists.

The county board of elections shall maintain at its office a file containing the duplicate mail-in voter's temporary



registration cards of every registered elector to whom a mail-in ballot has been sent. The duplicate mail-in voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards filed shall be included in the Registered Absentee and Mail-in Voters File for the Primary or Election of (date of primary or election) under section 1302.3(a).

**Section 1303-D. Official mail-in elector ballots.**

(a) **General rule.**--In election districts in which ballots are used, the ballots for use by mail-in voters under this act shall be the official ballots printed in accordance with sections 1002 and 1003.

(a.1) **Duties of county boards of elections.**--The county board of elections, when detaching the official ballots for mail-in voters, shall be required to indicate on the stub of each detached ballot the name of the applicant to which that precise ballot is being sent. The county board of elections shall also remove the numbered stub from each ballot and shall print, stamp or endorse in red color on the official ballots the words, "Official Mail-in Ballot." The ballots shall be distributed by a board as provided under this section.

(b) **Preparation of ballots.**--In election districts in which voting machines are used and in election districts in which paper ballots are used, the county board of elections in that election district will not print official mail-in ballots in accordance with sections 1002 and 1003. The ballots for use by mail-in voters under this section shall be prepared sufficiently in advance by the county board of elections and shall be distributed by the boards as provided under this act. The ballots shall be marked "Official Mail-in Ballot" but shall not be numbered and shall otherwise be in substantially the form for ballots required by Article X, which form shall be prescribed by the Secretary of the Commonwealth.

(c) **Use of ballot cards.**--In election districts in which electronic voting systems are utilized, the mail-in ballot may be in the form of a ballot card which shall be clearly stamped on the ballot card's face "Mail-in Ballot."

(d) **Special write-in mail-in ballots.**--In cases where there is not time to print on the ballots the names of the various candidates, the county board of elections shall print special write-in mail-in ballots which shall be in substantially the form of other official mail-in ballots, except that the special write-in mail-in ballots shall contain blank spaces only under the titles of the offices in which electors may insert by writing or

## 0305a

stamping the names of the candidates for whom they desire to vote, and in those cases, the county board of elections shall furnish to electors lists containing the names of all the candidates named in nomination petitions or who have been regularly nominated under the provisions of this act, for the use of the electors in preparing their ballots. Special write-in mail-in ballots shall include all constitutional amendments and other questions to be voted on by the electors.

(e) Notice.—The official mail-in voter ballot shall state that a voter who receives a mail-in ballot under section 1301-D and whose mail-in ballot is not timely received may only vote on election day by provisional ballot.

Section 1304-D. Envelopes for official mail-in ballots.

(a) Additional envelopes.—The county boards of election shall provide two additional envelopes for each official mail-in ballot of a size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official Mail-in Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the mail-in voter.

(b) Form of declaration and envelope.—The form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth and shall contain, among other things, a statement of the elector's qualifications, together with a statement that the elector has not already voted in the primary or election.

(c) Mailing envelope.—The mailing envelope addressed to the elector shall contain the two envelopes, the official mail-in ballot, lists of candidates, when authorized by section 1303-D(b), the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else.

(d) Notice.—Notice of the requirements under section 1306-D shall be printed on the envelope for the mail-in ballot.

Section 1305-D. Delivering or mailing ballots.

The county board of elections, upon receipt and approval of an application filed by a qualified elector under section 1301-D,

## 0306a

shall commence to deliver or mail official mail-in ballots as soon as a ballot is certified and the ballots are available. While any proceeding is pending in a Federal or State court which would affect the contents of any ballot, the county board of elections may await a resolution of that proceeding but in any event, shall commence to deliver or mail official absentee ballots not later than the second Tuesday prior to the primary or election. For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2-D(c) with the mail-in ballot. As additional applications are received and approved, the board shall deliver or mail official mail-in ballots to the additional electors within 48 hours.

### Section 1306-D. Voting by mail-in electors.

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

(a.1) Signature.--Any elector who is unable to sign the declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form:

I hereby declare that I am unable to sign my declaration for voting my mail-in ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

(Mark)

(Date)

(Complete Address of Witness)

**(Signature of Witness)**

**(b) Eligibility.—**

**(1) Any elector who receives and votes a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.**

**(2) An elector who requests a mail-in ballot and who is not shown on the district register as having voted may vote by provisional ballot under section 1210(a.4)(1).**

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

**Section 1307-D. Public records.**

**(a) General rule.—All official mail-in ballots, files, applications for ballots and envelopes on which the executed declarations appear and all information and lists are designated and declared to be public records and shall be safely kept for a period of two years, except that no proof of identification shall be made public, nor shall information concerning a military elector be made public which is expressly forbidden by the Department of Defense because of military security.**

**(b) Record.—For each election, the county board shall maintain a record of the following information, if applicable, for each elector who makes application for a mail-in ballot:**

**(1) The elector's name and voter registration address.**

**(2) The date on which the elector's application is received by the county board.**

**(3) The date on which the elector's application is approved or rejected by the county board.**

**(4) The date on which the county board mails or delivers the mail-in ballot to the elector.**

**(5) The date on which the elector's completed mail-in ballot is received by the county board.**

**(c) Compilation.—The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within 48 hours.**

**Section 1308-D. Violation of provisions relating to mail-in voting.**

## 0308a

**(a) Penalties.--Except as provided under subsection (b), a person who violates any of the provisions of this act relating to mail-in voting shall, unless otherwise provided, be subject to the penalties provided under section 1850.**

**(b) Persons not qualified as mail-in voters.--A person who knowingly assists another person who is not a qualified mail-in voter in filling out a mail-in ballot application or mail-in ballot commits a misdemeanor of the third degree.**

Section 9. Section 1405 of the act is amended to read:

Section 1405. Manner of Computing Irregular Ballots.--The county board, in computing the votes cast at any primary or election, shall compute and certify votes cast on irregular ballots exactly as such names were written, stamped[, affixed to the ballot by sticker,] or deposited [or affixed] in or on receptacles for that purpose, and as they have been so returned by the election officers. **In districts in which paper ballots or ballot cards are electronically tabulated, stickers or labels may not be used to mark ballots. A vote cast by means of a sticker or label affixed to a ballot or ballot card shall be void and may not be counted.** In the primary the Secretary of the Commonwealth shall not certify the votes cast on irregular ballots for any person for a National office including that of the President of the United States, United States Senator and Representative in Congress; or for any State office including that of Governor and Lieutenant Governor, Auditor General, State Treasurer, Senator and Representative in the General Assembly, justices and judges of courts of record or for any party office including that of delegate or alternate delegate to National conventions and member of State committee unless the total number of votes cast for said person is equal to or greater than the number of signatures required on a nomination petition for the particular office. In the primary the county board shall not certify the votes cast on irregular ballots for any person for a justice of the peace, constable, National, State, county, city, borough, town, township, ward, school district, election or local party office unless the total number of votes cast for said person is equal to or greater than the number of signatures required on a nomination petition for the particular office.

Section 10. The Secretary of the Commonwealth shall prepare and disseminate information to the public regarding the changes to the voting procedures under this act.

Section 11. Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.

Section 12. Repeals are as follows:

## 0309a

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of section 1231 of the act.

(2) 25 Pa.C.S. § 1326 is repealed.

(3) The General Assembly declares that the repeal under paragraph (4) is necessary to effectuate the addition of section 1232 of the act.

(4) 25 Pa.C.S. § 1330 is repealed.

(5) The General Assembly declares that the repeal under paragraph (6) is necessary to effectuate the addition of section 1233 of the act.

(6) 25 Pa.C.S. § 1602(a)(1) is repealed.

Section 13. The following apply:

(1) This section applies to the amendment or addition of the following provisions of the act:

- (i) Section 102.
- (ii) section 1003(a).
- (iii) Section 1007(b).
- (iv) Section 1107.
- (v) Section 1110.
- (vi) Section 1107-A.
- (vii) Section 1109-A.
- (viii) Section 1112-A(a).
- (ix) Section 1216(d).
- (x) Section 1222(a) and (b).
- (xi) Section 1223.
- (xii) Section 1231.
- (xiii) Section 1232.
- (xiv) Section 1233.
- (xv) Section 1302.
- (xvi) Section 1302.1.
- (xvii) Section 1302.2.
- (xviii) Section 1305.
- (xix) Section 1306.
- (xx) Section 1308.
- (xxi) Article XIII-D.

(2) The Pennsylvania Supreme Court has exclusive jurisdiction to hear a challenge to or to render a declaratory judgment concerning the constitutionality of a provision referred to in paragraph (1). The Supreme Court may take action it deems appropriate, consistent with the Supreme Court retaining jurisdiction over the matter, to find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief.

# 0310a

(3) An action under paragraph (2) must be commenced within 180 days of the effective date of this section.

Section 14. This act shall apply to elections held on or after April 28, 2020.

Section 15. This act shall take effect as follows:

(1) The addition of section 207 of the act shall take effect in 180 days.

(2) The amendment of section 908 of the act shall take effect in 60 days.

(3) The remainder of this act shall take effect immediately.

APPROVED--The 31st day of October, A.D. 2019.

