

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**No. 33 M.D. 2024**

DAVID H. ZIMMERMAN and KATHY L. RAPP,

Petitioners,

v.

AL SCHMIDT, in his official capacity as Acting Secretary of the Commonwealth  
of Pennsylvania, the COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF STATE, *et al.*,

Respondents.

**PETITIONERS' OMNIBUS BRIEF IN OPPOSITION TO THE  
PRELIMINARY OBJECTIONS OF ALL RESPONDENTS**

Gregory H. Teufel  
Pa. Id. No. 73062  
Adam G. Locke  
Pa. Id. No. 200441  
OGC LAW, LLC  
1575 McFarland Road, Suite 201  
Pittsburgh, PA 15216  
412-253-4622  
412-253-4623 (facsimile)  
gteufel@ogclaw.net  
alocke@ogclaw.net

*Attorneys for Petitioners*

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## **I. PRELIMINARY STATEMENT**

Petitioners David H. Zimmerman and Kathy L. Rapp are currently serving as elected representatives of the Pennsylvania House of Representatives and intend to seek reelection in 2024. They commenced this action by way of a Petition for Review (“PFR”), seeking declaratory and injunctive relief to restore the supremacy of the constitutional mandate in Article VII, Section 14 of the Pennsylvania Constitution, which plainly requires that absentee ballots be returned and canvassed in the election districts (precincts) in which the absentee voters respectively reside. PFR at ¶ 1. After more than 50 years of complying with this constitutional mandate, the Pennsylvania General Assembly suddenly disregarded it starting in 2019. Contrary to the plain and unambiguous language of Article VII, Section 14, two provisions of the Pennsylvania Election Code (“Election Code”),<sup>1</sup> namely 25 Pa.Stat. §§ 3146.6 and 3146.8, the official guidance issued by Respondent Department of State, and/or the practice and policy that has been adopted by each of the 67 Counties in Pennsylvania now dictate that absentee votes must be delivered to and canvassed on a county-wide basis at the offices of the relevant county boards of elections. Accordingly, Petitioners requested an order declaring 25 Pa.Stat. § 3146.6 and 25 Pa.Stat. § 3146.8 unconstitutional on their face and as applied.

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



Belied by those 50 years of recent history, Respondents suggest that complying with Article VII, Section 14 would be unmanageable and object that it makes no practical difference by whom or where absentee votes are canvassed. They also trivialize the importance of canvassing absentee votes in a constitutional manner because no excuse mail-in voting obviates the need for absentee voting altogether, despite the fact that tens of thousands of absentee votes continue to be cast in Pennsylvania elections.<sup>2</sup> They seem to overlook the implication of their trivialization, in that complying with the Constitution was actually more difficult in the recent 50 year period during which, prior to no excuse mail-in voting, there were dramatically more absentee ballots cast. In any event, speculative professed difficulty in complying with a constitutional mandate is no excuse for ignoring it.

The plain language of Article VII, Section 14 and the historical understanding of Article VII, Section 14 at the time of its adoption compel the conclusion that absentee ballots must be delivered to and canvassed at the local election district in which the absentee voters respectively reside and not at the county level. The Respondents should care, given their sworn duties to support, obey, and defend the

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<sup>2</sup> For example, according to the Election Administration and Voting Survey 2020 Comprehensive Report, in Pennsylvania's last Presidential election (2020), the state received approximately 27,000 absentee ballots through UOCAVA, with about 20,000 of those votes coming from non-military sources.

See ELECTION ADMINISTRATION AND VOTING SURVEY 2020 COMPREHENSIVE REPORT, U.S. Election Assistance Commission, [https://www.eac.gov/sites/default/files/document\\_library/files/2020\\_EAVS\\_Report\\_Final\\_508c.pdf](https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf)

Pennsylvania Constitution, but instead respond to the Petition questioning why anyone should care. It is not an excuse for ignoring a constitutional mandate that one cannot see or does not agree with the policy reasoning behind it, nor is Respondents' or this Court's agreement with the policy rationales behind the constitutional mandate necessary for proper resolution of this case, but Petitioners believe that following the constitutional mandate will better ensure election integrity.

As to standing, Respondents seem to suggest that the only parties that could have standing to raise these issues are candidates who lose elections they would have won but for absentee ballots. They are suggesting this Court should allow a clearly unconstitutional practice to continue until a candidate actually loses an election and comes to this Court seeking to nullify votes to reverse election results. That is a situation this Court has the power to avoid right now and that is an unreasonable risk to require all candidates to endure, prepare for, and adapt to in every election until this unconstitutional practice is ended. If this Court does not grant relief, this issue will predictably surface at some point in the future in a much less desirable context.

## II. STATEMENT OF THE CASE

### **A. STATEMENT OF THE FACTS**

Originally, the Pennsylvania Constitution required all qualified electors to cast their votes in-person and submit their ballots at the local election district and their ballots were also canvassed at their local election district. See PFR at ¶¶ 22-23, 30, 34-35. This method and manner of voting and canvassing was the only way a qualified elector could cast a ballot and have that ballot tabulated in accordance with the Constitution. See id. at ¶¶ 34-39. When the General Assembly enacted the Military Absentee Act of 1839 and 1923 Absentee Voting Act, which permitted forms of absentee voting, the Pennsylvania Supreme Court held that the statutes were unconstitutional and that a constitutional amendment would be required to authorize a method and manner of voting different from in-person voting. See Chase v. Miller, 41 Pa. 403 (Pa. 1862); In re Contested Election of Fifth Ward of Lancaster City, 126 A. 199 (Pa. 1924) (“Lancaster City”); see also McLinko v. Commonwealth, 279 A.3d 539, 564 (Pa. 2022) (holding that, due to the addition of Article VII, Section 4, the Pennsylvania Constitution permitted mail-in voting).

The Pennsylvania Constitution was eventually amended to allow voters to cast ballots via absentee voting. See McLinko, 279 A.3d at 581-82 and n.51. The constitutional provision authorizing absentee voting is currently Article VII, Section 14 of the Pennsylvania Constitution. The history of the constitutional amendments

regarding absentee voting are well summarized at McLinko, 279 A.3d at 561-63 and nn. 28-35. From 1949 until 1968, the pertinent language of the constitutional provision relating to absentee ballots stated as follows:

The General Assembly may, by general law, provide a manner in which, and the time and place at which, [qualified absentee electors] may vote and for the return and canvass of their votes in the election district in which they respectively reside.

See 1949 Pa. Laws 2138 (former Pa. Const. art. VIII, § 18); 1957 Pa. Laws 1019 (former Pa. Const. art. VIII, § 19).

From 1937 to 1968, the Election Code, which had been amended on numerous occasions during this timeframe, contained two provisions that directed absentee ballots to be returned to and canvassed by county board of election. The 1951 version of what is now 25 Pa.Stat. § 3146.6(a), in relevant part, stated as follows:

[A]t any time after receiving an official absentee ballot . . . the elector shall [complete the absentee ballot] . . . and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

25 Pa.Stat. § 3146.8(a), formerly the Act of March 6, 1951, 1951 Pa. Laws 3. The 1951 version of what is now 25 Pa.Stat. § 3146.8(a), in relevant part, provided as follows:

The county boards of election, **upon receipt of official absentee ballots** . . . shall safely keep the ballots in sealed or locked containers until they **are to be canvassed by the county board of elections**.

25 Pa.Stat. § 3146.8(a) (emphasis added), formerly the Act of March 6, 1951, 1951 Pa. Laws 3.

On April 23, 1968,<sup>3</sup> following the 1967 joint resolution passed by the General Assembly, the electorate approved an amended constitutional provision that renumbered and revised then Article VIII, Section 19 to Article VII, Section 14. Pa. Const. art. VII, § 14 (1967); 1967 Pa. Laws 1048; see McLinko v. Commonwealth, 270 A.3d 1243, 1259 (Pa. Cmwlth. 2022) (en banc), reversed on other grounds by McLinko v. Commonwealth, 279 A.3d 539 (Pa. 2022) (discussing the constitutional amendment and revisions). Critically, new Article VII, Section 14 revised former Article VIII, Section 19, in pertinent part, to remove the permissive and directory word “may” in Article VIII, Section 19 and replace it with the mandatory and imperative “shall.” Thus, in 1968 Article VII, Section 14 read and continues to now read as follows:

**The Legislature shall, by general law, provide a manner in which, and the time and place at which, [qualified absentee electors] may vote, and for the return and canvass of their votes in the election district in which they respectively reside.**

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<sup>3</sup> See [www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.HTM](http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.HTM). At page 11 of their Brief in Support of their Preliminary Objections, the Boards of Elections of Allegheny, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties incorrectly state that the operative provision of the Pennsylvania Constitution was renumbered from Article VIII, Section 19 to Article VII, Section 14 and, most critically, amended to state “The Legislature shall ...” instead of the “The Legislature may ...” in 1967. Those changes did not become effective until April 23, 1968, when the electorate approved them. That is an important difference, for reasons that will be explained below.

Pa. Const. Art. VII, § 14(a) (emphasis added).

Approximately 8 months after the electorate approved the new Article VII, Section 14, the General Assembly, in an apparent response to the change in language from “may” to “shall,” revised the provisions of the Election Code pertaining to absentee ballots. See Act of Dec. 11, 1968, P.L. 1183, No. 375 (the “Former Election Code”), repealed and replaced by the Act of October 31, 2019, P.L. 552 (“Act 77”). In accordance with the new term “shall” in Article VII, Section 14, the General Assembly enacted provisions to the Former Election Code mandating that “the local district board of elections” or “local district boards” (the local precincts) and not the county board of elections must receive and canvass absentee ballots. For example, the General Assembly added the following sections to the Former Election Code, directing that the local district board canvass absentee ballots before returning the absentee ballots to the county board of elections:

Section 1302.2(c). In addition, the **local district boards** of election shall, upon canvassing the official absentee ballots under section 1308, examine the voting check list of the election of the election district of said elector’s residence and satisfy itself of the election district of said elector’s residence and satisfy itself that such elector did not cast any other ballot other than the one properly issued to him under his absentee ballot. 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.

\* \* \*

Section 1308(e). [T]he **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 [absentee voters' lists and file]. If the **local election board** is satisfied that the declaration is sufficient ... the **local election board** shall announce the name of the elector and shall give any watcher present an opportunity to challenge [the absentee vote]. Upon challenge of any absentee elector ... **the local election board** shall mark "challenged" on the envelope ... and the same shall be set aside for the return to the county board unopened pending decision by the county board and shall not be counted. All absentee ballots not challenged . . . shall be counted and included with the general return of paper ballots or voting machines. ... Thereupon, the **local election board** shall open the envelope of every unchallenged absentee election .... If any of these envelopes shall contain any extraneous marks or identifying symbols other than the words "Official Absentee Ballot," the envelopes and the ballots contained therein shall be set aside and declared void. The **local election board** shall then break the seals of such envelopes, remove the ballots and record the votes in the same manner as district election officers are required to record votes. With respect to 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 secure, safe and sealed container in the custody of the county board until ... a formal hearing of all such challenges ....

Act of Dec. 11, 1968, P.L. 1183, No. 375, repealed by Act 77 (emphasis added).

In enacting Section 1302.2(c) and Section 1308(e) of the Former Election Code, the General Assembly recognized and acknowledged that Article VII, Section 14 required that absentee ballots had to be returned to and canvassed by the local polling place, precinct, or election district. Pursuant to the absentee voting mechanism of the Former Election Code, the General Assembly repeatedly distinguished "county boards of election" and "local election boards," particularly with respect to their election duties. Initially, the "county board of election"

received, processed, and reviewed absentee ballot applications and delivered the approved absentee ballots to the elector. See Sections 1302.2 and 1305 of the Former Election Code, Former 25 Pa.Stat. §§ 1302.2 and 1305 (repealed by Act 77). The “county boards of election” were obligated to “distribute the absentee ballots, unopened, to the absentee voter’s respective election district.” Section 1308(a) of the Former Election Code, Former 25 Pa.Stat. § 1308(a) (repealed by Act 77). The local election board then opened and canvassed the absentee ballots in accordance with the procedures set forth in Sections 1308(e) and 1302.2 of the Former Election Code, after which the local election board ensured that the absentee ballots were “included in and returned to the county board with the returns of the district.” Former 25 Pa.Stat. § 1308(a) (repealed). See 25 Pa.Stat. § 1308(b.1) (repealed by Act 77) (“In all election districts in which electronic voting systems are used, absentee ballots shall be opened at the election district....”); 25 Pa.Stat. § 1308(f) (repealed by Act 77) (“Any person challenging an application for an absentee ballot or an absentee 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 board....”). As such, the “county boards of election” had a limited role under the Former Election Code with respect to absentee voting, and the “local election boards” were charged with the duty to open the absentee ballots, assess them for the legal deficiencies, and then canvass



and count them as part of the local election district's vote tabulation, prior to sending the absentee votes, including challenged votes, to the "county boards of election."<sup>4</sup>

In enacting Section 1302.2(c) and Section 1308(e), the General Assembly implicitly recognized and acknowledged that Article VII, Section 14 required that absentee ballots had to be returned to and canvassed by the local election district. Consonant with the plain language of Article VII, Section 14, the Election Code continued to provide for the return and canvass of absentee ballots at the local polling place, precinct, or election district from 1968 to 2019, for over 50 years.<sup>5</sup> There is

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<sup>4</sup> Although Section 1306(a) of the Former Election Code stated that the electors were to initially mail or deliver in person an absentee ballot to the "county boards of election," the county boards of election, as noted above, were then required to deliver the absentee ballot, in an unopen form, to the "local election boards" in order for the "local election boards" to open the ballots and conduct the inspection, canvassing, and tabulation process. See Former 25 Pa.Stat. § 1306(a)(1) (repealed by Act 77) (stating that an "an elector shall send [the absentee ballot] by mail, postage prepaid, except where franked, or deliver it in person to said county boards of election."), and compare with Former 25 Pa.Stat. § 1308(a) (repealed by Act 77) (mandating that after receiving an absentee ballot, the county boards of elections had to "distribute the absentee ballots, unopened, to the absentee voter's respective election district."). Therefore, the General Assembly devised a manner and mode by which absentee ballots were received and canvassed by the local election district, polling place, or precinct in accordance with what was then new Article VII, Section 14.

<sup>5</sup> Respondent Department of State, Respondent Secretary of State, and the Respondent County Boards of Election for Allegheny County, Bucks County, Chester County, Delaware County, Montgomery County and Philadelphia County agree that the Former Election Code required that absentee ballots must be received and canvassed by the local boards of election for over 50 years. See Brief in Support of Preliminary Objections, Respondent Department of State, at page 8-9 n.6 ("While the General Assembly amended the Election Code in 1968 to require absentee ballots to be returned to county boards of elections but canvassed by election districts, Act of Dec. 11, 1968, P.L. 1183, No. 375, the General Assembly in 2019 reinstated the canvassing of absentee ballots by county boards of elections, together with the newly created mail-in ballots, Act of Oct. 31, 2019, P.L. 552, §§ 6-7, No. 77.); Preliminary Objections of the above-mentioned County Boards of Election, at page 16 n.4 ("Following the 1968 Supreme Court decisions discussed above, the Election Code did for a time provide for the canvass of absentee ballots at individual voting precincts, rather than at county boards of elections. This provision was amended by Act 77 of

no evidence or reason to believe, especially at this stage in this litigation, that there were any practical, financial, or administrative problems with returning and canvassing absentee ballots at the local election districts.

