



Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

WASHINGTON County

For Prothonotary Use Only:

Docket No:

2024-3953

FILED
July 02, 2024 10:07 AM
Office of the Prothonotary
Washington County, Pennsylvania

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint
- Writ of Summons
- Petition
- Transfer from Another Jurisdiction
- Declaration of Taking

Lead Plaintiff's Name:
Center for Coalfield Justice

Lead Defendant's Name:
Washington County Board of Elections

Are money damages requested? Yes No
Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a Class Action Suit? Yes No
Is this an MDJ Appeal? Yes No

Name of Plaintiff/Appellant's Attorney: Witold J. Walczak

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
- Malicious Prosecution
- Motor Vehicle
- Nuisance
- Premises Liability
- Product Liability (does not include mass tort)
- Slander/Libel/ Defamation
- Other:

CONTRACT (do not include Judgments)

- Buyer Plaintiff
- Debt Collection: Credit Card
- Debt Collection: Other
- Employment Dispute: Discrimination
- Employment Dispute: Other
- Other:

CIVIL APPEALS

- Administrative Agencies
- Board of Assessment
- Board of Elections
- Dept. of Transportation
- Statutory Appeal: Other
- Zoning Board
- Other:

MASS TORT

- Asbestos
- Tobacco
- Toxic Tort - DES
- Toxic Tort - Implant
- Toxic Waste
- Other:

REAL PROPERTY

- Ejectment
- Eminent Domain/Condemnation
- Ground Rent
- Landlord/Tenant Dispute
- Mortgage Foreclosure: Residential
- Mortgage Foreclosure: Commercial
- Partition
- Quiet Title
- Other:

MISCELLANEOUS

- Common Law/Statutory Arbitration
- Declaratory Judgment
- Mandamus
- Non-Domestic Relations
- Restraining Order
- Quo Warranto
- Replevin
- Other: Constitutional challenge for declaratory & injunctive relief

PROFESSIONAL LIABILITY

- Dental
- Legal
- Medical
- Other Professional:

NOTICE

Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:

Rule 205.5. Cover Sheet

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA

<p>CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP, BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON, ERIKA WOROBEK, SANDRA MACIOCE, KENNETH ELLIOTT, AND DAVID DEAN,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>WASHINGTON COUNTY BOARD OF ELECTIONS,</p> <p style="text-align: center;">Defendant.</p>	<p>CIVIL DIVISION</p> <p>24 No. 3953</p> <p>Judge _____</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p> <p>Filed on behalf of Plaintiffs, CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP, BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON, ERIKA WOROBEK, SANDRA MACIOCE, KENNETH ELLIOTT, AND DAVID DEAN</p> <p>Counsel of Record for these Parties:</p>
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**IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA**

<p>CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP, BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON, ERIKA WOROBEK, SANDRA MACIOCE, KENNETH ELLIOTT, AND DAVID DEAN,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>WASHINGTON COUNTY BOARD OF ELECTIONS,</p> <p style="text-align: right;">Defendant.</p>	<p>CIVIL DIVISION</p> <p><u>24</u> No. <u>3953</u></p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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NOTICE TO DEFEND

YOU HAVE BEEN SUED in court. IF YOU WISH TO DEFEND against the claims set forth in the following pages, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are WARNED that IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. YOU MAY LOSE MONEY OR PROPERTY or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.

If you do not know a lawyer, contact:

Lawyer Referral Service
119 South College Street
Washington, PA 15301
724.225.6710

If you cannot afford a lawyer, contact:

Southwestern Pennsylvania Legal Aid Society
10 West Cherry Avenue
Washington, PA 15301
724.225.6170

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, the Center for Coalfield Justice, the Washington Branch NAACP, and Washington County voters Bruce Jacobs, Jeffrey Marks, June DeVaughn Hython, Erika Worobec, Sandra Macioce, Kenneth Elliott, and David Dean, by and through undersigned counsel, bring this Complaint for Declaratory and Injunctive Relief against Defendant, the Washington County Board of Elections, and in support thereof aver as follows:

INTRODUCTION

1. This case is about fundamentally unfair and egregious conduct by the Washington County Board of Elections that rises to the level of a procedural due process violation of the Pennsylvania Constitution.

2. In April 2024, the Washington County Board of Elections (“the Board”) voted 2-1 to adopt a mail-in voting policy that deliberately concealed information about which voters had made disqualifying errors on their mail-in ballot envelopes. The Board’s decision was a complete reversal of its prior policy of notifying voters of ballot envelope mistakes — such as missing signatures or incomplete dates — and providing them with an opportunity to correct those errors.

3. Instead, in the weeks leading up to the April 2024 election, the Board determined which mail-in ballots would not be counted, and then implemented a systematic process to keep that information from voters and the public, in many cases affirmatively misleading voters into thinking that their mail-in ballots would be counted.

4. First, the Board deliberately entered information into Pennsylvania’s Statewide Uniform Registry of Electors (“SURE”) system that made it appear as if the Board had accepted

the defective mail ballots, when in fact the Board had already set them aside and was planning to not count them.

5. Second, the Board instructed its election office staff not to provide any information to voters who inquired about the status of their mail-in ballot, including whether they had made errors that would prevent their vote from being counted.

6. As a result of the Board's systematic and deliberate efforts to conceal this information, voters had no way of knowing that their mail-in ballot would not be counted, and in fact many voters were affirmatively misled into thinking that their mail-in ballot would be counted. Consequently, voters could not exercise their right to vote by casting a provisional ballot on Election Day. Ultimately, the Board's actions disenfranchised 259 qualified, eligible Washington County voters in the low-turnout April 2024 primary.

7. The Board's intentional manipulation of mail-in ballot processing procedures to conceal the existence of disqualifying voter errors and affirmatively mislead many voters, and its refusal to disclose voters' ballot status, violates the Pennsylvania Constitution's due process guarantee.

8. Procedural due process is necessary to "minimize substantively unfair or mistaken deprivations of life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests." *Washington v. Pa. Dep't. of Corr.* 306 A.3d 263, 285 (Pa. 2023) (citation omitted). "[D]emocracy implies respect for the elementary rights of men . . . a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights." *Id.* (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring)).

9. The Board's decision to deliberately conceal information about voters' mail-in ballot status, even though the Board knew it would lead to hundreds of individuals losing their fundamental right to vote, jettisons the "central demands" of due process, which are "notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018) (internal citation and quotations omitted).¹ The Board also committed a clear procedural due process violation by affirmatively misleading many voters into believing that their mail-in ballot would be counted, thereby depriving them of any ability to exercise their fundamental right to vote.²

10. Due process is not a choice: the Pennsylvania Constitution demands it. Plaintiffs, seven Washington County residents whose mail-in ballots were disqualified without their knowledge, and two organizations whose operations were disrupted by the Board's new policy, seek declaratory relief, special relief, and injunctive relief from this Court to ensure that Washington County voters are not deprived of their due process rights again in November.

¹ Courts applying the same procedural due process standard endorsed by the Pennsylvania Supreme Court have recognized that due process entitles voters to pre-deprivation notice when their vote is invalidated for a deficiency in their ballot envelope. *See, e.g., Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 476 F. Supp. 3d 158, 228 (M.D.N.C. 2020) (holding that when a mail-in ballot is rejected "for a reason that is curable" and the voter "is not given notice or an opportunity to be heard on this deficiency," that lack of process "facially effects a deprivation of the right to vote."); *Frederick v. Lawson*, 481 F. Supp. 3d 774, 794 (S.D. Ind. 2020) (when a government entity rejects a mail-in ballot based on "a curable deficiency" without providing voters "notice or an opportunity to respond at any point either before or after their ballots rejected, this all but ends the [due process] inquiry"); *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1053 (D.N.D. 2020) ("Attempting to contact voters and allowing an opportunity to verify ballots ensures compliance with the bare-minimum requirements of procedural due process."). Each of these federal courts relied on the same due process standard that applies under the Pennsylvania Constitution. *See Washington v. PA Dep't of Corr.*, 306 A.3d 263, 284-85 (Pa. 2023) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)).

² *See Turk v. Dept. of Transp., Bur. of Driver Licensing*, 983 A.2d 805, 818 (Pa. Commw. Ct. 2009); *Dunn v. Dept. of Transp., Bur. Of Driver Licensing*, 819 A.2d 189, 192-93 (Pa. Commw. Ct. 2003); *In the Interest of R.M.*, 790 A.2d 300, 306-07 (Pa. 2002).

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Complaint pursuant to 42 Pa.C.S. § 931(a), which provides that, with limited exceptions, “the courts of common pleas shall have unlimited jurisdiction of all actions and proceedings.” 42 Pa.C.S. § 931(a).

12. Venue exists in this Court pursuant to Pennsylvania Rule of Civil Procedure 2103 because this action arose in Washington County and this is a suit against a political subdivision within Washington County. Pa.R.Civ.P. 2103.

PARTIES

13. Plaintiff Center for Coalfield Justice (“CCJ”) is a 501(c)(3) Pennsylvania nonprofit organization headquartered in Washington County. CCJ uses public education, organizing, and advocacy to advance policies that address the health and environmental impacts of the coal, oil, and gas industries on Washington and Greene Counties; to strengthen the area’s local economies; and to ensure that area residents have a voice in electing officials that will be accountable on the issues that matter most to their community. CCJ has 300 individual members, many of whom are registered voters and regularly vote in Washington County, including by mail-in ballot.

14. Plaintiff Washington Branch NAACP is a non-profit, non-partisan organization operating in Washington County, Pennsylvania, and is affiliated with the NAACP Pennsylvania State Conference and the national NAACP. Washington Branch NAACP’s mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination in Washington County. Washington Branch NAACP has nearly 200 individual members, many of whom are registered voters and regularly vote in Washington County, including by mail-in ballot.

15. Plaintiff Bruce Jacobs is a 65-year-old, longtime registered voter who lives in Venetia, Pennsylvania, located in Washington County. *See* Declaration of Bruce Jacobs (“BJ Decl.”) ¶¶ 2, 3.³ Mr. Jacobs voted by mail-in ballot in the April 2024 primary election and intends to vote again by mail in the November 2024 general election. *Id.* ¶¶ 8, 17. The Washington County Board of Elections rejected Mr. Jacobs’ ballot this past April because he failed to sign and date the declaration envelope. *Id.* ¶ 12. Mr. Jacobs did not learn that his mail-in ballot was rejected until after the April 2024 primary election, and his vote was not counted. *Id.*

16. Plaintiff Jeffrey Marks is a 72-year-old, longtime registered voter who lives in Washington, Pennsylvania, located in Washington County. *See* Declaration of Jeffrey Marks (“JM Decl.”) ¶¶ 2, 3.⁴ Mr. Marks voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 6, 15. The Washington County Board of Elections rejected Mr. Marks’ ballot in the April 2024 election because he wrote an “incomplete date” on the declaration envelope. *Id.* ¶ 11. Mr. Marks did not learn that his mail-in ballot was rejected until after the April 2024 primary election, and his vote was not counted. *Id.* ¶¶ 10-11.

17. Plaintiff June DeVaughn Hython is an 85-year-old, longtime registered voter who lives in Canonsburg, Pennsylvania, located in Washington County. *See* Declaration of June DeVaughn Hython (“JDH Decl.”) ¶¶ 2, 3.⁵ Ms. DeVaughn Hython voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 8, 13. The Washington County Board of Elections rejected Ms. DeVaughn Hython’s ballot in the April 2024 election because she signed the declaration envelope in the wrong area and

³ A true and correct copy of the Declaration of Bruce Jacobs is attached hereto as Exhibit 1.

⁴ A true and correct copy of the Declaration of Jeffrey Marks is attached hereto as Exhibit 2.

⁵ A true and correct copy of the Declaration of June DeVaughn Hython is attached hereto as Exhibit 3.

failed to fill in the date. *Id.* ¶ 10. Ms. DeVaughn Hython did not learn that her mail-in ballot was rejected until after the April 2024 primary election, and her vote was not counted. *Id.*

18. Plaintiff Erika Worobec is a 45-year-old, longtime registered voter who lives in Cecil, Pennsylvania, located in Washington County. *See* Declaration of Erika Worobec (“EW Decl.”) ¶¶ 2, 3.⁶ Ms. Worobec voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 8, 14. The Washington County Board of Elections rejected Ms. Worobec’s ballot in the April 2024 election because she wrote an “incomplete date” on the declaration envelope. *Id.* ¶ 9. Ms. Worobec did not learn that her mail-in ballot was rejected until after the April 2024 primary election, and her vote was not counted. *Id.* ¶¶ 9, 10.

19. Plaintiff Sandra Macioce is a 64-year-old, longtime registered voter who lives in Canonsburg, Pennsylvania, located in Washington County. *See* Declaration of Sandra Macioce (“SM Decl.”) ¶¶ 2, 3.⁷ Ms. Macioce voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 6, 10. The Washington County Board of Elections rejected Ms. Macioce’s ballot in the April 2024 election because she wrote an “incomplete date” on the outer declaration envelope. *Id.* ¶ 8. Ms. Macioce did not learn that her mail-in ballot was rejected until after the April 2024 primary election, and her vote was not counted. *Id.*

20. Plaintiff Kenneth Elliott is a 48-year-old, longtime registered voter who lives in Amity, Pennsylvania, located in Washington County. *See* Declaration of Kenneth Elliott (“KE Decl.”) ¶¶ 2, 3.⁸ Mr. Elliott voted by mail-in ballot in the April 2024 primary election. *Id.* ¶ 8.

⁶ A true and correct copy of the Declaration of Erika Worobec is attached hereto as Exhibit 4.

⁷ A true and correct copy of the Declaration of Sandra Macioce is attached hereto as Exhibit 5.

⁸ A true and correct copy of the Declaration of Kenneth Elliott is attached hereto as Exhibit 6.

The Washington County Board of Elections rejected Mr. Elliott's ballot this past April because he wrote an "incomplete date" on the declaration envelope. *Id.* ¶ 10. Mr. Elliott did not learn that his mail-in ballot was rejected until after the April 2024 primary election, and his vote was not counted. *Id.* ¶ 11.

21. Plaintiff David Dean is a 54-year-old, longtime registered voter who lives in Canonsburg, Pennsylvania, located in Washington County. *See* Declaration of David Dean ("DD Decl.") ¶¶ 2, 3.⁹ Mr. Dean voted by mail-in ballot in the April 2024 primary election and intends to vote by mail in the November 2024 general election. *Id.* ¶¶ 9, 14. The Washington County Board of Elections rejected Mr. Dean's ballot in the April 2024 election because he wrote an "incomplete date" on the declaration envelope. *Id.* ¶ 10. Mr. Dean did not learn that his mail-in ballot was rejected until after the April 2024 primary election, and his vote was not counted. *Id.* ¶ 12.

22. Defendant Washington County Board of Elections is a local government agency that is responsible for overseeing the conduct of all elections in Washington County, 25 P.S. § 2641, and obligated to do so in accordance with the Pennsylvania Constitution. The Washington County Board of Elections is also charged with ensuring that elections are "honestly, efficiently, and uniformly conducted." 25 P.S. § 2642(g).

FACTUAL ALLEGATIONS

23. The Washington County Board of Elections deprived Voter-Plaintiffs and more than 250 other Washington County individuals of their vote in the April 2024 primary election. The Board directly caused this widespread disenfranchisement by choosing, in April 2024, to implement a new mail-in voting policy that deliberately concealed information from voters that

⁹ A true and correct copy of the Declaration of David Dean is attached hereto as Exhibit 7.

they had made disqualifying errors on their mail-in ballot envelopes, and in many cases affirmatively misled voters. Because of the Board's actions, voters had no way of learning that their ballot would not be counted, and were deprived of the opportunity to protect their right to vote by taking advantage of an existing statutory process: voting by provisional ballot.

A. Voting by Mail in Pennsylvania

24. Pennsylvania has long provided the option to vote absentee-ballot, but until 2020, that process was available only to voters who had a reason they could not vote in person, either because of current military service, a disability that prevents attendance at a polling place, or absence from the municipality on Election Day. *See* 25 P.S. §§ 3146.1– 3146.9.

25. In late 2019, the Pennsylvania Legislature adopted no-excuse mail-in voting, and implementation commenced in May 2020. Act of Oct. 31, 2019, P.L. 552, No. 77, § 8. Under the new system, all registered, eligible electors who apply by the deadline are permitted to vote by mail and are no longer required to provide a reason for voting by mail instead of in person. *See* 25 P.S. § 3150.11.

26. Under Pennsylvania law, identical procedures govern how voters apply for, complete, and return both absentee and mail-in ballots.¹⁰

27. A voter seeking to vote by mail must complete and submit an application to the county board of elections, which includes their name, address of registration, and proof of identification. *Id.* §§ 3146.2, 3150.12. Proof of identification must be a Pennsylvania driver's license number if the voter has a PennDOT issued driver's license or PennDOT non-driver ID card. If the voter does not have a Pennsylvania driver's license or non-driver ID, the voter must provide the last four digits of the voter's Social Security number. *Id.* § 2602(z.5)(3).

¹⁰ For ease of reference, the term "mail-in ballots" is used herein to encompass both absentee and mail-in ballots.

28. County boards begin processing mail-in ballot applications 50 days before each election. *Id.* § 3150.12a(a). Upon receipt of an application, the board verifies the voter's identity and eligibility and then sends the voter a mail-ballot package that contains: (1) the ballot; (2) a "secrecy envelope" marked with the words "Official Election Ballot"; and (3) a pre-addressed outer return envelope, which contains the voter declaration and spaces to sign and handwrite the date (the "declaration envelope"). *Id.* §§ 3146.6(a), 3150.16(a). The packet also contains instructions to the voter for marking and submitting the ballot.

29. The voter must complete several steps to successfully return a mail-in ballot. At any time after receipt, the mail-in voter must mark the ballot, place it in the secrecy envelope, and then place the secrecy envelope in the outer declaration envelope. *Id.* §§ 3146.6(a), 3150.16(a). Next, the voter must "fill out, date and sign" the printed declaration on the outer return envelope. *Id.* §§ 3146.6(a), 3150.16(a). Finally, the voter returns the entire ballot package by mail or in person to their respective county board of elections or at a designated drop-off location. To be considered timely, a county board of elections must receive the completed mail-in ballot by 8:00 p.m. on Election Day. *Id.* §§ 3146.6(c), 3150.16(c).

B. In Every Recent Election, Thousands of Eligible Voters Have Been Disqualified for Making Mistakes on their Mail-in Ballot Packet.

30. It is not uncommon for voters to make inadvertent errors when completing their mail-in ballot packet.

31. Current Pennsylvania law disqualifies mail-in ballots if the voter makes any of three mistakes when completing their envelope packet: failing to sign or date the declaration envelope; writing a date that is deemed "incorrect;" or failing to include the secrecy envelope.

See Ball v. Chapman, 289 A.3d 1 (Pa. 2023); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020).

32. Pennsylvania's Department of State ("DOS") has reported that in every election cycle since the implementation of no-excuse mail-in voting in 2020, thousands of mail-in ballots have been segregated and not counted due to "unintended technical errors" voters made when completing and submitting their mail ballot packets. *See* Press Release, Pa. Dep't of State, "Shapiro Administration Introduces Redesigned Mail Ballot Materials To Give Voters Clearer Instructions, Decrease Number Of Rejected Ballots, And Ensure Every Legal Vote Is Counted" (Nov. 29, 2023), <https://www.media.pa.gov/pages/state-details.aspx?newsid=584> (hereinafter DOS Press Release, "Redesigned Mail Ballot Materials").

33. For instance, in the November 2022 general election, more than 16,000 mail-in ballots in Pennsylvania were set aside because they lacked a proper signature or date on the declaration envelope, or because the voter forgot to include a secrecy envelope. *See* Mark Scolforo, *Majority of 16k Canceled Pa. Mail-In Ballots Were from Dems*, ASSOCIATED PRESS (Jan. 6, 2023), <https://apnews.com/article/2022-midterm-elections-pennsylvania-united-states-government-a1c75c9cfc2f1bfca21ac4a4cbfe60f0>.

34. These mistakes are unrelated to whether an individual is qualified or eligible to vote in the election; such determinations are made during the mail-ballot application process. Instead, the mistakes are related only to the declaration envelope or the secrecy envelope. The ballot itself is unaffected.

35. Ahead of the April 23, 2024, primary election, the Department of State redesigned the declaration envelope and instructions provided to mail-in ballot voters to "reduce voter errors and confusion." *See* DOS Press Release, "Redesigned Mail Ballot Materials," *supra* ¶ 32. The

changes included highlighting the fields the voter must complete on the declaration envelope and pre-filling “20” for the year to help ensure voters write the current date instead of their birthdate, a common disqualifying error. *Id.* DOS also gave counties the option to include a hole punch on the outer envelope, which would allow election officials to readily see when mail-ballot voters had forgotten to include the inner yellow secrecy envelope. *Id.*

36. Despite the redesigned ballot packet, more than 8,000 mail-in ballots were rejected statewide during the April 2024 primary because of issues related to the declaration envelope or a missing secrecy envelope. *See* Declaration of Ariel Shapell (“AS Decl.”) ¶ 14(a).¹¹

C. Prompt and Accurate Recording of Mail-in Ballot Status in the SURE System is Essential to the Effective Administration of Elections.

37. Upon receipt of a voter’s mail-in ballot, counties process that ballot using the SURE system, “a single, uniform integrated computer system” developed and established by DOS pursuant to its obligations under the federal Help America Vote Act (“HAVA”), 52 U.S.C. § 21083(a)(10)(A), and the Pennsylvania Election Code, 25 Pa.C.S § 1222. Indeed, all counties are required to work in and through the SURE system. *See id.* § 1222(c) (“All [county election] commissions shall be connected electronically to the SURE system and shall maintain their registration records in the system.”); *see also id.* § 1222(e) (“each commission shall be required to use the SURE system as its general register.”).