TOM WOLF

# 0311a

## Act of March 27, 2020, P.L. No. 41, No. 12

### AN ACT

Amending the act of June 3, 1937 (P.L.1333, No.320), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," in preliminary provisions, further providing for definitions; in county boards of elections, further providing for powers and duties of county boards; in ballots, further providing for forms of ballots, printing ballots, numbers; in electronic voting systems, further providing for forms, for election day procedures and the process of voting and for post election procedures; in preparation for and conduct of primaries and elections, further providing for manner of applying to vote, persons entitled to vote, voter's certificates, entries to be made in district register, numbered lists of voters, challenges and for deadline for receipt of valid voter registration application; in voting by qualified absentee electors, further providing for applications for official absentee ballots, for approval of application for absentee ballot, for absentee and mail-in electors files and lists, for official absentee voters ballots, for envelopes for official absentee ballots, for delivering or mailing ballots, for voting by absentee electors, for canvassing of official absentee ballots and mail-in ballots and for public records and repealing provisions relating to violation of provisions relating to absentee voting; in voting by qualified mail-in electors, further providing for qualified mail-in electors, for applications for official mail-in ballots, for approval of application for mail-in ballot, for official mail-in elector ballots, for envelopes for official mail-in ballots, for voting by mail-in electors and for public records and repealing provisions relating to violation of provisions relating to mail-in voting; providing for Pennsylvania Election Law Advisory Board; in penalties, further providing for violations of provisions relating to absentee electors ballots; providing for emergency provisions for 2020 general primary election; and making a related repeal.

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



## 0312a

Section 1. Section 102(a.1) and (z.6) of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, added October 31, 2019 (P.L.552, No.77), are amended and the section is amended by adding a subsection to read:

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

\* \* \*

(a.1) ["Canvass" includes] **The word "canvass" shall mean the gathering [the] of ballots after the [election] final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots.**

\* \* \*

(q.1) **The word "pre-canvass" shall mean the inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots.**

\* \* \*

(z.6) The words "qualified mail-in elector" shall mean a qualified elector [who is not a qualified absentee elector.]. **The term does not include a person specifically prohibited from being a qualified absentee elector under section 1301.**

Section 2. Section 302(p) of the act is amended to read:

Section 302. Powers and Duties of County Boards.--The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

\* \* \*

(p) A county board of elections shall not pay compensation to a judge of elections who wilfully fails to deliver by two o'clock A. M. on the day following the election envelopes; supplies, including all uncast provisional ballots; and returns, including all provisional ballots [and absentee ballots] cast in the election district **and statements signed under sections 1306 and 1302-D.**

Section 3. Section 1004 of the act, amended October 31, 2019 (P.L.552, No.77) and November 27, 2019 (P.L.673, No.94), is amended to read:

Section 1004. Form of Ballots; Printing Ballots[; Numbers].--From the lists furnished by the Secretary of the Commonwealth under the provisions of sections 915 and 984, and from petitions and papers filed in their office, the county election board shall print the official primary

## 0313a

and election ballots in accordance with the provisions of this act: Provided, however, That in no event, shall the name of any person consenting to be a candidate for nomination for any one office, except the office of judge of a court of common pleas, the Philadelphia Municipal Court or the office of school director in districts where that office is elective or the office of justice of the peace be printed as a candidate for such office upon the official primary ballot of more than one party. All ballots for use in the same election district at any primary or election shall be alike. [They shall be at least six inches long and four inches wide, and shall have a margin extending beyond any printing thereon. They shall be printed with the same kind of type (which shall not be smaller than the size known as "brevier" or "eight point body") upon white paper of uniform quality, without any impression or mark to distinguish one from another, and with sufficient thickness to prevent the printed matter from showing through. All the ballots for the same election district shall be bound together in books of fifty, in such manner that each ballot may be detached and removed separately. The ballots for each party to be used at a primary shall be bound separately.]

Section 4. Sections 1109-A(a)(2), (b) and (e) and 1112-A(b)(2), (3) and (4) of the act, amended October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1109-A. Forms.--(a) \* \* \*

(2) The pages placed on the voting device shall be of sufficient number to include, following the listing of particular candidates, the names of candidates for any nonpartisan offices and any measures for which a voter may be qualified to vote on a given election day.[, provided further that for municipal, general or special elections, the first ballot page shall list in the order that such political parties are entitled to priority on the ballot, the names of such political parties.]

\* \* \*

(b) Ballot labels shall be printed in plain clear type [in black ink], of such size and arrangement as to fit the construction of the voting device; and they shall be printed [on clear white material or on material of different colors to identify different ballots or parts of the ballot and in primary elections to identify each political party.] **in a manner prescribed by the Secretary of the Commonwealth to identify different ballots or parts of a ballot and in primary elections to identify each political party.**

\* \* \*

(e) In primary elections, the Secretary of the Commonwealth shall [choose a color for each party eligible to have candidates on the ballot and a separate color for independent voters. The ballot cards or paper ballots and ballot pages shall be printed on card or paper stock of the

# 0314a

color of the party of the voter and the appropriate party affiliation or independent status shall be printed on the ballot card or at the top of the paper ballot and on the ballot pages.] **prescribe a method to ensure that the elector votes the correct ballot.**

\* \* \*

Section 1112-A. Election Day Procedures and the Process of Voting.--\* \* \*

(b) In an election district which uses an electronic voting system which utilizes paper ballots or ballot cards to register the votes, the following procedures will be applicable for the conduct of the election at the election district:

\* \* \*

(2) At primary elections, the voter shall vote for the candidates of his choice for nomination, according to the number of persons to be voted for by him, for each office by making a cross (X) or check (✓) mark or by making a punch or mark sense mark in the square opposite the name of the candidate **or by otherwise indicating a selection associated with the candidate**, or he may so [mark the write-in position provided on the ballot for the particular office] **indicate on the ballot that the voter is electing to write in the name of a person for the particular office**, and[, in the space provided therefor on the ballot and/or ballot envelope, write] **insert** the identification of the office in question and the name of any person not already [printed on the ballot for that office] **listed as a candidate for that office**, and such [mark] **indication** and [written] insertion shall count as a vote for that person for such office.

(3) At all other elections, the voter shall vote for the candidates of his choice for each office to be filled, according to the number of persons to be voted for by him for each office, by making a cross (X) or check (✓) mark or by making a punch or mark sense mark in the square opposite the name of the candidate, **or by otherwise indicating a selection associated with the candidate**, or he may so [mark the write-in position provided on the ballot for the particular office] **indicate on the ballot that the voter is electing to write in the name of a person for the particular office**, and[, in the space provided therefor on the ballot and/or ballot envelope, write] **insert** the identification of the office in question and the name of any person not already [printed on the ballot for that office] **listed as a candidate for that office**, and such [mark] **indication** and [written] insertion shall count as a vote for that person for such office.

(4) If he desires to vote for the entire group of presidential electors nominated by any party or political body, he may make a cross (X) or check (✓) or punch or mark sense mark [in the appropriate space opposite] **or otherwise indicate a selection associated with the**

## 0315a

names of the candidates for President and Vice-President of such party or body. If he desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or political bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or political body, or wholly of names of persons not in nomination by any party or political body, he shall insert[, by writing or stamping,] the names of the candidates for presidential electors for whom he desires to vote [in the blank spaces provided therefor] on the write-in ballot under the title of the office "Presidential Electors". In case of a question submitted to the vote of the electors, he may make a cross (X) or check (✓) or punch or mark sense mark [in the appropriate square opposite] **or otherwise indicate a selection associated with** the answer which he desires to give.

\* \* \*

Section 5. Section 1113-A(i) of the act is amended to read:

Section 1113-A. Post Election Procedures.--\* \* \*

(i) In the event that district tabulation of votes is not provided for by the voting system, it shall be the responsibility of the county board of elections to make available to the public at the central tabulating center, the election results for each election district. [It shall be the further duty of the county board of elections to post such results in each election district no later than 5:00 p.m. of the second day following the election.]

\* \* \*

Section 6. Section 1210(a.4)(1) of the act, amended October 31, 2019 (P.L.552, No.77), is amended to read:

Section 1210. Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges.--\* \* \*

(a.4) (1) At all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot. Individuals who appear to vote shall be required to produce proof of identification pursuant to subsection (a) and if unable to do so shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot. [An elector who appears to vote on election day having requested an absentee ballot or mail-in ballot and who is not shown on the district register as having voted an absentee ballot or mail-in ballot shall be permitted to cast a provisional ballot.]

\* \* \*

## 0316a

Section 7. Section 1231(c)(2) of the act, added October 31, 2019 (P.L.552, No.77), is amended and the section is amended by adding a subsection to read:

Section 1231. Deadline for Receipt of Valid Voter Registration Application.--\* \* \*

(c) \* \* \*

[(2) No applications shall be received as follows:

(i) On Sundays.

(ii) On holidays.

(iii) On the day of the election.

(iv) During the fifteen days next preceding each general, municipal and primary election except as provided under subsection (b).]