In 2019, with the advent of what is commonly known as no-excuse or mail-in voting, pursuant to Act 77 of 2019, the General Assembly intermingled mail-in voting with absentee voting as though they were one and the same, for the purposes of return and canvassing. When the General Assembly enacted Act 77, it granted the county boards of election the statutory authority to receive and canvass both mail-in ballots and absentee ballots. In so doing, the General Assembly completely deleted all of the language reproduced above in former Section 1302.2(c) and Section 1308(e), deleted other subsections within those statutes that pertained to the local district boards, effectively expunged all references to the local district boards related to absentee voting and, through supplemental legislation, enacted and inserted what is now 25 Pa.Stat. § 3146.6 and 25 Pa.Stat. § 3146.8<sup>6</sup>. A true and correct copy of relevant excerpts from Act 77 is attached hereto as **Exhibit A**, marking the relevant

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2019, which returned to the earlier absentee-ballot-canvassing locations approved by the 1968 Supreme Court decisions. See Act of October 31, 2019, sec. 7, § 1308, 2019 Pa. Legis. Serv. Act 2019-77 (West) (amending 25 Pa. Stat. § 3146.8)).

<sup>6</sup> Part of what is now included in 25 Pa.Stat. § 3146.8 was adopted in 2006, providing for return of absentee ballots to and canvass of the absentee ballots by county boards of elections for absentee ballots from certain military and overseas voters “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.” See Act of May 11, 2006, P.L. 178, § 12, No. 45 (codified as amended at 25 Pa.Stat. § 3146.8(g)(1)(i)).

additions and deletions that the General Assembly effectuated to the Election Code (see Exhibit A, pp. 39, 43-45, & 47).

In its “Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures,” (“Guidance”) Section 4.1, Respondent Department of State has instructed Respondent County Boards of Elections that “voters must return their own completed absentee or mail-in ballot by 8:00 pm on Election Day to the county board of elections or other county-designated drop-off location.” PFR Ex. C. Further, at Section 5.2 of that Guidance, Respondent Department of State has instructed the Respondent County Boards of Elections that “the county board of elections” should conduct the pre-canvass and canvass procedures. Id.

Unlike the prior process where absentee ballots were initially received by county boards of elections but then ultimately distributed/returned to the local election districts in conformity with Article VII, Section 14, under the current practice, the ballots stop at the county boards of election and are canvassed by the county boards of election in their central offices rather than in the election districts in which the absentee voters respectively reside. PFR ¶¶ 56-60. Although theoretically, in compliance with both current laws, the guidance, and Article VII, Section 14, Respondent County Boards of Election could have local judges of elections and inspectors of elections canvass absentee ballots in the election districts in which the absentee voters reside for absentee ballots canvassed on election day

and have county officials canvass absentee ballots in the election districts in which the absentee voters reside for absentee ballots canvassed after election day, that does not appear to be what any of the Respondent County Boards of Election are doing.

## **B. PROCEDURAL HISTORY**

On January 30, 2024, Petitioners filed the PFR, requesting that this Court declare that that 25 Pa.Stat. § 146.6 and 25 Pa.Stat. § 3146.8 are unconstitutional on their face and as applied and provide injunctive and other relief. In the PFR, Petitioners named as Respondents the Department of State, the Secretary of the Department of State, and all the Boards of Election of each and every county in Pennsylvania. Thereafter, Respondents filed preliminary objections to the PFR.

On March 15, 2024, this Court, having reviewed the preliminary objections filed by Respondents, entered a per curiam Order, which stated in relevant part that “Petitioners’ omnibus brief addressing all preliminary objections shall be filed [] and served by April 29, 2024.” Order, 3/15, 2024, at p. 1. Accordingly, Petitioners submit the present Omnibus Brief in Opposition to the Preliminary Objections of All Respondents.

## **III. LEGAL STANDARD**

“The court may sustain preliminary objections only when, based on the facts pleaded, it is clear and free from doubt that the complainant will be unable to prove facts legally sufficient to establish a right to relief.” Mazur v. Trinity Area Sch. Dist.,

961 A.2d 96, 101 (Pa. 2008) (citations omitted). Stated somewhat differently, “[t]he question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.” McMahon v. Shea, 688 A.2d 1179, 1181 (Pa. 1997). “For the purpose of evaluating the legal sufficiency of the challenged pleading, the court must accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts.” Mazur, 961 A.2d at 101 (citations omitted).

#### **IV. ARGUMENT**

##### **A. PETITIONERS HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE STATUTES AT ISSUE.**

Petitioners possess standing to challenge the constitutionality of the statutes at issue. 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). An interest is “substantial” if the party’s interest “surpasses the common interest of all citizens in procuring obedience to the law.” Firearm Owners Against Crime v. City of Harrisburg, 218 A.3d 497, 506 (Pa. Cmwlth. 2019) (quotation omitted). A “direct” interest requires a causal connection between the matter complained of and the

party's interest. Id. An “immediate” interest requires a causal connection that is neither remote nor speculative. Id.<sup>7</sup>

Here, Petitioners commenced this suit in their capacity as candidates for the Pennsylvania House of Representatives. PFR at ¶¶ 6, 10. Petitioners have substantial, direct and immediate interests in whether Respondents are permitted to continue to enforce an unconstitutional law governing Pennsylvania elections and those interests are distinguishable from the interests shared by all other citizens or all other voters, because the Petitioners are past and likely future candidates for office. As candidates, the Petitioners suffer from having their elections impacted by absentee ballots that are not canvassed in accordance with the Pennsylvania Constitution and by having to adapt their campaigns to a void law. Petitioners have a First Amendment Right to pursue their candidacies for public office, and this constitutional freedom implies that they have a particular and unique interest in having ballots returned and canvassed in a manner that complies with the constitution. See, e.g., Phillips v. City of Dallas, 781 F.3d 772, 778-779 (5<sup>th</sup> Cir. 2015) (“This court has been unequivocal in its recognition of a First Amendment interest in candidacy.”); see also Davies v. Grossmont Union High School Dist., 930 F.2d 1390, 1397 (9<sup>th</sup> Cir. 1991)

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<sup>7</sup> To the extent that Respondents attempt to rely on federal caselaw applying a more stringent standard for standing, it is important to note that the Pennsylvania Constitution is more flexible than the stringent and jurisdictional Article III “case or controversy” standard that is controlling in federal courts. See Robinson Twp. v. Commonwealth, 83 A.3d 901, 917 (Pa. 2013) (in contrast to the federal standard for assessing jurisdiction, the standing doctrine is prudential in this Commonwealth and not a question of jurisdiction).

(concluding that “the individual’s right to seek public office is inextricably intertwined with the public’s fundamental right to vote”); In re Shuli, 525 A.2d 6, 9 (Pa. Cmwlth. 1987) (concluding that a candidate for district justice had standing to challenge his opponent’s nominating petition because his status as a candidate for the same office gave him a substantial interest in the action).

Moreover, Petitioner Zimmerman is currently a member of the Pennsylvania House of Representatives serving the 99th District, he was elected in 2022 and intends to seek reelection in 2024, and in previous elections, he had absentee ballots determined to have been casted in favor of candidates running against him, absentee ballots that were returned to and canvassed by the Lancaster County Board of Elections rather than in the precincts in which the absentee voters resided. PFR at ¶¶ 5-8. Petitioner Rapp is currently a member of the Pennsylvania House of Representatives serving the 65th District, she was elected in 2022 and intends to seek reelection in 2024, and in previous elections, she had absentee ballots determined to have been casted in favor of candidates running against her that were returned to and canvassed by the Warren County Board of Elections, Forest County Board of Elections, and the Crawford County Board of Elections rather than in the precincts in which the absentee voters resided. PFR at ¶¶ 9-12. Both Petitioners commenced suit to ensure that, in the upcoming elections, absentee votes are returned to and canvassed in local election districts in accordance with Article VII,

Section 14. PFR at ¶¶ 8,12. Petitioners could lose an upcoming election due to the impact of absentee votes that are returned and canvassed in an unconstitutional manner. See In re General Election—1985, 531 A.2d 836, 838 (Pa. Cmwlth. 1987) (concluding that candidate in general election had standing to challenge judicial deferment and resumption of election because it could have jeopardized the outcome of the election, a possibility sufficient to show “direct and substantial harm”).

In Bonner v. Chapman, 298 A.3d 153, 162 (Pa. Cmwlth. 2023) (en banc), this Court concluded that the petitioners, then current members of the Pennsylvania House of Representatives (including the Petitioners in this action), had standing to contest the constitutionality of Act 77, also known as no-excuse mail-in voting, because the petitioners alleged that they “were seeking reelection” and would “have to adapt, and expend funds, to account for the continued application of Act 77.” Id. at 162. Likewise, in this case, Petitioners will have to adapt and expend funds to account for the continued application of the unconstitutional statutes at issue, such as by paying for legal advice related to the issues raised in this action and contesting or opposing the inclusion of improperly returned and canvassed absentee ballots in the vote totals. In addition, the Petitioners would have to suffer under the risk at any point that an opposing candidate might do the same, contesting a vote total in Petitioners’ favor due to the unconstitutional return and canvassing of absentee ballots. Every candidate is entitled to an election run in accordance with the



Pennsylvania Constitution and should not have to adapt to situations where disregard of constitutional requirements is allowed to persist.

Moreover, aside from the fact that Petitioners have clear standing with respect to the Respondents who are the boards of election in the counties that include the election districts that have and will continue to vote in Petitioners' elections, particularly Lancaster County, Warren County, Crawford County, and Forest County, Petitioners also possess standing with respect to the other Respondents. Respondents the Department of State and the Secretary of the Commonwealth ("the Commonwealth Respondents") abide by, effectuate, and enforce 25 Pa.Stat. § 3146.6 and 25 Pa.Stat. § 3146.8. PFR at ¶¶ 14-15. The Respondent County Boards of Election either follow the official guidance issued by the Commonwealth Respondents or otherwise adhere to and/or implement policies that follow 25 Pa.Stat. § 3146.6 and 25 Pa.Stat. § 3146.8. PFR at ¶¶ 14-15.

The Respondent County Boards of Election in counties other than Lancaster County, Warren County, Crawford County, and Forest County are necessary parties for complete relief in that this Court could not order piecemeal relief with the resulting different locations for returning and canvassing absentee ballots in different counties. Had Petitioners not named the County Boards of Elections from the counties other than Lancaster County, Warren County, Crawford County, and Forest County as Respondents in this suit, the other parties would no doubt have objected

to the failure to join indispensable parties. This Court has statewide jurisdiction and in the interest of uniformity in the application of election laws and voting throughout this Commonwealth, has the inherent power to issue a statewide injunction and/or declaration that enjoins and/or binds all of the County Boards of Election in Pennsylvania, even in those counties in which Petitioners are not presently seeking office. See also Innovation Law Lab v. Wolf, 951 F.3d 1073, 1090-93 (9<sup>th</sup> Cir. 2020) (upholding a district court’s issuance of a nationwide injunction because the need for uniformity in the application of the law throughout the United States was absolutely paramount).<sup>8</sup>

Moreover, although to have standing a party must ordinarily have an interest in the controversy that is distinguishable from the interest shared by all 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, 550 A.2d at 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

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<sup>8</sup> The Boards of Elections of Allegheny, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, for example, argue lack of standing because the Petitioners’ House districts are not within those counties, citing, *inter alia*, Pa. State Conf. of NAACP v. Schmidt, No. 1:22-cv-00339, 2023 WL 8091601, at \*4-5 (W.D. Pa. Nov. 21, 2023), rev’d on other grounds sub nom. Pa. State Conf. of NAACP Branches v. Sec’y Comm’w of Pa., --- F.4th ---, 2024 WL 1298903 (3d Cir. Mar. 27, 2024). However, Pa. State Conf. of NAACP involved voter civil rights actions and not an action by candidates for office seeking to declare statutes and their application unconstitutional on a statewide basis.

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 (1) that issues are likely to escape judicial review when those directly and immediately affected are actually beneficially as opposed to adversely affected; (2) the appropriateness of judicial relief; (3) the availability of redress through other channels; and (4) 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 proceeding the

commencement of their respective terms. Id. at 186. Under those circumstances, the Pennsylvania Supreme 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, unconstitutional laws would otherwise go unchallenged, redress through other channels is unavailable, and the only persons better situated to assert the claims at issue are possibly Respondents, who did not choose to institute legal action for years. Determination of the continuing validity of election laws remains a function of the courts and granting standing would add judicial scrutiny of the continuing validity of the acts of public officials involved in the elective process.

Respondents’ standing arguments seem to suggest that the only candidate that would have standing to challenge the unconstitutional practices and statutes at issue would be a candidate who lost an election but would have been declared the winner but for the tally of the absentee ballots in that election. They are suggesting that, instead of doing the responsible thing and bring an action well in advance of an election and seek to resolve the problem without creating an issue of nullifying any

votes, a candidate must wait and bring an action trying to nullify votes if and when the need arises. Such a candidate would be denied relief for the same reasons relief was denied in the two primary cases relied upon by the Respondents, discussed in the next section. So, the net result, according to Respondents' reasoning, is that no candidate would ever have standing to challenge the statutes and practices at issue and simultaneously be able to obtain meaningful relief. For all of the foregoing reasons, this Court should determine that the Petitioners have standing to maintain this action and overrule the Respondents' standing Preliminary Objections.

**B. PETITIONERS HAVE STATED MERITORIOUS CLAIMS.**

Petitioners have averred facts stating meritorious claims upon which relief can (and should) be granted because the plain and unambiguous language of Article VII, Section 14 requires absentee votes to be returned and canvassed in the election districts in which the absentee voters respectively reside. "Every word employed in the constitution is to be expounded in its plain, obvious and commonsense meaning," Commonwealth v. Gaige, 94 Pa. 193 (1880), for the "ultimate touchstone is the actual language of the Constitution itself," Stilp v. Commonwealth, 905 A.2d 918, 939 (Pa. 2006). See McLinko, 279 A.3d at 577 ("In ascertaining the meaning of a word in accordance with its common and approved usage, this Court has found it helpful to consult dictionaries."). The word "shall" by definition is mandatory, and it is generally applied as such. Oberneder v. Link Computer Corp., 696 A.2d 148,

150 (Pa. 1997); see also McLinko, 279 A.3d at 581 n.51 (noting that “[i]n 1968, the directory ‘may’ became the mandatory ‘shall’ that continues to appear in Section 14” and suggesting that courts must not “ignore the mandatory connotation usually attributed to the word ‘shall’”); McLinko, 279 A.3d at 594 (Wecht, J., concurring) (noting that “the Constitution was amended several times to permit—but not to require—the General Assembly to provide a means of absentee voting,” and appreciating the legal significance when the people of Pennsylvania “amended the operative verb in Section 14 from the permissive ‘may’ to the obligatory ‘shall,’” because the change in language vested the General Assembly with an affirmative duty to implement absentee voting in a manner consistent with the term “shall”).

The plain and unambiguous language of Article VII, Section 14 unconditionally dictates that the General Assembly “shall” enact legislation that: (1) provides a manner for absentee voting for the enumerated individuals, and (2) provides a manner for absentee votes to be returned and canvassed in the election district in which the absentee voter resides. The final clause in Article VII, Section 14 requires that all absentee ballots must be submitted to (“returned”) and counted (“canvassed”) in the local polling place or precinct (“election district”) in which the absentee voters reside. See MIRRIAM-WEBSTER ONLINE DICTIONARY (defining “return” to mean “to bring, send, or put back to a former or proper place”); id. (defining “canvass” as the process “to examine (votes) officially for authenticity”);

see also 25 Pa.Stat. § 2602(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.”). Pursuant to Article VII, Section 14, every absentee ballot must be returned to and canvassed “in the election district in which [the absentee voters] respectively reside.” Pa. Const. Art. VII, § 14(a) (emphasis added). See MIRRIAM-WEBSTER DICTIONARY (defining “in,” when used as a preposition, “as a function word to indicate inclusion, location, or position within limits”).<sup>9</sup>

In the two cases principally relied upon by Respondents, candidates for office commenced lawsuits challenging the constitutionality of receiving and tabulating absentee ballots at the county level in the November 1966 and November 1977 general elections. See generally In re Absentee Ballots Case (No.1), 245 A.2d 258 (Pa. 1969) (plurality) (“Absentee Ballots No. 1”); In re Absentee Ballots Case (No.2), 245 A.2d 265 (Pa. 1969) (“Absentee Ballots No. 2”).<sup>10</sup> In these cases, the

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<sup>9</sup> On page 20 of their brief in support of their preliminary objections, the Commonwealth Respondents argue that “Requiring county boards of elections to canvass absentee ballots while attributing the votes to the absentee voter’s election district is entirely consistent with the constitutional language.” However, simply transmitting vote totals to election districts does not constitute canvassing votes in election districts.