38. Pennsylvania law also requires counties to enter data into the SURE system, including data identifying “registered electors who have been issued absentee ballots,” *id.* § 1222(c)(19), and data identifying “registered electors who vote in an election and the method by which their ballots were cast.” *Id.* § 1222(c)(20). *See also* 4 Pa. Code §183.4(b)(2) (“A commission shall enter. . . voting history for registrants.”).

¹¹ A true and correct copy of the Declaration of Ariel Shapell is attached hereto as Exhibit 8.

39. County boards of election must promptly and accurately enter this data into SURE not only to comply with their statutory obligation to “clearly identify” voters who have received and voted mail-in ballots, 25 P.S. § 3150.16(b)(1), but also to “[p]ermit the timely printing and transmission” of “district registers,” more commonly known as poll books, “and all other information contained in the system as may be necessary for the operation of the polling places on election days.” 25 Pa.C.S § 1222(c)(13).

40. Timely and accurate entry of voters’ mail-in ballot status into SURE is necessary to generate accurate poll books for Election Day that identify voters who requested a mail-in ballot that voted it and those who did not. For example, if the poll book shows that the voter was sent a mail-in ballot but has not voted it, the voter may vote by provisional ballot. 25 P.S. § 3150.16(b)(2) (mail-in ballots); *id.* § 3146.6(b)(2) (absentee ballots).

41. Accordingly, DOS guidance provides county boards with clear instructions to “promote consistency across the 67 counties” for the processing of mail-in ballots. *See* Pa. Dep’t of State, Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes (Updated: April 3, 2023) (hereinafter “DOS Guidance”).¹² First, boards are expected to “stamp the date of receipt” on the ballot-return envelope and record the date the ballot is received into the SURE system. *Id.* at 2. Next, DOS instructs county boards to “examine the Voter’s Declaration on the outer envelope” to determine whether the voter has made a disqualifying error. *Id.* at 3. If a county board of elections “determines that a ballot should not be counted, the final ballot disposition should be noted in [the] SURE [system].” *Id.* at 3.

42. DOS guidance emphasizes that when a county board of elections receives a mail-in ballot with a disqualifying error, “[i]t is important that the ballot return status is *promptly and*

¹² A true and correct copy of Pa. Dep’t of State, Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes (Updated: April 3, 2023) is attached hereto as Exhibit 9.

accurately recorded in SURE using the specific response type as to the disposition for each ballot received.” *Id.* at 3 (emphasis added).

43. The SURE system provides a number of codes that election offices can use when they receive a mail-in ballot with a disqualifying error. *See* Pa. Dep’t of State, SURE Project, County Release Notes (Mar. 11, 2024) (hereinafter SURE County Release Notes).¹³ *See also* Ex. 9, DOS Guidance at 3 (“The ballot return status . . . should be noted using the appropriate drop-down selection”).

44. Boards of elections can mark a ballot returned with an error as “cancelled” in the SURE system using one of the following codes:

- a. CANC – NO DATE
- b. CANC – INCORRECT DATE
- c. CANC – NO SECRECY ENVELOPE
- d. CANC – NO SIGNATURE

45. The “cancelled” codes are intended to be used when the voter returns the ballot packet with an error and the county “has made a final decision as to the ballot, or it does not offer the opportunity to cure.” Ex. 10, SURE County Release Notes at 8-9. Entering the “cancelled” codes into the SURE system will trigger an email notification to the voter about their options to “request a new ballot” or “go to [their] polling place on election day and cast a provisional ballot.” *Id.* For instance:¹⁴

¹³ A true and correct copy of the Pa. Dep’t of State, SURE Project, County Release Notes (Mar. 11, 2024) is attached hereto as Exhibit 10. The SURE County Release Notes are an explanation of the software changes into the SURE system deployed by DOS. The document explains the changes and provides instructions to the counties for properly using the updated SURE system.

¹⁴ *See* Right-To-Know Law Response from Pa. Dep’t. of State on SURE System Email Notifications (Apr. 18, 2024), a true and correct copy of which is attached hereto as Exhibit 11.

CANC – NO SECRECY ENVELOPE (Deployed 3/26/21)	Your ballot will not be counted because it was not returned in a secrecy envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO SIGNATURE (Updated 6/3/21) (Updated language to remove no date reference 1/27/23)	Your ballot will not be counted because you did not sign the declaration on your ballot return envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

46. Pursuant to the March 11, 2024 SURE system release notes, the Department of State now also provides “6 OPTIONAL ‘Pending’ Status Reasons . . . [which] may be used if a county offers ballot curing.” Ex. 11, DOS SURE Codes, *supra* ¶45. These “Pending” codes include:

- a. PEND – INCORRECT DATE
- b. PEND – NO DATE
- c. PEND – NO SIGNATURE
- d. PEND – NO SECRECY ENVELOPE

47. The SURE system has the option to mark ballots as “Pending” when election officials “ha[ve] noticed” that the voter has made an error in the completion of the ballot packet and the county “offers the opportunity for voters to replace or correct [the] submission error.” *Id* at 7. If the election office selects one of the “PEND” codes, the SURE system will automatically send the voter a corresponding email notification, such as:

<p>PEND – INCORRECT DATE</p>	<p>The county has noticed that the date written on your ballot return envelope is incorrect. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.</p>
<p>PEND – NO DATE</p>	<p>The county has noticed that you did not date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.</p>

48. Timely and accurate entry of voters’ mail ballot status also allows each voter to “track” the status of their mail-in ballot at a DOS website:

<https://www.pavoterservices.pa.gov/pages/ballottracking.aspx>

49. Consequently, when the county election office selects the appropriate “cancelled” or “pending” code into the SURE system, both the automatic SURE-system email and DOS’s mail-ballot tracker inform the elector that their vote will not be counted unless they take additional steps. This data is also made publicly available to requestors, enabling political parties and voting rights organizations to reach out to affected voters and notify them of their ballot status. *See* 25 P.S. §§ 3146.9, 3150.17.

50. However, if the county does not enter the correct, corresponding error code and instead records the ballot as received via the “RECORD – BALLOT RETURNED” code, the SURE system does not show that the ballot has been disqualified. *See* Ex. 10, SURE County

Release Notes at 10. Significantly, entry of this code generates an automated email to the voter suggesting their ballot will be counted:

RECORD – BALLOT RETURNED	Records the voter’s ballot as returned prior to the deadline.	Your ballot has been received by [County Name] County as of [DateRecorded]. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot and you are no longer permitted to vote at your polling place location.
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D. Prompt and Accurate Recording of Mail-in Ballot Status in the SURE System is Essential to Ensuring That Every Qualified and Eligible Voter Can Have Their Vote Counted.

51. A mail-in voter whose ballot has been rejected due to a technical error, such as a missing date, signature, or secrecy envelope, is entitled to cast a provisional ballot at their local polling place on Election Day and have it counted. *See e.g.*, Sept. 21, 2023 Order at 3, *Keohane v. Delaware County Board of Elections*, CV-2023-004458 (Del. Cnty. Ct. Common Pleas)¹⁵ (ordering the Delaware County Board of Elections to count provisional ballots cast by voters who were notified of their mail-in ballot rejection). *See also* 25 P.S. § 3050(a.4)(5); *see also* Pa. Dep’t. of State, Pennsylvania Provisional Voting Guidance (Mar. 11, 2024),¹⁶ at 4 (Providing that if a voter’s mail-in ballot “was rejected for a reason unrelated to the voter’s qualifications and the voter submitted a provisional ballot . . . , the provisional ballot shall be counted”). HAVA also clearly and unambiguously requires states to develop a provisional-ballot system to safeguard voters’ ability to vote. *See* 52 U.S.C. § 21082; *see also* P.S. 25 § 3050(a.4) (implementing HAVA); *see, e.g.*, *Common Cause Ga. v. Kemp*, 347 F. Supp. 3d 1270, 1292–93

¹⁵ A true and correct copy of *Keohane v. Delaware County Board of Elections*, CV-2023-004458 (Del. Cnty. Ct. Common Pleas Sept. 21, 2023) is attached hereto as Exhibit 12.

¹⁶ A true and correct copy of Pa. Dep’t. of State, Pennsylvania Provisional Voting Guidance (Mar. 11, 2024) is attached hereto as Exhibit 13.

(N.D. Ga. 2018) (citing *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1078 (N.D. Fla. 2004)).

52. Recognizing this fact, the majority of counties update the “ballot return status”—including information about a voter’s disqualifying error—“promptly and accurately” in the SURE system after receiving the ballot packet at the election office. *See* Ex. 8, AS Decl. ¶ 13(a) (showing the number of counties that utilized “CANC” or “PEND” codes prior to April 23, 2024 Election Day). This gives voters the opportunity to take the necessary steps to cast a valid vote.

53. Many county boards also take other simple steps to reduce the number of mail-in voters that are disenfranchised due to minor errors, including nearly all of Washington County’s neighboring counties:

- a. Fayette County has two notification methods: Election officials make phone calls to inform voters when they have made an error on their ballot envelope and also sends the voter a letter with instructions to “correct the error, so that your vote may be counted!”¹⁷
- b. Greene County has adopted a “Ballot Curing Policy” in which election officials provide a list of voters with ballot “deficienc[ies]” to Party Committees who are responsible for alerting voters to the problem and the steps “[t]o effect a cure” at the Election Bureau.¹⁸

¹⁷ A true and correct copy of the (excerpted) May 1, 2024 Right-to-Know Law Response from Marybeth Kuznik, Dir. of Elections and Voter Registration, Fayette Cnty. to ACLU-PA regarding Fayette County Notice and Cure Procedures is attached hereto as Exhibit 14.

¹⁸ A true and correct copy of the “Greene County Ballot Curing Procedures” is attached hereto as Exhibit 15.

- c. Beaver County election officials post a list of ballots with “observable defects” to the county’s website and to the “leadership of both major parties.”¹⁹ Voters are also permitted to contact the Bureau of Elections “at any time to inquire” if their ballot envelope has a defect that requires “curing.”

54. These steps are effective in both preserving voters’ right to have their vote counted and promoting the counties’ interest in fair and orderly election administration. A recent investigation found that the mail-in-ballot rejection rate “goes down significantly” when a county notifies the voter and provides an opportunity to fix the error. *See* Carter Walker, *ACLU signals effort to target disparate ‘notice and cure’ policies for flawed mail ballots*, VOTEBEAT PA. (May 16, 2024), <https://www.votebeat.org/pennsylvania/2024/05/16/aclu-lawsuit-challenges-butler-county-mail-ballot-notice-cure-policy-act-77/>. For instance, 62% of defective ballots in Allegheny County and 66% in Chester County were “cured” in the April 2024 primary election. *Id.*

E. In April 2024, the Washington County Board of Elections Changed its Mail-in Voting Policy and Practice.

55. In the lead-up to both the 2023 primary and general elections, Washington County was one of the counties that promptly and accurately recorded defective mail-in ballots in the SURE system as “CANC – NO DATE” and “CANC – NO SIGNATURE.” *See* Ex. 8, AS Decl. ¶ 11(a).

56. The County permitted voters to “cure” mail-in ballots that lacked a signature by going to the election office to add the signature. *See* Washington County Board of Elections

¹⁹ A true and correct copy of the May 8, 2024 Right-to-Know Law Response from Stacey L. Householder, Open Rec. Officer, Beaver Cnty. to ACLU-PA regarding Beaver County Elections Office Procedure is attached hereto as Exhibit 16.

Meeting Minutes for Apr. 26, 2023 and Sept. 19, 2023.²⁰ Voters who forgot the date or wrote an “incorrect date” could request a replacement mail-in ballot or vote a provisional ballot at their local polling place on Election Day. *See* Mike Jones, *Washington County Elections Officials Considering Options for Ballot ‘Curing’*, OBSERVER-REPORTER (Mar. 13, 2024), <https://www.observer-reporter.com/news/local-news/2024/mar/13/washington-county-elections-officials-considering-options-for-ballot-curing/>.

57. On March 12, 2024, following the distribution of DOS’s release notes adding new “PEND” codes to the SURE system, the Washington County Board of Elections met to reconsider their ballot “curing” process. *Id.*

58. At that meeting, Election Director Melanie Ostrander reportedly explained that counties had “multiple options” to handle “curing” in light of the DOS SURE-system update. *Id.* Board members could continue directing the election office to mark erroneous ballots “cancelled” so the voter received an email alerting them to the problem, or they could implement a “notice and cure” procedure in which election staff contact voters about the problem and allow them to fix it in the office. *Id.*

59. On April 11, 2024, the Washington County Board of Elections met again to discuss whether to change the existing “notice and cure” process for the April 2024 election. *See* Washington County Board of Elections Meeting Minutes from April 11, 2024.²¹

60. By this date, mail voting for the April primary was well underway. According to the SURE system information, Washington County had already sent out the majority of its mail-

²⁰ A true and correct copy of the April 26, 2024 Right-to-Know Law Response from Cynthia B. Griffin, Washington Cnty. Chief Rec. Officer to ACLU-PA producing Washington County Board of Elections Meeting Minutes from April 26, 2023 and Sept. 19, 2023 is attached hereto as Exhibit 17.

²¹ A true and correct copy of the May 14, 2024 Right-to-Know Law Response from Sarah A. Scott, Counsel for Washington Cnty. to ACLU-PA producing Washington County Board of Elections Meeting Minutes from April 11, 2024 is attached hereto as Exhibit 18.

in ballots nearly two weeks before, on April 1, 2024. *See* Ex. 8, AS Decl. ¶ 13(c). Director Ostrander advised the Board that their office had already identified “62 defective ballots,” about half of which were missing the final two digits in the year, following the DOS redesign of the outer envelope, which added “20__” to the date. Mike Jones, *Washington County Won’t Allow Voters to ‘Cure’ Defective Mail-in Ballots*, OBSERVER-REPORTER (Apr. 12, 2024), <https://www.observer-reporter.com/news/local-news/2024/apr/12/washington-county-wont-allow-voters-to-cure-defective-mail-in-ballots/>.

61. Election Director Ostrander again explained the “menu of options” for how counties can handle ballots with errors. She told the Board that (1) counties can contact the voter to let them know about the error and provide an opportunity to fix it at the election office; (2) the election office can mark the ballot “cancelled” so the voter will be notified by email that they need to request a new ballot or vote provisionally at their polling place; or (3) the election office can take no action and the voter will not learn about the error or have any opportunity to correct it. *Id.*

62. Following the discussion, the Washington County Board of Elections voted 2-1 to not allow any “curing” in the upcoming primary election, and instructed the county election office to enter defective mail-in ballots into the SURE system as “received,” despite the fact that those ballots could not be counted. *Id.*

63. On April 16, 2024, attorneys from the American Civil Liberties Union of Pennsylvania (ACLU-PA) and the Public Interest Law Center (PILC) sent a letter to the Washington County Board of Elections urging the Board to change its decision and allow “curing” or at a minimum, to enter the segregated ballots into the SURE system as “cancelled”

so that voters would be notified and have the option to cast a provisional ballot on Election Day.²² The Board never responded to the letter.

64. At the Board's April 18, 2024 meeting, community members, including representatives from Washington Branch NAACP, provided public comment criticizing the Board's decision not to notify voters who made mistakes on their declaration envelopes. One resident noted that by refusing to allow ballot curing, the Board was "essentially creating a scenario where individuals may unknowingly have their voices silenced." See Mike Jones, *Washington Co. Commissioners Refuse to Reverse Course on Ballot-Curing Decision*, HERALD-STANDARD (Apr. 20, 2024), <https://www.heraldstandard.com/local-news/2024/apr/20/washington-co-commissioners-refuse-to-reverse-course-on-ballot-curing-decision/>. At the meeting, 28 individuals provided public comment in support of "curing" mail-in ballots and only 7 spoke in favor of the Board's decision. *Id.*

65. Following more than an hour of public comment, Commissioner Maggi asked his colleagues to reconsider their decision not to allow "curing." *Id.* His motion to "reconvene to reconsider this issue" did not receive a second from either Commissioner Sherman or Commissioner Janis. *Id.* Commissioner Sherman stated, "My vote would not change." *Id.*

66. As of the April 18th meeting, 170 ballots with "curable" defects had already been identified and segregated. *Id.*

²² A true and correct copy of the Letter from ACLU-PA and PILC to Gary Sweat, Washington Cnty. Solicitor (Apr. 16, 2024) is attached hereto as Exhibit 19.

F. The Board's New Policy and Practice Concealed Vital Ballot Status Information from Voters and the Public, Causing Needless Disenfranchisement.

67. Pursuant to the Board's new policy, throughout the April 2024 election cycle the Washington County election office marked mail-in ballots that contained disqualifying errors as "received" instead of "cancelled." *See* Ex. 8, AS Decl. ¶ 14(b).

68. As a result, voters with defective declaration envelopes and missing secrecy envelopes were sent an automatic SURE-system email telling them only that their ballot "has been received" and that they "may receive another notification" if Washington County "identifies an issue" preventing the ballot from being counted. "Otherwise, you will not receive any further updates on the status of your ballot . . . and you are no longer permitted to vote at your polling place location." *See, e.g.*, Ex. 2, JM Decl at Ex. B. Voters checking the DOS online tracker to determine the status of their mail-in ballot received a similar message, misleading voters to believe that their mail-in ballot would be counted.

69. Moreover, Washington County instituted additional practices that prevented voters from learning that their mail-in ballot was defective and would not be counted.

70. Although the Board initially stated that voters could call to find out if their ballot had been set aside, Commissioner Maggi subsequently told news reporters that the Board's policy was to refuse to provide that information to voters: "If [voters] call our elections office, all they're going to tell [them] is they received it. They're not going to say that it wasn't signed or the date wasn't correct." Bob Mayo, *Voter Rights Advocates Urge Washington County: Let Mail Ballot Voters Correct Envelope Mistakes*, PITTSBURGH WTAE ACTION NEWS 4 (Apr. 16, 2024), <https://www.wtae.com/article/washington-county-ballot-curing-aclu-public-interest/60516485>.

71. Upon information and belief, no other county in Pennsylvania actively conceals the insufficiency of a voter's mail-in ballot submission, especially when a voter calls their county elections' office to inquire whether their mail-in ballot meets the requirements and will be counted.

72. Washington County also refused to provide a publicly available list of voters with deficient mail-in ballots, as required by the Election Code, which designates “[a]ll official mail-in ballots, files, applications for ballots and envelopes on which the executed declarations appear and all information and lists” as public records. 25 P.S. § 3150.17(a) (mail-in ballots); *id.* § 3146.9(a) (absentee ballots). The Election Code requires counties to compile these lists and make them publicly available “upon request within 48 hours of the request.” *id.* § 3150.17(c) (mail-in ballots); *id.* § 3146.9(c) (absentee ballots).

73. Because Washington County entered data into the SURE system showing that voters whose mail ballot packets contained errors were “received,” it also created inaccurate records and poll books for use at the polls on Election Day. *See supra* ¶¶ 39-40.

74. Washington County Board of Elections' actions ultimately prevented voters from exercising their right to vote by provisional ballot.

75. As of the date of this Complaint, Washington County still has not informed mail-in voters whose mail ballots contained declaration envelope errors or were missing secrecy envelopes in the April 2024 election that their ballots were cancelled and not counted. Nor did Washington County enter accurate codes into the SURE system regarding those ballots.

76. According to the County's post-election response to a Right-to-Know-Law request,²³ Washington County did not count the following timely-received ballots from otherwise qualified and eligible voters:

- a. 126 ballot envelopes were signed, but had an "incomplete date";
- b. 41 ballot envelopes were signed, but had an "incorrect date";
- c. 18 ballot envelopes were signed, but undated;
- d. 3 ballot envelopes were undated and had a signature in the "wrong area";
- e. 1 ballot envelope was not signed and had an incomplete date;
- f. 6 ballot envelopes were dated, but not signed;
- g. 52 ballot envelopes were neither signed nor dated; and
- h. 12 ballot packets were lacking a secrecy envelope.

77. In total, Washington County deprived 259 eligible mail-in voters who timely returned ballot packages with defects, which represents 2% of all timely-received mail-in ballots.²⁴ These voters are both Democrats and Republicans. Three quarters of the voters whose mail-in ballots were rejected by Washington County were over age 65, and 30% were over the age of 80.²⁵

²³ A true and correct copy of the May 17, 2024 Right-to-Know Response from Cynthia B. Griffin, Chief Clerk and Agency Open Rec. Officer for Washington Cnty. to ACLU-PA producing the names of mail-in ballot voters who submitted timely ballots but were set aside for minor errors is attached hereto as Exhibit 20.

²⁴ According to the "Summary Results Report for the 2024 General Primary," there were a total of 11,185 "ballots cast" in the April 2024 primary election. The 259 segregated ballots therefore represent more than 2% of all timely-received mail-in ballots that were received by the Washington County election office. *Summary Results Report 2024 General Primary*, WASHINGTON CNTY (May 6, 2024), https://cms.washingtoncopa.gov/uploads/2024_Primary_Election_Summary_Official_Results_0521195ffc.pdf.

²⁵ These figures were determined based on an analysis of the ages and political affiliations of the voters identified in Washington County's May 17, 2024, Right-to-Know Response Letter, *supra* n. 23.

78. These voters' ballots were marked as received in the SURE System despite the fact that they were disqualified. Many of these voters still do not know that the County did not count their vote in April 2024.

G. Absent Relief, Washington County Will Once Again Disenfranchise Hundreds of Qualified, Eligible Voters in the Upcoming General Election.

79. Counties will begin processing applications for mail-in ballots for the November 5, 2024 general election on September 16, 2024. *See* 25 P.S. § 3150.12a(a).