\* \* \*

**(e) (1) An applicant whose voter registration application is timely received under subsection (b) or (c) shall be deemed a registered elector of the county immediately upon acceptance of the voter registration application by the commission under 25 Pa.C.S. § 1328(c)(1) or (2) (relating to approval of registration applications), and the commission shall enter the elector's registration information in the general register, with the elector's unique identification number entered as his or her SURE registration number.**

**(2) Notwithstanding 25 Pa.C.S. § 1328(b)(2), if under subsection (b) or (c) an applicant timely presents his or her own application for voter registration under 25 Pa.C.S. § 1322 (relating to in-person voter registration), the commission shall immediately examine the application pursuant to 25 Pa.C.S. § 1328(a) and shall, while the applicant waits, promptly decide on said application by either accepting it, rejecting it or forwarding it pursuant to 25 Pa.C.S. § 1328(b) and, if accepted, process the application in accordance with 25 Pa.C.S. § 1328(c).**

Section 8. Sections 1302(e.1) and (i)(1), 1302.2(c) and (e) and 1302.3(a), amended October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1302. Applications for Official Absentee Ballots.--\* \* \*

(e.1) Any qualified registered elector who is unable because of illness or physical disability to attend his polling place on the day of any primary or election or operate a voting machine and state distinctly and audibly that he is unable to do so as required by section 1218 of this act may **at any time request**, with the certification by his attending physician that he is permanently disabled[,] and physically unable to attend the polls or operate a voting machine and make the distinct and audible statement required by section 1218 appended to

## 0317a

the application hereinbefore required, **to** be placed on a permanently disabled absentee ballot list file. An absentee ballot application shall be mailed to every such person otherwise eligible to receive one, by the first Monday in February each year, **or within forty-eight hours of receipt of the request, whichever is later**, so long as he does not lose his voting rights by failure to vote as otherwise required by this act. Such person shall not be required to file a physician's certificate of disability with each application as required in subsection (e) of this section. Should any such person lose his disability he shall inform the county board of elections of the county of his residence. An absentee ballot application mailed to [a voter] **an elector** under this section, which is completed and timely returned by the [voter] **elector**, shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year. **The transfer of a qualified registered elector on a permanently disabled absentee ballot list from one county to another county shall only be permitted upon the request of the qualified registered elector.**

\* \* \*

(i) (1) Application for official absentee ballots shall be on physical and electronic forms prescribed by the Secretary of the Commonwealth. The application shall state that an elector who [receives and votes] **applies for** an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day[.] **unless the elector brings the elector's absentee ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect.** Such physical application forms shall be made freely available to the public at county board of elections, municipal buildings and at such other locations designated by the secretary. Such electronic application forms shall be made freely available to the public through publicly accessible means. No written application or personal request shall be necessary to receive or access the application forms. Copies and records of all completed physical and electronic applications for official absentee ballots shall be retained by the county board of elections.

\* \* \*

Section 1302.2. Approval of Application for Absentee Ballot.--

\* \* \*

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of

## 0318a

preceding section 1301, shall determine the qualifications of such applicant by verifying the proof of identification and comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding, except that challenges may be made only on the ground that the applicant [did not possess the qualifications of an absentee] **was not a qualified** elector. Such challenges must be made to the county board of elections prior to [the applicable deadline for the absentee ballots to be received, as provided in section 1308(g)]. When so approved, the registration commission shall cause an absentee voter's temporary registration card to be inserted in the district register on top of and along with the permanent registration card. The absentee voter's temporary registration card shall be in the color and form prescribed in subsection (e) of this section:

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the insertion of the absentee voter's temporary registration card of any elector from the district register as set forth in section 1302.2 shall include only such applications and emergency applications as are received on or before the first Tuesday prior to the primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before eight o'clock P.M. on the day of the primary or election, the county board of elections shall determine the qualifications of such applicant by verifying the proof of identification and comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b).] **five o'clock p.m. on the Friday prior to the election: Provided, however, That a challenge to an application for an absentee ballot shall not be permitted on the grounds that the elector used an application for an absentee ballot instead of an application for a mail-in ballot or on the grounds that the elector used an application for a mail-in ballot instead of an application for an absentee ballot.**

\* \* \*

[(e) The absentee voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a

## 0319a

different and contrasting color to the permanent registration card and shall contain the absentee voter's name and address and shall conspicuously contain the words "Absentee Voter."]

\* \* \*

Section 1302.3. Absentee and Mail-in Electors Files and Lists.--

[(a) The county board of elections shall maintain at its office a file containing the duplicate absentee voter's temporary registration cards of every registered elector to whom an absentee ballot has been sent. Such duplicate absentee voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards and the registration cards under section 1302.3-D so filed shall constitute the Registered Absentee and Mail-in Voters File for the Primary or Election of (date of primary or election) and shall be kept on file for a period commencing the Tuesday prior to the day of the primary or election until the day following the primary or election or the day the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations.]

\* \* \*

Section 9. Section 1303(a) and (e), amended October 31, 2019 (P.L.552, No.77) and November 27, 2019 (P.L.673, No.94), are amended to read:

Section 1303. Official Absentee Voters Ballots.--(a) In districts in which ballots are used, the ballots for use by such absentee electors under the provisions of this act shall be the official ballots printed in accordance with sections 1002 and 1003: Provided, however, That the county board of elections when [detaching] **preparing** the official ballots for absentee electors shall be required to track the name of the applicant to which a ballot is being sent. The county board of elections shall also be required to print, stamp or endorse [in red color] upon such official ballots the words, Official Absentee Ballot. Such ballots shall be distributed by such boards as hereinafter provided.

\* \* \*

(e) The official absentee voter ballot shall state that [a voter] **an elector** who receives an absentee ballot pursuant to section 1301 and whose **voted** ballot is not timely received **by the commission** and who, on election day, is capable of voting at the appropriate polling place may only vote on election day by provisional ballot[.] **unless the elector brings the elector's absentee ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties under 18 Pa.C.S.**



## 0320a

### § 4904 (relating to unsworn falsification to authorities) to the same effect.

Section 10. Section 1304 of the act is amended to read:

Section 1304. Envelopes for Official Absentee Ballots.--

The county boards of election shall provide two additional envelopes for each official absentee ballot of such size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official [Absentee] **Election** Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector, and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the absentee voter. Said form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth and shall contain among other things a statement of the electors qualifications, together with a statement that such elector has not already voted in such primary or election. The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, lists of candidates, when authorized by section 1303 subsection (b) of this act, the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else.[: Provided, however, That envelopes for electors qualified under preceding section 1301, subsections (a) to (h), inclusive, shall have printed across the face of each transmittal or return envelope two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed, in the upper right corner of each such envelope in a box, the words "Free of U. S. Postage, Including Air Mail;" that all printing on the face of each such envelope be in red, and that there be printed in red, in the upper left corner of each such envelope, the name and address of the county board of elections of the proper county or blank lines for return address of the sender:

Provided further, That the aforesaid envelope addressed to the elector may contain absentee registration forms where required, and shall contain detailed instructions on the procedures to be observed in casting an absentee ballot as prescribed by the Secretary of the Commonwealth, together with return envelope upon which is printed the name and address of the registration commission of the proper

## 0321a

county, which envelope shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed in the upper right corner of each such envelope in a box the words "Free of U. S. Postage, Including Air Mail," and, in the upper left corner of each such envelope, blank lines for return address of the sender; that all printing on the face of each such envelope be in red.]

Section 11. Sections 1306(a) introductory paragraph and (b), 1308(g) and 1309(c) of the act, amended or added October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1306. Voting by Absentee Electors.--(a) Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official [Absentee] **Election** Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

\* \* \*

(b) (1) Any elector who receives and votes an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted absentee ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted an absentee ballot to vote at the polling place.

(2) An elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote by provisional ballot under section 1210(a.4)(1).

**(3) Notwithstanding paragraph (2), an elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote at the polling place if the elector remits the ballot and the envelope containing the declaration of the elector to the judge of**

# 0322a

elections to be spoiled and the elector signs a statement subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) in substantially the following form: I hereby declare that I am a qualified registered elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast my absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot and the envelope containing the declaration of the elector to the judge of elections at my polling place to be spoiled and therefore request that my absentee ballot or mail-in ballot be voided.

(Date)

(Signature of Elector).....(Address of Elector)

(Local Judge of Elections)

\* \* \*

Section 1308. Canvassing of Official Absentee Ballots and Mail-in Ballots.--\* \* \*

(g) (1) (i) An absentee ballot cast by any absentee elector as defined in section 1301(a), (b), (c), (d), (e), (f), (g) and (h) shall be canvassed in accordance with this subsection if the ballot is cast, submitted and received in accordance with the provisions of 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters).

(ii) An absentee ballot cast by any absentee elector as defined in section 1301(i), (j), (k), (l), (m) and (n), an absentee ballot under section 1302(a.3) or a mail-in ballot cast by a mail-in elector shall be canvassed in accordance with this subsection if the absentee ballot or mail-in ballot is received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

**(1.1) The county board of elections shall meet no earlier than seven o'clock A.M. on election day to pre-canvass all ballots received prior to the meeting. A county board of elections shall provide at least forty-eight hours' notice of a pre-canvass meeting by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed. No person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.**

(2) The county board of elections shall meet no earlier than the close of polls on the day of the election and no later than the third day following the election to begin canvassing [the] absentee ballots and

## 0323a

mail-in ballots [received under this subsection and subsection (h)(2).] **not included in the pre-canvass meeting. The meeting under this paragraph shall continue until all absentee ballots and mail-in ballots received prior to the close of the polls have been canvassed. The county board of elections shall not record or publish any votes reflected on the ballots prior to the close of the polls.** The canvass process shall continue through the eighth day following the election[.] **for valid military-overseas ballots timely received under 25 Pa.C.S. § 3511 (relating to receipt of voted ballot). A county board of elections shall provide at least forty-eight hours' notice of a canvass meeting by publicly posting a notice on its publicly accessible Internet website.** One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are canvassed. [Representatives shall be permitted to challenge any absentee elector or mail-in elector in accordance with the provisions of paragraph (3).]