<sup>10</sup> In Absentee Ballots No. 2, there were six participating Justices in the case; three Justices concurred in the result of the opinion but did not join the analysis (Jones, J., O’Brien, J., Roberts, J., concurring in the result only), whereas two Justices joined the opinion of the author (Eagan, J. and Bell, C.J., joining Musmanno, J.), and one Justice (Cohen, J.) took no part. Consequently, the case was decided on a three-to-three basis, and Absentee Ballots No. 2 did not garner a majority of the justices to agree on the legal rationale. Therefore, Absentee Ballots No. 2 is a non-binding

candidates alleged that the county boards of election could not receive and canvass absentee votes because the provisions of the Election Code that allowed them to do so contravened the absentee ballot constitutional provision, then Article VIII, Section 19, which stated in pertinent part as follows:

The General Assembly **may**, by general law, provide a manner in which, and the time and place at which, [qualified absentee electors] may vote and for the return and canvass of their votes in the election district in which they respectively reside.

Former Pa. Const. art. VIII, § 19 (emphasis added).

In what must be a typographical error, the opinion in Absentee Ballots No. 1 incorrectly quoted Article VIII, Section 19 as beginning with “The Legislature shall ...” rather than “The Legislature may ...” As the new provision Article VII, Section 14 did not take effect until April 23, 1968, and Absentee Ballots No. 1 concerned an election in 1967, Article VII, Section 14 was definitely not applicable to the case and the relevant constitutional provision was in fact permissive, beginning, “The Legislature may ...” and not the mandatory, “The Legislature shall ...” It is clear that the Court in Absentee Ballots No. 1 was in fact deciding the constitutional question under the permissive Article VIII, Section 19 because, among other things, it relied on standards applicable only to constitutional provisions that have been in

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plurality decision that has no precedential effect. See Gallagher v. Geico Indem. Co., 201 A.3d 131, 135 n.5 (Pa. 2019) (“[A] plurality opinion . . . does not constitute binding precedent.”).



effect for a long time and not brand new constitutional provisions. The Pennsylvania Supreme Court commenced its analysis, *inter alia*, with the following standards:

“Where a statute has been in force for many years without any question as to its constitutionality being raised and engagements have been entered into on the strength of its validity, the court will not undertake the drastic measure of wiping it off the statute books unless it is convinced beyond all peradventure of doubt that it violates a provision of the fundamental law.” Wilson v. Philadelphia School District, 328 Pa. 225, 242 (1937).

Absentee Ballots No. 1, 245 A.2d 258, 260-261. The Court went on to explain the history of the canvass of absentee ballots and the fact that no one had previously questioned the authority of county boards of election to canvass absentee ballots for decades. Id. at 261.<sup>11</sup> But the new, mandatory constitutional language “The Legislature shall ...” had not even taken yet effect by the time of the election at issue.

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<sup>11</sup> On pages 20 to 21 of their brief in support of its preliminary objections, citing Absentee Ballots No. 1, the Commonwealth Respondents argue that because statutes have directed late received military and overseas absentee ballots to be returned to and canvassed by county election boards since as early as 2006, as evidence that one of the statutes at issue has at least in part been in force for many years without any question being raised as to its constitutionality and, therefore, this Court should hesitate to declare that statute unconstitutional “unless it is convinced beyond peradventure of doubt that it violates a provision of the fundamental law.” However, the Court in Absentee Ballots No. 1 explained:

If something is demonstrated to be monumentally wrong it becomes the duty of the courts to so declare, regardless of current embarrassment and discomfort, all to the end that what is wrong may be made right and illegal wounds inflicted may be cured as quickly as possible, whatever may be the surgery and legislative therapy required. We refer to the hitherto freedom from attack of the election code (on the subject of county canvassing of absentee ballots), only for the purpose of showing that the absence of constitutional condemnation would suggest that the lawmakers of the state are satisfied it conforms to the Constitution.

Former Article VIII, Section 19, which contained the permissive term “may,” granted the Legislature the power but not the duty to enact legislation providing a manner for absentee voting for certain enumerated individuals, but did not require that, if it exercised that power, the Legislature must also provide a manner for each absentee vote to be returned and canvassed in the election district in which the absentee voter resided. The “and” that preceded “for the return and canvass” in the former Article VIII, Section 19 was used in its several or permissive sense as opposed to its joint or mandatory sense.

In Weinberg v. Waystar, Inc., 294 A.3d 1039, 1058 (Del. 2023), the Delaware Supreme Court persuasively explained as follows:

[A]lthough some scholars maintain that “the meaning of and is usually several,” it is, at least, commonplace. This is especially true in permissive sentences and aligns with our understanding of common, ordinary usage. For example, if the litigants went to a breakfast meeting and the host said, “You may have a yogurt, a muffin, and a bagel,” the litigants would understand that they may take any of the food items, all of the food items, or none of the food items. In the same situation, albeit with a more demanding host, if the litigants were told, “You must take a yogurt, a muffin, and a bagel,” they would understand that they must take all three food items.

See also Mason v. Range Res.-Appalachia LLC, 120 F. Supp. 3d 425, 445 (W.D. Pa. 2015) (court persuasively explained that authorities agree that “and” has a several sense as well as a joint sense and when the word “and” is used in a permissive sentence, it is likely to be used in its several sense). Likewise, because of the permissive preface “may” in former Article VII, Section 19, the Legislature could,

but was not required to, enact legislation to provide a manner, time, and place for absentee voting for the enumerated individuals, and could also, but was under no obligation to do so, the Legislature could further provide for the return and canvass of absentee ballots in the election district in which the absentee voters resided.

Changing the word “may” to “shall” in the current Article VII, Section 14 changed the “and” that preceded “for the return and canvass” from its former (and more typical) several or permissive sense to a joint or mandatory sense. The term “shall” in Article VII, Section 14 changed the context of that “and,” such that now the same “and” has a joint or mandatory meaning with respect to requiring the Legislature to provide for both (1) a manner, time, and place for absentee voting and (2) the returned and canvass of absentee ballots in the election district in which the absentee voters resided, and not just the first without the second, at its discretion. See 10 P.L.E. CONSTITUTIONAL LAW § 28 (2023) (“[W]hen a constitutional provision contemplates the enactment of implementing legislation, the provision should, absent clear language to the contrary, be interpreted as establishing general guidelines for the forthcoming legislation, rather than mandatory directives as to its content. The word ‘shall’ in a provision of the Constitution is mandatory, not directory . . . The Legislature is bound and concluded by the mandatory provisions of the Constitution, and is under an obligation to perform the duties and discharge the functions imposed upon it by the Constitution in accordance with its mandate.”)

(footnotes omitted); Am. Appliance v. EW Real Estate Mgmt., 769 A.2d 444, 448 n.5 (Pa. 2001) (“Our Court subsequently amended the language of Rule 315 by changing ‘may’ to ‘shall,’ to avoid any inconsistency in the entering of judgments on cross-complaints.”); Commonwealth v. Holmes, 155 A.3d 69, 84 (Pa. Super. 2017) (“In 1998, the legislature amended the reference from ‘may’ to ‘shall’ to make restitution mandatory.”); Lorino v. Workers’ Compensation Appeal Board, 266 A.3d 487, 491-493 (Pa. 2021) “[W]here the General Assembly uses both ‘may’ and ‘shall’ in the same section of a statute, it intends for those terms to have distinct meanings. ... The term ‘shall’ establishes a mandatory duty, whereas the term ‘may’ connotes an act that is permissive, but not mandated or required.”); Harris Assocs. v. Clark County Sch. Dist., 181 P.3d 532, 535 (Nev. 2003) (stating that when the Legislature amends a statute to change its language from “may” to “shall,” this evinces the Legislature’s intent that the statutory provision be mandatory); United States v. Redman, 35 F.3d 437, 441 (9<sup>th</sup> Cir. 1994) (“The amendment of language ... must properly be understood as evidence of an intent to abandon the standard established by the old language in favor of something different.”).

From 1937 to 1968, in the previous versions of what are now 25 Pa.Stat. § 3146.6(a), 25 Pa.Stat. § 3146.8(a), the General Assembly simply exercised the authority to provide a manner in which and a time and place at which absentee voters may vote and declined to also require that the absentee votes be returned to and

canvassed in the election district in which the absentee voters resided. After April 23, 1968, when the replacement of Article VIII, Section 19 with Article VII, Section 14 resulted in the replacement of the term “may” with the term “shall,” the General Assembly reacted by enacting former Sections 1302.2 and 1308(e) to the Election Code, which required absentee ballots to be returned to the “local election district” for receipt, review, and canvass. In so doing, the General Assembly recognized the new constitutional requirement to both (1) provide a manner in which and a time and place at which absentee voters may vote and (2) provide for the return and canvass of the absentee votes in the election districts in which the absentee voters resided. Former Sections 1302.2(c) and 1308(e) of the Election Code continued to so provide for over 50 years.

Here, there is no ambiguity surrounding the shift from “may” to “shall” in 1968, and Article VII, Section 14 must be applied according to its plain language. See In re Canvass of Absentee Ballots of November 4, 2003 General Election, 843 A.2d 1223, 1231-32 (Pa. 2004) (“Although some contexts may leave the precise meaning of the word ‘shall’ in doubt . . . this Court has repeatedly recognized the unambiguous meaning of the word in most contexts.”). Because 25 Pa.Stat. §§ 3146.6 and 3146.8 direct that absentee ballots must be delivered to and canvassed at the county boards of election—and not to the local polling precinct or precinct—the statutes are unconstitutional on their face and also as applied.

Absentee Ballots No. 1 was not decided under the new, mandatory, Article VII, Section 14, and was instead decided under the old, permissive Article VIII, Section 19, and for that reason is clearly distinguishable and not binding on this Court in its determination of whether the statutes at issue in this case violate Article VII, Section 14. Nor should the remaining reasoning of Absentee Ballots No. 1 persuade this Court to find the statutes at issue constitutional.

In addition to premising its ruling on the long history of the absence of any constitutional challenge to the statutes directing county boards of elections to canvass absentee ballots, Absentee Ballots No. 1 further explained that its holding was based on its desire to avoid nullifying 5,506 votes because “[s]uch mass disenfranchisement should not be proclaimed except for grave constitutional infirmities,” 245 A.2d at 262. That compelling reason is not present here because this case does not involve any attempt to invalidate even a single vote and involves only prospective relief.

The Pennsylvania Supreme Court in Absentee Ballots No. 1 went on to “study the objective realities of county-wide canvassing of votes” and noted that the court below had noted that canvassing absentee ballots in the election districts would “create chaotic and highly disruptive situations,” concluding that the drafters of the constitutional provision at issue could not have really meant to require canvassing in the election districts because it “could only lead to absurd consequences.” 245

A.2d at 263-264. That was a curious holding in the absence of a well developed evidentiary record, of which the Court made no mention, and is the type of policy analysis best left to legislatures, not courts. In any event, the Court's prediction did not age well, because within the same year the Legislature did what the Court thought was too absurd to do and required by statute that absentee ballots be canvassed in the local election districts. That requirement failed to yield the absurd consequences that the Court predicted and remained in effect for more than 50 years thereafter. To say the least, it would be very surprising to see the Court apply that same reasoning to Article VII, Section 14 today.

Finally, the Pennsylvania Supreme Court in Absentee Ballots No. 1 relied upon and agreed with the reasoning of the Supreme Court of New Jersey in Miller v. Montclair, 108 A. 131 (N.J. 1919). The relevant New Jersey constitutional provision, like Article VIII, Section 19, contained a permissive and directory grant of legislative power (despite including the term "shall"). See Miller, 108 A. at 134 ("The legislature shall have power to provide \* \* \* for the return and canvass of their votes in the election districts in which they respectively reside.") (quoting former N.J. Const., art. 2, P1)). The New Jersey Constitution merely granted the New Jersey legislature a "power" rather than placing a mandatory requirement on the legislature. In addition, in the Miller case, the challenged statute did not direct the counting of the votes at issue at any particular location, and the Supreme Court of New Jersey

acknowledged that “if the constitution means that actual counting should be done in the election district, the county board may attend there for that purpose.” 108 A. at 134. The analysis of the Miller case was applicable to a permissive constitutional provision like Former Article VIII, Section 19 was, but is not applicable to a mandatory provision like Article VII, Section 14, and unlike in Miller, the Petitioners here are challenging not just the statutes at issues but also the directives of the Commonwealth Respondents and the practices of the Boards of Elections of canvassing the absentee ballots at the county board of elections central offices rather than in the precincts. So not only is Absentee Ballots No. 1 not binding or applicable with respect to questions under Article VII, Section 14, but also none of its reasoning is applicable to this case.

Absentee Ballots No. 2, decided on the same day as Absentee Ballots No. 1, helps make clear why both cases are inapplicable to this case and clearly distinguishable. The Pennsylvania Supreme Court in Absentee Ballots No. 2 correctly quoted Article VIII, Section 19 beginning with “The Legislature may ...” (245 A.2d at 267), which reinforces the point that the reference to “The Legislature shall ...” in Absentee Ballots No. 1 was just an error. Similar to Absentee Ballots No. 1, the Court premised its opinion on the “impossibility of the district boards canvassing the absentee ballots during their ephemeral existence” but at the same time acknowledged:



Perhaps the Legislature should amend the election code to provide that absentee ballots must be mailed at such a time to insure their arriving at the district election board the day before the date of the election, on penalty of invalidation of such ballots that arrive later. With machinery of this kind, the district election boards could efficiently, speedily and properly handle all absentee ballots on election day so that when the computation would have been completed, it would include the counting of the ballots of those who voted by mail, as well as those who voted in person.

245 A.2d at 266. The Court in Absentee Ballots No. 2 recognized that Article VIII, Section 19 was “merely directory.” Id. at 267. The Court further premised its decision on a desire to avoid disenfranchising votes. Id. Like Absentee Ballots No. 1, Absentee Ballots No. 2 is distinguishable because the Court in that case only interpreted the permissive and directory “may” as it appeared in former Article VIII, Section 19, and did not address the mandatory and obligatory “shall” in Article VII, Section 14 and because the Petitioners in this case are not seeking to nullify any votes or change any election results, and are only seeking prospective relief.

In implementing Act 77, the General Assembly overlooked or ignored the fact that absentee voting was governed by a specific constitutional provision, Article VII, Section 14, and not the general constitutional provisions that the Supreme Court relied upon to uphold the constitutionality of no-excuse mail-in voting in McLinko, including Article VII, Section 4. See Commonwealth ex rel. Specter v. Vignola, 285 A.2d 869, 872 (Pa. 1971) (“While the Articles and provisions of the Constitution must be read and construed together, if or when there is any overlapping or any

apparent ambiguity or real conflict or inconsistency, the specific must prevail over the general.”). The Court in McLinko said as much:

While it is accurate that Act 77’s provision of universal mail-in voting provides a way for designated absentee voters to cast their vote without resorting to the absentee voting provisions of the Election Code, this current ability to do so does not render Section 14 of Article VII surplusage.