80. Voters must return their mail-in ballots to the county boards of elections by 8:00 p.m. on Election Day in order for their vote to be counted in the election. 25 P.S. §§ 3146.6(c), 3150.16(c).

81. The Washington County Board of Elections has given every indication that it intends to continue its policy and practice of concealing information and misleading voters about their mail-in ballot status by entering inaccurate codes into the SURE system, thus depriving voters of any opportunity to vote by provisional ballot in the upcoming November 5, 2024 general election. *See* Mike Jones, *Washington Co. Commissioners Refuse to Reverse Course on Ballot-Curing Decision*, HERALD-STANDARD (Apr. 20, 2024), <https://www.heraldstandard.com/local-news/2024/apr/20/washington-co-commissioners-refuse-to-reverse-course-on-ballot-curing-decision/>; *see also* Mamie Bah, *ACLU Speaking Out After Vote by Washington County Commissioners*, CBS PITTSBURGH (Apr. 16, 2024), <https://www.cbsnews.com/pittsburgh/news/american-civil-liberties-union-of-pennsylvania-washington-county-curing-ballots/>.

82. As a result, Plaintiffs will once again be subject to the Board's unlawful policy and practice in the November general election, and hundreds of voters will once again be disenfranchised.

H. Plaintiffs Have Been and Will Continue to Be Injured by Washington County's Policy and Practice of Concealing Information about Rejected Mail-in Ballots and Misleading Voters about Their Ballot Status.

Plaintiff Bruce Jacobs

83. Bruce Jacobs is a qualified, eligible Washington County voter who was disenfranchised in the April 2024 primary due to the Board of Elections' decision to conceal information about voters who made mistakes when completing their mail-in ballot.

84. Mr. Jacobs is a 65-year-old resident of Venetia, Pennsylvania who has voted in Washington County for decades. *See* Ex. 1, BJ Decl. ¶¶ 3, 6.

85. Ahead of the April 2024 primary election, Mr. Jacobs applied for and received a mail-in ballot. *Id.* ¶ 8. He marked the ballot, inserted it into the secrecy envelope and outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶ 10.

86. Mr. Jacobs' ballot was timely received by the Washington County election office. But because he forgot to sign and date the declaration envelope, the election office set aside Mr. Jacob's ballot and did not count it in the vote totals. *Id.* ¶ 12.

87. The Washington County Board of Elections never notified Mr. Jacobs that he made a disqualifying mistake when completing his mail-in ballot packet. *Id.* ¶ 12. Mr. Jacobs only learned that his vote was not counted when he received a phone call from a non-profit organization nearly two months after the election. *Id.* ¶ 12.

88. Had Mr. Jacobs known that his mail-in ballot would not be counted, he would have done whatever was necessary to ensure his vote was counted, including casting a provisional ballot at his polling place on Election Day. *Id.* ¶ 14.

89. Mr. Jacobs will vote by mail in the November 2024 general election. *Id.* ¶ 17.

Plaintiff Jeffrey Marks

90. Jeffrey Marks is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board of Elections' decision to conceal information about voters who made mistakes when completing their mail-in ballot.

91. Mr. Marks is a 72-year-old resident of Washington, Pennsylvania. *See* Ex. 2, JM Decl. ¶¶ 2-3. He has been a registered voter in Washington County for decades. *Id.* ¶ 3.

92. Ahead of the April 2024 primary election, Mr. Marks applied for and received a mail-in ballot. *Id.* ¶ 6. He marked the ballot, inserted it into the secrecy envelope and outer return envelope, and signed and dated the outer return envelope. *Id.* ¶¶ 6-8.

93. On April 22, 2024, Mr. Marks received an email from Washington County stating that the county had received his ballot. *Id.* ¶ 9. Consequently, Mr. Marks believed his vote would be counted. *Id.* ¶ 10.

94. To the contrary, the election office set aside Mr. Marks' ballot and did not count it in the vote totals because Mr. Marks inadvertently failed to complete the date on his declaration envelope. *Id.* ¶ 11.

95. The Board never notified Mr. Marks that he had made a disqualifying mistake when completing his mail-in ballot packet. Mr. Marks only learned that his vote was not counted when he received a phone call from a non-profit organization nearly two months after the election. *Id.* ¶¶ 11-12.

96. Had Mr. Marks known that his mail-in ballot would not be counted, he would have cast a provisional ballot at his polling place on Election Day. *Id.* ¶ 13.

97. Mr. Marks will vote by mail in the November 2024 general election. *Id.* ¶ 15.

Plaintiff June DeVaughn Hython

98. June DeVaughn Hython is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board's decision to conceal information about voters who made mistakes when completing their mail-in ballot.

99. Ms. DeVaughn Hython is an 85-year-old resident of Canonsburg, Pennsylvania and has voted in Washington County for over half a century. *See* Ex. 3, JDH Decl. ¶¶ 2-3. She previously served as a poll worker in Washington County. *Id.* ¶ 5.

100. Ahead of the April 2024 primary election, Ms. DeVaughn Hython applied and received a mail-in ballot. She marked her ballot, inserted it into the secrecy envelope and outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶ 8.

101. Ms. DeVaughn Hython's ballot was timely received by the Washington County election office, but because she signed in the incorrect area and failed to date the declaration envelope, the election office set aside her ballot and did not count it in the vote totals. *Id.* ¶ 10.

102. The Washington County Board of Elections never notified Ms. DeVaughn Hython that she had made a disqualifying mistake when completing her mail-in ballot packet during the April 2024 primary election, and Ms. DeVaughn Hython believed her vote had been counted. *Id.* ¶ 10. She only learned that her ballot had been disqualified when she received a phone call from a non-profit organization nearly two months after the election. *Id.*

103. Had Ms. DeVaughn Hython known that her mail-in ballot would not be counted, she would have done whatever was necessary to make sure her vote was counted, including casting a provisional ballot at her polling place on Election Day. *Id.* ¶ 12.

104. Ms. DeVaughn Hython intends to vote by mail in the November 2024 general election. *Id.* ¶ 13.

Plaintiff Erika Worobec

105. Erika Worobec is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board's decision to conceal information about voters who made mistakes when completing their mail-in ballot.

106. Ms. Worobec is a 45-year-old resident of Cecil, Pennsylvania who recently moved to Washington County. *See* Ex. 4, EW Decl. ¶¶ 2-3.

107. Ahead of the April 2024 primary election, Ms. Worobec applied for and received a mail-in ballot. *Id.* ¶ 8. She marked the ballot, inserted it into the secrecy envelope and outer return envelope, signed and dated the outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶ 8.

108. Ms. Worobec's ballot was timely received by the Washington County election office, but because she inadvertently did not complete the date, the election office set aside Ms. Worobec's ballot and did not count it in the vote totals. *Id.* ¶ 9.

109. The Washington County Board of Elections never notified Ms. Worobec that she made a disqualifying mistake when completing her mail-in ballot packet. *Id.* ¶¶ 10, 13. She only learned that her vote was not counted when she received a phone call from a non-profit organization nearly two months after the election. *Id.* ¶ 9.

110. Had Ms. Worobec known that her mail-in ballot would not be counted, she would have done whatever was necessary to make sure her vote was counted, including casting a provisional ballot at her polling place on Election Day. *Id.* ¶ 11.

111. Ms. Worobec will vote by mail in the November 2024 general election. *Id.* ¶ 14.

Plaintiff Sandra Macioce

112. Ms. Macioce is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board's decision to conceal information about voters who made mistakes when completing their mail-in ballot.

113. Ms. Macioce is a 64-year-old resident of Canonsburg, Pennsylvania and has lived in Washington County since 2019. *See* Ex. 5, SM Decl. ¶¶ 2-3.

114. Ahead of the April 2024 primary election, Ms. Macioce applied for and received a mail-in ballot. She marked the ballot, inserted it into the secrecy envelope and outer return envelope, signed and dated the outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶¶ 6-7.

115. On April 15, 2024, Ms. Macioce received an email from Washington County stating that the county received her ballot. *Id.* ¶ 7. Consequently, she believed her vote would be counted. *Id.*

116. Ms. Macioce's ballot was timely received by the election office but because she inadvertently did not complete the date, the election office set aside her ballot and did not count it in the vote totals. *Id.* ¶ 8. Ms. Macioce only learned that her vote was not counted when she received a phone call from a non-profit organization nearly two months after the election. *Id.* ¶ 8.

117. Had Ms. Macioce known that her mail-in ballot would not be counted, she would have done whatever was necessary to make sure her vote was counted, including casting a provisional ballot at her polling place on Election Day. *Id.* ¶ 9.

118. Ms. Macioce will vote by mail in the November 2024 general election. *Id.* ¶ 10.

Plaintiff Kenneth Elliott

119. Kenneth Elliott is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board of Elections' decision to conceal information about voters who made mistakes when completing their mail-in ballot.

120. Mr. Elliott is a 48-year-old resident of Amity, Pennsylvania. *See* Ex. 6, KE Decl. ¶ 2. He has been a registered voter in Washington County for his entire adult life. *Id.* ¶ 3.

121. Ahead of the April 2024 primary election, Mr. Elliott applied for and received a mail-in ballot. *Id.* ¶ 8. He marked the ballot, inserted it into the secrecy envelope and outer return envelope, and signed and dated the outer return envelope. *Id.*

122. On April 22, 2024, Mr. Elliott received an email from Washington County stating that the county had received his ballot. *Id.* ¶ 9. Consequently, Mr. Elliott assumed that his vote would be counted in the election. *Id.*

123. To the contrary, the election office set aside Mr. Elliot's ballot and did not count it in the vote totals because Mr. Elliott wrote an "incomplete date" on the outer declaration envelope. *Id.* ¶ 10.

124. The Board never notified Mr. Elliott that he had made a disqualifying mistake when completing his mail-in ballot packet. Mr. Elliott only learned that his vote was not counted when he received a phone call from Washington County NAACP President David Gatling more than two months after the election. *Id.*

125. Had Mr. Elliott known that his mail-in ballot would not be counted, he would have cast a provisional ballot at his polling place on Election Day. *Id.* ¶ 11.

Plaintiff David Dean

126. David Dean is a qualified, eligible Washington County voter who was disenfranchised by the Washington County Board of Elections in the April 2024 primary election due to the Board's decision to conceal information about voters who made mistakes when completing their mail-in ballot. *See* Ex. 7, DD Decl. ¶ 10.

127. Mr. Dean is a 54-year-old resident of Canonsburg, Pennsylvania and member of the Washington Branch NAACP. *Id.* ¶¶ 2-3. On Election Day, Mr. Dean works as a poll worker in Washington County. *Id.* ¶ 6.

128. Ahead of the April 2024 primary election, Mr. Dean applied for and received a mail-in ballot. He marked his ballot, inserted it into the secrecy envelope and outer return envelope, and mailed the ballot back to Washington County prior to Election Day. *Id.* ¶ 9.

129. Mr. Dean's ballot was timely received by the Washington County election office, but because he wrote an "incomplete date" on the declaration envelope, the election office set aside his ballot and did not count it in the vote totals. *Id.* ¶ 10.

130. The Washington County Board of Elections never notified Mr. Dean that he had made a mistake when completing his mail-in ballot packet during the April 2024 primary election. *Id.* ¶¶ 10-11. He only learned that his ballot had been disqualified several months after the election when he received a phone call from Washington Branch NAACP President David Gatling, who explained that his vote had not been counted in the election. *Id.*

131. Had Mr. Dean known that his mail-in ballot would not be counted, he would have done whatever was necessary to make sure his vote was counted, including casting a provisional ballot at his polling place on Election Day. *Id.* ¶ 12.

132. Mr. Dean will vote by mail in the November 2024 general election. *Id.* ¶ 14.

Plaintiff Center for Coalfield Justice

133. For 30 years, CCJ has helped Washington County residents impacted by coal mining and fossil fuel extraction protect their rights to a healthy environment and a thriving economy. CCJ provides community members with information about proposed extraction projects and their potential environmental impacts, organizes members to advocate for better oversight of the fossil fuel industry, and helps residents address the effects of that industry on their local economies.

134. Voter participation is critical to achieving each of CCJ's objectives. Accordingly, in 2020 CCJ launched the Defending Democracy Program to increase civic engagement of community members who live with the daily impacts of fossil fuel extraction and use. Through this program, CCJ educates Washington County residents about political candidates' positions on important environmental, public health, and economic issues. CCJ also raises awareness about the influence that corporate interests can have on shaping policy and regulation, and the importance of turning out to vote to ensure that those elected to office will advance the health, prosperity, and safety of local community members. CCJ also engages in non-partisan voter education efforts to ensure that all residents of Washington County have the information they need to participate in the democratic process.

135. The Washington County Board of Elections' decision to conceal the status of mail-in ballots and affirmatively mislead voters, thus depriving mail-in voters of the opportunity to have their vote counted, has directly impaired CCJ's ability to fulfill its mission and forced CCJ to divert time and resources away from its core work to address the disenfranchisement of the County's voters.

136. Upon learning that Washington County was segregating defective mail-in ballots and concealing those voters' ballot status, CCJ quickly redirected staff and resources to investigate and analyze the new policy and to conduct outreach to potentially affected voters before Election Day and educate them about their options to have their ballot counted in the 2024 primary election.

137. Based on information initially provided to CCJ by the Washington County election office, CCJ developed an outreach plan to inform members via text message and social media that they should contact the Washington County election office to inquire whether their mail-in ballot would be counted. CCJ also created public education and social media materials to inform the larger community about the County's change in policy and its potential impact on voters.

138. CCJ planned to inform individuals who were told they had made an error about the option of casting a provisional ballot on Election Day to ensure their vote would be counted. However, several days into this outreach campaign, CCJ learned that when Washington County residents called to inquire about the status of their mail-in ballot, the election staff refused to provide any information.

139. CCJ then made several attempts to obtain the list of voters whose ballots had been disqualified, including by requesting the list in person at the election office before Election Day, but was unable to access the information.

140. As a result of Washington County's actions, CCJ has been forced to delay important initiatives, including a public education campaign to raise awareness about fracking in coalfields and statewide advocacy work around climate equity. CCJ also had to forego an

opportunity to apply for grant funding that would have supported the organization's efforts to address the impact of the opioid crisis in their communities.

141. If the Board's policy remains in place for the November general election, CCJ will need to continue putting projects on hold in order to address its impact on CCJ members, many of whom will be disenfranchised as a result of the policy, and CCJ's ability to pursue its core mission will continue to be impeded. For example, CCJ had planned to advance its Money in Politics campaign, which raises awareness about the impact of money from wealthy corporations on the policies and actions of elected officials. Instead, CCJ will need to conduct an extensive outreach campaign to alert community members that they will not be able to access accurate information about the status of their mail-in ballot, and work to educate voters to minimize the significant disenfranchisement of their members in November's election.

Plaintiff Washington Branch NAACP

142. The Washington Branch NAACP works to improve the political, educational, social, and economic status of Black Americans by fighting discrimination and addressing the impacts of historic disinvestment, disenfranchisement, and institutionalized racism in Washington County. Over the past several years, their work has included a wide range of efforts to remedy civil rights violations suffered by members and campaigns to improve political equality and educational equity. The Washington Branch NAACP has nearly 200 members, many of whom are registered voters who regularly vote in Washington County, including by mail-in ballot.

143. Civic engagement is crucial to the Washington Branch NAACP's efforts to empower historically disadvantaged communities and increase their representation in government. Accordingly, the Washington Branch NAACP works to expand voter participation

among its members through voter registration and turnout efforts, organizes candidate fora to help voters make informed decisions at the polls, and provides public education to improve trust in the political process.

144. The Washington County Board of Elections' decision in April of 2024 to conceal the status of mail-in ballots and affirmatively mislead voters has disrupted the Washington Branch NAACP's ability to pursue its mission by disenfranchising its members, damaging perceptions of the integrity of the electoral system, and threatening to decrease voter turnout in future elections.

145. Since Washington County changed its mail-voter-notification policy in April 2024, the Washington Branch NAACP has had to shift its resources away from previously planned initiatives. These include planning a campaign to promote mental health among Black residents and mobilizing to oppose educational redlining. Instead, the NAACP has redirected resources to address the county board's actions, advocating against the new policy and investigating concerns about voter disenfranchisement in the community.

146. If Washington County's policy is permitted to stay in place for the November general election, the Washington Branch NAACP will be forced to continue diverting staff time and funding to develop and implement tools and strategies to prevent eligible, qualified voters from having their ballots disqualified, and its many of its members will be disenfranchised.

147. The Voter-Plaintiffs' deprivation of due process and the opportunity to exercise right to vote, and the Organizational Plaintiffs' diversion of resources and disenfranchisement of its members, are irreparable injuries that are capable of repetition yet evading review, and for which there is no adequate remedy at law.

COUNT I
Violation of the Pennsylvania Constitution's
Procedural Due Process Guarantee, Art. I, § 1

148. Plaintiffs hereby incorporate the foregoing paragraphs as if they were fully set forth herein.

149. Article I, Section 1 of the Pennsylvania Constitution provides: “All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” PA. CONST. Art. I, § 1.

150. The Pennsylvania Supreme Court has long recognized that the “guarantee of due process of law, in Pennsylvania jurisprudence, emanates from a number of provisions of the Declaration of Rights,” including Article I, Section 1. *Khan v. State Bd. of Auctioneer Exam'rs*, 842 A.2d 936, 945 (Pa. 2004).

151. “The central demands of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018) (internal citation and quotations omitted). These rules are intended to “minimize substantively unfair or mistaken deprivations of life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests.” *Washington v. Pa. Dep't of Corr.*, 306 A.3d 263, 285 (Pa. 2023) (quoting *Carey v. Piphus*, 435 U.S. 247, 259 (1978)).

152. To ascertain what process is due, Pennsylvania courts rely on the three-part test first developed in *Mathews v. Eldridge*, balancing (1) the private interest affected by the official action; (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards; and (3) the government's interest, including the fiscal and

administrative burden that the additional procedures would entail. *Id.* at 299-300 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

153. Balancing these interests, Washington County Board of Elections' actions concealing voters' mail-in ballot status and affirmatively misleading many voters violates Plaintiffs' procedural due process rights.

154. *First*, the private interest affected by the Board's actions is the complete loss of the fundamental right to vote. *See Applewhite v. Commonwealth*, 54 A.3d 1, 3 (Pa. 2012) ("the right to vote in Pennsylvania, as vested in eligible, qualified voters, is a fundamental one"); *see also In re Nader*, 858 A.2d 1167, 1181 (Pa. 2004) ("the right to vote" is "fundamental").

155. In the April 2024 primary election, the Washington County Board of Elections' new policy to actively conceal from voters that they had made a disqualifying error on their mail-in ballot, and in many cases to affirmatively mislead voters into believing that their mail-in ballot would count, violates the notice requirements of due process and deprived more than 250 Washington County mail-ballot voters, including the Voter-Plaintiffs, of their right to vote. Washington County's policy left Voter-Plaintiffs and other similarly situated voters "no recourse . . . and no way to remedy the loss of that vote in the election." *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *7 (N.D. Ill. Mar. 13, 2006). If the Board's policy is allowed to continue for November's general election, where much higher turnout is expected, significantly more than 250 voters, of all political persuasions, will be disenfranchised.

156. *Second*, the risk of erroneous deprivation coupled with the probable value of additional safeguards also weighs in Plaintiffs' favor. Washington County's policy not only gives election workers authority to cancel voters' mail-in ballots without notice, it effectively denies voters any means of learning about their ballot status before Election Day, thus depriving

them of any opportunity, much less a meaningful one, to address the County's determination to cancel their vote. Moreover, Washington County's deliberate concealment of disqualifying defects on mail-in ballot submissions, and affirmative misleading of many voters, deprives voters from preserving their right to vote through the existing statutory provisional ballot process, a process intended to operate as a backstop to prevent the loss of the right to vote. *See* Ex. 12, *Keohane*, CV-2023-004458 at 3; *see also* § 3050(a.4)(5).

157. The risk of erroneous deprivation created by this policy is unreasonable in light of the fact that additional safeguards would greatly reduce this risk. *See Jaeger*, 464 F. Supp. 3d 1039, 1053 (D.N.D. 2020) (the "value of additional procedures to safeguard against erroneous ballot rejections" becomes "apparent" where "[t]he result is the outright disenfranchisement of otherwise qualified electors"); *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 158 (Pa. 1964) ("the disenfranchisement of even one person validly exercising his right to vote is an extremely serious matter").

158. *Third*, additional procedures would not impair the County's interests. Promptly and accurately entering the status of mail-in ballots in the SURE system would pose no administrative burden on the County. Indeed, prior to April 2024, Washington County both gave notice and provided an opportunity to correct defective mail-in ballots. And the widespread use of effective notification procedures by counties across the state, including neighboring ones, is further testament to the *de minimis* burden.

159. For instance, upon receiving a voter's mail-in ballot election workers must already enter a code into the SURE system. They would simply need to enter the correct code to make accurate mail-in ballot status information available to voters and the public. Moreover, the ability to vote a provisional ballot to correct a defective mail-in ballot already exists, and other

counties' varied means of allowing voters to rescue defective ballots evidences the minimal administrative cost. Such steps would ultimately *promote* the County's interests in ensuring the fair and orderly administration of elections. *See Frederick*, 481 F. Supp.3d at 796 (state has important interest in "maintaining election integrity" and "providing mail-in absentee voters notice and the opportunity to cure . . . by confirming their identity in fact promotes these important governmental interests"); *Jaeger*, 464 F. Supp. 3d at 1053–54 ("allowing voters to verify the validity of their ballots demonstrably advances—rather than hinders—these goals.")