(3) When the county board meets to **pre-canvass or** canvass absentee ballots and mail-in ballots under [paragraph] **paragraphs (1), (1.1) and (2)**, the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the "Registered Absentee and Mail-in Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File," whichever is applicable. If the county board has verified the proof of identification as required under this act and is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee and Mail-in Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the county board shall [announce the name of the elector and shall give any candidate representative or party representative present an opportunity to challenge any absentee elector or mail-in elector upon the ground or grounds: (i) that the absentee elector or mail-in elector is not a qualified elector; or (iii) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein, the board shall mark "challenged" on the envelope together with the reasons therefor, and the same shall be set aside unopened pending final determination of the challenge according to the procedure described in paragraph (5).] **provide a list of the names of**

## 0324a

**electors whose absentee ballots or mail-in ballots are to be pre-canvassed or canvassed.**

(4) All absentee ballots [and mail-in ballots not challenged for any of the reasons provided in] **which have not been challenged under section 1302.2(c) and all mail-in ballots which have not been challenged under section 1302.2-D(a)(2) and that have been verified under** paragraph (3) shall be counted and included with the returns of the applicable election district as follows:

(i) The county board shall open the envelope of every unchallenged absentee elector and mail-in elector in such manner as not to destroy the declaration executed thereon.

(ii) If any of the envelopes on which are printed, stamped or endorsed the words "Official [Absentee] **Election Ballot**" [or "Official Mail-in Ballot"] contain any [extraneous marks or identifying symbols,] **text, mark or symbol which reveals the identity of the elector, the elector's political affiliation or the elector's candidate preference,** the envelopes and the ballots contained therein shall be set aside and declared void.

(iii) The county board shall then break the seals of such envelopes, remove the ballots and [record the votes.] **count, compute and tally the votes.**

**(iv) Following the close of the polls, the county board shall record and publish the votes reflected on the ballots.**

(5) [With respect to the challenged ballots, they] **Ballots received whose applications have been challenged and ballots which have been challenged** shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges, and notice shall be given where possible to all absentee electors and mail-in electors thus challenged and to every individual who made a challenge. The time for the hearing shall not be later than [five (5)] **seven (7)** days after the [date of the challenge] **deadline for all challenges to be filed.** On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges, and, in hearing the testimony, the county board shall not be bound by the Pennsylvania Rules of Evidence. The testimony presented shall be stenographically recorded and made part of the record of the hearing.

(6) The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any person aggrieved by the decision of the county board. The appeal shall be taken, within two (2) days after the decision was made, whether the decision was reduced to writing or not, to the court of common pleas setting forth the objections to the county board's decision and praying for an order reversing the decision.

## 0325a

(7) Pending the final determination of all appeals, the county board shall suspend any action in canvassing and computing all challenged ballots received under this subsection irrespective of whether or not appeal was taken from the county board's decision. Upon completion of the computation of the returns of the county, the votes cast upon the challenged official absentee ballots that have been finally determined to be valid shall be added to the other votes cast within the county.

\* \* \*

Section 1309. Public Records.--\* \* \*

(c) The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within forty-eight hours **of the request**.

Section 12. Section 1331 of the act is repealed:

[Section 1331. Violation of Provisions Relating to Absentee Voting.--(a) Except as provided in subsection (b), any person who shall violate any of the provisions of this act relating to absentee voting shall, unless otherwise provided, be subject to the penalties provided for in section 1850 of this act.

(b) Any person who knowingly assists another person who is not a qualified absentee elector in filling out an absentee ballot application or absentee ballot commits a misdemeanor of the third degree.]

Section 12.1. Sections 1301-D(a), 1302-D(f) and (g), 1302.2-D(a)(2), (3), (4) and (5), (b) and (d) and 1302.3-D of the act, added October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1301-D. Qualified mail-in electors.

(a) General rule.--[The following individuals] **A qualified mail-in elector** shall be entitled to vote by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article.[:

(1) Any qualified elector who is not eligible to be a qualified absentee elector under Article XIII.

(2) (Reserved).]

\* \* \*

Section 1302-D. Applications for official mail-in ballots.

\* \* \*

(f) Form.--Application for an official mail-in ballot shall be on physical and electronic forms prescribed by the Secretary of the Commonwealth. The application shall state that a voter who [receives and votes] **applies for** a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day[.] **unless the elector brings the elector's mail-in ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled**

## 0326a

**and signs a statement subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect.** The physical application forms shall be made freely available to the public at county board of elections, municipal buildings and at other locations designated by the Secretary of the Commonwealth. The electronic application forms shall be made freely available to the public through publicly accessible means. No written application or personal request shall be necessary to receive or access the application forms. Copies and records of all completed physical and electronic applications for official mail-in ballots shall be retained by the county board of elections.

(g) Permanent mail-in voting list.--

(1) Any qualified registered elector may request to be placed on a permanent mail-in ballot list file **at any time during the calendar year.** A mail-in ballot application shall be mailed to every person otherwise eligible to receive a mail-in ballot application by the first Monday in February each year **or within 48 hours of receipt of the request, whichever is later,** so long as the person does not lose the person's voting rights by failure to vote as otherwise required by this act. A mail-in ballot application mailed to [a voter] **an elector** under this section, which is completed and timely returned by the [voter] **elector,** shall serve as an application for any and all primary, general or special elections to be held in the remainder of that calendar year and for all special elections to be held before the third Monday in February of the succeeding year.

(2) The Secretary of the Commonwealth may develop an electronic system through which all qualified electors may apply for a mail-in ballot and request permanent mail-in voter status under this section, provided the system is able to capture a digitized or electronic signature of the applicant. A county board of elections shall treat an application or request received through the electronic system as if the application or request had been submitted on a paper form or any other format used by the county.

**(3) The transfer of a qualified registered elector on a permanent mail-in voting list from one county to another county shall only be permitted upon the request of the qualified registered elector.**

Section 1302.2-D. Approval of application for mail-in ballot.

(a) Approval process.--The county board of elections, upon receipt of any application of a qualified elector under section 1301-D, shall determine the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained on the applicant's permanent registration card. The following shall apply:

\* \* \*

(2) The approval decision shall be final and binding, except that challenges may be made only on the grounds that the applicant [did not possess the qualifications of a mail-in] **was not a qualified** elector.

(3) Challenges must be made to the county board of elections prior to [the applicable deadline for the mail-in ballots to be received, as provided in section 1308(g).] **five o'clock p.m. on the Friday prior to the election: Provided, however, That a challenge to an application for a mail-in ballot shall not be permitted on the grounds that the elector used an application for a mail-in ballot instead of an application for an absentee ballot or on the grounds that the elector used an application for an absentee ballot instead of an application for a mail-in ballot.**

(4) When approved, the registration commission shall cause a mail-in voter's [temporary registration card] **record** to be inserted in the district register [on top of and along with the permanent registration card] **as prescribed by the Secretary of the Commonwealth.**

[(5) The mail-in voter's temporary registration card shall be in the color and form prescribed under subsection (d).]

(b) Duties of county boards of elections and registration commissions.--The duties of the county boards of elections and the registration commissions with respect to the insertion of the mail-in voter's [temporary registration card of any elector from the district register as provided under this section] **record** shall include only the applications as are received on or before the first Tuesday prior to the primary or election.

\* \* \*

[(d) Temporary registration card.--The mail-in voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the mail-in voter's name and address and shall conspicuously contain the words "Mail-in Voter."]

[Section 1302.3-D. Mail-in electors files and lists.

The county board of elections shall maintain at its office a file containing the duplicate mail-in voter's temporary registration cards of every registered elector to whom a mail-in ballot has been sent. The duplicate mail-in voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards filed shall be included in the Registered Absentee and Mail-in Voters File for the Primary or Election of (date of primary or election) under section 1302.3(a).]



## 0328a

Section 13. Section 1303-D(a.1) and (e), amended or added October 31, 2019 (P.L.552, No.77) and November 27, 2019 (P.L.673, No.94), are amended to read:

Section 1303-D. Official mail-in elector ballots.

\* \* \*

(a.1) Duties of county boards of elections.--The county board of elections, when [detaching] **preparing** the official ballots for mail-in voters, shall be required to indicate on [the stub of each detached ballot the name of the applicant to which that precise ballot is being sent.] **the voter's record the identification number of specific ballot envelope into which the voter's ballot is inserted.** The county board of elections shall also [remove the numbered stub from each ballot and shall] print, stamp or endorse [in red color] on the official ballots the words, "Official Mail-in Ballot." The ballots shall be distributed by a board as provided under this section.