279 A.3d at 581.

Accordingly, Petitioners have stated meritorious claims upon which relief can be granted and this Court should overrule Respondents Preliminary Objections premised upon failure to state a claim.

**C. RESPONDENTS CANNOT MEET THEIR BURDEN OF ESTABLISHING A LACHES DEFENSE.**

Any contention by Respondents that laches<sup>12</sup> bars this action lacks merit. the applicable standards and burden of proof, as this Court explained in McLinko, 270 A.3d 1243, 1268 (Pa.Cmwlt. 2022), reversed in part, affirmed in part by McLinko v. Commonwealth, 279 A.3d 539 (Pa. 2022):

Laches is an equitable defense that can result in the dismissal of an action where the plaintiff has been dilatory in seeking relief and the delay has prejudiced the defendant. Commonwealth ex rel. Baldwin v. Richard, 561 Pa. 489, 751 A.2d 647, 651 (Pa. 2000); Smires v. O’Shell, 126 A.3d 383, 393 (Pa.Cmwlt. 2015). A defendant can establish

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<sup>12</sup> Only the Adams County Board of Elections briefed the laches issue, and the Boards of Election of Armstrong, Bedford, Bradford Butler, Clarion, Fayette, Summerset, Susquehanna, Tioga and Warren Counties joined in the briefs of all of the other Respondents, including Adams County Board of Elections’ laches argument. Contrary to Adams’ County’s inaccurate factual assertion, the current statutes being challenged have not been in effect for 79 years, but rather were passed in 2019.

prejudice from the passage of time by offering evidence that he changed his position with the expectation that the plaintiff has waived his claim. Baldwin, 751 A.2d at 651. The question of laches is factual and is determined by examining the circumstances of each case. Sprague, 550 A.2d at 188.

This Court has further noted that “Because laches is an affirmative defense, the burden of proof is on the defendant or respondent to demonstrate unreasonable delay and prejudice.” Pennsylvania Federation of Dog Clubs v. Commonwealth, 105 A.3d 51, 58 (Pa.Cmwlth. 2014).

It is not clear that laches is ever available as a defense to an action seeking only prospective relief. See Sprague, 550 A.2d at 188-89 (“We have not been able to discover any case which holds that laches will bar an attack upon the constitutionality of a statute as to its future operation.”) (internal citation omitted). In Democratic Exec. Comm. Of Fla. V. Detzner, 347 F. Supp. 3d 1017, 1025-1026 (N.D. Fla. 2018), the court explained:

[I]t is not clear laches applies when a plaintiff seeks prospective relief for continuing constitutional violations. See Garza v. Cty. Of Los Angeles, 918 F.2d 763, 772 (9<sup>th</sup> Cir. 1990); see also Peter Letterese & Assocs. Inc., v. World Inst. Of Scientology Enters. Int’l, 533 F.3d 1287, 1321 (11<sup>th</sup> Cir. 2008) (stating in a copyright case “laches serves as a bar only to the recovery of retrospective damage, not to prospective relief”). And laches has not prevented courts in this Circuit from entering prospective injunctive relief in close temporal proximity to an election. See, e.g., Ga. Coal. For the People’s Agenda, Inc. v. Deal, 214 F. Supp. 3d 1344, 1345-46 (S.D. Ga. 2016); Common Cause/Ga. V. Billups, 406 F. Supp. 2d 1326, 1376 (N.D.Ga. 2005); Fla. Democratic Party v. Detzner, No. 4:16-cv-607, 2016 U.S. Dist. LEXIS 143620, 2016 WL 6090943 at \*9-\*10 (N.D.Fla. Oct. 16, 2016).

Especially because Petitioners seek only prospective relief, there is no identifiable prejudice to the Respondents or anyone else from the fact that Petitioners did not immediately seek to have the statutes at issue declared void in 2019.

In contrast to Kelly v. Commonwealth, 240 A.3d 1255 (Pa. 2020) (*per curiam*), which was cited by Respondent Adams County Board of Elections, the relief that Petitioners seek here has been specifically tailored to avoid retrospective relief. In Kelly, the petitioners sought relief that would “invalidate the ballots of the millions of Pennsylvania voters who utilized the mail-in voting procedures established by Act 77.” *Id.* at 1256. Here, Petitioners seek only prospective relief. In Kelly, in support of applying laches to dismiss the claim, the Pennsylvania Supreme Court noted and entirely relied upon prejudice in the form of “the disenfranchisement of millions of Pennsylvania voters,” *id.*, but no such prejudice would ensue from granting the relief that the Petitioners seek here.

Although the petitioners in Kelly also sought prospective relief, the brief Pennsylvania Supreme Court *per curiam* opinion made no mention of it and focused exclusively on retrospective relief when dismissing the case on the grounds of laches. *Id.* Moreover, the Pennsylvania Supreme Court has made it clear that *per curiam* orders have no stare decisis effect. Commonwealth v. Dickson, 918 A.2d 95, 108 n. 14 (Pa. 2007). Nevertheless, the Adams County Board of Elections attempts to treat Kelly as if it were binding precedent. The Respondents point to no prior case

where a *per curiam* opinion was relied upon in such a manner. The Respondents similarly point to no precedent for using expenses incurred in returning to a constitutional method of administering elections as support for a laches defense in an action challenging laws purporting to implement an unconstitutional approach. Allowing such a basis for a laches defense would insulate virtually any unconstitutional or voided law from challenge, as governments frequently incur costs in dealing with the consequences of having a law declared unconstitutional. It is surprising if the Adams County Board of Elections is unaware of having returned and canvassed absentee ballots to the precincts in which the absentee voters resided for more than 50 years, when that proper practice ended less than five years ago, but its brief declares, in defiance of the long track record of a manageable process, that returning the prior practice would require a “seismic overhaul” and would wreak “chaos” upon counties. See Memorandum in Support of Preliminary Objections of Respondent Adams County Board of Elections, p.15.<sup>13</sup> In any event, any costs or burdens of returning to a constitutional approach are not costs or burdens of correcting the unconstitutional approach, but rather are the costs and burdens of having changed the election laws in disregard of the constitutional requirements for

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<sup>13</sup> If Respondents had filed an application for summary relief, the facts in support would either need to be undisputed or supported by undisputed evidence, not mere unsupported and disputed assertions in pleadings or briefs, and facts in support of preliminary objections must be clear from the face of the petition or complaint.

canvassing of absentee ballots. Accordingly, this Court should overrule Respondents' Preliminary Objections premised upon a laches defense.

### **V. CONCLUSION**

For all the foregoing reasons, this Court should overrule all of the Respondents' Preliminary Objections.

Dated: April 29, 2024

Respectfully submitted,

/s/ Gregory H. Teufel

Gregory H. Teufel

Adam G. Locke

*Attorneys for Petitioners*

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## **CERTIFICATION OF COMPLIANCE**

Pursuant to Rule 127(a) of the Pennsylvania Rules of Appellate Procedure, 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.

Filed: April 29, 2024

/s/ Gregory H. Teufel

Gregory H. Teufel

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**CERTIFICATION OF WORD COUNT**

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that this Brief contains 10,510 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b).

Filed: April 29, 2024

/s/ Gregory H. Teufel  
Gregory H. Teufel

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# **EXHIBIT A**

[2019 Bill Text PA S.B. 421](#)

Enacted, October 31, 2019

**Reporter**

2019 Bill Text PA S.B. 421

**Notice**

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**Added:** Text highlighted in green

**Deleted:** ~~Red text with a strikethrough~~

THE STATE OF PENNSYLVANIA BILL TEXT > PENNSYLVANIA 203RD GENERAL  
ASSEMBLY 2019-20 REGULAR SESSION > SENATE BILL 421 > ACT NO. 2019

**Progress**

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**ENACTED**

[Legislative Outlook in detail](#)

Introduced

Passed 1st  
Committee

Passed 1st  
Chamber

Passed 2nd  
Committee

Passed 2nd  
Chamber

Enacted



**Synopsis**

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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 ballots, further providing for form of official election ballot; 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 and for election day procedures and the process of voting; and, in preparation for and conduct of primaries and elections, further providing 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 and for what ballots shall be counted, manner of counting and defective ballots.~~

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 ~~AND~~ , FOR NUMBER OF BALLOTS TO BE PRINTED AND SPECIMEN BALLOTS AND FOR FORMS OF BALLOTS ON FILE AND OPEN TO PUBLIC INSPECTION AND BALLOTS AND DIAGRAMS TO BE FURNISHED TO CANDIDATES AND PARTIES; IN VOTING MACHINES, FURTHER PROVIDING FOR REQUIREMENTS OF VOTING MACHINES AND FOR FORM OF BALLOT LABELS ON VOTING MACHINES; IN ELECTRONIC VOTING SYSTEMS, FURTHER PROVIDING FOR REQUIREMENTS OF ELECTRONIC VOTING SYSTEMS, FOR FORMS, FOR ELECTION DAY PROCEDURES AND THE PROCESS OF VOTING AND FOR POST ELECTION PROCEDURES; PROVIDING FOR VOTING APPARATUS BONDS; IN PREPARATION FOR AND CONDUCT OF PRIMARIES AND ELECTIONS, FURTHER PROVIDING FOR MANNER OF APPLYING TO VOTE AND PERSONS ENTITLED TO VOTE AND VOTER'S CERTIFICATES AND ENTRIES TO BE MADE IN DISTRICT REGISTER AND NUMBERED LISTS OF VOTERS AND CHALLENGES, FOR METHOD OF MARKING BALLOTS AND DEPOSITING SAME IN DISTRICTS IN WHICH BALLOTS ARE USED, FOR INSTRUCTIONS OF VOTERS AND MANNER OF VOTING IN DISTRICTS IN WHICH VOTING MACHINES ARE USED, FOR COUNT AND RETURN OF VOTES IN DISTRICTS IN WHICH BALLOTS ARE USED, FOR WHAT BALLOTS SHALL BE COUNTED, MANNER OF COUNTING AND DEFECTIVE BALLOTS AND FOR CANVASS AND RETURN OF VOTES IN DISTRICTS IN WHICH VOTING MACHINES ARE USED AND PROVIDING FOR DEADLINE FOR RECEIPT OF VALID VOTER REGISTRATION APPLICATION, FOR APPEALS AND FOR APPEALS TO COURT OF COMMON PLEAS; IN VOTING BY QUALIFIED ABSENTEE ELECTORS, FURTHER PROVIDING FOR APPLICATIONS FOR OFFICIAL ABSENTEE

BALLOTS, FOR DATE OF APPLICATION FOR ABSENTEE BALLOT, FOR APPROVAL OF APPLICATION FOR ABSENTEE BALLOT, FOR ABSENTEE ELECTORS FILES AND LISTS, FOR OFFICIAL ABSENTEE VOTERS BALLOTS, FOR DELIVERING OR MAILING BALLOTS, FOR VOTING BY ABSENTEE ELECTORS, FOR CANVASSING OF OFFICIAL ABSENTEE BALLOTS AND FOR PUBLIC RECORDS; PROVIDING FOR VOTING BY QUALIFIED MAIL-IN ELECTORS; IN RETURNS OF PRIMARIES AND ELECTIONS, FURTHER PROVIDING FOR MANNER OF COMPUTING IRREGULAR BALLOTS; ~~IN PRIMARY AND ELECTION EXPENSES, FURTHER PROVIDING FOR REPORTING BY CANDIDATES AND POLITICAL COMMITTEES AND OTHER PERSONS;~~ PROVIDING FOR DISSEMINATION OF INFORMATION AND FOR JURISDICTION; REMOVING REFERENCES TO THE TRAFFIC COURT OF PHILADELPHIA; AND MAKING RELATED REPEALS.

**Text**

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

~~Section 1. Sections 1003(a), 1107(b), 1110(h), 1107-A(3), 1109-A(a)(2) and (d), 1112-A(a)(2) and (4), 1216(d) and (f), 1222(a) and (b) and 1223(a) of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, are amended to read:~~

~~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....., 1920.....~~

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

SECTION 5.1. SECTIONS 1302.1, 1302.2, 1302.3 HEADING, (A) AND (C), 1303(D) AND (E) AND 1305(B) OF THE ACT ARE AMENDED TO READ:

SECTION 1302.1. DATE OF APPLICATION FOR ABSENTEE BALLOT.--

(A) EXCEPT AS PROVIDED IN ~~SUBSECTIONS (A.1) AND (A.2)~~ SUBSECTION (A.3), APPLICATIONS FOR ABSENTEE BALLOTS SHALL BE RECEIVED IN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS NOT EARLIER THAN FIFTY (50) DAYS BEFORE THE PRIMARY OR ELECTION ~~AND~~, EXCEPT THAT IF A COUNTY BOARD OF ELECTIONS DETERMINES THAT IT WOULD BE APPROPRIATE TO ITS OPERATIONAL NEEDS, ANY APPLICATIONS FOR ABSENTEE BALLOTS RECEIVED MORE THAN FIFTY (50) DAYS BEFORE THE PRIMARY OR ELECTION MAY BE PROCESSED BEFORE THAT TIME. APPLICATIONS FOR ABSENTEE BALLOTS SHALL BE PROCESSED IF RECEIVED NOT LATER THAN FIVE O'CLOCK P.M. OF THE FIRST TUESDAY PRIOR TO THE DAY OF ANY PRIMARY OR ELECTION.

~~(A.1) EXCEPT AS PROVIDED IN SUBSECTION (A.2), IN THE EVENT ANY ELECTOR OTHERWISE QUALIFIED WHO IS SO PHYSICALLY DISABLED OR ILL ON OR BEFORE THE FIRST TUESDAY PRIOR TO ANY PRIMARY OR ELECTION THAT HE IS UNABLE TO FILE HIS APPLICATION OR WHO BECOMES PHYSICALLY DISABLED OR ILL AFTER THE FIRST TUESDAY PRIOR TO ANY PRIMARY OR ELECTION AND IS UNABLE TO APPEAR AT HIS POLLING PLACE OR ANY ELECTOR OTHERWISE QUALIFIED WHO BECAUSE OF THE CONDUCT OF HIS BUSINESS, DUTIES OR OCCUPATION WILL NECESSARILY BE ABSENT FROM THE MUNICIPALITY OF HIS RESIDENCE ON THE DAY OF THE PRIMARY OR ELECTION, WHICH FACT WAS NOT AND COULD NOT REASONABLY BE KNOWN TO SAID ELECTOR ON OR BEFORE THE FIRST TUESDAY PRIOR TO ANY PRIMARY OR ELECTION, THE ELECTOR SHALL BE ENTITLED TO AN ABSENTEE BALLOT AT ANY TIME PRIOR TO FIVE O'CLOCK P.M. ON THE FIRST FRIDAY PRECEDING ANY PRIMARY OR ELECTION UPON EXECUTION OF AN~~

~~EMERGENCY APPLICATION IN SUCH FORM PRESCRIBED BY THE SECRETARY OF THE COMMONWEALTH.~~

~~(A.2) IN THE EVENT ANY ELECTOR OTHERWISE QUALIFIED WHO BECOMES SO PHYSICALLY DISABLED OR ILL BETWEEN FIVE O'CLOCK P.M. ON THE FIRST FRIDAY PRECEDING ANY PRIMARY OR ELECTION AND EIGHT O'CLOCK P.M. ON THE DAY OF ANY PRIMARY OR ELECTION THAT HE IS UNABLE TO APPEAR AT HIS POLLING PLACE OR ANY ELECTOR OTHERWISE QUALIFIED WHO BECAUSE OF THE CONDUCT OF HIS BUSINESS, DUTIES OR OCCUPATION WILL NECESSARILY BE ABSENT FROM THE MUNICIPALITY OF HIS RESIDENCE ON THE DAY OF THE PRIMARY OR ELECTION, WHICH FACT WAS NOT AND COULD NOT REASONABLY BE KNOWN TO SAID ELECTOR PRIOR TO FIVE O'CLOCK P.M. ON THE FIRST FRIDAY PRECEDING ANY PRIMARY OR ELECTION, THE ELECTOR SHALL BE ENTITLED TO AN ABSENTEE BALLOT IF THE ELECTOR COMPLETES AND FILES WITH THE COURT OF COMMON PLEAS IN THE COUNTY IN WHICH THE ELECTOR IS QUALIFIED TO VOTE AN EMERGENCY APPLICATION OR A LETTER OR OTHER SIGNED DOCUMENT, WHICH INCLUDES THE SAME INFORMATION AS IS PROVIDED ON THE EMERGENCY APPLICATION. UPON A DETERMINATION THAT THE ELECTOR IS A QUALIFIED ABSENTEE ELECTOR UNDER SECTION 1301, THE JUDGE SHALL ISSUE AN ABSENTEE BALLOT TO THE ELECTOR.~~

(A.3)

(1)

THE FOLLOWING CATEGORIES OF ELECTORS MAY APPLY FOR AN ABSENTEE BALLOT UNDER THIS SUBSECTION, IF OTHERWISE QUALIFIED:

(I)

AN ELECTOR WHOSE PHYSICAL DISABILITY OR ILLNESS PREVENTED THE ELECTOR FROM APPLYING FOR AN ABSENTEE

BALLOT BEFORE FIVE O'CLOCK P.M. ON THE FIRST TUESDAY PRIOR TO THE DAY OF THE PRIMARY OR ELECTION.