160. In short, Article I, Section 1 entitles qualified, eligible voters to know when their mail-in ballot is disqualified in time to rescue their right to vote by casting a provisional ballot. Washington County's actions have deprived and will continue to deprive Plaintiffs of the Pennsylvania Constitution's due process guarantee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Honorable Court enter judgment in their favor and against the Washington County Board of Elections, and:

- a. Declare that the Washington County Board of Elections' policy and practice of concealing information and misleading voters about their mail-in ballot status is unconstitutional and invalid because it violates the rights of Plaintiffs and all voters under the Pennsylvania Constitution's Due Process Guarantee, Article I, Section 1;
- b. Enjoin the Washington County Board of Elections from concealing information and misleading voters about their mail-in ballot status;
- c. Direct the Washington County Board of Elections to provide accurate, timely information to voters about mail-in ballots containing disqualifying errors,

including by promptly and accurately entering voters' ballot status into the SURE system, so that at a minimum, voters have an opportunity to cast a provisional ballot on Election Day; and

- d. Provide such other and further relief as this Honorable Court deems just and appropriate.

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Jeffrey S. Edwards (No. 73978)
Luke M. Reilly (No. 324792)
Christopher J. Merken (No. 329814)
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VERIFICATION

I, Sarah Martik, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Sarah Martik

Dated: June 27, 2024

Name: Sarah Martik

Title: Executive Director

Center for Coalfield Justice

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VERIFICATION

I, David Gatling Sr., hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Dated: June 28, 2024

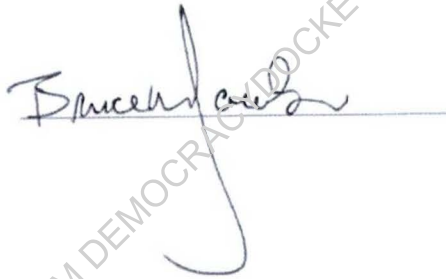
David Gatling, Sr.
President, Washington Branch NAACP

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VERIFICATION

I, Bruce Michael Jacobs, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Dated: June 27, 2024

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VERIFICATION

I, JEFFREY R. MARKS, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Handwritten signature of Jeffrey R. Marks over a horizontal line.

Dated: June 27, 2024

RETRIEVED FROM DEMOCRACYDOCKET.COM

VERIFICATION

June B. DeVaughn Hython

I, _____, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

June B. DeVaughn Hython

Dated: June 28, 2024

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VERIFICATION

I, ERIKA WYROBEC, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief, and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: June 27, 2024

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VERIFICATION

I, Sandra Macioce, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Sandra Macioce

Dated: June 26, 2024

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VERIFICATION

I, Kenneth Elliott, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Kenneth Elliott

Dated: June 29, 2024

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VERIFICATION

1. David L Dean, hereby state:

1. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
2. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

David L Dean

Dated: June 30, 2024

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Samsung Quad Camera
Shot with my Galaxy A12

CERTIFICATE OF COMPLIANCE

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

Dated: July 1, 2024



Witold J. Walczak
Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Complaint for Declaratory and Injunctive Relief has been served upon all other parties at the address(es) listed in the manner of service specified below, this 1st day of July, 2024.

Washington County Board of Commissioners
95 West Beau Street, Suite 605
Washington, PA 15301
By personal service pursuant to Pa.R.Civ.P. 402(a)(2)(iii)

Gary Sweat, Esq.
Washington County Solicitor
95 West Beau Street, Suite 605
Washington, PA 15301
Courtesy copy via electronic mail: gsweat@sweatlaw.com



Witold J. Walczak
Counsel for Plaintiffs

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EXHIBIT

1

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DECLARATION OF BRUCE JACOBS

I, Bruce Jacobs, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 65 years old and am otherwise competent to testify.

3. I am a resident of Venetia, Pennsylvania, located in Washington County. I have lived in Washington County for around 30 years.

4. I was a practicing occupational therapist for over 30 years, specializing in orthopedic hand and upper extremity care. I worked in both hospital and outpatient settings with a broad variety of patients who needed rehabilitative care. I helped people recover from and manage traumatic life experiences such as strokes, amputations, and spinal cord injuries. I was passionate about my job and working with people.

5. Since retiring in 2021, I have had more time to devote to my artistic passions. I am currently training to be a docent at the Carnegie Museum of Art in Pittsburgh. I am also a self-taught musician/archivist with a focus on traditional Appalachian and Irish fiddle tunes.

6. Voting and our rights as Americans have always been incredibly important to me. Both my wife and I worked long hours as therapists, she as a speech therapist in a school setting. We raised three daughters and even

with this busy schedule we were sure to vote in every presidential election. Now that I am retired, I make it a priority to vote in every primary and general election, including local elections for county officials.

7. I started voting by mail during the COVID pandemic in 2021 to protect the health of myself and my family. I have continued voting by mail in the years since because I found this to be a convenient way to vote.

8. I voted by mail this year. Ahead of the 2024 primary election, I applied for and received a mail-in ballot from Washington County.

9. Normally, my wife and I complete our mail-ballot packet on the same day, and we often double check each other's ballot envelopes. For this election, my wife ended up submitting her mail-in ballot a few days before I did. She then reminded me to do mine.

10. I marked my ballot, inserted it into the secrecy envelope and the outer return envelope, and mailed my ballot packet back to Washington County before Election Day. I thought I had done everything correctly.

11. I mailed my ballot packet back to Washington County right before Election Day. I did not receive any further communication from the county regarding the status of my mail-in ballot.

12. I first learned that my ballot was not counted when I received a phone call from a non-profit organization on June 12th, 2024. I was both

surprised and confused by this information; I did not know who the caller was or why I had not been contacted directly by Washington County election officials. According to the information that the caller received, I had forgotten to sign and date the outer envelope.

13. I began reading news articles about the decision of the Washington County Commissioners not to notify voters who made mistakes on their mail-in ballots ahead of the election. I feel angry that the county took away my right to vote and the voting rights of hundreds of others.

14. I only wish that I had been respected as an American and been notified that there was an error with the envelope delivering my ballot that prevented it from being counted. If they told me about the error, I would have immediately done whatever was necessary to make sure that my vote was counted in the primary election. I would have fixed the mistake at the county election office if that was an option, or I would have gone on Election Day to cast a provisional ballot at my local polling place.

15. Since Washington County made sure that I would not learn that my mail-in ballot was rejected, there was nothing I could do to correct their claim of an error.

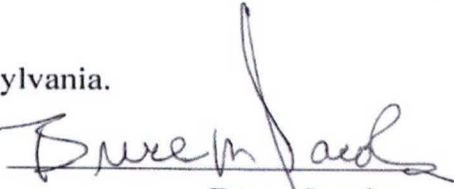
16. I was then, and am now, frustrated with the state of political affairs. I live in a county and a state where elections are close and every vote truly

counts. No voter should be rejected based on simple mistakes on their ballot envelope that are easily corrected—and certainly hundreds of voters in Washington County in the most recent election should not be disenfranchised for that reason. I am upset to see people’s rights and dignity eroding before our eyes.

17. I intend to vote by mail in the November 2024 general election, and want to know if the County decides to disqualify my mail-in ballot so that I can do whatever I need to do to make sure my vote is counted this time.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 24 of June, 2024 in Venetia, Pennsylvania.


Bruce Jacobs

EXHIBIT

2

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DECLARATION OF JEFFREY MARKS

I, Jeffrey Marks, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 72 years old and am otherwise competent to testify.

3. I was born in Pittsburgh, but have lived in Washington, Pennsylvania, for decades. I have been a registered voter in Washington County for more than 20 years.

4. For most of my career, I worked as a radiological engineer at the Bettis Atomic Power Laboratory in West Mifflin, Pennsylvania. We worked on decommissioning and health physics, which involves studying the effects of radiation exposure on the human body.

5. I started voting by mail during the COVID pandemic because it was the safest way to vote. Prior to 2020, I generally voted in person at my polling place.

6. I voted by mail this year. Ahead of the 2024 primary election, I applied for a mail-in ballot from Washington County. On April 16, 2024, I received an email notification stating that my ballot application had been processed and approved. A true and correct copy of the April 16, 2024 email is attached as Exhibit A.

7. When I received my mail-in ballot, I immediately marked the ballot,

inserted it in into the secrecy envelope and put it in the outer return envelope. I brought the ballot directly to the mail box so it would be picked up and arrive on time to the election office.

8. I was absolutely positive that I signed and dated the outer return envelope correctly. I used to work in a verbatim compliance environment in the nuclear energy industry for over 16 years, so I am very careful about following instructions, and was very conscientious to make sure the date was legible. In fact, before dropping it off at the mail box, I decided to take a photo of the outer envelope, because I wanted to have a record that I had filled everything out correctly in case someone tried to disqualify my ballot. I had heard in the news that there were all these problems with mail-in ballots not being counted over ticky-tacky requirements, and I wanted to have proof that I had done it correctly. I had also heard in the news that Washington County wasn't going to notify people if they made a mistake on their ballot, which I thought was ridiculous.

9. On April 22, 2024, I received an email stating that my ballot had been "received by" Washington County. A true and correct copy of the email dated April 22, 2024 is attached as Exhibit B. The email stated:

If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

10. After I received that email, I thought it was a done deal and assumed that my vote was going to be counted and deleted the photo so that it wouldn't take up space on my phone. When you receive an email like that, you think, "my vote is in and it's gonna count."

11. A few weeks after Election Day, I received a call from someone at the Center for Coalfield Justice. They told me that my mail-in ballot had not been counted because I had written an "incomplete date" on the outer envelope.

12. At first, I didn't believe it when I heard this, because I am certain that I filled out the ballot packet correctly. I understand that they don't want people voting who are not supposed to be. But I have so much identification, between my driver's license, mail, the name on my property. Washington County knows exactly who I am and where I live.

13. If I had been notified that I made a mistake, I would have gone to my polling place on Election Day and submitted a provisional ballot instead.

14. It's supposed to be that the only time your vote doesn't count is if you don't go out and vote. I made every effort to exercise my right to vote in this election, and I am angry to hear that my vote wasn't counted because of a supposed mistake. I understand the importance of being compliant, but not to the sublime. I want to see proof from Washington County that the date wasn't legible.

15. As of right now, I am planning to vote by mail in November, but I want to be certain that it's a fair process.

16. I feel like my right to vote has been stripped away because of Washington County's lack of communication. I want to stand up for what's right. The process should be fairer for people who make an honest mistake. I don't believe the process should be so cumbersome that people who have a right to vote, don't get the chance to vote.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 24th of June, 2024 in Washington, Pennsylvania.



Jeffrey Marks

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit A to Marks Declaration

RETRIEVED FROM DEMOCRACYDOCKET.COM

FW: Your Ballot Application Has Been Processed

skram1092 <skram1092@aol.com>
To: Kate Steiker-Ginzberg <ksteiker-ginzberg@aclupa.org>

Mon, Jun 17, 2024 at 5:20 PM

All emails from State 4

Sent from my T-Mobile 5G Device

----- Original message -----

From: STSVCOMP001@pa.gov
Date: 4/16/24 9:10 AM (GMT-05:00)
To: SKRAM1092@AOL.COM
Subject: Your Ballot Application Has Been Processed

Dear JEFFREY R MARKS,

The WASHINGTON County Election Office has processed your ballot application on 04/15/2024.

Your application status is: Approved.

If your application was approved, you will receive an email when your ballot is being prepared for mailing. You can always check your ballot status at the following Department of State link: <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>

If you have questions about your ballot application, please contact WASHINGTON County at (724) 228-6750.

Thank you

****Please do not reply to this email.****

RETRIEVED FROM DEMOCRACYBUCKET.COM

Exhibit B to Marks Declaration

RETRIEVED FROM DEMOCRACYDOCKET.COM

FW: Your Ballot Has Been Received

skram1092 <skram1092@aol.com>
To: Kate Steiker-Ginzberg <ksteiker-ginzberg@aclupa.org>

Mon, Jun 17, 2024 at 4:45 PM

See attached

Jeff

Sent from my T-Mobile 5G Device

----- Original message -----

From: RA-voterregstatcert@state.pa.us
Date: 4/22/24 10:26 AM (GMT-05:00)
To: SKRAM1092@AOL.COM
Subject: Your Ballot Has Been Received

Dear JEFFREY R MARKS,

Your ballot has been received by WASHINGTON County as of April 22, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx> .
要閱讀此資訊的中文版, 請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx> .

Thank you.

****Please do not reply to this email.****

EXHIBIT

3

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF JUNE DEVAUGHN HYTHON

I, June DeVaughn Hython, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 85 years old and am otherwise competent to testify.

3. I have lived in Washington County for 50 years and I have been a registered voter here that entire time.

4. I am a person who has always been involved in a lot of things. I used to raise horses and run a woman's clothing store. When I retired, I started working at a senior citizens community center. I still play darts there every Friday.

5. I have been voting since I was old enough to vote, and I was a poll worker in Washington County for many years. Those were long days, but I did it with three friends and really enjoyed helping people vote.

6. I have always loved the community experience of voting in person, but about three years ago I had to stop driving, so I started voting by mail.

7. I'm glad voting by mail is an option. A lot of people can't take time off work to get to the polls on Election Day. I remember when I was a poll worker, we would get a ton of people lining up right before the polls closed because they hadn't had time to drive over earlier.

8. I voted by mail this year. When I received my mail ballot, I filled it

out right away, put it in the secrecy envelope, filled out the outer envelope and sent it back more than a week before Election Day.

9. I thought I did everything right when I filled out the ballot envelope. I have voted by mail several times now and never had an issue except once after I got re-married and had to correct my new name. That time, I remember getting a call from a lady at the elections office and they sent me a paper to fill out so my vote would be counted.

10. This time, I didn't hear anything from the elections office, so I thought everything was fine. But a few weeks after Election Day, I received a call from someone at a non-profit organization who told me that my ballot had been rejected because I didn't sign the ballot envelope in the right place and I forgot to date it.

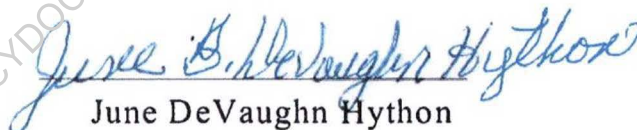
11. If I did sign my name in the wrong place or miss the date, I don't even know why that should matter. People make these kinds of silly mistakes all the time – it's like writing a check. Sometimes you miss the date.

12. I certainly would have corrected the problems if someone had just told me. I could have gotten a ride to the elections office to fix things if that was an option. And even if I had had to go to the polls on Election Day to vote provisionally, I would have asked a friend to drive me. There are people who will drive you to the polls, especially if you're a senior.

13. I plan to vote by mail again in November, and if I don't fill out the ballot envelope the way they want me to, I want them to tell me instead of just throwing out my vote. My vote should count as much as anyone else's.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 28 of June, 2024 in Canonsburg, Pennsylvania.


June DeVaughn Hython

RETRIEVED FROM DEMOCRACYDOCKEY.COM

EXHIBIT

4

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF ERIKA WOROBEC

I, Erika Worobec, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 45 years old and am otherwise competent to testify.

3. I moved with my family to Washington County about two years ago to begin operating a horse farm.

4. I grew up between Lancaster, Williamsport, and Pittsburgh, Pennsylvania. As an adult, I have also lived in New York and Colorado.

5. Voting is incredibly important to me. My great-grandparents came to the United States as refugees during the Russian revolution. They worked hard because they wanted future generations to have the right to question the government and elect leaders who will be best for our family. I take every opportunity to vote in honor of their legacy.

6. Part of my job as a mom is to protect my family, and voting is an important part of how I do that. I vote because I care deeply about protecting the environment, animal rights and human rights.

7. I started voting by mail during the COVID pandemic to protect the health and safety of myself and my family. I continued voting by mail in the years since then because I found it to be a convenient way to participate in the election.

8. Ahead of the 2024 primary election, I applied for and received a mail-in ballot. I was very excited when the ballot arrived because I'm really a nerd about the whole thing. I immediately took the mail-in ballot to the table, marked it and placed it in the secrecy envelope and the outer envelope. I thought I had filled everything out correctly, and put it right in my car to take to the mailbox the next morning.

9. Several weeks after the election, I received a phone call from the Center for Coalfield Justice informing me that my ballot had not been counted. Apparently, the county had received the ballot on time, but I had written an "incomplete date" on the outer envelope. I honestly thought it was a crank call. I kept asking them questions because it seemed so absurd that my vote had not been counted over such a trivial mistake.

10. I feel frustrated and disenfranchised that Washington County did not tell me before the election that they decided not to count my ballot. After the election, I found an email from them, but it only said that they received my ballot and nothing about it not being counted. How can our democracy be "by the people and for the people" if the government is making these sweeping decisions about which ballots shouldn't be counted without even telling people?

11. If the Washington County Board of Elections had notified me that my ballot wouldn't be counted, I immediately would have taken any steps that were

required to fix the issue. I would have gone to the election office to correct the ballot envelope, or I would have cast a provisional ballot at my polling place on Election Day.

12. I live only a few miles from Allegheny County. I don't understand why voters in neighboring counties receive an opportunity to fix their mail-in ballots and have them counted, but in Washington County we apparently have no rights as voters.

13. The fact that I found out after the election that my ballot wasn't counted makes me feel sick. I feel like I let my great-grandparents down, and all those who are being targeted for their beliefs and identities.

14. I plan to vote by mail again in November. I believe that Washington County should inform me if they are going to reject my ballot for any reason and should give me an opportunity to fix the situation prior to Election Day.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 27 of June, 2024 in Cecil, Pennsylvania.


Erika Worobec

EXHIBIT

5

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF SANDRA MACIOCE

I, Sandra Macioce, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.

2. I am 64 years old and am otherwise competent to testify.

3. I have lived in Washington County since 2019 and regularly vote in elections.

4. I was the office manager of a cancer center until I retired, and now I work part-time in a consignment store.

5. I started voting by mail during the COVID pandemic. After that, my husband and I realized that given our schedules, it was easier to vote by mail than in person, so I've voted by mail a few times since then.

6. I have never had an issue voting by mail before. This year, when I received my mail ballot, I marked it, put it in the secrecy envelope, and filled out the ballot return envelope, like usual.

7. On April 15, 2024, I received an email stating that my ballot had been received by Washington County. A true and correct copy of the April 15, 2024 email is attached as Exhibit A. I understood from the email that unless I received another email notifying me about an issue with my ballot envelope, I should assume my mail ballot would be counted and that I could not vote in person on

Election Day.

8. I didn't receive any more notifications from Washington County, but a few weeks after Election Day, I received a call from someone at a non-profit organization informing me that Washington County had disqualified my ballot because it had an "incomplete date."

9. It is hard to imagine how I messed that up, and I would really like to see the ballot to see what they mean by "incomplete" date. And I definitely would have liked to have fixed any errors. If I had known, I could have just gone to the elections office to fill in the rest of the date, or voted in person by provisional ballot.

10. I want to vote by mail in November, and if the elections office thinks I've made a small error on the return envelope, I want them to notify me so that I can correct it and make sure my vote is counted.

I understand that false statements herein are subject to the penalties of 18

Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 26 of June, 2024 in Canonsburg, Pennsylvania.



Sandra Macioce

Exhibit A to Macioce Declaration

RETRIEVED FROM DEMOCRACYDOCKET.COM

Fwd: Your Ballot Has Been Received

Gary Macioce <legacy1052019@gmail.com>
To: ksteiker-ginzberg@aclupa.org
Cc: cdepalma@pubintlaw.org

Wed, Jun 26, 2024 at 2:32 PM

----- Forwarded message -----

From: <RA-voterregstatcert@state.pa.us>
Date: Mon, Apr 15, 2024 at 12:03 PM
Subject: Your Ballot Has Been Received
To: <legacy1052019@gmail.com>

Dear SANDRA L MACIOCE,

Your ballot has been received by WASHINGTON County as of April 15, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

Thank you.

****Please do not reply to this email.****

—
Gary and Sandy Macioce
105 Legacy Drive
Canonsburg, PA 15317
legacy1052019@gmail.com

EXHIBIT

6

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF KENNETH ELLIOTT

I, Kenneth Elliott, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 48 years old and am otherwise competent to testify.
3. I was born and raised in Washington County. I have been a Washington County voter for my entire adult life.
4. I work in public relations and charitable giving for a non-profit organization.
5. Voting is an important right. It is our ability to determine who will be the best representative of our values. Before I cast my vote, I do research about all the candidates, regardless of their political party, before making my decision.
6. I started voting by mail when it became available during the COVID pandemic. I continued voting by mail in the years since. I am part of the LGBTQIA community and I prefer the privacy of voting from my home.
7. I always notice the emails about the mail ballot process. I got the email that said my mail-in ballot application had been received by Washington County, and another saying the application was approved. I also remember seeing an email that said, "Your ballot is on the way."
8. When I received my mail-in ballot for the April 2024 primary, I marked

the ballot, put it in the secrecy envelope, and filled out the ballot return envelope. I thought I had done everything correctly, because I never had an issue with mail-in voting before.

9. On April 22, 2024, I received an email saying that the county had received my mail-in ballot. The email said that if there was any irregularity, the county may contact me again. A true and correct copy of the email dated April 22, 2024 is attached hereto as Exhibit A. When I saw the email, I assumed that my ballot had been accepted and that everything was fine.

10. Two months after the election, I received a call from Washington Branch NAACP President, David Gatling. Mr. Gatling told me that my vote wasn't counted, along with more than 200 Washington County voters, because I had made mistake on my mail-in ballot. I learned later that I had written an "incomplete date" on the outer return envelope.

11. I am angry that my vote wasn't counted and that no one from Washington County contacted me about the issue with my mail-in ballot. If I had been notified, I would have easily gone to my polling place on Election Day to cast a provisional ballot.