\* \* \*

(e) Notice.--The official mail-in voter ballot shall state that a voter who receives a mail-in ballot under section 1301-D and whose **voted** mail-in ballot is not timely received may only vote on election day by provisional ballot[.] **unless the elector brings the elector's mail-in ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect.**

Section 14. Sections 1304-D(a), 1305-D, 1306-D(a) and (b) and 1307-D(c) of the act, added October 31, 2019 (P.L.552, No.77), are amended to read:

Section 1304-D. Envelopes for official mail-in ballots.

(a) Additional envelopes.--The county boards of election shall provide two additional envelopes for each official mail-in ballot of a size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official [Mail-in] **Election** Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the mail-in voter.

\* \* \*

Section 1305-D. Delivering or mailing ballots.

## 0329a

The county board of elections, upon receipt and approval of an application filed by a qualified elector under section 1301-D, shall commence to deliver or mail official mail-in ballots as soon as a ballot is certified and the ballots are available. While any proceeding is pending in a Federal or State court which would affect the contents of any ballot, the county board of elections may await a resolution of that proceeding but in any event, shall commence to deliver or mail official [absentee] **mail-in** ballots not later than the second Tuesday prior to the primary or election. For applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2-D(c) with the mail-in ballot. As additional applications are received and approved, the board shall deliver or mail official mail-in ballots to the additional electors within 48 hours.

Section 1306-D. Voting by mail-in electors.

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

\* \* \*

(b) Eligibility.--

(1) Any elector who receives and votes a mail-in ballot under section 1301-D shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.

(2) An elector who requests a mail-in ballot and who is not shown on the district register as having voted may vote by provisional ballot under section 1210(a.4)(1).

**(3) Notwithstanding paragraph (2), an elector who requests a mail-in ballot and who is not shown on the district register as having voted the ballot may vote at the polling place if the elector remits the ballot and the envelope**

containing the declaration of the elector to the judge of elections to be spoiled and the elector signs a statement subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) which shall be in substantially the following form:

I hereby declare that I am a qualified registered elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast my absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot to the judge of elections at my polling place to be spoiled and therefore request that my absentee ballot or mail-in ballot be voided.

(Date)

(Signature of Elector)(Address of Elector)

(Local Judge of Elections)

\* \* \*

Section 1307-D. Public records.

\* \* \*

(c) Compilation.--The county board shall compile the records listed under subsection (b) and make the records publicly available upon request within 48 hours of the request.

Section 14.1. Section 1308-D of the act is repealed:  
[Section 1308-D. Violation of provisions relating to mail-in voting.

(a) Penalties.--Except as provided under subsection (b), a person who violates any of the provisions of this act relating to mail-in voting shall, unless otherwise provided, be subject to the penalties provided under section 1850.

(b) Persons not qualified as mail-in voters.--A person who knowingly assists another person who is not a qualified mail-in voter in filling out a mail-in ballot application or mail-in ballot commits a misdemeanor of the third degree.]

Section 15. The act is amended by adding an article to read:

**ARTICLE XIII-E**

**PENNSYLVANIA ELECTION LAW ADVISORY BOARD**

**Section 1301-E. Definitions.**

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The Pennsylvania Election Law Advisory Board established under section 1302-E(a).

**Section 1302-E. Pennsylvania Election Law Advisory Board.**

(a) Establishment.--The Pennsylvania Election Law Advisory Board is established within the Joint State Government Commission.

## 0331a

**(b) Members.**—The board shall be comprised of the following members:

- (1) The Secretary of the Commonwealth or a designee.**
- (2) The President pro tempore of the Senate or a designee.**
- (3) The Minority Leader of the Senate or a designee.**
- (4) The Speaker of the House of Representatives or a designee.**

**(5) The Minority Leader of the House of Representatives or a designee.**

**(6) One member from each congressional district, of whom no more than half may be registered with the same political party, appointed by the Governor and confirmed by the Senate and which shall include members who:**

- (i) represent groups advocating for individuals with disabilities;**
- (ii) represent groups advocating for voting rights; and**
- (iii) represent county commissioners or county election officials.**

**(c) Duties.**—The board shall have the following duties:

**(1) Study this act and identify statutory language to repeal, modify or update.**

**(2) Collaborate with other agencies and political subdivisions of the Commonwealth to study election-related issues.**

**(3) Study the development of new election technology and voting machines.**

**(4) Evaluate and make recommendations on:**

**(i) improving the electoral process in this Commonwealth by amending this act or through regulations promulgated by the Department of State; and**

**(ii) implementing best practices identified to ensure the integrity and efficiency of the electoral process in this Commonwealth.**

**(5) By the end of each fiscal year, publish extensive and detailed findings on the Joint State Government Commission's publicly accessible Internet website and make them available in electronic format to the Office of the Governor and members of the General Assembly.**

**(d) Quorum.**—A majority of appointed members shall constitute a quorum for the purpose of conducting business.

**(e) Chairperson and vice chairperson.**—The members shall select a member to be chairperson and another member to be vice chairperson.

## 0332a

**(f) Transparency and ethics.**--The board shall be subject to the following laws:

**(1) The act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.**

**(2) The act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.**

**(3) The act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.**

**(4) 65 Pa.C.S. Ch. 7 (relating to open meetings).**

**(g) Information gathering.**--The board may conduct hearings and otherwise gather relevant information and analysis that it considers appropriate and necessary to fulfill its duties.

**(h) Reimbursement.**--Members of the board shall be reimbursed for reasonable expenses.

Section 15.1. Section 1853 of the act is amended to read:

Section 1853. Violations of Provisions Relating to Absentee [Electors] **and Mail-in Ballots.**--If any person shall sign an application for absentee ballot, **mail-in ballot** or declaration of elector on the forms prescribed knowing any matter declared therein to be false, or shall vote any ballot other than one properly issued to [him] **the person**, or vote or attempt to vote more than once in any election for which an absentee ballot **or mail-in ballot** shall have been issued to [him] **the person**, or shall violate any other provisions of Article XIII **or Article XIII-D** of this act, [he] **the person** shall be guilty of a misdemeanor of the [first] **third** degree, and, upon conviction, shall be sentenced to pay a fine not exceeding [ten thousand dollars (\$10,000)] **two thousand five hundred dollars (\$2,500)**, or be imprisoned for a term not exceeding [five (5)] **two (2)** years, or both, at the discretion of the court.

If any chief clerk or member of a board of elections, member of a return board or member of a board of registration commissioners, shall neglect or refuse to perform any of the duties prescribed by Article XIII **or Article XIII-D** of this act, or shall reveal or divulge any of the details of any ballot cast in accordance with the provisions of Article XIII **or Article XIII-D** of this act, or shall count an absentee ballot **or mail-in ballot** knowing the same to be contrary to Article XIII **or Article XIII-D**, or shall reject an absentee ballot **or mail-in ballot** without reason to believe that the same is contrary to Article XIII **or Article XIII-D**, or shall permit an elector to cast [his] **the elector's** ballot at a polling place knowing that there has been issued to the elector an absentee ballot, [he] **the elector** shall be guilty of a felony of the third degree, and, upon conviction, shall be punished by a fine not exceeding fifteen thousand dollars (\$15,000), or be imprisoned for a

term not exceeding seven (7) years, or both, at the discretion of the court.

Section 16. The act is amended by adding an article to read:

**ARTICLE XVIII-B  
EMERGENCY PROVISIONS FOR 2020 GENERAL PRIMARY  
ELECTION**

**Section 1801-B. Election officers.**

**(a) Requirement.--**

**(1) Except as provided under paragraph (2), and notwithstanding section 402 or any other law of this Commonwealth, an election officer must be a qualified registered elector of the county in which the polling place is located.**

**(2) An election officer shall not be required to be a qualified registered elector in the election district in which the election officer is appointed.**

**(b) (Reserved).**

**Section 1802-B. Polling place.**

**(a) Consolidation of polling places.--**

**(1) A county board of elections may, not less than 20 days prior to the election, select and designate as the polling place for an election district any public or private building situated in another election district within the county, notwithstanding if the building is located in an election district which is not immediately adjacent to the boundary of the election district for which the building is to be a polling place.**

**(2) A polling place may be selected and designated under this subsection without the approval of a court.**

**(3) Two or more polling places may be consolidated, except that the consolidation of polling places may not result in more than a 60% reduction of polling place locations in the county, except for necessitous circumstances and as approved by the Department of State. Two or more polling places may be located in the same building.**

**(4) A polling place selected and designated under this subsection must be directly accessible by a public street or thoroughfare.**

**(b) Posting.--A county board of elections shall, not less than 15 days prior to the election under section 1804-B, post in a conspicuous place at the office of the county board of elections, a list of each place at which the election is to be held in each election district of the county. The list shall be available for public inspection at the office of the county board of elections**

and posted on the county's publicly accessible Internet website.

**Section 1803-B. Permissible polling place locations.**

(a) **Service.**—Subject to subsection (b) and notwithstanding section 529(a) and (b) or any other law of this Commonwealth, malt or brewed beverages and liquors may be served in a building where a polling place is located during the hours that the polling place is open, except that an election may not be held in a room where malt or brewed beverages or liquors are dispensed.

(b) **Accessibility.**—A polling place under subsection (a) must be accessible from an outside entrance that does not require passageway through the room where malt or brewed beverages or liquors are dispensed.