(II)

AN ELECTOR WHO, BECAUSE OF THE ELECTOR'S BUSINESS, DUTIES OR OCCUPATION, WAS UNABLE TO APPLY FOR AN ABSENTEE BALLOT BEFORE FIVE O'CLOCK P.M. ON THE FIRST TUESDAY PRIOR TO THE DAY OF THE PRIMARY OR ELECTION.

(III)

AN ELECTOR WHO BECOMES SO PHYSICALLY DISABLED OR ILL AFTER FIVE O'CLOCK P.M. ON THE FIRST TUESDAY PRIOR TO THE DAY OF THE PRIMARY OR ELECTION THAT THE ELECTOR IS UNABLE TO APPEAR AT THE POLLING PLACE ON THE DAY OF THE PRIMARY OR ELECTION.

(IV)

AN ELECTOR WHO, BECAUSE OF THE CONDUCT OF THE ELECTOR'S BUSINESS, DUTIES OR OCCUPATION, WILL NECESSARILY BE ABSENT FROM THE ELECTOR'S MUNICIPALITY OF RESIDENCE ON THE DAY OF THE PRIMARY OR ELECTION, WHICH FACT WAS NOT AND COULD NOT REASONABLY BE KNOWN TO THE ELECTOR ON OR BEFORE FIVE O'CLOCK P.M. ON THE FIRST TUESDAY PRIOR TO THE DAY OF THE PRIMARY OR ELECTION.

(2)

AN ELECTOR DESCRIBED IN PARAGRAPH (1) MAY SUBMIT AN APPLICATION FOR AN ABSENTEE BALLOT AT ANY TIME UP UNTIL THE TIME OF THE CLOSING OF THE POLLS ON THE DAY OF THE PRIMARY OR ELECTION. THE APPLICATION SHALL INCLUDE A DECLARATION DESCRIBING THE CIRCUMSTANCES THAT PREVENTED THE ELECTOR FROM APPLYING FOR AN ABSENTEE BALLOT BEFORE FIVE O'CLOCK



P.M. ON THE FIRST TUESDAY PRIOR TO THE DAY OF THE PRIMARY OR ELECTION OR THAT PREVENT THE ELECTOR FROM APPEARING AT THE POLLING PLACE ON THE DAY OF THE PRIMARY OR ELECTION, AND THE ELECTOR'S QUALIFICATIONS UNDER PARAGRAPH (1). THE DECLARATION SHALL BE MADE SUBJECT TO THE PROVISIONS OF [18 PA.C.S. SECTION 4904](#) (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES).

(3)

IF THE COUNTY BOARD OF ELECTIONS DETERMINES THAT THE ELECTOR MEETS THE REQUIREMENTS OF THIS SECTION, THE BOARD SHALL ISSUE AN ABSENTEE BALLOT TO THE ELECTOR.

(4)

IF THE ELECTOR IS UNABLE TO APPEAR ~~IN COURT~~ AT THE OFFICE OF THE COUNTY BOARD OF ELECTIONS TO RECEIVE THE BALLOT, THE ~~JUDGE~~ BOARD SHALL GIVE THE ELECTOR'S ABSENTEE BALLOT TO AN AUTHORIZED REPRESENTATIVE OF THE ELECTOR WHO IS DESIGNATED IN WRITING BY THE ELECTOR. THE AUTHORIZED REPRESENTATIVE SHALL DELIVER THE ABSENTEE BALLOT TO THE ELECTOR AND RETURN THE COMPLETED ABSENTEE BALLOT, SEALED IN THE OFFICIAL ABSENTEE BALLOT ENVELOPES, TO THE OFFICE OF THE COUNTY BOARD OF ELECTIONS, ~~WHO~~ WHICH SHALL ~~DISTRIBUTE~~ RETAIN THE BALLOT, UNOPENED, ~~TO THE ABSENTEE VOTER'S ELECTION DISTRICT~~ UNTIL THE CANVASSING OF ALL ABSENTEE BALLOTS.

(5)

MULTIPLE PEOPLE QUALIFIED UNDER THIS SUBSECTION MAY DESIGNATE THE SAME PERSON, AND A SINGLE PERSON MAY SERVE

AS THE AUTHORIZED REPRESENTATIVE FOR MULTIPLE QUALIFIED ELECTORS.

(6)

IF THE ELECTOR IS UNABLE TO APPEAR ~~IN COURT~~ AT THE OFFICE OF THE COUNTY BOARD OF ELECTIONS OR UNABLE TO OBTAIN ASSISTANCE FROM AN AUTHORIZED REPRESENTATIVE, THE COUNTY BOARD MAY PROVIDE AN AUTHORIZED REPRESENTATIVE OR ASK THE JUDGE ~~SHALL~~ OF THE COURT OF COMMON PLEAS IN THE COUNTY IN WHICH THE ELECTOR IS QUALIFIED TO VOTE TO DIRECT A DEPUTY SHERIFF OF THE COUNTY TO DELIVER THE ABSENTEE BALLOT TO THE ELECTOR IF THE ELECTOR IS AT A PHYSICAL LOCATION WITHIN THE COUNTY AND RETURN THE COMPLETED ABSENTEE BALLOT, SEALED IN THE OFFICIAL ABSENTEE BALLOT ENVELOPES, TO THE COUNTY BOARD OF ELECTIONS ~~, WHO SHALL DISTRIBUTE THE BALLOTS, UNOPENED, TO THE ABSENTEE VOTER'S RESPECTIVE ELECTION DISTRICT~~. IF THERE IS NO AUTHORIZED REPRESENTATIVE AND A DEPUTY SHERIFF IS UNAVAILABLE TO DELIVER AN ABSENTEE BALLOT UNDER THIS SECTION, THE JUDGE MAY DIRECT A CONSTABLE TO MAKE SUCH DELIVERY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(7)

IN THE CASE OF AN ELECTOR WHO REQUIRES ASSISTANCE IN MARKING THE ELECTOR'S BALLOT, THE ELECTOR SHALL DESIGNATE IN WRITING THE PERSON WHO WILL ASSIST IN MARKING THE BALLOT. SUCH PERSON SHALL BE OTHERWISE ELIGIBLE TO PROVIDE ASSISTANCE TO ELECTORS ELIGIBLE FOR ASSISTANCE, AND SUCH PERSON SHALL DECLARE IN WRITING THAT ASSISTANCE WAS RENDERED. ANY PERSON OTHER THAN THE DESIGNEE WHO SHALL

RENDER ASSISTANCE IN MARKING A BALLOT OR ANY PERSON RENDERING ASSISTANCE WHO SHALL FAIL TO EXECUTE A DECLARATION SHALL BE GUILTY OF A VIOLATION OF THIS ACT.

(8)

NO ABSENTEE BALLOT UNDER THIS SUBSECTION SHALL BE COUNTED WHICH IS RECEIVED IN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS LATER THAN ~~EIGHT O'CLOCK P.M. ON THE DAY OF THE PRIMARY OR ELECTION~~ THE DEADLINE FOR ITS RECEIPT AS PROVIDED IN SECTION 1308(G).

(B)

IN THE CASE OF AN ELECTOR WHOSE APPLICATION FOR AN ABSENTEE BALLOT IS RECEIVED BY THE OFFICE OF THE COUNTY BOARD OF ELECTIONS EARLIER THAN FIFTY (50) DAYS BEFORE THE PRIMARY OR ELECTION, THE APPLICATION SHALL BE HELD AND PROCESSED UPON COMMENCEMENT OF THE FIFTY-DAY PERIOD OR AT SUCH EARLIER TIME AS THE COUNTY BOARD OF ELECTIONS DETERMINES MAY BE APPROPRIATE.

~~(C) IN THE CASE OF AN ELECTOR WHO IS PHYSICALLY DISABLED OR ILL ON OR BEFORE THE FIRST TUESDAY PRIOR TO A PRIMARY OR ELECTION OR BECOMES PHYSICALLY DISABLED OR ILL AFTER THE FIRST TUESDAY PRIOR TO A PRIMARY OR ELECTION, SUCH EMERGENCY APPLICATION, LETTER OR OTHER SIGNED DOCUMENT SHALL CONTAIN A SUPPORTING AFFIDAVIT FROM HIS ATTENDING PHYSICIAN STATING THAT DUE TO PHYSICAL DISABILITY OR ILLNESS SAID ELECTOR WAS UNABLE TO APPLY FOR AN ABSENTEE BALLOT ON OR BEFORE THE FIRST TUESDAY PRIOR TO THE~~

~~PRIMARY OR ELECTION OR BECAME PHYSICALLY DISABLED OR ILL AFTER THAT PERIOD.~~

~~(D) IN THE CASE OF AN ELECTOR WHO IS NECESSARILY ABSENT BECAUSE OF THE CONDUCT OF HIS BUSINESS, DUTIES OR OCCUPATION UNDER THE UNFORESEEN CIRCUMSTANCES SPECIFIED IN SUBSECTIONS (A.1) AND (A.2), SUCH EMERGENCY APPLICATION, LETTER OR OTHER SIGNED DOCUMENT SHALL CONTAIN A SUPPORTING AFFIDAVIT FROM SUCH ELECTOR STATING THAT BECAUSE OF THE CONDUCT OF HIS BUSINESS, DUTIES OR OCCUPATION SAID ELECTOR WILL NECESSARILY BE ABSENT FROM THE MUNICIPALITY OF HIS RESIDENCE ON THE DAY OF THE PRIMARY OR ELECTION WHICH FACT WAS NOT AND COULD NOT REASONABLY BE KNOWN TO SAID ELECTOR ON OR BEFORE THE FIRST TUESDAY PRIOR TO THE PRIMARY OR ELECTION.~~

SECTION 1302.2. APPROVAL OF APPLICATION FOR ABSENTEE BALLOT.--

(A)

THE COUNTY BOARD OF ELECTIONS, UPON RECEIPT OF ANY APPLICATION FILED BY A QUALIFIED ELECTOR NOT REQUIRED TO BE REGISTERED UNDER PRECEDING SECTION 1301, SHALL ASCERTAIN FROM THE INFORMATION ON SUCH APPLICATION, DISTRICT REGISTER OR FROM ANY OTHER SOURCE THAT SUCH APPLICANT POSSESSES ALL THE QUALIFICATIONS OF A QUALIFIED ELECTOR OTHER THAN BEING REGISTERED OR ENROLLED. IF THE BOARD IS SATISFIED THAT THE APPLICANT IS QUALIFIED TO RECEIVE AN OFFICIAL ABSENTEE BALLOT, THE APPLICATION SHALL BE MARKED APPROVED SUCH APPROVAL DECISION SHALL BE FINAL AND BINDING EXCEPT THAT CHALLENGES MAY BE MADE ONLY ON THE GROUND THAT THE APPLICANT DID NOT POSSESS QUALIFICATIONS OF AN ABSENTEE ELECTOR. SUCH

CHALLENGES MUST BE MADE TO THE COUNTY BOARD OF ELECTIONS PRIOR TO ~~5:00 O'CLOCK P.M. ON THE FIRST FRIDAY PRIOR TO THE ELECTION.~~ THE APPLICABLE DEADLINE FOR THE ABSENTEE BALLOTS TO BE RECEIVED, AS PROVIDED IN SECTION 1308(G). WHEN SO APPROVED, THE COUNTY BOARD OF ELECTIONS SHALL CAUSE THE APPLICANT'S NAME AND RESIDENCE (AND AT A PRIMARY, THE PARTY ENROLLMENT) TO BE INSERTED IN THE MILITARY, VETERANS AND EMERGENCY CIVILIANS ABSENTEE VOTERS FILE AS PROVIDED IN SECTION 1302.3, SUBSECTION (B): PROVIDING, HOWEVER, THAT NO APPLICATION OF ANY QUALIFIED ELECTOR IN MILITARY SERVICE SHALL BE REJECTED FOR FAILURE TO INCLUDE ON ~~HIS~~ THE ELECTOR'S APPLICATION ANY INFORMATION IF SUCH INFORMATION MAY BE ASCERTAINED WITHIN A REASONABLE TIME BY THE COUNTY BOARD OF ELECTIONS.

(B)

THE COUNTY BOARD OF ELECTIONS, UPON RECEIPT OF ANY APPLICATION FILED BY A QUALIFIED ELECTOR WHO IS ENTITLED, UNDER THE PROVISIONS OF THE PERMANENT REGISTRATION LAW AS NOW OR HEREINAFTER ENACTED BY THE GENERAL ASSEMBLY, TO ABSENTEE REGISTRATION PRIOR TO OR CONCURRENTLY WITH THE TIME OF VOTING AS PROVIDED UNDER PRECEDING SECTION 1301, SHALL ASCERTAIN FROM THE INFORMATION ON SUCH APPLICATION OR FROM ANY OTHER SOURCE THAT SUCH APPLICANT POSSESSES ALL THE QUALIFICATIONS OF A QUALIFIED ELECTOR. IF THE BOARD IS SATISFIED THAT THE APPLICANT IS ENTITLED, UNDER THE PROVISIONS OF THE PERMANENT REGISTRATION LAW AS NOW OR HEREINAFTER ENACTED BY THE GENERAL ASSEMBLY, TO ABSENTEE REGISTRATION PRIOR TO OR CONCURRENTLY WITH THE TIME OF VOTING AND THAT THE APPLICANT IS QUALIFIED TO RECEIVE AN OFFICIAL ABSENTEE BALLOT, THE

APPLICATION SHALL BE MARKED "APPROVED." SUCH APPROVAL DECISION SHALL BE FINAL AND BINDING EXCEPT THAT CHALLENGES MAY BE MADE ONLY ON THE GROUND THAT THE APPLICANT DID NOT POSSESS THE QUALIFICATIONS OF AN ABSENTEE ELECTOR PRIOR TO OR CONCURRENTLY WITH THE TIME OF VOTING. SUCH CHALLENGES MUST BE MADE TO THE COUNTY BOARD OF ELECTIONS PRIOR TO ~~5:00 O'CLOCK P.M. ON THE FIRST FRIDAY PRIOR TO THE ELECTION.~~ THE APPLICABLE DEADLINE FOR THE ABSENTEE BALLOTS TO BE RECEIVED, AS PROVIDED IN SECTION 1308(G). WHEN SO APPROVED, THE COUNTY BOARD OF ELECTIONS SHALL CAUSE THE APPLICANT'S NAME AND RESIDENCE (AND AT A PRIMARY, THE PARTY ENROLLMENT) TO BE INSERTED IN THE MILITARY, VETERANS AND EMERGENCY CIVILIAN ABSENTEE VOTERS FILE AS PROVIDED IN SECTION 1302.3 SUBSECTION (B).