12. I was planning to vote by mail-in ballot in November. At the moment, I am considering voting in person at my polling place because I don't have confidence in the mail-in process. I want to know that it is a fair process

and ensure that my vote will be counted.

I understand that false statements herein are subject to the penalties of
18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 29th of June, 2024 in Amity, Pennsylvania.

Kenneth Elliott

Kenneth Elliott

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit A to Elliott Declaration

RETRIEVED FROM DEMOCRACYDOCKET.COM

Fwd: Your Ballot Has Been Received

1 message

Ken Elliott <kenelliott76@gmail.com>
To: Ksteiker-ginzberg@aclupa.org

Fri, Jun 28, 2024 at 7:00 PM

Sent from my iPhone

Begin forwarded message:

From: RA-voterregstatcert@state.pa.us
Date: 22 April 2024 at 11:06:53 GMT-4
To: kenelliott76@gmail.com
Subject: Your Ballot Has Been Received

Dear KENNETH B ELLIOTT,

Your ballot has been received by WASHINGTON County as of April 22, 2024. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

Para leer esta información en español, vaya a <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.
要閱讀此資訊的中文版，請造訪 <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

Thank you.

****Please do not reply to this email.****

EXHIBIT

7

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF DAVID DEAN

I, David Dean, hereby declare as follows:

1. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am 54 years old and am otherwise competent to testify.
3. I was born in Washington County and have lived here for decades.
4. I am currently retired. I previously worked as a sales representative for a telecommunications company.
5. I am a member of the Washington Branch NAACP. I have been a member on and off since my early 20s.
6. Every Election Day, I work at the polling place as the minority inspector. It is one of the most enjoyable things I get to do twice a year. I love spending time with the people I grew up with, especially the senior citizens, who are excited to come vote.
7. I believe that voting is our birthright. My grandfather always said, "They denied us the right to vote, so when you have that privilege, you have to go out and support your democracy."
8. I've been voting by mail since the pandemic. It's also more convenient because I'm working at the polling place on Election Day.

9. I have never had an issue voting by mail before. This year, when I received my mail ballot, I marked it, put it in the secrecy envelope, and filled out the ballot return envelope. I thought I had done everything correctly. I returned the ballot in early April, right after I received it.

10. I never heard anything from Washington County that there was a problem with my ballot. Several months after the election, I received a call from Washington Branch NAACP President David Gatling, who told me that my vote had been disqualified because I had written an "incomplete date" on the mail-in ballot envelope. I didn't believe it. I've always been a stickler about the date, especially because I was concerned about circumstances like this, so I'm very particular about how I fill out the ballot.

11. After I received the call from President Gatling, I was pissed off. All the years I've been voting in Washington County and working at the polls, I just don't understand how you can be so technical with my vote.

12. If I had been notified before the election that I had made a mistake on the ballot envelope, I would have easily gone to the election office to fix the problem if that was an option. Just hand me a pen and I would have fixed it. And even though I work the polls on Election Day, I also could have found time to go cast a provisional ballot instead.

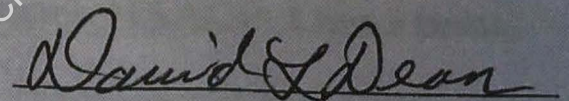
13. It makes me angry that I had no voice in the election. I feel that they

denied my right of free speech and my right to vote.

14. I plan to vote by mail again in the November 2024 election, and I would like Washington County to notify me if there is a problem with my ballot and if it won't be counted for any reason.

I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Executed this 30 of June, 2024 in Canonsburg, Pennsylvania.



David Dean

RETRIEVED FROM DEMOCRACYDOCKET.COM



Samsung Quad Camera
Shot with my Galaxy A12

EXHIBIT

8

RETRIEVED FROM DEMOCRACYDOCKET.COM

**DECLARATION OF ARIEL SHAPELL
IN SUPPORT OF PLAINTIFFS' ACTION FOR DECLARATORY
JUDGMENT**

1. I, Ariel Shapell, am an attorney at the American Civil Liberties Union of Pennsylvania (“ACLU-PA”) and have a background in data analytics.

2. I received a B.S.B.A. with majors in mathematics and finance from Washington University in St. Louis in 2011 and a J.D. from the University of Pennsylvania Carey Law School in 2021.

3. In 2014 and 2015, I served as the Director of Business Intelligence at Beatport LLC, a digital music and entertainment company, where I was responsible for organizing, analyzing, and reporting the company’s business data. In my role, I performed data analyses and visualizations and developed systems to extract, transform, and load data. I also supervised a team of three data scientists and analysts.

4. From 2015 until 2018, I served as a product manager at Postlight LLC, a technology consultancy. At Postlight LLC, I oversaw data analytics and digital product development projects for large entertainment, finance, and cultural institutions.

5. From 2019 through the present, I have worked as a volunteer, intern, and now legal fellow at the ACLU-PA. During my time with the ACLU-PA, I have conducted numerous analyses of large data sets for both litigation and advocacy.

6. I have been asked by the ACLU-PA, Dechert LLP, and the Public Interest Law Center (collectively, "Plaintiffs' Counsel" or "Counsel") to apply my training to assess the number of Pennsylvania mail-ballots that were coded as canceled or pending in the November 2023 municipal election and the April 2024 primary election because (1) the voter neglected to write the date on the outer mail ballot envelope ("Declaration Envelope") or wrote a date on the Declaration Envelope that was deemed "incorrect"; (2) the voter neglected to sign the Declaration Envelope; (3) the voter neglected to include the inner secrecy envelope when completing their mail-in ballot packet, or (4) for some other, unspecified reason.

7. I have been informed and understand that on August 21, 2023, ACLU-PA attorney Kate Steiker-Ginzberg received access from the Pennsylvania Department of State to the "Pennsylvania Statewide Mail-Ballot File," which contains point-in-time public information about each mail-ballot application and mail ballots recorded in Pennsylvania's Statewide Uniform Registry of Electors ("SURE") system.

8. I reviewed three different data files that I received from Attorney Steiker-Ginzberg, which were generated at different points in time as follows: (1) a file generated on November 6, 2023 containing mail and absentee ballot data from the Department of State exported from the SURE system and reporting data

relating to mail ballots submitted in the November 2023 municipal election (pre-Election Day), under the filename VR_SWMailBallot_External 20231106.TXT; (2) a file generated on April 22, 2024 containing mail and absentee ballot data from the Department of State exported from the SURE system and reporting data relating to mail ballots submitted in the April 2024 primary election (pre-Election Day), under the file name VR_SWMailBallot_External 20240422_5PM.TXT; and (3) a file generated on May 14, 2024 containing mail and absentee data from the Department of State data exported from the SURE system and reporting data relating to mail-ballots received in the April 2024 Pennsylvania presidential primary election (post-Election Day), under the filename VR_SWMailBallot_External 20240514.TXT.

9. I have been informed and understand that:

- a. When counties enter data about mail ballots, they enter codes into the SURE system to record the status of mail-ballots received by the county. In the data sets I reviewed, the codes represent the status of the ballots at the time the file was generated.
- b. For purposes of entering the final disposition of mail-ballots, counties can choose from a list of codes, but those relevant to my analysis include the following:

CANC – NO DATE

CANC – INCORRECT DATE

CANC – NO SECRECY ENVELOPE

CANC – NO SIGNATURE

CANC – OTHER

c. The abbreviation “CANC” means “canceled.” “CANC” codes indicate that the voter made an error when submitting their mail-ballot package and the county set the ballot aside and did not count it.

d. Ahead of the 2024 primary election, DOS added optional codes for counties who had implemented a program to alert voters that their mail-ballot package contained a disqualifying error. Those relevant to my analysis include the following:

PEND – INCORRECT DATE

PEND – NO DATE

PEND – NO SIGNATURE

PEND – NO SECRECY ENVELOPE

PEND – OTHER

10. For the November 6, 2023 SURE file, I identified mail ballots in Washington County that were coded as “canceled” for one of the following reasons:

- a. Mail ballots in which the voter neglected to write the date on the Declaration Envelope, by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE.”
- b. Mail ballots in which the voter wrote an “incorrect” date on the Declaration Envelope, by selecting the rows in the files where the “Ballot status reason” field was set to “CANC – INCORRECT DATE.”
- c. Mail ballots in which the voter neglected to sign the Declaration Envelope, by selecting rows in the files where the “Ballot status reason” field was set to “CANC – NO SIGNATURE.”
- d. Mail ballots in which the voter neglected to include the secrecy envelope, by selecting rows in the files where the “Ballot status reason” field was set to “CANC – NO SECRECY ENVELOPE.”

11. Based on the methodology described above, I determined that as of November 6, 2023 (the day prior to Election Day):

- a. Washington County used the “CANC- NO DATE” code for 75 ballots and the “CANC – NO SIGNATURE” code for 1 ballot.

12. For the April 22, 2024 and May 14, 2024 SURE files, I identified mail ballots that counties other than Washington County coded as “canceled” or “pending” for one of the following reasons:

- a. Mail ballots in which the voter neglected to write the date on the Declaration Envelope, by selecting the rows in the files where the “Ballot status reason” field was set to “CANC - NO DATE” or “PEND – NO DATE.”
- b. Mail ballots in which the voter wrote an “incorrect” date on the Declaration Envelope, by selecting the rows in the files where the “Ballot status reason” field was set to “CANC – INCORRECT DATE” or “PEND – INCORRECT DATE.”
- c. Mail ballots in which the voter neglected to sign the Declaration Envelope, by selecting rows in the files where the “Ballot status reason” field was set to “CANC – NO SIGNATURE” or “PEND – NO SIGNATURE.”
- d. Mail ballots in which the voter neglected to include the secrecy envelope, by selecting rows in the files where the “Ballot status

reason” field was set to “CANC – NO SECRECY ENVELOPE” or “PEND – NO SECRECY ENVELOPE.”

- e. Mail ballots that were canceled or pending for another reason, by selecting rows in the files where the “Ballot status reason” field was set to “CANC – OTHER” or “PEND – OTHER”

13. Based on the methodology described above, I determined that as of April 22, 2024 (the day prior to Election Day):

- a. 40 counties were utilizing the “canceled” or “pending” codes in the SURE system for mail-in voters who made one of the aforementioned mistakes when completing the Declaration Envelope.
- b. 6,062 mail-in ballots submitted in the April 2024 primary election had been coded in the SURE file as “canceled” or “pending” because the voter neglected to write the date on the Declaration Envelope (791 ballots), wrote a date was deemed “incorrect” (2,146 ballots), neglected to sign the Declaration Envelope (1,715 ballots), neglected to include the inner secrecy envelope (622 ballots), or used the “other” code (788 ballots).
- c. The majority of Washington County's mail-in ballots were sent out on April 1, 2024.

- d. In the April 2024 primary election, Washington County did not use the “canceled” or “pending” codes in the SURE system for voters who made one of the aforementioned mistakes when completing their mail-in ballot packet.

14. Based on the methodology described above, I determined that as of May 14, 2024 (three weeks after Election Day):

- a. 8,660 mail-in ballots submitted in the April 2024 primary election had been coded in the SURE file as “canceled” or “pending” because the voter neglected to write the date on the Declaration Envelope (1,216 ballots), wrote a date was deemed “incorrect” (3,205 ballots), neglected to sign the Declaration Envelope (2,598 ballots), neglected to include the inner secrecy envelope (1,577 ballots), or used the “other” code (64 ballots).
- b. Washington County had still not entered the “canceled” or “pending” codes in the SURE system for voters who made one of the aforementioned mistakes when completing their mail-in ballot packet.

15. My conclusions, and the bases for my conclusion, are presented in this declaration. My work on these matters is ongoing, and I may make necessary revisions or additions to the conclusions in this declaration should new information

become available or to respond to any opinions and analyses proffered by Defendants. I am prepared to testify on the conclusions in this declaration, as well as to provide any additional relevant background. I reserve the right to prepare additional exhibits to support any testimony.

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



Ariel Shapell
June 29, 2024

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EXHIBIT

9

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TLP: WHITE



**GUIDANCE CONCERNING EXAMINATION OF
ABSENTEE AND MAIL-IN BALLOT RETURN
ENVELOPES**

Updated: April 3, 2023

Version: 4.0

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EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES

1 BACKGROUND:

The Pennsylvania Election Code describes processes that a qualified voter follows to apply for, receive, complete, and timely return an absentee or mail-in ballot to their county board of election. These processes include multiple secure methods used by the voter's county board of election to verify that the qualified voter's absentee or mail-in application is complete and that the statutory requirements are satisfied. These methods include voter identification verification confirmed by either a valid driver's license number, the last four digits of the voter's Social Security number or other valid photo identification, and unique information on the application, including the voter's residence and date of birth. Before sending the ballot to the applicant, the county board of elections confirms the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained in the voter record. If the county is satisfied that the applicant is qualified, the application must be approved. This approval shall be final and binding, except that challenges may be made only on the grounds that the applicant was not a qualified voter, and those challenges must be made to the county prior to five o'clock p.m. on the Friday prior to the election.

Once the qualified voter's absentee or mail-in ballot application is approved, the voter is mailed a ballot with instructions and two envelopes. The outer envelope includes both a unique correspondence ID barcode that links the envelope to the qualified voter's application and a pre-printed Voter's Declaration that the voter must sign and date representing that the voter is qualified to vote the enclosed ballot and has not already voted. This Guidance addresses the examination of the Voter's Declaration on the outer ballot return envelope. This Guidance assumes that the voter has satisfactorily completed the steps described above as to application for, receipt of and return of an absentee or mail-in ballot.

2 RECORDING THE RETURN DATE, RETURN METHOD AND BALLOT STATUS FOR RETURNED MAIL BALLOTS:

County boards of elections should have processes in place to record the return date, return method, and ballot status for all voted mail ballots received. County boards of elections must store and maintain returned mail ballots in a secure location until the ballots are to be pre-canvassed or canvassed.

County boards of elections should stamp the date of receipt on the ballot-return envelope. County boards of elections should record the receipt of absentee and mail-in ballots daily in the Statewide Uniform Registry of Electors (SURE) system. To record a

ballot as returned, the staff should scan the correspondence ID barcode on the outside of the outer ballot return envelope. The correspondence ID on the envelope is unique to each absentee or mail-in voter and each issuance of a ballot to a voter. Once a correspondence ID has been recorded as returned in the SURE system, it cannot be recorded again. Further, if a ballot issuance record is cancelled by the county board of elections (e.g., voided to reissue a replacement ballot) in the SURE system, the correspondence ID on the cancelled ballot will become invalid. If the same barcode is subsequently scanned, the SURE system will not allow the returned ballot to be marked as being approved for counting.

The county boards of elections should record the date a mail ballot is received (not the date that a returned ballot is processed). In the event a county board of elections is entering a mail ballot on a date other than the date it was received, county personnel should ensure that the SURE record reflects the date of receipt, rather than the date of entry, since by default, SURE will automatically populate both the 'Date Received' and 'Vote Recorded' fields with the current date and time unless users manually correct the date to reflect the date received.

3 EXAMINATION OF DECLARATION ON MAIL BALLOT RETURN ENVELOPES:

The county board of elections is responsible for approving ballots to be counted during pre-canvassing and canvassing.

To promote consistency across the 67 counties, the county boards of elections should follow the following steps when processing returned absentee and mail-in ballots.

After setting aside ballots of electors who died prior to the opening of the polls, the county board of elections shall examine the Voter's Declaration on the outer envelope of each returned ballot and compare the information on the outer envelope, i.e., the voter's name and address, with the information contained on the list of absentee and mail-in voters.

If the Voter's Declaration on the return envelope is not signed or dated, or is dated with a date deemed to be incorrect, that ballot return envelope must be set aside and the ballot not counted. If the board determines that a ballot should not be counted, the final ballot disposition should be noted in SURE. The ballot return status (Resp Type) should be noted using the appropriate drop-down selection. It is important that the ballot return status is promptly and accurately recorded in SURE using the specific response type as to the disposition for each ballot received.

Due to ongoing litigation, ballots that have been administratively determined to be undated or incorrectly dated should be set aside and segregated from other ballots. Counties may prefer to keep segregated undated and incorrectly dated ballots organized by precinct and alphabetically by last name within each precinct. The department strongly recommends that counties also segregate into separate groups undated ballots versus incorrectly dated ballots.

When voters return their ballots in person to election offices, it is recommended that office personnel remind voters to confirm that they signed and correctly dated their ballots,

If the county election board is satisfied that the declaration is sufficient, the mail-in or absentee ballot should be approved for the pre-canvass or canvass unless the application was challenged in accordance with the Pennsylvania Election Code.

The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.

Version	Date	Description
1.0	9.11.2020	Initial document release
2.0	5.24.2022	Updates related to court decisions
3.0	9.26.2022	Updates related to court decisions
4.0	4.3.2023	Updates to conform to administrative changes and litigation

EXHIBIT

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Changes to SURE VR and PA Voter Services as of March 11, 2024

The following information outlines the additions and changes which will be deployed after the close of business on March 11, 2024, as part of the B 23.9.0 release. Please contact the SURE Help Desk for further information or with questions regarding any item(s) on the list provided below.

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*Republican Inspector
Respondent Ex. 2*



SURE VR

Ballot Response Type Updates

As part of this release, modifications have been made within the SURE VR system to add 6 OPTIONAL 'Pending' Status Reasons when recording 'Response Types' for absentee and/or mail in ballot labels. These options may be used if a county offers ballot curing. If a county chooses to apply these Status Reasons and the voter's ballot application contains an email address, the system will then send an email to the voter which will provide them with information relating to the status of their ballot with a URL link to the Department of State website. Email details are provided later in this document.

Below are the new 'Pending' Status Reasons:

- PEND – INCORRECT DATE
- PEND – NO DATE
- PEND – NO SIGNATURE
- PEND – NO SECRECY ENVELOPE
- PEND – NO ID
- PEND – OTHER

The new response types are available for selection for each of the following ballot labels:

- Absentee Ballot Label
- Mail-In Ballot Label
- PA – Bedridden Veteran Ballot Label
- PA – Email – Bedridden Veteran Ballot Label
- PA – Email – Military and Civilian Overseas Ballot Label
- PA – Email – Remote/Isolated Bedridden Veteran Ballot Label
- PA – Email – Remote/Isolated Overseas Ballot Label
- PA – Military and Civilian Overseas Ballot Label
- PA – Remote/Isolated Bedridden Veteran Ballot Label
- PA – Remote/Isolated Overseas Ballot Label



The response types are available in the following areas within the SURE VR system:

- Record Mailings Screen

Response Date: 02/22/2024 Letter Type: Absentee Ballot Label

Ballot Counted: [] Resp Type: []

Ballot Rejection Types:

- CANC - EMAIL BALLOT UND BATCH
- CANC - EMAIL BALLOT UNDELIVERABLE
- CANC - INCORRECT DATE
- CANC - LABEL CANCELLED
- CANC - NO DATE
- CANC - NO ID
- CANC - NO SECRECY ENVELOPE
- CANC - NO SIGNATURE
- CANC - OTHER
- CANC - REPLACED
- CANC - RETURNED AFTER DEADLINE
- CANC - UNDELIVERABLE
- CANC - VOTE CHALLENGED
- PEND - INCORRECT DATE
- PEND - NO DATE
- PEND - NO ID
- PEND - NO SECRECY ENVELOPE
- PEND - NO SIGNATURE
- PEND - NOT YET RETURNED
- PEND - OTHER
- RECORD - BALLOT RETURNED

- Bulk Ballot Response Utility Screen

Bulk Ballot Response Utilities

Election: 2024 GENERAL ELECTION (11/05/2024)

Response Type: []

Response Date: []

Ballot Received Method: []

Record Response

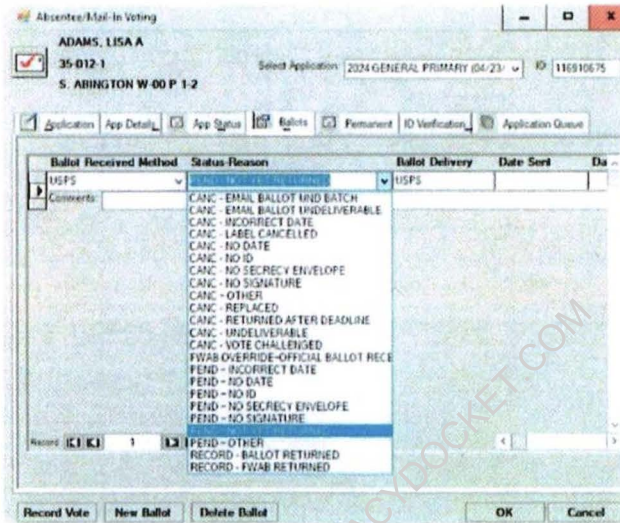
Total Number of []

Response Types:

- CANC - EMAIL BALLOT UND BATCH
- CANC - EMAIL BALLOT UNDELIVERABLE
- CANC - INCORRECT DATE
- CANC - LABEL CANCELLED
- CANC - NO DATE
- CANC - NO ID
- CANC - NO SECRECY ENVELOPE
- CANC - NO SIGNATURE
- CANC - OTHER
- CANC - REPLACED
- CANC - RETURNED AFTER DEADLINE
- CANC - UNDELIVERABLE
- CANC - VOTE CHALLENGED
- PEND - INCORRECT DATE
- PEND - NO DATE
- PEND - NO ID
- PEND - NO SECRECY ENVELOPE
- PEND - NO SIGNATURE
- PEND - NOT YET RETURNED
- PEND - OTHER
- RECORD - BALLOT RETURNED



- **Ballots** tab on the **Absentee/Mail-In Voting** screen



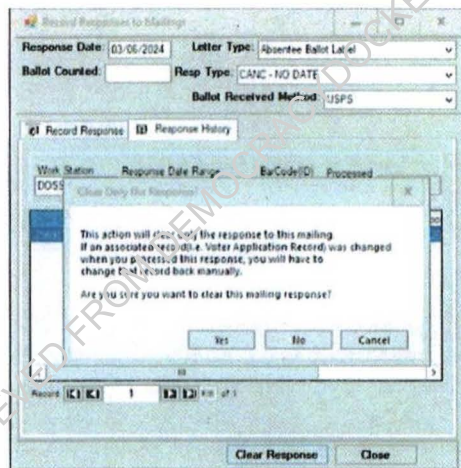
Please Note: Although changes were made to include the new response types under the **Ballots** tab of the **Absentee/Mail-In Voting** screen, the Department of State strongly recommends if a Status Reason update is needed, that the change should be made by utilizing the **Record Mailings** or **Bulk Ballot Response Utility** screens.