**Section 1804-B. General primary election.**

(a) **Time.**—Notwithstanding section 603 or any law of this Commonwealth, the general primary election shall occur throughout this Commonwealth on June 2, 2020.

(b) **Calculation.**—The following shall apply:

(1) Except for the deadline relating to the nomination of a candidate under Article IX, any date or deadline in this act, 25 Pa.C.S. Pt. IV (relating to voter registration) or 25 Pa.C.S. Ch. 35 (relating to uniform military and overseas voters) that depends on, or is contingent on, the date of the general primary election, shall be calculated based on the June 2, 2020, date for the general primary election.

(2) Notwithstanding subsection (a), the due date for the sixth Tuesday pre-primary cycle 1 campaign finance report shall be March 17, 2020.

(c) **Nonapplicability.**—This section shall not be construed to apply to the nominating petition process.

(d) **Ballots.**—A ballot for the general primary 2020 which has been purchased, printed or acquired prior to the effective date of this section and shows an election date of April 28, 2020, shall not be deemed to be invalid because of the date.

**Section 1805-B. Expiration.**

**This article shall expire on July 3, 2020.**

Section 17. This act shall apply as follows:

(1) The amendment or addition of the following shall apply to elections occurring on or after June 2, 2020:

(i) Section 102(a.1), (q.1) and (z.6).

(ii) Section 1302.2(c).

(iii) Section 1308(g).

(iv) Section 1301-D(a).

# 0335a

(v) Section 1302.2-D(a).

(2) The amendment or addition of the following shall apply to elections occurring on or after November 2, 2020:

(i) Section 302(p).

(ii) Section 1302(i)(1).

(iii) Section 1303(e).

(iv) Section 1306(b).

(v) Section 1302-D(f).

(vi) Section 1303-D(e).

(vii) Section 1306-D(b).

(3) The amendment or addition of the following shall apply to envelopes and ballots purchased, printed or acquired after the effective date of this section:

(i) Section 1004.

(ii) Section 1109-A(b) and (e).

(iii) Section 1112-A(b)(2),(3) and (4).

(iv) Section 1303(a).

(v) Section 1304.

(vi) Section 1306(a) introductory paragraph.

(vii) Section 1303-D(a.1).

(viii) Section 1304-D(a).

(ix) Section 1306-D(a).

Section 18. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment or addition of section 1231(c)(2) and (e).

(2) 25 Pa.C.S. § 1328(c)(4) and (5) are repealed.

Section 19. This act shall take effect immediately.

APPROVED--The 27th day of March, A.D. 2020.

TOM WOLF



**25 Pa. Stat. §(z.6)**

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

- (a) The word “candidate” shall, unless the context otherwise requires, include both candidates for nomination and election.
- (a.1) The word “canvass” shall mean the gathering of ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots.
- (b) The word “county” shall mean any county of this Commonwealth.
- (c) The words “county board” or “board” shall mean the county board of elections of any county herein provided for.
- (d) The words “district election board” or “election board” shall mean the election officers required to conduct primaries and elections in any election district in accordance with the provisions of this act.
- (e) The words “district register” shall mean the cards containing all or any part of the registry list of qualified electors of the same election district, as prepared by the registration commissions.
- (f) The word “election” shall mean any general, municipal, special or primary election, unless otherwise specified.
- (g) The words “election district” shall mean a district, division or precinct, established in accordance with the provisions of this act, within which all qualified electors vote at one polling place.
- (g.1) The words “election officer” shall include the judge of elections and the majority and minority inspectors elected or appointed by a county board of elections and the clerk or machine inspector appointed by a county board of elections.
- (h) The words “general election” shall mean the election which the Constitution of this Commonwealth requires to be held in even-numbered years.
- (i) The words “independent nomination” shall mean the selection by an independent political body, in accordance with the provisions of this act, of a candidate for a public office authorized to be voted for at an election.
- (j) The words “municipal election” shall mean the election which the Constitution of this Commonwealth requires to be held in odd-numbered years.
- (k) The word “nomination” shall mean the selection, in accordance with the provisions of this act, of a candidate for a public office authorized to be voted for at an election.
- (l) The words “November election” shall mean either the general or municipal election, or both, according to the context.
- (m) The word “oath” shall include affirmation and the word “swear” shall include affirm.
- (n) The word “party” shall mean a political party, as defined in section 801 of this act

## 0337a

- (o) The words “party nomination” shall mean the selection by a political party, in accordance with the provisions of this act, of a candidate for a public office authorized to be voted for at an election.
- (p) The words “political body” shall mean an independent body of electors, as defined in section 801 of this act.
- (q) The words “polling place” shall mean the room provided in each election district for voting at a primary or election.
- (q.1) The word “pre-canvass” shall mean the inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots.
- (r) The words “primary” or “primary election” shall mean any election held for the purpose of electing party officers and nominating candidates for public offices to be voted for at an election.
- (r.1) “Public institution” means institutions primarily maintained by the Federal, State or local governments and includes but is not limited to veterans’ hospitals and homes, State hospitals, poor houses and county homes.
- (s) The words “public office” shall include every public office to which persons can be elected by a vote of the electors under the laws of this State.
- (t) The words “qualified elector” shall mean any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, shall obtain such qualifications before the next ensuing election.
- (u) The words “registered and enrolled member of a political party” shall mean any qualified elector who shall be registered according to political designation, in accordance with the provisions of the registration acts.
- (v) The words “special election” shall mean any election other than a regular general, municipal or primary election.
- (w) The words “qualified absentee elector” shall mean:
- (1) Any qualified elector who is or who may be in the military service of the United States regardless of whether at the time of voting he is present in the election district of his residence or is within or without this Commonwealth and regardless of whether he is registered or enrolled; or
  - (2) Any qualified elector who is a spouse or dependent residing with or accompanying a person in the military service of the United States if at the time of voting such spouse or dependent is absent from the municipality of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or
  - (3) Any qualified elector who is or who may be in the service of the Merchant Marine of the United States if at the time of voting he is absent from the municipality of his residence: Provided, however, That the said elector has been

## 0338a

registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(4) Any qualified elector who is a spouse or dependent residing with or accompanying a person who is in the service of the Merchant Marine of the United States if at the time of voting such spouse or dependent is absent from the municipality of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(5) Any qualified elector who is or who may be in a religious or welfare group officially attached to and serving with the armed forces if at the time of voting he is absent from the municipality of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(6) Any qualified elector who is a spouse or dependent residing with or accompanying a person in a religious or welfare group officially attached to and serving with the armed forces if at the time of voting such spouse or dependent is absent from the municipality of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(7) Any qualified elector who expects to be or is outside the territorial limits of the several States of the United States and the District of Columbia because his duties, occupation or business require him to be elsewhere during the entire period the polls are open for voting on the day of any primary or election or who is or who may be a civilian employee of the United States outside the territorial limits of the several States of the United States and the District of Columbia, whether or not such elector is subject to civil-service laws and the Classification Act of 1949 and whether or not paid from funds appropriated by the Congress, if at the time of voting he is absent from the municipality of his residence: Provided, however, That said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(8) Any qualified elector who is a spouse or dependent residing with or accompanying a person who expects to be or is outside the territorial limits of the several States of the United States and the District of Columbia because his duties, occupation or business require him to be elsewhere during the entire period the

## 0339a

polls are open for voting on the day of any primary or election or who is a spouse or dependent residing with or accompanying a person who is a civilian employee of the United States outside the territorial limits of the several States of the United States and the District of Columbia whether or not such person is subject to civil-service laws and the Classification Act of 1949 and whether or not paid from funds appropriated by the Congress if at the time of voting such spouse or dependent is absent from the municipality of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(9) Any qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability if he is absent from the municipality of his residence and unable to attend his polling place because of such illness or physical disability regardless of whether he is registered and enrolled; or

(10) Any qualified, registered and enrolled elector who expects to be or is absent from the municipality of his residence because his duties, occupation or business require him to be elsewhere during the entire period the polls are open for voting on the day of any primary or election; or

(11) Any qualified, registered and enrolled elector who is unable to attend his polling place because of illness or physical disability; or

(12) Any qualified, registered and enrolled elector who is a spouse or dependent accompanying a person employed in the service of this Commonwealth or in the service of the Federal Government within the territorial limits of the several States of the United States and the District of Columbia in the event the duties, profession or occupation of such person require him to be absent from the municipality of his residence; or

(13) Any qualified elector who is a county employe who cannot vote due to duties on election day relating to the conduct of the election; or

(14) Any qualified elector who will not attend a polling place because of the observance of a religious holiday:

Provided, however, That the words “qualified absentee elector” shall in nowise be construed to include persons confined in a penal institution or a mental institution nor shall it in anywise be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition set forth in section 102(t) of this act.

(x) The words “members of the merchant marine of the United States” mean persons (other than persons in military service) employed as officers or members of crews of vessels documented under the laws of the United States or of vessels owned by the United States or of vessels of foreign flag registry under charter to or control of the United States, and persons (other than persons in military service) enrolled with the United States for employment or for training for employment or maintained by the United States for emergency relief service as officers or members of crews of any such vessels, but does not include persons so employed or enrolled

## 0340a

for such employment or for training for employment or maintained for such emergency relief on the Great Lakes or the Inland waterways.