(C)

THE COUNTY BOARD OF ELECTIONS, UPON RECEIPT OF ANY APPLICATION OF A QUALIFIED ELECTOR REQUIRED TO BE REGISTERED UNDER THE PROVISIONS OF PRECEDING SECTION 1301, SHALL DETERMINE THE QUALIFICATIONS OF SUCH APPLICANT BY VERIFYING THE PROOF OF IDENTIFICATION AND COMPARING THE INFORMATION SET FORTH ON SUCH APPLICATION WITH THE INFORMATION CONTAINED ON THE APPLICANT'S PERMANENT REGISTRATION CARD. IF THE BOARD IS SATISFIED THAT THE APPLICANT IS QUALIFIED TO RECEIVE AN OFFICIAL ABSENTEE BALLOT, THE APPLICATION SHALL BE MARKED "APPROVED." SUCH APPROVAL DECISION SHALL BE FINAL AND BINDING, EXCEPT THAT CHALLENGES MAY BE MADE ONLY ON THE GROUND THAT THE APPLICANT DID NOT POSSESS THE QUALIFICATIONS OF AN ABSENTEE ELECTOR. SUCH CHALLENGES MUST BE MADE TO THE COUNTY BOARD

OF ELECTIONS PRIOR TO ~~5:00 O'CLOCK P.M. ON THE FIRST FRIDAY PRIOR TO THE ELECTION.~~ THE APPLICABLE DEADLINE FOR THE ABSENTEE BALLOTS TO BE RECEIVED, AS PROVIDED IN SECTION 1308(G). WHEN SO APPROVED, THE REGISTRATION COMMISSION SHALL CAUSE AN ABSENTEE VOTER'S TEMPORARY REGISTRATION CARD TO BE INSERTED IN THE DISTRICT REGISTER ON TOP OF AND ALONG WITH THE PERMANENT REGISTRATION CARD. THE ABSENTEE VOTER'S TEMPORARY REGISTRATION CARD SHALL BE IN THE COLOR AND FORM PRESCRIBED IN SUBSECTION (E) OF THIS SECTION:

PROVIDED, HOWEVER, THAT THE DUTIES OF THE COUNTY BOARDS OF ELECTIONS AND THE REGISTRATION COMMISSIONS WITH RESPECT TO THE INSERTION OF THE ABSENTEE VOTER'S TEMPORARY REGISTRATION CARD OF ANY ELECTOR FROM THE DISTRICT REGISTER AS SET FORTH IN SECTION 1302.2 SHALL INCLUDE ONLY SUCH APPLICATIONS AND EMERGENCY APPLICATIONS AS ARE RECEIVED ON OR BEFORE THE FIRST TUESDAY PRIOR TO THE PRIMARY OR ELECTION. IN ALL CASES WHERE APPLICATIONS ARE RECEIVED AFTER THE FIRST TUESDAY PRIOR TO THE PRIMARY OR ELECTION AND BEFORE ~~FIVE O'CLOCK P.M. ON THE FIRST FRIDAY PRIOR TO~~ EIGHT O'CLOCK P.M. ON THE DAY OF THE PRIMARY OR ELECTION, THE COUNTY BOARD OF ELECTIONS SHALL DETERMINE THE QUALIFICATIONS OF SUCH APPLICANT BY VERIFYING THE PROOF OF IDENTIFICATION AND COMPARING THE INFORMATION SET FORTH ON SUCH APPLICATION WITH THE INFORMATION CONTAINED ON THE APPLICANT'S DUPLICATE REGISTRATION CARD ON FILE IN THE GENERAL REGISTER (ALSO REFERRED TO AS THE MASTER FILE) IN THE OFFICE OF THE REGISTRATION COMMISSION AND SHALL CAUSE THE NAME AND RESIDENCE (AND AT PRIMARIES, THE PARTY ENROLLMENT) TO BE INSERTED IN THE MILITARY, VETERANS AND EMERGENCY CIVILIAN

ABSENTEE VOTERS FILE AS PROVIDED IN SECTION 1302.3, SUBSECTION (B). ~~IN ADDITION, THE LOCAL DISTRICT BOARDS OF ELECTIONS SHALL, UPON CANVASSING THE OFFICIAL ABSENTEE BALLOTS UNDER SECTION 1308, EXAMINE THE VOTING CHECK LIST OF THE ELECTION DISTRICT OF SAID ELECTOR'S RESIDENCE AND SATISFY ITSELF THAT SUCH ELECTOR DID NOT CAST ANY BALLOT OTHER THAN THE ONE PROPERLY ISSUED TO HIM UNDER HIS ABSENTEE BALLOT APPLICATION. IN ALL CASES WHERE THE EXAMINATION OF THE LOCAL DISTRICT BOARD OF ELECTIONS DISCLOSES THAT AN ELECTOR DID VOTE A BALLOT OTHER THAN THE ONE PROPERLY ISSUED TO HIM UNDER THE ABSENTEE BALLOT APPLICATION, THE LOCAL DISTRICT BOARD OF ELECTIONS SHALL THEREUPON CANCEL SAID ABSENTEE BALLOT AND SAID ELECTOR SHALL BE SUBJECT TO THE PENALTIES AS HEREINAFTER SET FORTH.~~

(D)

IN THE EVENT THAT ANY APPLICATION FOR AN OFFICIAL ABSENTEE BALLOT IS NOT APPROVED BY THE COUNTY BOARD OF ELECTIONS, THE ELECTOR SHALL BE NOTIFIED IMMEDIATELY TO THAT EFFECT WITH A STATEMENT BY THE COUNTY BOARD OF THE REASONS FOR THE DISAPPROVAL. FOR THOSE APPLICANTS WHOSE PROOF OF IDENTIFICATION WAS NOT PROVIDED WITH THE APPLICATION OR COULD NOT BE VERIFIED BY THE BOARD, THE BOARD SHALL SEND NOTICE TO THE ELECTOR WITH THE ABSENTEE BALLOT REQUIRING THE ELECTOR TO PROVIDE PROOF OF IDENTIFICATION WITH THE ABSENTEE BALLOT OR THE BALLOT WILL NOT BE COUNTED.

(E)

THE ABSENTEE VOTER'S TEMPORARY REGISTRATION CARD SHALL BE IN DUPLICATE AND THE SAME SIZE AS THE PERMANENT REGISTRATION CARD, IN A DIFFERENT AND CONTRASTING COLOR TO THE PERMANENT



REGISTRATION CARD AND SHALL CONTAIN THE ABSENTEE VOTER'S NAME AND ADDRESS AND SHALL CONSPICUOUSLY CONTAIN THE WORDS "ABSENTEE VOTER." ~~SUCH CARD SHALL ALSO CONTAIN THE AFFIDAVIT REQUIRED BY SUBSECTION (B) OF SECTION 1306.~~

(F)

NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A QUALIFIED ABSENTEE ELECTOR SHALL NOT BE REQUIRED TO PROVIDE PROOF OF IDENTIFICATION IF THE ELECTOR IS ENTITLED TO VOTE BY ABSENTEE BALLOT UNDER THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT ([PUBLIC LAW 99-410, 100 STAT. 924](#)) OR BY AN ALTERNATIVE BALLOT UNDER THE VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT ([PUBLIC LAW 98-435, 98 STAT. 1678](#)).

SECTION 1302.3. ABSENTEE AND MAIL-IN ELECTORS FILES AND LISTS.--

(A) THE COUNTY BOARD OF ELECTIONS SHALL MAINTAIN AT ITS OFFICE A FILE CONTAINING THE DUPLICATE ABSENTEE VOTER'S TEMPORARY REGISTRATION CARDS OF EVERY REGISTERED ELECTOR TO WHOM AN ABSENTEE BALLOT HAS BEEN SENT. SUCH DUPLICATE ABSENTEE VOTER'S TEMPORARY REGISTRATION CARDS SHALL BE FILED BY ELECTION DISTRICTS AND WITHIN EACH ELECTION DISTRICT IN EXACT ALPHABETICAL ORDER AND INDEXED. THE REGISTRATION CARDS AND THE REGISTRATION CARDS UNDER SECTION 1302.3-D SO FILED SHALL CONSTITUTE THE REGISTERED ABSENTEE AND MAIL-IN VOTERS FILE FOR THE PRIMARY OR ELECTION OF (DATE OF PRIMARY OR ELECTION) AND SHALL BE KEPT ON FILE FOR A PERIOD COMMENCING THE TUESDAY PRIOR TO THE DAY OF THE PRIMARY OR ELECTION UNTIL THE DAY FOLLOWING THE PRIMARY OR ELECTION OR THE DAY THE COUNTY BOARD OF ELECTIONS CERTIFIES THE RETURNS OF THE PRIMARY OR ELECTION, WHICHEVER DATE IS LATER.

SUCH FILE SHALL BE OPEN TO PUBLIC INSPECTION AT ALL TIMES SUBJECT TO REASONABLE SAFEGUARDS, RULES AND REGULATIONS.

\* \* \*

(C)

NOT LESS THAN FIVE DAYS PRECEDING THE ELECTION, THE CHIEF CLERK SHALL PREPARE A LIST FOR EACH ELECTION DISTRICT SHOWING THE NAMES AND POST OFFICE ADDRESSES OF ALL VOTING RESIDENTS THEREOF TO WHOM OFFICIAL ABSENTEE OR MAIL-IN BALLOTS SHALL HAVE BEEN ISSUED. EACH SUCH LIST SHALL BE PREPARED IN DUPLICATE, SHALL BE HEADED "PERSONS IN (GIVE IDENTITY OF ELECTION DISTRICT) TO WHOM ABSENTEE OR MAIL-IN BALLOTS HAVE BEEN ISSUED FOR THE ELECTION OF (DATE OF ELECTION)," AND SHALL BE SIGNED BY HIM NOT LESS THAN FOUR DAYS PRECEDING THE ELECTION. HE SHALL POST THE ORIGINAL OF EACH SUCH LIST IN A CONSPICUOUS PLACE IN THE OFFICE OF THE COUNTY ELECTION BOARD AND SEE THAT IT IS KEPT SO POSTED UNTIL THE CLOSE OF THE POLLS ON ELECTION DAY. HE SHALL CAUSE THE DUPLICATE OF EACH SUCH LIST TO BE DELIVERED TO THE JUDGE OF ELECTION IN THE ELECTION DISTRICT IN THE SAME MANNER AND AT THE SAME TIME AS ARE PROVIDED IN THIS ACT FOR THE DELIVERY OF OTHER ELECTION SUPPLIES, AND IT SHALL BE THE DUTY OF SUCH JUDGE OF ELECTION TO POST SUCH DUPLICATE LIST IN A CONSPICUOUS PLACE WITHIN THE POLLING PLACE OF HIS DISTRICT AND SEE THAT IT IS KEPT SO POSTED THROUGHOUT THE TIME THAT THE POLLS ARE OPEN. UPON WRITTEN REQUEST, HE SHALL FURNISH A COPY OF SUCH LIST TO ANY CANDIDATE OR PARTY COUNTY CHAIRMAN.

SECTION 1303. OFFICIAL ABSENTEE VOTERS BALLOTS.--\* \* \*

(D)

IN CASES WHERE THERE IS NOT TIME TO PRINT ON SAID BALLOTS THE NAMES OF THE VARIOUS CANDIDATES, THE COUNTY BOARD OF ELECTIONS SHALL PRINT SPECIAL WRITE-IN ABSENTEE BALLOTS WHICH SHALL BE IN SUBSTANTIALLY THE FORM OF OTHER OFFICIAL ABSENTEE BALLOTS EXCEPT THAT SUCH SPECIAL WRITE-IN ABSENTEE BALLOTS SHALL CONTAIN BLANK SPACES ONLY UNDER THE TITLES OF SUCH OFFICES IN WHICH ELECTORS MAY INSERT, BY WRITING OR STAMPING, THE NAMES OF THE CANDIDATES FOR WHOM THEY DESIRE TO VOTE, AND IN SUCH CASES THE COUNTY BOARD OF ELECTIONS SHALL FURNISH TO ELECTORS LISTS CONTAINING THE NAMES OF ALL THE CANDIDATES NAMED IN NOMINATION PETITIONS OR WHO HAVE BEEN REGULARLY NOMINATED UNDER THE PROVISIONS OF THIS ACT, FOR THE USE OF SUCH ELECTORS IN PREPARING THEIR BALLOTS. SPECIAL WRITE-IN ABSENTEE BALLOTS ALSO SHALL INCLUDE ALL CONSTITUTIONAL AMENDMENTS AND OTHER QUESTIONS TO BE VOTED ON BY THE ELECTORS.

(E)

THE OFFICIAL ABSENTEE VOTER BALLOT SHALL STATE THAT A VOTER WHO RECEIVES AN ABSENTEE BALLOT PURSUANT TO SECTION 1301 AND WHOSE BALLOT IS NOT TIMELY RECEIVED AND WHO, ON ELECTION DAY, IS CAPABLE OF VOTING AT THE APPROPRIATE POLLING PLACE ~~-MUST VOID THE ABSENTEE BALLOT AND VOTE IN THE NORMAL MANNER AT THE APPROPRIATE VOTING PLACE-~~ MAY ONLY VOTE ON ELECTION DAY BY PROVISIONAL BALLOT.

SECTION 1305. DELIVERING OR MAILING BALLOTS.--

\* \* \*

(B)

(1)

THE COUNTY BOARD OF ELECTIONS UPON RECEIPT AND APPROVAL OF AN APPLICATION FILED BY ANY ELECTOR QUALIFIED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1301, SUBSECTIONS (I) TO (L), INCLUSIVE, SHALL COMMENCE TO DELIVER OR MAIL OFFICIAL ABSENTEE BALLOTS ~~ON~~ AS SOON AS A BALLOT IS CERTIFIED AND THE BALLOTS ARE AVAILABLE. WHILE ANY PROCEEDING IS PENDING IN A FEDERAL OR STATE COURT WHICH WOULD AFFECT THE CONTENTS OF ANY BALLOT, THE COUNTY BOARD OF ELECTIONS MAY AWAIT A RESOLUTION OF THAT PROCEEDING BUT IN ANY EVENT, SHALL COMMENCE TO DELIVER OR MAIL OFFICIAL ABSENTEE BALLOTS NOT LATER THAN THE SECOND TUESDAY PRIOR TO THE PRIMARY OR ELECTION. FOR THOSE APPLICANTS WHOSE PROOF OF IDENTIFICATION WAS NOT PROVIDED WITH THE APPLICATION OR COULD NOT BE VERIFIED BY THE BOARD, THE BOARD SHALL SEND THE NOTICE REQUIRED UNDER SECTION 1302.2(D) WITH THE ABSENTEE BALLOT. AS ADDITIONAL APPLICATIONS ARE RECEIVED AND APPROVED AFTER THE TIME THAT THE COUNTY BOARD OF ELECTIONS BEGINS DELIVERING OR MAILING OFFICIAL ABSENTEE AND MAIL-IN BALLOTS, THE BOARD SHALL DELIVER OR MAIL OFFICIAL ABSENTEE BALLOTS TO SUCH ADDITIONAL ELECTORS WITHIN FORTY-EIGHT HOURS.