By current design, changing the Status Reason from the **Absentee/Mail In Voting** screen, **Ballots** tab will not properly update the **Correspondence** tab on the voter record.

If using the **Record Mailings** screen, it will be necessary to access the **Response History** tab of the **Record Mailings** screen to clear the previous response before you can proceed to update the new response type.

Please reference the "Clearing an Absentee Ballot Label Response" in the Absentee Processing User Guide for detailed steps to clear a response.



Additionally, the response type of 'CANC-VOTE CANCELLED' has been removed as a drop-down selection. Any previous ballot applications associated with this status will not be affected for historical purposes.



Ballot Response Email Verbiage Updates

As part of this release, emails that are triggered upon recording a response have been updated to include the new pending Response Types and will provide the applicant with more information regarding their current ballot status. These apply when a change has been made to the ballot or when the ballot has been recorded as received,

The table below lists each of the 'Response Types' as well as the 'Business Reason' for which they apply. The 'Second Paragraph Email Verbiage' describes language that is associated to each Response Type and will appear as dynamic text in the second paragraph of the emails. This information will also appear on the PAVS Election Ballot Status Tracker updates described later below.

Response Type	Business Reason	Second Paragraph Email Verbiage
PEND – OTHER	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed a submission error.	The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – INCORRECT DATE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter used the wrong date.	Your mail ballot may not be counted because you did not correctly date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO DATE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter left	The county has noticed that you did not date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.



	the ballot return envelope undated.	If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO SIGNATURE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter left the ballot return envelope unsigned.	The county has noticed that you did not sign your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information. If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO SECRECY ENVELOPE	To be used when a county offers the opportunity for voters to replace or correct a submission error, and the county has noticed that the voter returned the ballot without a secrecy envelope.	The county has noticed that when you returned your ballot, you placed it in the ballot return envelope without placing it into the secrecy envelope that says "OFFICIAL ELECTION BALLOT." This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelopes, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information. If you cannot fix your ballot envelopes in time, you can go to your polling place on election day and cast a provisional ballot.
CANC – EMAIL BALLOT UND BATCH	This is used by SURE VR when an email ballot correspondence cannot be delivered to the absentee email address. Ballots with this type of response were automatically placed in an UND DEL absentee application batch.	Your ballot will not be counted because your emailed balloting materials have been returned as undeliverable.
CANC – EMAIL BALLOT UNDELIVERABLE	Cancels a ballot label that has been sent via email if the email has been returned as undeliverable.	Your email balloting materials were returned as undeliverable. Your county will send you a new paper ballot to the address on file.



	Recording a ballot label as CANCEL - Email Ballot Undeliverable will automatically queue a paper ballot label for the voter.	
CANCEL - INCORRECT DATE	This cancels the ballot if it is returned to the county with an incorrect date on the ballot envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your mail ballot may not be counted because you did not correctly date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANCEL - LABEL CANCELLED	Used if a ballot label is misplaced or damaged and is cancelled in order to create another one; also used to generate 2 nd ballot labels.	Your ballot status has been updated to cancelled because your original ballot has been misplaced or damaged. A new ballot is being created and will be provided to you. No email generated.
PEND - NO ID	To be used by any county that has received a ballot for a voter who did not include the required ID, and who wants to alert the voter to this issue.	Your ballot application did not include valid identifying information, and your ballot was returned without the necessary ID. Your ballot will not be counted unless you bring valid identifying information to your county election official. You can find more information on the necessary ID here: https://www.vote.pa.gov/Voting-in-PA/Documents/DOS_Identification_for_absentee_voting.pdf .
CANCEL - NO DATE	Cancels the ballot if it is returned to the county with no date on the ballot envelope. It should only be used when the county has made a final decision as to	Your mail ballot may not be counted because you did not date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.



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	the ballot, or it does not offer the opportunity to cure.	
CANC – NO ID	Cancels ballot if absentee or mail-in requiring ID is not provided.	Your ballot will not be counted because you did not timely provide proof of identification.
CANC – NO SECRECY ENVELOPE	Cancels ballot if county receives ballot and it is not in the inner secrecy envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your ballot will not be counted because it was not returned in a secrecy envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO SIGNATURE	Cancels the ballot if it is returned to the county with no signature on the ballot envelope. It should only be used when the county has made a final decision as to the ballot, or it does not offer the opportunity to cure.	Your ballot will not be counted because you did not sign the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date] or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – REPLACED	Used to cancel a lost ballot if a replacement is sent.	No email generated.
CANC – RETURNED AFTER DEADLINE	After Deadline Cancels the ballot if it is invalid due to being returned after the deadline.	Your ballot will not be counted because it was received after the deadline.
CANC – UNDELIVERABLE	Cancels the ballot if it is returned undeliverable by the Post Office.	Your ballot will not be counted because it was returned as undeliverable by the United States Postal Service (USPS). If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you



		can go to your polling place on election day and cast a provisional ballot.
CANC – OTHER	The CANC– OTHER status reason should be used <i>only</i> when no other field more aptly applies. This may be for a secrecy envelope with disqualifying markings on it, or other issues that do not fall into another SURE categories. Do not use this code for any other cancellation reason.	The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – VOTE CHALLENGED	Used if a ballot is not counted because of a successful challenge.	Your ballot will not be counted because of a successful challenge.
PEND – NOT YET RETURNED	Status the label is in after the ballot is sent and before it is returned.	No email generated.
RECORD – BALLOT RETURNED	Records the voter's ballot as returned prior to the deadline.	Your ballot has been received by [County Name] County as of [DateRecorded]. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot and you are no longer permitted to vote at your polling place location.
RECORD-FWAB RETURNED	Used to record a Federal Write In Ballot was received prior to the Official Ballot being returned.	Your ballot has been received by [CountyName] County as of [DateRecorded].
FWAB OVERRIDE-OFFICIAL BALLOT RECEIVED	Used to record an Official Ballot as returned and	Your ballot has been received by [CountyName] County as of [DateRecorded].



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	overrides the Federal Write In Absentee Ballot previously recorded.	
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Sample Emails:

The email gives the voter notice that their ballot has been received and has additional language stating that the voter may receive further communication if an error is identified with their ballot.

Subject Line: Your Ballot Has Been Received

Email Body:

Dear [ApplicantName],

Your ballot has been received by [CountyName] County as of [DateRecorded].

Please note, if [CountyName] County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact [CountyName] County at [CountyContact].
Thank you.

To read this information in Spanish, go to [ballot tracker URL] - In Spanish

To read this information in Chinese, go to [ballot tracker URL] - In traditional Chinese

****Please do not reply to this email.****

FWAB Ballots

Subject Line: Your Ballot Has Been Received

Email Body:

Dear [ApplicantName],

Your ballot has been received by [CountyName] County as of [DateRecorded]. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions about your ballot, please contact [CountyName] County at [CountyContact].
Thank you.

To read this information in Spanish, go to [ballot tracker URL] - In Spanish

To read this information in Chinese, go to [ballot tracker URL] - In traditional Chinese



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****Please do not reply to this email.****

Your Ballot Status Has Changed

The email below is generated when certain cancel codes and pending codes are recorded in SURE VR.
The second paragraph dynamic email language will be the same as shown in the table above.

Subject Line: Your Ballot Status Has Changed – Check for Updates

Email Body:

Dear [ApplicantName],

After your ballot was received by [CountyName] County, it received a new status.

(THE SECOND PARAGRAPH DYNAMIC EMAIL LANGUAGE WILL APPEAR HERE.)

You can get more information on your ballot's new status by going to
<https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>.

If you have questions or need more information after checking your ballot's status, please contact
[CountyName] County at [CountyContact].

To read this information in Spanish, go to [ballot tracker URL] - In Spanish

To read this information in Chinese, go to [ballot tracker URL] - In traditional Chinese

Thank you.

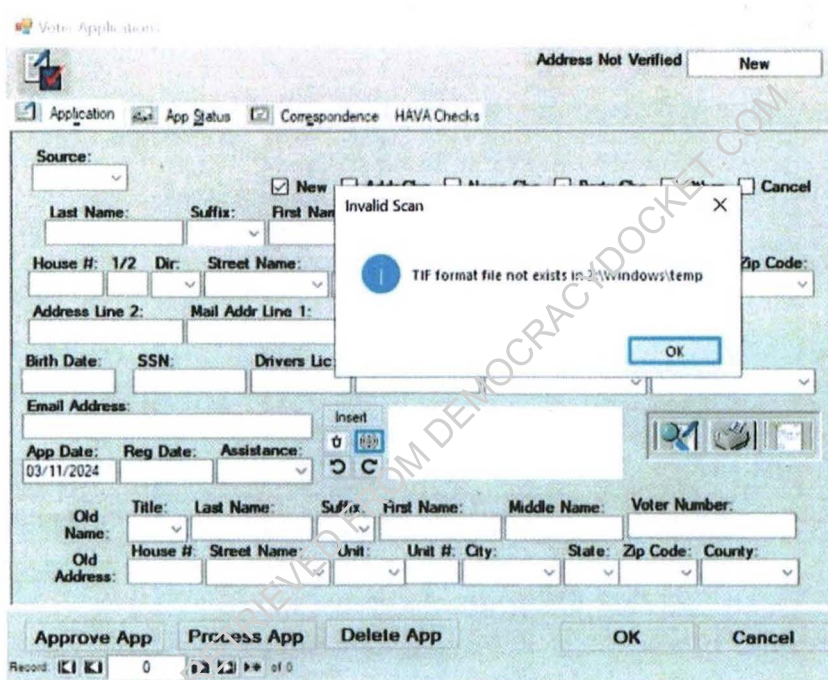
****Please do not reply to this email.****



SURE VR Disconnects

Modifications to the SURE VR system to address county reported issues with the 'Add Last Scan Document' and 'Add Last Scan' buttons, stemming from a discovered issue with system disconnects from the 'Z Drive'. Currently, users must select a map drive button in CITRIX when this issue occurs. This release will include systematic logic to reconnect the drive when the system detects a disconnect has occurred.

- The system will now give an updated error message when an incorrect file format is being used.





PA VOTER SERVICES

Election Ballot Status Tracker

In addition to the updates mentioned above, modifications have also been made to the PAVS Election Ballot Status Tracker for a voter wishing to view their ballot status for a ballot application as follows:

- The 'Ballot Type' column has been updated to display either "Absentee" or "Mail-In".
- The 'Status' column displays the Response Types associated to the ballot.
- Below each ballot line item will be a brief description of the status listed to give additional information to the voter.
- In the event multiple Response Types exist for an active election, then each of the ballot line items will be displayed along with the status of each ballot.

The tracker and all columns have been updated to appear in English, Spanish, and Traditional Chinese based on the selection made by the voter.

Please see the screenshots below:

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You cannot use the tracker to track the status of a ballot voted in person on Election Day.

First Name (as it appeared on your application)
 Lee

Last Name (as it appeared on your application)
 Johnson

Date of Birth (mm/dd/yyyy)
 08/26/1963

County
 LACKAWANNA

Submit

Your Ballot Status Result(s)

Ballot Type	Election	Application Received	Application Processed	Ballot Mailed On	Ballot Received	Status
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC - OTHER

The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before [April 06, 2024], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

The table above provides a summary of your application and ballot status. The columns will update as your county processes your application or ballot. The status column will read as "Vote Recorded" after your county has received your voted ballot.

If you have any questions about the status of your ballot, please contact LACKAWANNA County at (570) 963-8737 or visit www.vote.pa.gov/county for more information.

Column Descriptions
Ballot Type - Absentee or Mail-In
Election - The requested ballot is for this election.
Application Received - The date when your county received your application.
Application Processed - The date when your county processed your application.
Ballot Mailed On - The date when your county mailed your ballot to the address on your application.
Ballot Received by County - The date when your county received your voted ballot.
Status - The status of your ballot request is the last known state of where your ballot request stands.

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Estado de la boleta electoral

Puede rastrear el estado de su papeleta de voto por correo o en ausencia completando los campos abajo. No puede usar el rastreador para rastrear el estado de la papeleta que completó en persona el día de las elecciones.

Nombre (tal y como aparecía en su solicitud)

Lee

Apellido (tal y como aparecía en su solicitud)

Johnson

Fecha de Nacimiento (MM/DD/YYYY)

08/26/1963

Condado

LACKAWANNA

Enviar

Resultado(s) del estado de su boleta

Tipo de boleta	Elección	Solicitud recibida	Solicitud procesada	Boleta enviada por correo	Boleta recibida	Estado
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC - OTHER

El condado ha identificado un error en el (los) sobre(s) de su papeleta y su papeleta no será contada. Si no tiene tiempo para solicitar una nueva papeleta antes de la April 08, 2024, o si la fecha límite ya pasó, puede ir a su lugar de votación el día de las elecciones y emitir una papeleta provisional.

El cuadro de arriba presenta un resumen de su solicitud y estado de boleta. Las columnas se actualizarán a medida que en su condado se procese su solicitud o boleta. En la columna de estado aparecerá "Vote Recorded" después de que su condado haya recibido su boleta de votación.

Si tiene alguna pregunta sobre el estado de su boleta, por favor comuníquese con el Condado de LACKAWANNA en (570) 963-6737 o visite www.vote.pa.gov/county para más información.

Descripciones de las columnas

Tipo de boleta - Ausente o por correo

Elección - La boleta solicitada es para esta elección.

Solicitud recibida - La fecha en la que su condado recibió su solicitud.

Solicitud procesada - La fecha en la que su condado procesó su solicitud.

Boleta enviada por correo - La fecha en la que su condado le envió su boleta a la dirección que figura en su solicitud.

Boleta recibida por el condado - La fecha en la que su condado recibió su boleta de votación.

Estado - El estado de su solicitud de boleta es el último estado conocido en el que se encuentra su solicitud de boleta.



選票狀態

填寫下列欄位，即可追蹤您的郵寄或缺席選票狀態。若選票是在選舉日當天由本人投入，則您無法使用追蹤器進行追蹤。

名字 (如申請上所示)

Lee

姓氏 (如申請上所示)

Johnson

出生日期 (月/日/年)

08/26/1963

縣

LACKAWANNA

提交

您的選票狀態結果

選票類型	選舉	申請接收日期	申請處理日期	選票郵寄日期	選票已接收	狀態
Absentee	2024 GENERAL PRIMARY	02/16/2024	02/16/2024			CANC - OTHER

如果本縣發現您的選票信封有錯誤，您的選票將不予計數。如果您在 April 08, 2024 前沒有時間申請一張新選票，或如果截止日期已過，您可在選舉當日前往投票站投下一張臨時選票。

上表提供您申請與選票狀態的摘要。只要您的縣處理您的申請或選票，欄位會更新。縣收到您的投票選票之後，狀態欄就會變成「投票已記錄」。

若您對您的選票狀態有任何疑問，請聯絡 LACKAWANNA 縣 ((570) 963-6737)，或造訪 www.vote.pa.gov/county 以獲取更多資訊。

備說明:

選票類型 - 缺席還是郵寄

選舉 - 申請的選票用於此選舉。

申請接收日期 - 您的縣收到您申請的日期。

申請處理日期 - 您的縣處理您申請的日期。

選票郵寄日期 - 您的縣將您的選票寄到您申請的日期。

縣收到選票日期 - 您的縣收到您投票選票的日期。

狀態 - 您選票申請的狀態是您選票申請的已知狀態。



TLP:AMBER+STRICT

Department of State
Statewide Uniform Registry of Electors (SURE) Project
B 23.9.0_County Release Notes
March 11, 2024

DEPARTMENT OF STATE English Español 繁體中文 [HOME](#) [OTHER LINKS >](#)

Election Ballot Status

Your **Mail-in or Absentee Ballot status** can be tracked by completing the fields below. You cannot use the tracker to track the status of a ballot voted in person on Election Day.

First Name (as it appeared on your application)

Last Name (as it appeared on your application)

Date of Birth (mm/dd/yyyy)

County

Your Ballot Status Result(s)

Ballot Type	Election	Application Received	Application Processed	Ballot Mailed On	Ballot Received	Status
Mail-In	2024 GENERAL PRIMARY	03/06/2024	03/06/2024			PEND - NOT YET RETURNED
Your ballot has not yet been returned to LACKAWANNA county. The status of your ballot will be updated once the county receives your ballot.						
Absentee	2024 GENERAL PRIMARY	02/20/2024	02/20/2024			CANC - OTHER

The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before April 16, 2024, or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

Note: The above shows multiple Response Types that are associated to the ballot.

EXHIBIT

11

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

Right-to-Know Law Office
Room 306, North Office Building
401 North Street
Harrisburg, PA 17120-0500
Fax: 717-214-9899

Mailing Date: April 18, 2024

Kate Steiker-Ginzberg
ACLU of Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102

ksteiker-ginzberg@aclupa.org

RE: Right-to-Know Law Request No. 2024-266

Dear Ms. Steiker-Ginzberg:

On April 12, 2024, the Department of State received your request for information pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL), wherein you requested: “(1) a copy of any instructions that have been issued to the county Boards of Elections and/or election offices (from January 2024 to the present) relating to the use of SURE-system codes for mail-in ballots that are received by the election office with errors. (e.g. CANC-No Signature, PEND-No Signature, CANC-No Date, PEND-No Date, etc.); (2) a copy of all standard form emails, email templates and/or email communications that are or will be automatically sent to mail-in voters when the voter’s ballot is scanned into the SURE system as “RECEIVED,” “PENDING” or “CANCELLED” by the county election office; and (3) to the extent not answered by #1 and #2, please provide any other guidance, directives or instructions sent by the Department of State to county Boards of Election and/or election offices that address how the counties should handle (1) mail-in ballots that arrive with defects that prevent them from being counted (e.g. missing signature, date, or secrecy envelope); and (2) any procedures that allow voters to “cure” such defects.”

Your request is granted in part and enclosed is a record that contains information that is responsive to requested items (2) and (3) of your request. Additional guidance responsive to your request may be found on the Department's website here [Election Directives and Guidance \(pa.gov\)](#), more specifically here [2023-04-03-Examination-Absentee-Mail-In-Ballot-Return-Envelopes-4.0.pdf \(pa.gov\)](#). There is no fee due to the Department's policy of not charging if the file is sent electronically.

In regards to requested items (1) and (3), your request is denied in part because it requested information that, if released publicly, would cause a security risk and expose the election infrastructure to potential attacks. The Department withheld records (SURE job aids) that relate to the operation of the SURE system and contain information that if released publicly would cause a security risk or expose the SURE system to a potential cyber-attack. Because the SURE system has been designated as part of the nation's critical infrastructure by the United States Department of Homeland Security, any information that can put the system at risk is not permitted to be disclosed publicly. Here, the information contained in the withheld records is of such a nature that if released would create a reasonable likelihood of endangering the physical security and safety of the SURE system and as such, the records are exempt from disclosure under the RTKL pursuant to Sections 708(b)(2), (b)(3) and (b)(4). *See also, Sheckler v. DOS*, Docket Nos.: AP 2024-0596; 2022-0629; 2022-0492.

You have a right to appeal this response in writing to Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, PA 17126-0333. If you choose to file an appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the agency is wrong in its response.

Also, the OOR has an appeal form available on the OOR website at:
<https://www.openrecords.pa.gov/Appeals/AppealForm.cfm>

Respectfully,

Janelle S. Hawthorne

Janelle S. Hawthorne, J.D.
Agency Open Records Officer
Department of State
Room 306, North Office Building
401 North Street
Harrisburg, PA 17120-0500
717-317-5340

Mail-Ballot Status Codes, Emails, and Online Ballot Tracker

Codes and Text

Status Codes	Email text in Second Paragraph and in Tracker (All PEND and CANC codes will follow the Your Ballot Status Has Changed email in the slideshow provided)
PEND – OTHER	The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – INCORRECT DATE	The county has noticed that the date written on your ballot return envelope is incorrect. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information. If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.
PEND – NO DATE	The county has noticed that you did not date your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information. If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.