(y) The word “dependent” means any person who is in fact a dependent.

(z) The words “person authorized to administer oaths” shall mean any person who is a commissioned officer in military service or any member of the merchant marine of the United States designated for this purpose by the United States Secretary of Commerce or any civilian official empowered by any State or Federal law to administer oaths.

(z.1) The words “in military service” shall mean the uniformed services as defined in section 102 of the Career Compensation Act of 1949 (63 Stat. 804, U.S. Code, Title 37 Par. 231)

(z.2) Repealed by 1968, Dec. 11, P.L. 1183, No. 375, § 2.

(z.3) The words “duties, occupation or business” shall include leaves of absence for teaching or education, vacations, sabbatical leaves, and all other absences associated with the elector’s duties, occupation or business, and also include an elector’s spouse who accompanies the elector.

(z.4) The word “municipality” shall mean a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.

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

(1) In the case of an elector who has a religious objection to being photographed, a valid-without-photo driver’s license or a valid-without-photo identification card issued by the Department of Transportation.

(2) For an elector who appears to vote under section 1210, a document that:

(i) shows the name of the individual to whom the document was issued and the name substantially conforms to the name of the individual as it appears in the district register;

(ii) shows a photograph of the individual to whom the document was issued;

(iii) includes an expiration date and is not expired, except:

(A) for a document issued by the Department of Transportation which is not more than twelve (12) months past the expiration date; or

(B) in the case of a document from an agency of the Armed forces of the United States or their reserve components, including the Pennsylvania National Guard, establishing that the elector is a current member of or a veteran of the United States Armed Forces or National Guard which does not designate a specific date on which the document expires, but includes a designation that the expiration date is indefinite; and

(iv) was issued by one of the following:

(A) The United States Government.

(B) The Commonwealth of Pennsylvania.

(C) A municipality of this Commonwealth to an employee of that municipality.

(D) An accredited Pennsylvania public or private institution of higher learning.

(E) A Pennsylvania care facility.

## 0341a

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

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

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

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

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

(z.6) The words "qualified mail-in elector" shall mean a qualified elector. The term does not include a person specifically prohibited from being a qualified absentee elector under section 1301.

United States Code3 U.S.C. § 15

Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title [3 USCS § 6] from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown

## 0343a

by the determination mentioned in section 5 [3 USCS § 5] of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title [3 USCS § 5], is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

### 3 U.S.C. § 16

At such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this subchapter, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar



## 0344a

day, Sunday excepted, at the hour of 10 o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House.

# APPENDIX K

**0345a**



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

Date: October 28, 2020

Version: 1.0

## 0346a

In recognition of documented United States Postal Service (“USPS”) delays and citing the Pennsylvania Constitution’s Free and Equal Elections Clause’s guarantee of free exercise of the right to suffrage, on September 17, 2020, the Pennsylvania Supreme Court (i) held that absentee and mail-in ballots mailed by voters via the USPS and postmarked by 8:00 p.m. on Tuesday, November 3, 2020 shall be counted if they are otherwise valid and received by the county boards of election on or before 5:00 p.m. on Friday, November 6, 2020, and (ii) further held that ballots received within this period that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, will be presumed to have been mailed by 8:00 p.m. on November 3 unless a preponderance of the evidence demonstrates that the ballot was mailed after such time.

Certain parties asked the United States Supreme Court to stay the Pennsylvania Supreme Court’s decision. The United States Supreme Court denied that request on October 19, 2020. Therefore, the Pennsylvania Supreme Court’s ruling, summarized above, remains the law.

On Friday, October 23, 2020, certain parties petitioned the U.S. Supreme Court for a writ of certiorari, asking that Court to vacate the Pennsylvania Supreme Court’s September 17 decision and eliminate the three-day extension. Those parties also filed a motion for expedited consideration of their petition. On Monday, October 26, 2020, Secretary Boockvar filed a response to the motion. At this time, both the petition and motion remain pending before the U.S. Supreme Court.

The Secretary continues to defend the extension to ensure that every timely and validly cast mail-in and absentee ballot is counted. Because this issue is still-pending before the U.S. Supreme Court, however, county boards of elections are directed to take the following action to securely segregate mail-in and civilian absentee ballots received by the county board before 8:00 p.m. on November 3 from those received via USPS after 8:00 p.m. on November 3 and before 5:00 p.m. on Friday, November 6:

- 1) All mail-in and civilian absentee ballots delivered by the USPS and received between 8:00 p.m. on Tuesday, November 3, 2020 and 5:00 p.m. on Friday, November 6, 2020 shall be kept separate and segregated from all other voted ballots.
- 2) The county boards of elections shall not pre-canvass or canvass any mail-in or civilian absentee ballots received between 8:00 p.m. on Tuesday, November 3, 2020 and 5:00 p.m. on Friday, November 6, 2020 until further direction is received. These ballots shall be maintained by the county board in a secure, safe and sealed container separate from other voted ballots.
- 3) For every ballot delivered to the county board by the USPS between 8:00 p.m. on Tuesday, November 3, 2020 and 5:00 p.m. on Friday, November 6, 2020, each county board shall maintain an accurate log of the date upon which the ballot was delivered by the USPS to the county board of elections. The log shall include (i) the name and address of the elector, (ii) the date of delivery by the USPS, (iii) whether the ballot return envelope has a legible postmark, and (iv) the postmark date, when present and legible.

# 0347a

The Department of State will promptly update the county boards of elections on how to pre-canvass and canvass the segregated ballots and of further developments related to the Court-ordered extension. County boards should remain alert for further direction regarding the ballots subject to the Supreme Court's decision.

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Version History:

Version	Date	Description
1.0	10.28.2020	Initial document release

## STATEWIDE RETURN AND RECOUNT DIRECTIVE AND PROCEDURES

The Department of State issued this directive and adopted these procedures to implement the amendments made to the Pennsylvania Election Code by Act 97 of 2004 relating to reporting of unofficial election returns to the Department of State, the requirement that the Secretary of the Commonwealth determine whether a recount of returns for statewide public office or ballot question are required, and to ensure consistency with amendments to the Election Code made by Acts 77 and 94 of 2019, and 12 of 2020. This Directive supersedes the election return and recount provisions contained in the Directive dated June 9, 2011, entitled *Directive Concerning the Use, Implementation and Operation of Electronic Voting Systems by the County Boards of Elections*. The guidance concerning pre-canvassing and canvassing of ballots in this Directive refers only to the pre-canvassing and canvassing of ballots received by 8:00 P.M. on Election Day. Guidance entitled *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*, issued separately by the Department of State on November 1, 2020, provides procedures counties should follow to canvass ballots received after 8:00 P.M. on Election Day, November 3, 2020.

### TRANSMITTAL OF RETURNS ON ELECTION NIGHT

By **2:00 A.M. on the day following the election**, Sections 1113-A, 1225 and 1228 of the Election Code require the judge of elections to return to the county board of elections the following materials:

1. Envelopes;
2. Supplies, including all uncast provisional ballots; and
3. Returns, including all provisional ballots cast in the election district.

25 P.S. §§ 3031.13, 3065 and 3068.

By **3:00 A.M. on the day following the election**, each county board of elections must submit to the Department of State pursuant to Section 1402 of the Election Code returns received from the district boards of elections for each office for which a candidate must file a nomination petition with the Secretary of the Commonwealth. 25 P.S. § 3152. These returns must be submitted as prescribed by the Secretary of the Commonwealth utilizing the Department of State's election night reporting system or such other method authorized by the Department.

### COMPUTATION AND REPORTING OF UNOFFICIAL GENERAL RETURNS

As provided for by Section 1308 of the Election Code, the county board of elections shall meet no earlier than 7:00 A.M. on Election *Day* to **pre-canvass** all absentee and mail-in ballots received prior to this meeting. 25 P.S. § 3146.8(g)(1.1). The county board of elections shall meet no earlier than the close of polls on the day of the election and no later than the third day following the election to begin the **canvass** of absentee and mail-in ballots not included in the pre-canvass

# 0349a

Effective: November 1, 2020.

meeting. 25 P.S. § 3146.8(g)(2). The canvass of mail-in and absentee ballots shall continue until completed.

**No later than 9:00 A.M. on the third day following the primary or election**, each county board of elections must publicly commence the computation and canvassing of the returns from the various election districts as required by Sections 1403 and 1404 of the Election Code and continue the same until completed. 25 P.S. §§ 3153-3154. Upon the completion of the computation and canvassing (including any recount conducted under Section 1404(e) of the Election Code, 25 P.S. § 3154(e)), the board of elections must tabulate the figures for the entire county and sign, announce and attest the returns as provided by Section 1404(f) of the Election Code (25 P.S. § 3154(f)). The computed and tabulated returns that are announced, signed by the board of elections, and attested to by the clerks who made and computed the entries reflecting the returns under Section 1404(f) of the Election Code (25 P.S. § 3154(f)) must be considered unofficial for five (5) days thereafter. *Id.*

**No later than 5:00 P.M. on the Tuesday following the day of the election**, the county board of elections must submit to the Secretary of the Commonwealth the unofficial returns of the county for all statewide public offices and ballot questions that appeared on the ballot in every election district in the Commonwealth. The county board of elections shall submit to the Secretary of the Commonwealth the unofficial returns for such offices and ballot questions that the county board of elections announced and signed as required by Section 1404(f) of the Election Code. 25 P.S. § 3154(f).