(2)

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ACT AND NOTWITHSTANDING THE INCLUSION OF A MAILING ADDRESS ON AN ABSENTEE OR MAIL-IN BALLOT APPLICATION, A VOTER WHO PRESENTS THE VOTER'S OWN APPLICATION FOR AN ABSENTEE OR MAIL-IN BALLOT WITHIN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS DURING REGULAR BUSINESS HOURS MAY REQUEST TO

RECEIVE THE VOTER'S ABSENTEE OR MAIL-IN BALLOT WHILE THE VOTER IS AT THE OFFICE. THIS REQUEST MAY BE MADE ORALLY OR IN WRITING. UPON PRESENTATION OF THE APPLICATION AND THE MAKING OF THE REQUEST AND UPON APPROVAL UNDER SECTIONS 1302.2 AND 1302.2-D, THE COUNTY BOARD OF ELECTIONS SHALL PROMPTLY PRESENT THE VOTER WITH THE VOTER'S ABSENTEE OR MAIL-IN BALLOT. IF A VOTER PRESENTS THE VOTER'S APPLICATION WITHIN THE COUNTY BOARD OF ELECTIONS' OFFICE IN ACCORDANCE WITH THIS SECTION, A COUNTY BOARD OF ELECTIONS MAY NOT DENY THE VOTER'S REQUEST TO HAVE THE BALLOT PRESENTED TO THE VOTER WHILE THE VOTER IS AT THE OFFICE UNLESS THERE IS A BONA FIDE OBJECTION TO THE ABSENTEE OR MAIL-IN BALLOT APPLICATION.

\* \* \*

SECTION 6. SECTION 1306(A)(1) AND (B) OF THE ACT ARE AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

SECTION 1306. VOTING BY ABSENTEE ELECTORS.--

(A) EXCEPT AS PROVIDED IN PARAGRAPHS ~~(1),~~ (2) AND (3), AT ANY TIME AFTER RECEIVING AN OFFICIAL ABSENTEE BALLOT, BUT ON OR BEFORE ~~FIVE O'CLOCK P.M. ON THE FRIDAY PRIOR TO~~ EIGHT O'CLOCK P.M. THE DAY OF THE PRIMARY OR ELECTION, THE ELECTOR SHALL, IN SECRET, PROCEED TO MARK THE BALLOT ONLY IN BLACK LEAD PENCIL, INDELIBLE PENCIL OR BLUE, BLACK OR BLUE-BLACK INK, IN FOUNTAIN PEN OR BALL POINT PEN, AND THEN FOLD THE BALLOT, ENCLOSE AND SECURELY SEAL THE SAME IN THE ENVELOPE ON WHICH IS PRINTED, STAMPED OR ENDORSED "OFFICIAL ABSENTEE BALLOT." THIS ENVELOPE SHALL THEN BE PLACED IN THE SECOND ONE, ON WHICH IS PRINTED THE FORM OF DECLARATION OF THE ELECTOR, AND THE ADDRESS OF THE ELECTOR'S COUNTY BOARD OF

ELECTION AND THE LOCAL ELECTION DISTRICT OF THE ELECTOR. THE ELECTOR SHALL THEN FILL OUT, DATE AND SIGN THE DECLARATION PRINTED ON SUCH ENVELOPE. SUCH ENVELOPE SHALL THEN BE SECURELY SEALED AND THE ELECTOR SHALL SEND SAME BY MAIL, POSTAGE PREPAID, EXCEPT WHERE FRANKED, OR DELIVER IT IN PERSON TO SAID COUNTY BOARD OF ELECTION.

~~(1) ANY ELECTOR WHO SUBMITS AN EMERGENCY APPLICATION AND RECEIVES AN ABSENTEE BALLOT IN ACCORDANCE WITH SECTION 1302.1(A.2) OR (C) SHALL MARK THE BALLOT ON OR BEFORE EIGHT O'CLOCK P.M. ON THE DAY OF THE PRIMARY OR ELECTION. THIS ENVELOPE SHALL THEN BE PLACED IN THE SECOND ONE, ON WHICH IS PRINTED THE FORM OF DECLARATION OF THE ELECTOR, AND THE ADDRESS OF THE ELECTOR'S COUNTY BOARD OF ELECTION AND THE LOCAL ELECTION DISTRICT OF THE ELECTOR. THE ELECTOR SHALL THEN FILL OUT, DATE AND SIGN THE DECLARATION PRINTED ON SUCH ENVELOPE. SUCH ENVELOPE SHALL THEN BE SECURELY SEALED AND THE ELECTOR SHALL SEND SAME BY MAIL, POSTAGE PREPAID, EXCEPT WHERE FRANKED, OR DELIVER IT IN PERSON TO SAID COUNTY BOARD OF ELECTION.~~

\*\*\*

(B)

~~IN THE EVENT THAT ANY SUCH ELECTOR, EXCEPTING AN ELECTOR IN MILITARY SERVICE OR ANY ELECTOR UNABLE TO GO TO HIS POLLING PLACE BECAUSE OF ILLNESS OR PHYSICAL DISABILITY, ENTITLED TO VOTE AN OFFICIAL ABSENTEE BALLOT SHALL BE IN THE MUNICIPALITY OF HIS RESIDENCE ON THE DAY FOR HOLDING THE PRIMARY OR ELECTION FOR WHICH THE BALLOT WAS ISSUED, OR IN THE EVENT ANY SUCH ELECTOR SHALL HAVE RECOVERED FROM HIS ILLNESS OR PHYSICAL~~

~~DISABILITY SUFFICIENTLY TO PERMIT HIM TO PRESENT HIMSELF AT THE PROPER POLLING PLACE FOR THE PURPOSE OF CASTING HIS BALLOT, SUCH ABSENTEE BALLOT CAST BY SUCH ELECTOR SHALL, BE DECLARED VOID.~~

~~ANY SUCH ELECTOR REFERRED TO IN THIS SUBSECTION, WHO IS WITHIN THE MUNICIPALITY OF HIS RESIDENCE, MUST PRESENT HIMSELF AT HIS POLLING PLACE AND SHALL BE PERMITTED TO VOTE UPON PRESENTING HIMSELF AT HIS REGULAR POLLING PLACE IN THE SAME MANNER AS HE COULD HAVE VOTED HAD HE NOT RECEIVED AN ABSENTEE BALLOT: PROVIDED, THAT SUCH ELECTOR HAS FIRST PRESENTED HIMSELF TO THE JUDGE OF ELECTIONS IN HIS LOCAL ELECTION DISTRICT AND SHALL HAVE SIGNED THE AFFIDAVIT ON THE ABSENTEE VOTER'S TEMPORARY REGISTRATION CARD, WHICH AFFIDAVIT SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:~~

~~I HEREBY SWEAR THAT I AM A QUALIFIED REGISTERED ELECTOR WHO HAS OBTAINED AN ABSENTEE BALLOT, HOWEVER, I AM PRESENT IN THE MUNICIPALITY OF MY RESIDENCE AND PHYSICALLY ABLE TO PRESENT MYSELF AT MY POLLING PLACE AND THEREFORE REQUEST THAT MY ABSENTEE BALLOT BE VOIDED.~~

~~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. SECTION 3511](#) (RELATING TO RECEIPT OF VOTED BALLOT), A COMPLETED ABSENTEE BALLOT MUST BE RECEIVED IN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS NO LATER THAN EIGHT O'CLOCK P.M. ON THE DAY OF THE PRIMARY OR ELECTION.

SECTION 7. SECTIONS 1308 HEADING, (A), (B), (B.1), (D), (E), (F), (G)(1), (2), (3), (4) AND (5) AND (H) AND 1309 OF THE ACT ARE AMENDED TO READ:

SECTION 1308. CANVASSING OF OFFICIAL ABSENTEE BALLOTS AND MAIL-IN BALLOTS.--

(A) THE COUNTY BOARDS OF ELECTION, UPON RECEIPT OF OFFICIAL ABSENTEE BALLOTS IN ~~SUCH~~ SEALED OFFICIAL ABSENTEE BALLOT ENVELOPES AS PROVIDED UNDER THIS ARTICLE AND MAIL-IN BALLOTS AS IN



SEALED OFFICIAL MAIL-IN BALLOT ENVELOPES AS PROVIDED UNDER ARTICLE XIII-D, SHALL SAFELY KEEP THE ~~SAME~~ BALLOTS IN SEALED OR LOCKED CONTAINERS UNTIL THEY ~~DISTRIBUTE SAME TO THE APPROPRIATE LOCAL ELECTION DISTRICTS IN A MANNER PRESCRIBED BY THE SECRETARY OF THE COMMONWEALTH.~~

~~EXCEPT AS PROVIDED IN SECTION 1302.1(A.2), THE COUNTY BOARD OF ELECTIONS SHALL THEN DISTRIBUTE THE ABSENTEE BALLOTS, UNOPENED, TO THE ABSENTEE VOTER'S RESPECTIVE ELECTION DISTRICT CONCURRENTLY WITH THE DISTRIBUTION OF THE OTHER ELECTION SUPPLIES. ABSENTEE BALLOTS SHALL BE CANVASSED IMMEDIATELY AND CONTINUOUSLY WITHOUT INTERRUPTION UNTIL COMPLETED AFTER THE CLOSE OF THE POLLS ON THE DAY OF THE ELECTION IN EACH ELECTION DISTRICT. THE RESULTS OF THE CANVASS OF THE ABSENTEE BALLOTS SHALL THEN BE INCLUDED IN AND RETURNED TO THE COUNTY BOARD WITH THE RETURNS OF THAT DISTRICT. EXCEPT AS PROVIDED IN SECTION 1302.1(A.2) AND SUBSECTION (G), NO ABSENTEE BALLOT SHALL BE COUNTED WHICH IS RECEIVED IN THE OFFICE OF THE COUNTY BOARD OF ELECTION LATER THAN FIVE O'CLOCK P.M. ON THE FRIDAY IMMEDIATELY PRECEDING THE PRIMARY OR NOVEMBER ELECTION.~~ ARE TO BE CANVASSED BY THE COUNTY BOARD OF ELECTIONS. AN ABSENTEE BALLOT, WHETHER ISSUED TO A CIVILIAN, MILITARY OR OTHER VOTER DURING THE REGULAR OR EMERGENCY APPLICATION PERIOD, SHALL BE CANVASSED IN ACCORDANCE WITH SUBSECTION (G). A MAIL-IN BALLOT SHALL BE CANVASSED IN ACCORDANCE WITH SUBSECTION (G).

(B)

WATCHERS SHALL BE PERMITTED TO BE PRESENT WHEN THE ENVELOPES CONTAINING OFFICIAL ABSENTEE BALLOTS AND MAIL-IN

BALLOTS ARE OPENED AND WHEN SUCH BALLOTS ARE COUNTED AND RECORDED.

~~(B.1) IN ALL ELECTION DISTRICTS IN WHICH ELECTRONIC VOTING SYSTEMS ARE USED, ABSENTEE BALLOTS SHALL BE OPENED AT THE ELECTION DISTRICT, CHECKED FOR WRITE-IN VOTES IN ACCORDANCE WITH SECTION 1113-A AND THEN EITHER HAND-COUNTED OR COUNTED BY MEANS OF THE AUTOMATIC TABULATION EQUIPMENT, WHATEVER THE CASE MAY BE.~~

(D)

WHENEVER IT SHALL APPEAR BY DUE PROOF THAT ANY ABSENTEE ELECTOR OR MAIL-IN ELECTOR WHO HAS RETURNED HIS BALLOT IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT HAS DIED PRIOR TO THE OPENING OF THE POLLS ON THE DAY OF THE PRIMARY OR ELECTION, THE BALLOT OF SUCH DECEASED ELECTOR SHALL BE REJECTED BY THE CANVASSERS BUT THE COUNTING OF THE BALLOT OF AN ABSENTEE ELECTOR OR A MAIL-IN ELECTOR THUS DECEASED SHALL NOT OF ITSELF INVALIDATE ANY NOMINATION OR ELECTION.

~~(E) AT SUCH TIME THE LOCAL ELECTION BOARD SHALL THEN FURTHER EXAMINE THE DECLARATION ON EACH ENVELOPE NOT SO SET ASIDE AND SHALL COMPARE THE INFORMATION THEREON WITH THAT CONTAINED IN THE "REGISTERED ABSENTEE VOTERS FILE," THE ABSENTEE VOTERS' LIST AND THE "MILITARY VETERANS AND EMERGENCY CIVILIANS ABSENTEE VOTERS FILE." IF THE LOCAL ELECTION BOARD IS SATISFIED THAT THE DECLARATION IS SUFFICIENT AND THE INFORMATION CONTAINED IN THE "REGISTERED ABSENTEE VOTERS FILE," THE ABSENTEE VOTERS' LIST AND THE "MILITARY VETERANS AND EMERGENCY CIVILIANS ABSENTEE VOTERS FILE"~~

~~VERIFIES HIS RIGHT TO VOTE, THE LOCAL ELECTION BOARD SHALL ANNOUNCE THE NAME OF THE ELECTOR AND SHALL GIVE ANY WATCHER PRESENT AN OPPORTUNITY TO CHALLENGE ANY ABSENTEE ELECTOR UPON THE GROUND OR GROUNDS (1) THAT THE ABSENTEE ELECTOR IS NOT A QUALIFIED ELECTOR; OR (2) THAT THE ABSENTEE ELECTOR WAS WITHIN THE MUNICIPALITY OF HIS RESIDENCE ON THE DAY OF THE PRIMARY OR ELECTION DURING THE PERIOD THE POLLS WERE OPEN, EXCEPT WHERE HE WAS IN MILITARY SERVICE OR EXCEPT IN THE CASE WHERE HIS BALLOT WAS OBTAINED FOR THE REASON THAT HE WAS UNABLE TO APPEAR PERSONALLY AT THE POLLING PLACE BECAUSE OF ILLNESS OR PHYSICAL DISABILITY; OR (3) THAT THE ABSENTEE ELECTOR WAS ABLE TO APPEAR PERSONALLY AT THE POLLING PLACE ON THE DAY OF THE PRIMARY OR ELECTION DURING THE PERIOD THE POLLS WERE OPEN IN THE CASE HIS BALLOT WAS OBTAINED FOR THE REASON THAT HE WAS UNABLE TO APPEAR PERSONALLY AT THE POLLING PLACE BECAUSE OF ILLNESS OR PHYSICAL DISABILITY. UPON CHALLENGE OF ANY ABSENTEE ELECTOR, AS SET FORTH HEREIN THE LOCAL ELECTION BOARD SHALL MARK "CHALLENGED" ON THE ENVELOPE TOGETHER WITH THE REASON OR REASONS THEREFOR, AND THE SAME SHALL BE SET ASIDE FOR RETURN TO THE COUNTY BOARD UNOPENED PENDING DECISION BY THE COUNTY BOARD AND SHALL NOT BE COUNTED. ALL ABSENTEE BALLOTS NOT CHALLENGED FOR ANY OF THE REASONS PROVIDED HEREIN SHALL BE COUNTED AND INCLUDED WITH THE GENERAL RETURN OF PAPER BALLOTS OR VOTING MACHINES, AS THE CASE MAY BE AS FOLLOWS. THEREUPON, THE LOCAL ELECTION BOARD SHALL OPEN THE ENVELOPE OF EVERY UNCHALLENGED ABSENTEE ELECTOR IN SUCH MANNER AS NOT TO DESTROY THE DECLARATION EXECUTED THEREON. ALL OF SUCH ENVELOPES ON WHICH ARE~~