<p>PEND – NO SIGNATURE</p>	<p>The county has noticed that you did not sign your ballot return envelope. This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot return envelope, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot return envelope in time, you can go to your polling place on election day and cast a provisional ballot.</p>
<p>PEND – NO SECRECY ENVELOPE</p>	<p>The county has noticed that when you returned your ballot, you placed it in the ballot return envelope without placing it into the secrecy envelope that says “OFFICIAL ELECTION BALLOT.” This means your ballot may not be counted. Your county offers you the opportunity to fix your ballot envelopes, and you should go to https://www.vote.pa.gov/Voting-in-PA/Pages/Return-Ballot.aspx to get more information.</p> <p>If you cannot fix your ballot envelopes in time, you can go to your polling place on election day and cast a provisional ballot.</p>
<p>CANC – EMAIL BALLOT UNDELIVERABLE</p>	<p>Your ballot will not be counted because your emailed balloting materials have been returned as undeliverable.</p>
<p>CANC – EMAIL BALLOT UNDELIVERABLE</p>	<p>Your email balloting materials were returned as undeliverable. Your county will send you a new paper ballot to address on file.</p>
<p>CANC – INCORRECT DATE (New reason added 1/27/23)</p>	<p>Your mail ballot may not be counted because you did not correctly date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.</p>
<p>CANC – LABEL CANCELLED</p>	<p>No email generated.</p>
<p>PEND – NO ID</p>	<p>Your ballot application did not include valid identifying information, and your ballot was returned without the necessary ID. Your ballot will not be counted unless you bring valid identifying information to your county election official. You can find more information on the</p>

	necessary ID here: https://www.vote.pa.gov/Voting-in-PA/Documents/DOS_Identification_for_absentee_voting.pdf .
CANC – NO DATE (New reason added 1/27/23)	Your mail ballot may not be counted because you did not date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO ID	Your ballot will not be counted because you did not timely provide proof of identification.
CANC – NO SECRECY ENVELOPE (Deployed 3/26/21)	Your ballot will not be counted because it was not returned in a secrecy envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – NO SIGNATURE (Updated 6/3/21) (Updated language to remove no date reference 1/27/23)	Your ballot will not be counted because you did not sign the declaration on your ballot return envelope. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.
CANC – REPLACED	No email generated.
CANC – RETURNED AFTER DEADLINE	Your ballot will not be counted because it was received after the deadline.
CANC – UNDELIVERABLE	Your ballot will not be counted because it was returned as undeliverable by the United States Postal Service (USPS). If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

CANC – OTHER (Updated language 10/27/2020)	<p>The county has identified an error with your ballot envelope(s), and your ballot will not be counted. If you do not have time to request a new ballot before [April 16, 2023], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.</p> <p>(For implementation purposes, this is a new code, and the CANC-VOTE CANCELLED should be removed from drop down.)</p>
CANC – VOTE CHALLENGED	<p>Your ballot will not be counted because of a successful challenge.</p>

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EXHIBIT

12

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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION AT LAW

SONJA KEOHANE, RICHARD KEOHANE :
and BARBARA WELSH :

No.: 2023-004458

v. :

DELAWARE COUNTY BOARD OF :
ELECTIONS :

ORDER

AND NOW, this *21st* day of September, 2023, upon consideration of the Motion for Judgment on the Pleadings of Petitioners Sonja Keohane, Richard Keohane, and Barbara Welsh, a Memorandum of Law in support thereof, Respondent Delaware County Board of Elections' response to the Motion in which Respondent does not oppose the relief requested by Petitioners, and Petitioners' reply in support of the Motion, it is ORDERED that the Motion for Judgment on the Pleadings is GRANTED. It is further ORDERED that Respondent is directed to count Petitioners' provisional ballots submitted at their respective polling places on Primary Election Day, May 16, 2023, and amend the official vote count from the May 2023 Primary Election to include the votes indicated on Petitioners' provisional ballots. In support of the foregoing, the Court hereby sets forth the following:

1. The facts of this case are not in dispute as this matter concerns the decision of Respondent Delaware County Board of Elections ("the Board") not to count three provisional ballots submitted by Petitioners, who each voted by mail but whose mail-in ballots were canceled due to disqualifying defects on the outer envelopes;
2. In each instance, the Board contacted Petitioners and provided a "notice and cure letter" explaining the opportunity to cure the defective ballots in person at the Board's

office in Media, Delaware County, Pennsylvania or to request a replacement ballot be issued by mail in advance of primary Election Day, May 16, 2023;

3. The Petitioners did not request replacement ballots nor appear in person in Media, Delaware County, Pennsylvania to avail themselves of the “notice and cure” procedure offered by the Board but rather each Petitioner voted provisionally at their polling place on primary Election Day, May 16, 2023;

4. Subsequently, at the provisional ballot challenge hearing, the Board voted to not count these ballots based on *In Re Allegheny Cnty. Provisional Ballots in the 2020 Gen. Election*, 241 A.3d 695 (Pa.Cmwth. 2020) which stands for the proposition that voters who have cast another ballot and/or whose ballots have been timely received by the Board may not have subsequent provisional ballots counted;

5. This Court recognizes the Election Code contains two provisions which are at issue and relate to casting a provisional ballot following an unsuccessful attempt to cast a mail-in or absentee ballot. The first subsection states that “[e]xcept as provided in clause (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector’s registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.” 25 P.S. § 3050(a.4)(5)(i);

6. The second subsection states that a provisional ballot “shall not be counted” if “the elector’s absentee ballot or mail-in ballot are timely received by a county board of elections.” 25 P.S. § 3050(a.4)(5)(ii)(F);

7. To the extent there is any ambiguity between § 3050(a.4)(5)(i) and § 3050(a.4)(5)(ii)(F), Pennsylvania law demands that statutory provisions be read harmoniously to give effect to both provisions and should be construed in a way that does not nullify or exclude another provision. *See, e.g., In re Borough of Downingtown*, 161 A.3d 844, 871 (Pa. 2017) (noting that when two statutory provisions can be read as harmonious or in conflict, courts should construe them as in harmony with each other).

8. “It is the longstanding and overriding policy in this Commonwealth to protect the elective franchise. The Election Code must be liberally construed so as not to deprive . . . the voters of their right to elect a candidate of their choice. It is therefore a well-settled principle of Pennsylvania election law that every rationalization within the realm of common sense should aim at saving the ballot rather than voiding it.” *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058, 1071 (Pa. 2020).

9. In this instance, these three qualified voters who attempted to submit mail-in ballots to the Board and were later notified by the Board that their respective mail-in ballots were defective, cannot be said to have “cast” a ballot.

10. All parties and this Court are concerned with the risk of double voting; however, the Board has safeguards in place to prevent double voting in this situation.

11. “When the Board receives a mail-in or absentee ballot, Board staff examines the outer envelope for obvious defects such as a missing signature or date. If such a defect is found, the Board provides a notice via e-mail or regular mail to the affected voter and offers them the opportunity to cure their ballot at Government Center in person, or mails a replacement ballot.” (Board’s 7/28/23 Memorandum of Law, p. 6).

12. The defective mail-in ballot is segregated from other mail-in ballots and is not counted or included in the pre-canvass and canvass. (Board's 7/28/23 Memorandum of Law, p. 6). It is treated by the Board's staff as if the ballot was not received at all.

Id. Then, the voter may vote their replacement ballot;

13. The Board also provided this Court with additional protections afforded by the provisional ballot challenge hearing process. These include:

- a. "The Board schedules and holds a provisional ballot challenge hearing within seven days of each primary or election. *See* 25 P.S. § 3050(a.4)(4);
- b. Prior to the hearing, the Board checks all provisional ballots against Election Day poll books and by-mail ballots to determine if each voter who voted provisionally also voted a different way;
- c. The Board also collects the names and addresses of each voter who cast a provisional ballot in Delaware County and makes those available to party leaders and candidates;
- d. The Board further publishes all mail-in and absentee voters on its website. Therefore, ahead of the hearing, representatives and the Board, and any other interested party, can confirm that voters have not cast a provisional ballot and also voted in some other way."

(Board's 7/28/23 Memorandum of Law, p. 7).

14. With these safeguards in place, Respondent shall count Petitioners' provisional ballots submitted at their respective polling places on Primary Election Day, May 16, 2023, and amend the official vote count from the May 2023 Primary Election to include the votes indicated on Petitioners' provisional ballots.

BY THE COURT:



JOHN J. WHELAN, J.

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EXHIBIT

13

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Pennsylvania Provisional Voting Guidance

Date: March 11, 2024

Version: 2.1

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Background

This revised guidance addresses the issuance, voting, and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA).

Generally, under the applicable statutes, if a voter is not eligible to be issued a regular ballot, that voter is entitled to submit a provisional ballot at the polling place. Provisional ballots may be issued at the polling place until the close of polls on Election Day absent a court order extending voting hours.

Using Provisional Ballots

Provisional ballots are utilized when a voter believes that they are eligible to vote, but the poll worker is unable to confirm the voter's eligibility. Provisional ballots permit the voter to submit a ballot, although the ballot is initially segregated from the regular ballots returned by voters whose eligibility was confirmed at the polls on Election Day. After Election Day, the county board of elections must adjudicate the provisional ballot voter's eligibility to vote. If the board determines that the voter is eligible and did not already vote in that election, then the provisional ballot is counted or partially counted, if applicable.

Voters are entitled to a provisional ballot when their eligibility to vote is uncertain. A poll worker must inform voters that they have a right to use a provisional ballot if their eligibility is uncertain. The circumstances which would create a situation where a voter may be issued a provisional ballot include, but are not necessarily limited to:

- Voter's name was not in the poll book or supplemental poll book.
 - For example, the voter reported to the wrong precinct, or
 - The voter did not report a recent change in residence to the county election office.
- Voter is required to show ID but cannot do so.
- Voter eligibility was challenged by an election official.
- Voter was issued an absentee or mail-in ballot but believes that they did not successfully vote the ballot, and the ballot and outer return envelope were not surrendered at the polling place to be spoiled.
- Voter returned a completed absentee or mail-in ballot that will be rejected by the county board of elections, and the voter believes they are eligible to vote.
- A special court order was issued with respect to the voter's status.
- A special court order was issued related to extending the hours of voting.

- Voter claims they are registered in a political party with which they are not affiliated (for primary elections only).

Process for the Voter

Any voter who intends to submit a provisional ballot shall follow these steps:

- 1) Before receiving a provisional ballot, the voter must complete the sections on the provisional ballot envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials.
- 2) Upon completion of the above sections of the provisional ballot envelope, the voter must mark their provisional ballot.
- 3) After the voter marks their provisional ballot, they must seal their ballot in the secrecy envelope and then place the secrecy envelope in the provisional ballot envelope.
- 4) The voter must fill out the Voter Signature Section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector.
- 5) The voter must sign both the Voter Affidavit for Provisional Ballot and the front of the provisional ballot envelope.
- 6) The Judge of Elections and the Minority Inspector will then sign the affidavit after noting the reason for the provisional ballot.

Voters can check the status of their provisional ballot after the election by calling their county board of elections, checking the PA Voter Services website, or calling the PA Department of State.

Note: The online provisional ballot search will return results only for the active election and cannot be used to search provisional ballots from previous elections.

Voters will need to provide their provisional ballot number or their full name and date of birth to check the status of their provisional ballot.

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

Process for Poll Workers

Voters who requested an absentee or mail-in ballot may arrive at their polling place on Election Day seeking to vote. Poll workers should follow the instructions below for these voters.

- 1) For voters who were issued an absentee or mail-in ballot but **did not** successfully return their ballot to the board of elections:
 - a. These voters' names will be found in section 1 of the poll book, and the signature line will say either "Remit Absentee Ballot or Vote Provisionally" or "Remit Mail-in Ballot or Vote Provisionally."
 - i. Option A. If the voter has their unvoted absentee or mail-in ballot and outer envelope with them, the poll worker shall permit the voter to surrender their mail ballot and envelope and sign the Elector's Declaration to Surrender their Mail Ballot form (see **Appendix A**). After the voter does this, the poll worker shall allow the voter to vote by regular ballot the same as any other voter.
 - ii. Option B. If the voter is designated in the poll book as having been issued an absentee or mail-in ballot but the voter does not have their absentee or mail-in ballot and outer envelope with them, the voter may submit only a provisional ballot, and the poll worker shall offer them this option.
- 2) For voters who **did** successfully return their absentee or mail-in ballot:
 - a. If a voter was issued an absentee or mail-in ballot and successfully returned their ballot, their name will be found in section 2 of the poll book, and the signature line will say either "Absentee – Ballot Cast/Not Eligible" or "Mail-in – Ballot Cast/Not Eligible."
 - b. If a voter listed in section 2 of the poll book believes that they have not successfully voted their absentee or mail-in ballot or otherwise contests their ballot status, the poll worker must provide the voter a provisional ballot.

For **everyone** receiving a provisional ballot, poll workers must ensure that, before the provisional ballot is issued, the Voter Information, Voter Affidavit for Provisional Ballot, and Current Address sections on the provisional ballot envelope are completed by the voter. Again, the voter must sign **both** the Voter Affidavit for Provisional Ballot **and** the front of the provisional ballot envelope.

Poll workers must ensure that the voter signs their name in the presence of both the Judge of Elections and the Minority Inspector. Poll workers must also ensure that both the Judge of Elections and Minority Inspector sign the affidavit.

If polling place hours are extended beyond 8:00 p.m. on Election Day by court order, all votes submitted after 8:00 p.m. shall be submitted via provisional ballot only.

Process for County Elections Officials

Within seven days after the election, the county board of elections must review and make a determination for each provisional ballot cast on Election Day.

Counties should notify parties and the public a week in advance of the date that election officials will meet to examine and reconcile provisional ballots during the post-election official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act¹ for public meetings.

Parameters for canvassing provisional ballots

- When determining whether to count a provisional ballot, the county board of elections must reconcile provisional ballots with ballots cast in person on Election Day and with returned absentee and mail-in ballots. If a voter cast an Election Day ballot or successfully voted an absentee or mail-in ballot, the provisional ballot shall not be counted.
- A county board of elections can approve a provisional ballot for counting only if the voter is qualified and eligible to vote in the election.
- When researching provisional ballots during the canvassing period, the county election staff should enter the voter's provisional voting information from the provisional envelope into the SURE system to maintain an accounting of the number of provisional ballots issued for the election.
- If a voter's mail-in or absentee ballot was rejected for a reason unrelated to the voter's qualifications, and the voter submitted a provisional ballot and meets other provisional ballot requirements, the provisional ballot shall be counted if the county determines that the voter is eligible to vote.²
- Counties are prohibited from counting a provisional ballot submitted by a qualified registered voter of another county.
- During the canvass, the county board of elections must determine, for each provisional ballot, whether:
 - The provisional ballot should be counted in full (i.e., all contests on the ballot are counted);
 - The provisional ballot should be partially counted (i.e., some contests but not all contests on the ballot are counted) and the reason(s) for the partial counting;

¹ 65 Pa.C.S. § 701, *et seq.*

² The Department agrees with the analysis of the Delaware County Court of Common Pleas in *Keohane v. Delaware County Board of Elections*, No. 2023-004458 (Sept. 21, 2023); *but see In Re Allegheny Cnty. Provisional Ballots in the 2020 Gen. Election*, 241 A.3d 695 (Pa. Commw. Ct. 2020) (unpublished).

- The provisional ballot is invalid because the voter successfully submitted another ballot; or
- The provisional ballot should be rejected for another reason(s) and the reason(s) for the rejection.

Hearings for provisional ballots challenged during the canvass

If a provisional ballot is challenged during the canvass, the county board of elections must schedule a hearing within seven days of the challenge to consider the challenge and determine the disposition of the ballot. Additionally, notice shall be given where possible to the challenged provisional voter and to the attorney, watcher, or candidate who made the challenge.

- It is recommended that counties notify parties and the public of the hearing a week in advance of the date, noting that election officials will meet to examine and reconcile provisional ballots during the post-election official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act³ for public meetings.
- During the hearing, the county board of elections must decide whether to uphold or dismiss the challenge. The county board is not bound by the Pennsylvania Rules of Evidence. Any testimony presented must be stenographically recorded.

###

Version	Date	Description
1.0	3.5.2020	Initial document release
1.1	10.21.2020	Updated per Act 12 of 2020
2.0	10.12.2023	Updated to reflect judicial guidance
2.1	3.11.2024	Updated to implement clarifying edits and modified affidavit form.

³ 65 Pa.C.S. § 701, *et seq.*

EXHIBIT

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FAYETTE COUNTY ELECTION BUREAU
Marybeth Kuznik, Director
2 West Main Street • Suite 111 • Uniontown, PA 15401
724-430-1289 • 724-430-4948 (fax) • voter@fayettepa.org



May 1, 2024

Kate Steiker-Ginzberg
ACLU
PO Box 60173
Philadelphia, PA 19102

Dear Ms. Steiker-Ginzberg,

The Fayette County Bureau of Elections has received and considered your Right-To-Know request of March 22, 2024.

Public access to election documents is exempt from the Right To Know Law by Section 3031.1, which states “[i]f any provisions of this act regarding access to records conflict with any other federal or state law, the provision of this act shall not apply.” 65 P.S. § 67.310.1.

Public access to election records is specifically governed under Section 2648 of the Pennsylvania Election Code, which states in pertinent part,

The records of each county board of elections. . . shall be open to public inspection, except as herein provided, and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employes having duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employe of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act. . .

25 P.S. § 2648.

The above notwithstanding, the Fayette County Election Bureau and Fayette County Election Board wish to be transparent. Therefore, **without waiving our right to follow and enforce the above statutory procedures regarding any future requests from any party**, we voluntarily respond to your request as follows (responses interspersed into pertinent section of

your request) and grant available requested records as follows:

1. Records that constitute, reflect, or describe **any policy that has been approved and adopted** by the Board of Elections, which addresses whether voters who make disqualifying mistakes (e.g. missing signature, date or secrecy envelope) when completing their mail-in ballot return envelopes or submitting their mail ballots will be notified and/or permitted to “cure” such deficiencies so that their ballot can be counted.

No written policy has been approved or adopted by the Board of Elections

2. If the Board of Elections does not have a written policy, but does have **procedures or practices** currently in place that provide voters with notice and an opportunity to “cure” mail-in ballots with deficiencies, please provide **records** showing:

a. Any **notice** provided to voters of their mistake prior to Election Day, such as:

i. An example of a letter, postcard, or e-mail sent directly from the county elections office to a voter about a mail-in ballot with a deficiency;

Copy of letter sent to voters is provided, see attached

Copy of Instructions for Calling Voters – see G-2023 document attached

ii. An example of an automatic SURE-system email regarding the cancellation, and whether that email is sent before or after Election Day;

Requester would need to obtain this information from the PA Department of State

iii. An example of a list of voters who returned a mail-ballot with an error, which is made accessible (1) on a public government website; and/or (2) to the party representatives; or (3) upon request;

No lists of voters who return mail-ballots with an error were posted on the internet, made available to party representatives, or otherwise provided publicly

iv. Any other records that constitute or relate to the notice given to voters — such as a phone call from the county election office — that mail-in voters receive if they have made an error;

See attached spreadsheet from P-2024 Primary Election

See attached pdf file from G-2023 General Election

b. The county’s processes, if any, for voters to **cure** their mistake, such as:

i. An attestation or other form that voters complete in-person at the election office to “cure” their mail-ballot mistake;

ii. A replacement ballot request form;

iii. Any other records constituting or relating to the “curing” practices that are implemented by the county election office; and

No forms are required to cure deficient ballots.

c. Whether voters who learn that their mail ballot has been canceled due to a mistake are permitted to cast a **provisional ballot** at their local precinct on Election Day and whether that provisional ballot will be **counted** by the Board of Elections.

Responsive records could include:

i. Lists of provisional ballots cast in an election by voters whose mail-in ballots were previously canceled; or

ii. Board of Elections minutes showing deliberation and/or official action regarding provisional ballots cast by voters whose mail-in ballots were canceled.

See minutes of November 15, 2022 Election Board Meeting, pp. 19-21 attached and available online

3. If you do not have records of a policy or practice responsive to requests 1 or 2, please provide records (from January 2023 to the present) constituting or reflecting any discussion, deliberation, communication, correspondence, memoranda, communications, and/or internal policies, guidelines, rules, practices, or procedure or official action by or among the Board of Elections regarding “notice and cure” practices or procedures, including any decision to not adopt “notice and cure” procedures.

Fayette County does not have any records of this type within the stated timeframe

4. If you do not have records of a policy or practice responsive to requests 1 or 2, please provide records (from January 2023 to the present) constituting or reflecting any memoranda, communications, and/or internal policies, guidelines, rules, practices, or procedures related to **SURE-system protocols** regarding mail-in ballots with errors, including any records from the Pennsylvania Department of State regarding data entry into the SURE system.

After diligent search, Fayette County Election Bureau attaches five emails and directives we have saved from the PA Department of State.

Please contact me if you have any questions or need additional explanations. Thank you for your interest in the Fayette County Bureau of Elections.

Sincerely,



Marybeth Kuznik
Director of Elections and Voter Registration

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CALLING VOTERS WITH BALLOT ENVELOPE ERRORS

1. Please Call each voter on these lists.
2. IF PHONE IS ANSWERED -- tell voter that there was an error on their ballot envelope that might cause their vote not to be counted and that they need to come into the Election Bureau to correct the problem. (You can tell them what was wrong based on the "issue" column.

NOTE! Tell voters with "No Signature" that their vote WILL not be counted unless they come in and sign it.

3. Voter must come in person and must bring Identification. A Driver's License, PennDOT ID card, U.S. Passport, or Voter Registration Card from Fayette County will work. If they do not have any of these, let MB know. (If necessary, get their name/number and MB will call them back.)
4. IF NO ANSWER WHEN YOU CALL - leave a message and just say that there was an error on their ballot envelope that might cause their vote not to be counted, and to please call the Election Bureau as soon as possible at 724-430-1289.
5. Tell voters that they may also go to their polling place and vote on a provisional ballot.
6. Please make a note of people you reach and their response, or if you left a message.

THANK YOU!

NOTE: BALLOTS MUST BE CORRECTED BY 8 PM ON ELECTION DAY NOV. 7.

MB = Marybeth Kuznik, Director of Elections

FAYETTE COUNTY ELECTION BUREAU
Marybeth Kuznik, Director
2 West Main Street • Suite 111 • Uniontown, PA 15401
724-430-1289 • 724-430-4948 (fax) • voter@fayettepa.org



[VOTER'S ADDRESS]
[VOTER'S ADDRESS]
[VOTER'S ADDRESS]

[DATE]

Dear Mail-In / Absentee Voter,

The Fayette County Election Bureau has received your ballot and we noticed that there is an error with the date or signature on your outer envelope. Your vote may not be counted if this error is not corrected.