In the event that the county board of elections has not yet completed, announced and signed the unofficial returns as provided by Section 1404(f) of the Election Code (25 P.S. § 3154(f)), the county board of elections shall submit, no later than 5:00 P.M. on the Tuesday following Election Day, those election returns that have been computed and tabulated by that date and time. With the submission of partial returns, the county board of elections shall inform the Secretary of the Commonwealth that the unofficial returns are not yet complete and shall provide to the Secretary the number of potentially valid ballots that the county board of elections estimates have not been included in the reported partial computation of returns.

These unofficial returns must be submitted to the Secretary of the Commonwealth by e-mail on form DSBE UR-CBE (Unofficial Returns Reporting Form) **by 5:00 P.M. on or before the Tuesday following the election** to resource account RA-elections@pa.gov. In addition to the reporting form, the county board of elections must submit a printed report from the election management system showing the results for each county-wide contest for all the ballots counted.

The report to the Secretary made as required by Section 1404(f) of the Election Code (25 P.S. § 3154(f)) on Form DSBE UR-CBE shall include an accurate accounting of all uncounted provisional ballots, uncounted absentee ballots, uncounted mail-in ballots, uncounted alternative ballots, and any other types of uncounted ballots (including any ballots from military and overseas civilian voters that have not yet been canvassed) for which a final resolution regarding the validity of the ballots has not yet been made.

In the event that the statutory deadline to receive and count absentee and mail-in ballots from certain electors has been extended by order of court or by legislation enacted by the General Assembly to a date that occurs after the date on which the county board of elections is required to submit unofficial returns to the Secretary of the Commonwealth, the county board of elections

must also attach to form DSBE UR-CBE a statement describing the total number of absentee and mail-in ballots that were delivered to absentee electors affected by the court order and that have not yet been received by the county board of elections. *(For example, if the deadline to receive absentee ballots from military electors and overseas citizens were extended to a date after the date that the board of elections is required to make its submission of unofficial returns to the Secretary of the Commonwealth, the county board of elections must calculate the total number of absentee ballots that might be received from those absentee electors affected by the court-ordered extension.)*

The submission of unofficial returns made to the Secretary of the Commonwealth as required by Section 1404(f) of the Election Code (25 P.S. § 3154(f)), and recorded on form DSBE UR-CBE, must be signed by the members of the county board of elections.

Based on assessment of the unofficial returns submitted to the Secretary of the Commonwealth by the county boards of elections, the Secretary may request a supplemental report regarding additional returns that have been computed and tabulated by the county boards of elections after the Tuesday following Election Day and before 5:00 P.M. on the second Thursday following Election Day when the Secretary is required to determine whether the standards for a Statewide recount have been met under Section 1404(g) of the Election Code. 25 P.S. § 3154(g).

## **RECOUNT ORDER BY THE SECRETARY**

Unless waived by all affected candidates, Section 1404(g) of the Election Code (25 P.S. § 3154(g)) requires the Secretary of the Commonwealth to order all county boards of election to conduct a recount if, based on the unofficial returns submitted to the Secretary by the county boards of election on form DSBE UR-CBE and any required supplements thereto, the Secretary of the Commonwealth determines:

- (1) A candidate for a public office that appears on the ballot in every election district in the Commonwealth was defeated by **one-half of one percent** or less of the votes cast for the office; or
- (2) A ballot question appearing on the ballot in every election district in the Commonwealth was approved or rejected by one-half of one percent or less.

The Secretary of the Commonwealth must issue an order for a recount by **5:00 P.M. of the second Thursday following the day of the election**. *The Secretary of the Commonwealth must provide 24 hours notice of the order to each candidate and to each county chairman of each party or political body affected by the recount.* Notice will be provided to each candidate and to each county chairman affected via e-mail and press release, and other method(s) as the Secretary might deem necessary and appropriate.

As provided by Section 1404(h) of the Election Code (25 P.S. § 3154(h)), the Secretary will not order a recount if the defeated candidate by 12:00 P.M. on the second Wednesday following the election requests in writing that a recount not be made.

# 0351a

Effective: November 1, 2020.

The recount order will be transmitted to each county via e-mail and other means deemed appropriate by the Secretary of the Commonwealth. The recount order also will be posted on the Department of State's World Wide Web Site at [www.dos.state.pa.us](http://www.dos.state.pa.us).

Under Section 1404(g)(5)(ii) of the Election Code (25 P.S. § 3154(g)(5)(ii)), the Secretary of the Commonwealth must schedule the recount, so it is **begun no later than the third Wednesday following the election.**

Under Section 1404(g)(4) of the Election Code (25 P.S. § 3154(g)(4)), a candidate affected by the recount may be present, in person or by attorney, at the recount conducted in each county. A political party or political body affected by the recount may send two representatives to the recount.

Section 1404(g)(5)(iii) (25 P.S. § 3154(g)(5)(iii)) mandates that the recount be **completed by 12:00 Noon on the Tuesday following the third Wednesday after the election.**

## CONDUCTING THE RECOUNT

Under Sections 1118-A and 1404(e)(3) of the Election Code (25 P.S. §§ 3031.18 and 3154(e)(3)), the county board of elections must recount all ballots using manual, mechanical or electronic devices of a different type than that used for the specific election.

- **All ballots containing overvotes, undervotes or marginal marks must be counted manually.**
- Counties shall conduct the recount using tabulators of a different type than that used in the election, or by a hand count of the paper ballots.

By 5:00 P.M on the Friday following the election the county board of elections must submit a completed Recount Procedures Form. This form will be proscribed by the Secretary, provide an overview of the county's recount plan, and will be distributed as necessary.

Under Section 1407(a) of the Election Code (25 P.S. § 3157(a)), appeals of determinations made by a county board of elections following an order for a recount by the Secretary of the Commonwealth related to the offices or ballot questions that are the subject of the statewide recount must be taken to the Commonwealth Court – even after the recount ordered by the Secretary has been completed.

## RECORDING THE RESULTS OF THE RECOUNT

A county board of elections must record the results of its recount on form DSBE RE-CBE (Recount Tabulation Reporting Form). The recount report shall include the computation and tabulation of all returns that have been made by the county board of elections.

In the event that the statutory deadline to receive and count absentee and mail-in ballots from certain electors has been extended by order of court to a date occurring after the completion of the recount, a county board of elections must attach to form DSBE RE-CBE a statement that describes the total number of absentee and mail-in ballots that were delivered to such electors and that have



# 0352a

Effective: November 1, 2020.

not yet been received by the county board of elections. *(For example, if the deadline to receive absentee ballots from military electors and overseas citizens were extended to a date occurring after the completion of the recount, the county board of elections would need to calculate the total number of absentee ballots that may yet be received by those affected military and overseas electors.)*

## **TRANSMITTING THE RECORDED RESULTS OF THE RECOUNT TO THE SECRETARY**

As required by Section 1404(g)(6) of the Election Code (25 P.S. § 3154(g)(6)), the county boards of elections must submit the results of the recount to the Secretary of the Commonwealth on form DSBE RE-CBE **no later than 12:00 Noon on the day following completion of the recount via e-mail to resource account [RA-elections@pa.gov](mailto:RA-elections@pa.gov)**, and via additional means, as may be required by the Secretary.

###

# APPENDIX L

## 0353a



These vote totals do not include any votes from mail ballots received between 8 p.m. on election day and 5 p.m. the following Friday.

### 2020 Presidential Election

Tuesday, November 3, 2020

Unofficial Returns

### Statewide

#### Filter Options

- 1st Congressional District
- 2nd Congressional District
- 3rd Congressional District
- 4th Congressional District
- 5th Congressional District
- 6th Congressional District
- 7th Congressional District
- 8th Congressional District
- 9th Congressional District
- 10th Congressional District

#### Representative in Congress

17th Congressional District

County Breakdown

**LAMB, CONOR J**  
(DEM)

51.15%

**Votes: 222,253**

Election Day : 80451  
Mail : 137568  
Provisional : 3528

**PARNELL, RICHARD SEAN**  
(REP)

48.85%

**Votes: 212,284**

Election Day : 161984  
Mail : 45987  
Provisional : 3980

[Back to Top](#)



These vote totals do not include any votes from mail ballots received between 8 p.m. on election day and 5 p.m. the following Friday.

## 2020 Presidential Election

Tuesday, November 3, 2020

Unofficial Returns

## Statewide

Filter Options

Statewide

### President of the United States

Statewide

County Breakdown

**BIDEN, JOSEPH ROBINETTE JR**  
(DEM)

50.01%

**Votes: 3,458,229**

Election Day : 1409341

Mail : 1995691

Provisional : 53168

Runningmate: KAMALA D HARRIS

**TRUMP, DONALD J.**  
(REP)

48.84%

**Votes: 3,377,674**

Election Day : 2731230

Mail : 595538

Provisional : 50874

Runningmate: MICHAEL R PENCE

**JORGENSEN, JO**  
(LIB)

1.15%

**Votes: 79,380**

Election Day : 53318

Mail : 24783

Provisional : 1277

Runningmate: JEREMY SPIKE COHEN