~~PRINTED, STAMPED OR ENDORSED THE WORDS "OFFICIAL ABSENTEE BALLOT" SHALL BE PLACED IN ONE OR MORE DEPOSITORIES AT ONE TIME AND SAID DEPOSITORY OR DEPOSITORIES WELL SHAKEN AND THE ENVELOPES MIXED BEFORE ANY ENVELOPE IS TAKEN THEREFROM. IF ANY OF THESE ENVELOPES SHALL CONTAIN ANY EXTRANEOUS MARKS OR IDENTIFYING SYMBOLS OTHER THAN THE WORDS "OFFICIAL ABSENTEE BALLOT," THE ENVELOPES AND THE BALLOTS CONTAINED THEREIN SHALL BE SET ASIDE AND DECLARED VOID. THE LOCAL ELECTION BOARD SHALL THEN BREAK THE SEALS OF SUCH ENVELOPES, REMOVE THE BALLOTS AND RECORD THE VOTES IN THE SAME MANNER AS DISTRICT ELECTION OFFICERS ARE REQUIRED TO RECORD VOTES. WITH RESPECT TO THE CHALLENGED BALLOTS, THEY SHALL BE RETURNED TO THE COUNTY BOARD WITH THE RETURNS OF THE LOCAL ELECTION DISTRICT WHERE THEY SHALL BE PLACED UNOPENED IN A SECURE, SAFE AND SEALED CONTAINER IN THE CUSTODY OF THE COUNTY BOARD UNTIL IT SHALL FIX A TIME AND PLACE FOR A FORMAL HEARING OF ALL SUCH CHALLENGES AND NOTICE SHALL BE GIVEN WHERE POSSIBLE TO ALL ABSENTEE ELECTORS THUS CHALLENGED AND TO EVERY ATTORNEY, WATCHER OR CANDIDATE WHO MADE SUCH CHALLENGE. THE TIME FOR THE HEARING SHALL NOT BE LATER THAN SEVEN (7) DAYS AFTER THE DATE OF SAID CHALLENGE. ON THE DAY FIXED FOR SAID HEARING, THE COUNTY BOARD SHALL PROCEED WITHOUT DELAY TO HEAR SAID CHALLENGES AND, IN HEARING THE TESTIMONY, THE COUNTY BOARD SHALL NOT BE BOUND BY TECHNICAL RULES OF EVIDENCE. THE TESTIMONY PRESENTED SHALL BE STENOGRAPHICALLY RECORDED AND MADE PART OF THE RECORD OF THE HEARING. THE DECISION OF THE COUNTY BOARD IN UPHOLDING OR DISMISSING ANY CHALLENGE MAY BE REVIEWED BY THE COURT OF~~

~~COMMON PLEAS OF THE COUNTY UPON A PETITION FILED BY ANY PERSON AGGRIEVED BY THE DECISION OF THE COUNTY BOARD. SUCH APPEAL SHALL BE TAKEN, WITHIN TWO (2) DAYS AFTER SUCH DECISION SHALL HAVE BEEN MADE, WHETHER REDUCED TO WRITING OR NOT, TO THE COURT OF COMMON PLEAS SETTING FORTH THE OBJECTIONS TO THE COUNTY BOARD'S DECISION AND PRAYING FOR AN ORDER REVERSING SAME. PENDING THE FINAL DETERMINATION OF ALL APPEALS, THE COUNTY BOARD SHALL SUSPEND ANY ACTION IN CANVASSING AND COMPUTING ALL CHALLENGED BALLOTS IRRESPECTIVE OF WHETHER OR NOT APPEAL WAS TAKEN FROM THE COUNTY BOARD'S DECISION. UPON COMPLETION OF THE COMPUTATION OF THE RETURNS OF THE COUNTY, THE VOTES CAST UPON THE CHALLENGED OFFICIAL ABSENTEE BALLOTS SHALL BE ADDED TO THE OTHER VOTES CAST WITHIN THE COUNTY.~~

(F)

ANY PERSON CHALLENGING AN APPLICATION FOR AN ABSENTEE BALLOT ~~OR~~ , AN ABSENTEE BALLOT, AN APPLICATION FOR A MAIL-IN BALLOT OR A MAIL-IN BALLOT FOR ANY OF THE REASONS PROVIDED IN THIS ACT SHALL DEPOSIT THE SUM OF TEN DOLLARS (\$10.00) IN CASH WITH THE ~~LOCAL ELECTION~~ COUNTY BOARD, ~~IN CASES OF CHALLENGES MADE TO THE LOCAL ELECTION BOARD AND WITH THE COUNTY BOARD IN CASES OF CHALLENGES MADE TO THE COUNTY BOARD FOR WHICH HE SHALL BE ISSUED A RECEIPT FOR EACH CHALLENGE MADE,~~ WHICH SUM SHALL ONLY BE REFUNDED IF THE CHALLENGE IS SUSTAINED OR IF THE CHALLENGE IS WITHDRAWN WITHIN FIVE (5) DAYS AFTER THE PRIMARY OR ELECTION. IF THE CHALLENGE IS DISMISSED BY ANY LAWFUL ORDER THEN THE DEPOSIT SHALL BE FORFEITED. ~~ALL DEPOSIT MONEY RECEIVED BY THE LOCAL ELECTION BOARD SHALL BE TURNED OVER TO~~

~~THE COUNTY BOARD SIMULTANEOUSLY WITH THE RETURN OF THE CHALLENGED BALLOTS.~~ THE COUNTY BOARD SHALL DEPOSIT ALL DEPOSIT MONEY IN THE GENERAL FUND OF THE COUNTY.

NOTICE OF THE REQUIREMENTS OF SUBSECTION (B) OF SECTION 1306 SHALL BE PRINTED ON THE ENVELOPE FOR THE ABSENTEE BALLOT OR MAIL-IN BALLOT.

(G)

(1)

(I)

AN ABSENTEE BALLOT CAST BY ANY ABSENTEE ELECTOR AS DEFINED IN SECTION 1301(A), (B), (C), (D), (E), (F), (G) AND (H) ~~WHICH IS RECEIVED IN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS AFTER FIVE O'CLOCK P.M. ON THE FRIDAY IMMEDIATELY PRECEDING THE ELECTION AND NO LATER THAN FIVE O'CLOCK P.M. ON THE SEVENTH DAY FOLLOWING AN ELECTION~~ SHALL BE CANVASSED IN ACCORDANCE WITH THIS SUBSECTION IF ~~THE ABSENTEE BALLOT IS POSTMARKED NO LATER THAN THE DAY IMMEDIATELY PRECEDING THE ELECTION.~~ THE BALLOT IS CAST, SUBMITTED AND RECEIVED IN ACCORDANCE WITH THE PROVISIONS OF 25 PA.C.S. CH. 35 (RELATING TO UNIFORM MILITARY AND OVERSEAS VOTERS).

(II)

AN ABSENTEE BALLOT CAST BY ANY ABSENTEE ELECTOR AS DEFINED IN SECTION 1301(I), (J), (K), (L), (M) AND (N), AN ABSENTEE BALLOT UNDER SECTION 1302(A.3) OR A MAIL-IN BALLOT CAST BY A MAIL-IN ELECTOR SHALL BE CANVASSED IN ACCORDANCE WITH THIS SUBSECTION IF THE ABSENTEE BALLOT OR MAIL-IN BALLOT IS RECEIVED IN THE OFFICE OF THE COUNTY BOARD OF ELECTIONS

NO LATER THAN EIGHT O'CLOCK P.M. ON THE DAY OF THE PRIMARY OR ELECTION.

(2)

THE COUNTY BOARD OF ELECTIONS SHALL MEET ~~ON THE EIGHTH DAY FOLLOWING THE ELECTION TO CANVASS~~ NO EARLIER THAN THE CLOSE OF POLLS ON THE DAY OF THE ELECTION AND NO LATER THAN THE THIRD DAY FOLLOWING THE ELECTION TO BEGIN CANVASSING THE ABSENTEE BALLOTS AND MAIL-IN BALLOTS RECEIVED UNDER THIS SUBSECTION AND SUBSECTION (H)(2). THE CANVASS SHALL CONTINUE THROUGH THE EIGHTH DAY FOLLOWING THE ELECTION. ONE AUTHORIZED REPRESENTATIVE OF EACH CANDIDATE IN AN ELECTION AND ONE REPRESENTATIVE FROM EACH POLITICAL PARTY SHALL BE PERMITTED TO REMAIN IN THE ROOM IN WHICH THE ABSENTEE BALLOTS AND MAIL-IN BALLOTS ARE CANVASSED. REPRESENTATIVES SHALL BE PERMITTED TO CHALLENGE ANY ABSENTEE ELECTOR OR MAIL-IN ELECTOR IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (3).

(3)

WHEN THE COUNTY BOARD MEETS TO CANVASS ABSENTEE BALLOTS AND MAIL-IN BALLOTS UNDER PARAGRAPH (2), THE BOARD SHALL EXAMINE THE DECLARATION ON THE ENVELOPE OF EACH BALLOT NOT SET ASIDE UNDER SUBSECTION (D) AND SHALL COMPARE THE INFORMATION THEREON WITH THAT CONTAINED IN THE "REGISTERED ABSENTEE AND MAIL-IN VOTERS FILE," THE ABSENTEE VOTERS' LIST AND/OR THE "MILITARY VETERANS AND EMERGENCY CIVILIANS ABSENTEE VOTERS FILE," WHICHEVER IS APPLICABLE. IF THE COUNTY BOARD HAS VERIFIED THE PROOF OF IDENTIFICATION AS REQUIRED UNDER THIS ACT AND IS SATISFIED THAT THE DECLARATION IS

SUFFICIENT AND THE INFORMATION CONTAINED IN THE "REGISTERED ABSENTEE AND MAIL-IN VOTERS FILE," THE ABSENTEE VOTERS' LIST AND/OR THE "MILITARY VETERANS AND EMERGENCY CIVILIANS ABSENTEE VOTERS FILE" VERIFIES HIS RIGHT TO VOTE, THE COUNTY BOARD SHALL ANNOUNCE THE NAME OF THE ELECTOR AND SHALL GIVE ANY CANDIDATE REPRESENTATIVE OR PARTY REPRESENTATIVE PRESENT AN OPPORTUNITY TO CHALLENGE ANY ABSENTEE ELECTOR OR MAIL-IN ELECTOR UPON THE GROUND OR GROUNDS: (I) THAT THE ABSENTEE ELECTOR OR MAIL-IN ELECTOR IS NOT A QUALIFIED ELECTOR; OR ~~(II) THAT THE ABSENTEE ELECTOR WAS WITHIN THE MUNICIPALITY OF HIS RESIDENCE ON THE DAY OF THE PRIMARY OR ELECTION DURING THE PERIOD THE POLLS WERE OPEN, EXCEPT WHERE HE WAS IN THE MILITARY SERVICE OR EXCEPT IN THE CASE WHERE HIS BALLOT WAS OBTAINED FOR THE REASON THAT HE WAS UNABLE TO APPEAR PERSONALLY AT THE POLLING PLACE BECAUSE OF ILLNESS OR PHYSICAL DISABILITY; OR~~ (III) THAT THE ABSENTEE ELECTOR WAS ABLE TO APPEAR PERSONALLY AT THE POLLING PLACE ON THE DAY OF THE PRIMARY OR ELECTION DURING THE PERIOD THE POLLS WERE OPEN IN THE CASE HIS BALLOT WAS OBTAINED FOR THE REASON THAT HE WAS UNABLE TO APPEAR PERSONALLY AT THE POLLING PLACE BECAUSE OF ILLNESS OR PHYSICAL DISABILITY. UPON CHALLENGE OF ANY ABSENTEE ELECTOR, AS SET FORTH HEREIN, THE BOARD SHALL MARK "CHALLENGED" ON THE ENVELOPE TOGETHER WITH THE REASONS THEREFOR, AND THE SAME SHALL BE SET ASIDE UNOPENED PENDING FINAL DETERMINATION OF THE CHALLENGE ACCORDING TO THE PROCEDURE DESCRIBED IN PARAGRAPH (5).

(4)



ALL ABSENTEE BALLOTS AND MAIL-IN BALLOTS NOT CHALLENGED FOR ANY OF THE REASONS PROVIDED IN PARAGRAPH (3) SHALL BE COUNTED AND INCLUDED WITH THE RETURNS OF THE APPLICABLE ELECTION DISTRICT AS FOLLOWS -- :

(I)

THE COUNTY BOARD SHALL OPEN THE ENVELOPE OF EVERY UNCHALLENGED ABSENTEE ELECTOR AND MAIL-IN ELECTOR IN SUCH MANNER AS NOT TO DESTROY THE DECLARATION EXECUTED THEREON.

(II)

IF ANY OF THE ENVELOPES ON WHICH ARE PRINTED, STAMPED OR ENDORSED THE WORDS "OFFICIAL ABSENTEE BALLOT" OR "OFFICIAL MAIL-IN BALLOT" CONTAIN ANY EXTRANEIOUS MARKS OR IDENTIFYING SYMBOLS, THE ENVELOPES AND THE BALLOTS CONTAINED THEREIN SHALL BE SET ASIDE AND DECLARED VOID.

(III)

THE COUNTY BOARD SHALL THEN BREAK THE SEALS OF SUCH ENVELOPES, REMOVE THE BALLOTS AND RECORD THE VOTES.

(5)

WITH RESPECT TO THE CHALLENGED BALLOTS, THEY SHALL BE PLACED UNOPENED IN A SECURE, SAFE AND SEALED CONTAINER IN THE CUSTODY OF THE COUNTY BOARD UNTIL IT SHALL FIX A TIME AND PLACE FOR A FORMAL HEARING OF ALL SUCH CHALLENGES, AND NOTICE SHALL BE GIVEN WHERE POSSIBLE TO ALL ABSENTEE ELECTORS AND MAIL-IN ELECTORS THUS CHALLENGED AND TO EVERY INDIVIDUAL WHO MADE A CHALLENGE. THE TIME FOR THE HEARING SHALL NOT BE LATER THAN FIVE (5) DAYS AFTER THE DATE OF THE CHALLENGE. ON THE DAY FIXED FOR SAID HEARING, THE

COUNTY BOARD SHALL PROCEED WITHOUT DELAY TO HEAR SAID CHALLENGES, AND, IN HEARING THE TESTIMONY, THE COUNTY BOARD SHALL NOT BE BOUND BY THE PENNSYLVANIA RULES OF EVIDENCE. THE TESTIMONY PRESENTED SHALL BE STENOGRAPHICALLY RECORDED AND MADE PART OF THE RECORD OF THE HEARING.

\* \* \*

(H)

FOR THOSE ABSENTEE BALLOTS OR MAIL-IN BALLOTS FOR WHICH PROOF OF IDENTIFICATION HAS NOT BEEN RECEIVED OR COULD NOT BE VERIFIED:

~~(1) IF THE PROOF OF IDENTIFICATION IS RECEIVED AND VERIFIED BY THE COUNTY BOARD OF ELECTIONS PRIOR TO THE DISTRIBUTION OF THE ABSENTEE BALLOTS OR MAIL-IN BALLOTS TO THE LOCAL ELECTION DISTRICTS, THEN THE COUNTY SHALL DISTRIBUTE THE ABSENTEE BALLOTS AND MAIL-IN BALLOTS FOR WHICH PROOF OF IDENTIFICATION IS RECEIVED AND VERIFIED, ALONG WITH THE OTHER ABSENTEE BALLOTS AND MAIL-IN BALLOTS, TO THE ABSENTEE VOTER'S RESPECTIVE ELECTION DISTRICT OR THE MAIL-IN 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' OR MAIL-IN BALLOTS' BEING SENT TO THE APPROPRIATE LOCAL ELECTION DISTRICTS, THE COUNTY BOARD SHALL KEEP THE ABSENTEE BALLOT OR MAIL-IN 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 AND MAIL-IN 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 OR MAIL-IN 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)