If you would like to correct the problem, you will need to come in person to our office at 2 West Main Street, in Uniontown PA 15401. We are open Monday through Friday from 8 A.M to 4:30 P.M. You will need to bring identification with you in one of the forms approved by the Legislature for voters in a polling place. The most common of these is your PennDOT Driver's License or Photo ID card, a U.S. Passport, or your official Voter Registration Card from Fayette County. If you do not have any of these IDs, please give us a call.

No ballots may be taken from the Election Bureau during the correction process.

We hope that you will stop into the Election Bureau soon and correct the error, so that your vote may be counted!

Sincerely,

Emma Santore
Elections and Voter Registration Clerk
Fayette County Election Bureau

EXHIBIT

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GREENE COUNTY

BALLOT CURING PROCEDURES

I. Introduction

This ballot curing policy for Greene County is established to allow registered voters the opportunity to cure immaterial deficiencies with their absentee or mail-in ballots.

II. Definitions

As used herein, the following terms shall have the meanings indicated:

Ballot: An absentee or mail-in ballot which a qualified elector may use to cast a vote in an election.

Bureau: The Greene County Bureau of Elections.

County: Greene County.

County Board: Greene County Board of Elections.

Deficiency: A defect regarding the required signature and/or date in the outside of the ballot envelope.

Party Committee: The Greene County Democratic Committee and the Greene County Republican Committee, as designated by their respective state organizations.

Qualified Elector: Any person who shall possess all the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth.

III. Cure Procedure for Deficiency in the Ballot of a Qualified Elector

- A. Upon identifying a Deficiency with a Ballot submitted by a Qualified Elector, the Bureau will segregate said Ballot and place the Qualified Elector's name and phone number (if one is provided) on a list.
- B. During a Primary Election, the list of Qualified Voters who submitted Deficient Ballots shall be made available to the Party Committees once a day at the request of the Party Committee.

- C. The Party Committees may contact the Qualified Elector who submitted a Ballot with a Deficiency to advise that there is a Deficiency with their Ballot and that the Qualified Elector is permitted to appear at the Bureau to remedy such deficiency.
- D. During the general elections, in addition to Party Committees, the list of Qualified Voters who submitted Ballots with Deficiencies will be made available to any duly authorized representative of any recognized political party other than the Party Committees which have a candidate on the Ballot.

It is acknowledged that Qualified Electors registered as Independent will not have a duly authorized party representative. The Bureau will publicize through its regular course that any voter can check the status of their Ballots via Department of State website and that cure procedures are available.

- E. To effect a cure, A Qualified Elector must appear in person at the Bureau before 8:00 P.M. on Election Day and sign an attestation that includes the missing or incorrect signature and/or date, which shall be recorded with their Ballot.
- F. The Bureau shall not perform any remedy on behalf of the Qualified Elector but will only provide the opportunity for the Qualified Elector to remedy the defect.
- G. The Bureau shall not send the Ballot back to the Qualified Elector or issue to the Qualified Elector a new Ballot due to the deficiency.
- H. This Policy shall not modify any procedures regarding Provisional Ballots with the exception of allowing a Provisional Ballot to be counted for a Qualified Elector who cannot come to the Bureau to remedy a deficiency on the Ballot envelope but is able to go to their polling place.

IV. Cure Procedure for Deficiency in the Ballot as a result of Bureau Error

- A. All Ballot Deficiencies caused by Bureau Error shall be dealt with on a case-by-case basis.
- B. In the event that a Ballot Deficiency exists as a result of Bureau Error, the Bureau shall first determine whether the Ballot Deficiency can be remedied within the time limits fixed by statute.
- C. If it is determined that the Ballot Deficiency caused by Bureau Error can be remedied within the time limits fixed by statute, the Bureau shall determine the specific errors causing the Ballot Deficiency and prepare a second Ballot correcting the errors identified.

The initial ballots shall be declared null and void and shall be sequestered and segregated and retained by the Bureau as provided by statute.

The corrected Ballots shall be mailed to the Qualified Electors accompanied by a letter advising the Qualified Electors of the errors in the previous Ballot and requesting the Qualified Electors to execute the second corrected Ballot.

- D. If it is determined that the Ballot Deficiency caused by Bureau Error CANNOT be remedied within the time limits fixed by statute, the Bureau shall determine the specific errors causing the Ballot Deficiency.

The Bureau, on a “case by case” basis, shall determine an appropriate method to mitigate the Ballot Deficiency to the extent possible.

- E. The Bureau shall maintain a complete record of its efforts to remedy the Ballot Deficiencies including but not limited to:

A. Minutes of meetings addressing the Ballot Deficiencies.

B. Measures taken by the Bureau to remedy or mitigate the Ballot Deficiencies.

ADOPTED BY THE GREENE COUNTY BOARD OF ELECTIONS ON APRIL 11,
2024

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Board of Commissioners
Daniel C. Camp III, Chairman
Jack Manning
Tony Amadio

County Solicitor
Garen Fedeles

Assistant County Solicitor
Nathan A. Morgan

Assessment Solicitor
Joseph A. Askar

Paralegal
Stacey L. Householder

May 8, 2024

ksteiker-ginzberg@aclupa.org
Kate Steiker-Ginzberg
PO Box 60173
Philadelphia, PA 19102

RE: Right to Know Request

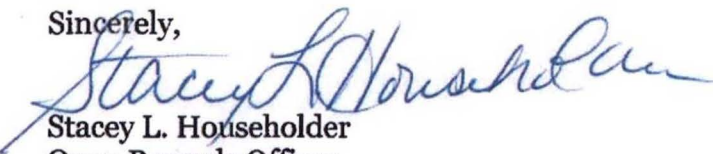
Dear Ms. Steiker-Ginzberg,

Thank you for writing to Beaver County with your request for information pursuant to the Pennsylvania Right to Know Law, 65 P.S. Section 67.101, *et. seq.* On April 1, 2024, you requested records related to policies and procedures for the Bureau of Elections. The County invoked an extension of time of thirty (30) days.

Your request is granted and the requested document is attached.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,



Stacey L. Householder
Open Records Officer

Enclosure



BUREAU OF ELECTIONS

OFFICE PROCEDURE

BALLOTS WITH OBSERVABLE DEFECTS

Each election, voters across Pennsylvania submit ballots to Boards of Elections that have material defects on the outer declaration envelopes (i.e. utilizing an incorrect date, not dating the envelope as required by 25 PS § 3150.16, not signing the envelopes as required by 25 PS § 3150.16). While no practices regarding requirements or restrictions regarding so-called “notice and cure” operations for voters to fix mistakes and avoid having their ballots set aside exist in the Pennsylvania Election Code, the Beaver County Bureau of Elections has developed a consistent practice regarding voters’ abilities to cure ballots with observable defects on the outer declaration envelopes. Since the *Ball v. Chapman (2022)* decision and opinions, litigation has continued on both the question of curing and other questions regarding dating and signature requirements on the declaration envelopes. However, we have operated from this posture since the November 2022 election and will continue to do so until statutory or court-ordered regulations supersede. In either of the scenarios, listed below, and irrespective of the notice structure outlined voters are free to contact the Bureau of Elections at any time and inquire if their ballot envelopes have any defects. Upon inquiry, our staff will review the envelope, and provide details to the voters regarding the status of the envelope related to observable defects only, and provided an opportunity to cure the error.

**Board of
Commissioners**
Daniel C. Camp III,
Chairman
Jack Manning
Tony Amadio

**BUREAU OF
ELECTIONS**
810 Third Street
Beaver, PA 15009

Colin Sisk, Director

724-770-4440 | PHONE
724-728-9318 | FAX

SCENARIO A: Ballots with observable defects are received by the Bureau of Elections prior to the Friday before the Election in question:

- 1) All ballots are date and timestamped upon receipt in the Bureau of Elections.
- 2) Ballots are next reviewed by full-time staff members to ensure compliance with statute.
- 3) Ballots with observable defects (missing a signature, incorrect dates, missing dates) are segregated, with sorting by precinct and based on defect(s) apparent.
- 4) Staff will record ballots with defects with the SURE status code of **RECORD- BALLOT RETURNED**. This is done so as to demonstrate the ballot has been received for those voters who submitted information to receive email notifications. No other codes are to be used, as this could provide notice of potential defects to some voters but not to all, and such could create an imbalanced nature of notice.
- 5) Staff will then add the voters’ name and basic information (street address, precinct of registration, etc.) to a regularly maintained list of voters whose ballot envelopes have an observable defect.
- 6) The list of ballots received in scenario A will be posted to the county’s website on the Friday prior to the election in question. The listing will also be emailed to the leadership of both major parties in the county. That effort is the full extent of notice provided to voters.
- 7) Voters can appear in person in our office to cure any defects on their declaration envelopes.

SCENARIO B: Ballots with observable defects are received by the Bureau of Elections on or after the Friday before the Election in question:

- 1) All ballots are date and timestamped upon receipt in the Bureau of Elections.
- 2) Ballots are next reviewed by full-time staff members to ensure compliance with statute.
- 3) Ballots with observable defects (missing a signature, incorrect dates, missing dates) are segregated, with sorting by precinct and based on defect(s) apparent.
- 4) Staff will record ballots with defects with the SURE status code of **RECORD- BALLOT RETURNED**. This is done so as to demonstrate the ballot has been received for those voters who submitted information to receive email notifications. No other codes are to be used, as this could provide notice of potential defects to some voters but not to all, and such could create an imbalanced nature of notice.
- 5) Voters can appear in person in our office to cure any defects on their declaration envelopes.

EXHIBIT

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County of Washington

COMMONWEALTH OF PENNSYLVANIA

Commissioners

NICK SHERMAN
Chairman

ELECTRA S. JANIS
Vice Chair

LARRY MAGGI
Commissioner



DARYL W. PRICE
Chief of Staff

CYNTHIA B. GRIFFIN
Chief Clerk

95 W. BEAU ST., SUITE 605 - WASHINGTON, PA 15301 - 724-228-6724

April 26, 2024

RE: Washington County's Response to your RTK Request

Good afternoon, Ms. Steiker-Ginzberg,

Thank you for writing to Washington County with your request for records pursuant to Pennsylvania's Right-To-Know Law ("RTKL"), 65 P.S. §§ 67.101 et seq. Your request was received on March 22, 2024, and you requested any policy that was approved by the Board of Elections; notice to cure the ballots and if no records, you asked to be provided with the 2023 Election procedures; and lastly, to provide records from January 2023 to the present regarding "notice and cure" procedures.

In response to your first request, the Board of Elections meeting minutes for the April 11, 2024 will not be approved until the Board reconvenes for its next meeting on May 13, 2024. Pursuant to Section 708(b)(21), draft minutes of any meeting of agency are exempt from public disclosure until the next regularly scheduled meeting. Once the meeting minutes have been approved the records will be supplemented.

Regarding notice to cure ballots, Washington County has no records in its possession, custody or control insofar as the Board of Elections voted to not allow residents to cure ballots. Therefore, the County does not contain any information and/or procedures related to Notification of Curing.

Board of Elections' meeting minutes for April 26 and September 19, 2023 are attached. This is where the curing process for the 2023 Elections was discussed.

Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes is also attached.

Please be advised that this is correspondence will serve to close this record with our office as permitted by law.

Regards,

Cynthia B. Griffin
Chief Clerk/Right-to-Know Officer
95 West Beau Street, Suite 605
Washington, PA 15301
Phone (724) 228-6723
Fax: (724) 228-6965
Email: griffinc@co.washington.pa.us
www.washingtoncopa.gov



CBG/dc

Washington County Board of Elections
April 26, 2023

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chair Diana Irey Vaughan, Monica Merrell, and Todd Pappasergi. Also present were Solicitor Jana Grimm, Election Director Melanie Ostrander, Chief of Staff Michael Namie, Washington County Republican Party Treasurer April Betzner, Washington County Republican Party Tina Whited, Washington County Republican Party Vice Chair Jeffrey Elias, candidate for County Commissioner and concerned citizen Ashley Duff, and Observer Reporter journalist Mike Jones.

Mrs. Vaughan called the meeting to order at 10:00 am.

Mrs. Vaughan led the attendees in prayer.

Mrs. Vaughan led the Pledge of Allegiance.

Public Comment

Tina Whited inquired on the set up for election night to allow the public to view the return of results by the poll workers.

Mrs. Vaughan called for a motion to amend the agenda to include approval of the minutes of the April 11, 2023 meeting, which was omitted in error.

Mr. Pappasergi moved to amend the agenda to include approval of the minutes of the April 11, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Mr. Pappasergi moved to approve the minutes of the April 11, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Election Director Comment

Ms. Ostrander reported to the Board her review of how other counties handle the process of public viewing of the election night returns process, and her suggestion for Washington County.

There are seven security cameras in the election night returns areas; one outside, one in the stairwell, two in the hallway, one in the ballot room, one in the ballot storage room, and one in the EMS computer room. The Public Meeting Room has two large flat screen televisions. The live stream from these seven cameras can be displayed on the two televisions. The public can enter the Public Meeting Room from the door on North Franklin Street and be able to view the live stream from these security cameras. Two Sheriff Deputies are needed to provide security for the Room; one at the entrance and one at the entrance to the hallway. The capacity of the room is 100 people.

New Business

Appointment of Pre-Canvass Workers

Mr. Pappasergi moved to appoint the following people to serve as pre-canvass workers for Election Day, May 16, 2023 beginning at 9:00 am:

Charles Mahoney, Miles Glotfelty, Jessica Glotfelty, David Kresh, Catherine Kresh, Betsy West, James Blue, Peggy Wilson, Joseph Trifaro Jr, Mary Lea Dutton, Linda Andrews, and Maureen Jones.

Mrs. Merrell seconded the motion.

Motion approved.

Appointment of Election Night Workers

Mr. Pappasergi moved to appoint the following people to serve as election night workers for Election Day, May 16, 2023 beginning at 7:00 pm:

Penny Folino, Eric Fowler, Matthew Malik, Mitchell Malik, David Gump, Ashley Ostrander, Bridgett Gerba, and KC Lindley.

Mrs. Merrell seconded the motion.

Motion approved.

Appointment of the Canvass Board

Mr. Pappasergi moved to appoint the following people to serve as the Canvass Board.

David Kresh, Catherine Kresh, Charles Watts, Mary Lea Dutton, and Maureen Jones.

Mrs. Merrell is awaiting response from a person to make six appointments. If that person is not available, the Canvass Board will remain at five members.

Mrs. Merrell seconded the motion.

Motion approved.

Mr. Pappasergi moved to allow curing of absentee and mail in ballots if the voter failed to sign the return envelope under the Voter's Declaration, and to not allow curing if the voter signed but did not date the envelope under the Voter's Declaration.

Mrs. Merrell seconded the motion.

Motion approved.

Announcements

The next Board of Elections meeting will occur Thursday, June 1, 2023 at 10:00 am in the Crossroads Center Conference Room, Room G-17, Washington, PA.

There being no further business, Chair Vaughan declared the meeting adjourned at 10:45 am.

Washington County Board of Elections
September 19, 2023

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chair Diana Irey Vaughan, Monica Merrell, and Todd Pappasergi. Also present were Solicitor Jana Grimm and Elections Director Melanie Ostrander.

Mrs. Vaughan called the meeting to order at 10:02 am.

Mrs. Grimm led the attendees in prayer.

Ms. Ostrander led the Pledge of Allegiance.

Mr. Pappasergi moved to approve the minutes of the June 1, 2023 meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Public Comment

No public comments

Election Director Comments

We received 10 affidavits challenging the residency of 10 registered voters based on the fact their names appeared on the National Change of Address report.

Absentee and Mail in ballots will be mailed beginning on October 10.

As of today, we have approximately 12,500 applications for mail ballots.

New Business

Todd Pappasergi moved for Solicitor Grimm to review the challenge affidavits, the Pennsylvania Election Code, and the National Voter Registration Act and make a recommendation to the Board at the next BOE meeting.

Mrs. Merrell seconded the motion.

Motion approved.

Ms. Ostrander will contact the Pre-Canvass Workers, Election Night Workers, and Canvass Board members from the May 16, 2023 Municipal Primary for availability. The appointments will be voted on at the next BOE meeting.

The process for public viewing on Election Night will remain the same as was decided at the April 26, 2023 BOE meeting, which is there are seven security cameras in the election night returns areas; one outside, one in the stairwell, two in the hallway, one in the ballot room, one in the ballot storage room, and one in the EMS computer room. The Public Meeting Room has two large flat screen televisions. The live stream from these seven cameras can be displayed on the two televisions. The public can enter the Public Meeting Room from the door on North Franklin Street and be able to view the live stream from these security cameras. Two Sheriff Deputies are

needed to provide security for the Room; one at the entrance and one at the entrance to the hallway. The capacity of the room is 100 people.

The process for curing received absentee and mail in ballots will remain the same as was voted on at the April 26, 2023 BOE meeting, which is curing of absentee and mail in ballots if the voter failed to sign the return envelope under the Voter's Declaration, and to not allow curing if the voter signed but did not date the envelope under the Voter's Declaration.

Announcements

The next Board of Elections meeting will occur Tuesday, October 17, 2023 at 10:00 am in the Crossroads Center Conference Room, Room G-17, Washington, PA.

There being no further business, Chair Vaughan declared the meeting adjourned at 10:33 am.

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EXHIBIT

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Sweat Law Offices

Attorneys at Law

Gary L. Sweat, Esquire

Email: gsweat@sweatlaw.com

Michael C. Cruny, Esquire

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Sarah A. Scott, Esquire

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Phone 724-222-5150

Fax 724-222-5009

May 14, 2024

VIA ELECTRONIC MAIL ONLY

Kate Steiker-Ginzberg

ACLU of Pennsylvania

P.O. Box 60173

Philadelphia, PA 19102

Ksteiker-ginzberg@aclupa.org

**RE: WASHINGTON COUNTY – RIGHT TO KNOW REQUEST – MARCH 22,
2024 – SUPPLEMENTAL DOCUMENTATION**

Dear Kate:

It was a pleasure meeting with you all on Thursday, May 9, 2024 regarding the Right to Know Request you have submitted to Washington County regarding the April 2023 Primary Election.

Please find enclosed a copy of the Meeting Minutes from the Board of Elections Meeting held on Monday, May 13, 2024. These Minutes were approved by the Board of Elections that day, as well.. Please be advised this is a supplement to the initial documents provided, as we discussed in our Conference Call on Thursday.

Please advise if you need any further information and/or documents. The County will provide a response to your recent request submitted on Friday, May 10, 2024. Please contact my office should you have any further questions.

Very truly yours,

SWEAT LAW OFFICES

By: 

Sarah A. Scott, Esquire

Cc: Cindy Griffin – Right to Know Officer and Chief Clerk for Washington County
Melanie Ostrander – Elections Director

Sweat Law Offices
375 Valley Brook Road, Suite 112
McMurray, PA 15317

Washington County Board of Elections
April 11, 2024

The Washington County Board of Elections met in special session in the Crossroads Center Conference Room, Room G-17, Washington, PA with the following members being present: Chairman Nick Sherman, Electra S. Janis, and Larry Maggi. Also present were Solicitor Gary Sweat, Chief of Staff Daryl Price, Elections Director Melanie Ostrander, Executive Assistant Casey Grealish, Executive Assistant Heather Wilhelm, Mike Jones from the Observer Reporter, and Paul Fedore from the Center for Coalfield Justice.

Mr. Sherman called the meeting to order at 11:02 am.

Mr. Sherman led the Pledge of Allegiance.

Ms. Janis moved to approve the minutes of the March 12, 2024 meeting.

Mr. Maggi seconded the motion.

Motion unanimously approved.

Public Comment

Paul Fedore representing the Center for Coalfield Justice spoke on allowing voters to cure errors made on the absentee and mail in ballot declaration envelope.

Election Director Comments

Ms. Ostrander provided an update on the number of absentee and mail in ballots sent and received. Ms. Ostrander provided an example of the e-mail voters received after their absentee or mail in ballot has been received by the Elections Office.

New Business

Ms. Janis moved to increase the rover compensation to \$275.

Mr. Maggi seconded the motion.

Motion unanimously approved.

Ms. Janis moved to approve the following individuals as pre-canvass workers:

- Miles Glotfelty
- Sarah Wilhelm
- Jeffrey S Elias
- Sandra Schiffauer
- Beau Bouchard
- Dean Petrone Jr
- Michelle Fellin
- Beatriz Harrison
- Elizabeth Jackovich
- Meredith Camilletti
- Sandra Carman

- Charles Mahoney
- Linda M Andrews
- Mary Lea Dutton
- Joseph M Trifaro Jr

Mr. Maggi seconded the motion.
Motion unanimously approved.

Ms. Janis moved to approve the following individuals as election night workers.

- Dave Orndoff
- Angela Carrier
- Timothy Lesso
- Rachel Hrutkay
- Cassidy O'Connor
- Gabriella Gardner
- Lauren Lukas
- Sylvia Stoy
- Coryn Stoy

Mr. Maggi seconded the motion.
Motion unanimously approved.

Ms. Janis moved to approve the following individuals as Canvass Board members.

- Jeffrey S Elias
- Antony Gennaccaro
- John Hudock
- Gerilynn Gennaccaro
- Mary Lea Dutton
- Charles Watts

Mr. Maggi seconded the motion.
Motion unanimously approved.

Mr. Sherman moved to not allow curing of absentee and mail in ballots received with errors on the declaration envelope.

Ms. Janis seconded the motion.

Discussion was held between members regarding curing of ballots.

Roll call vote taken:

Mr. Sherman – yes; Ms. Janis – yes; Mr. Maggi – no

Ms. Janis moved to accept the following procedure for allowing viewing of election night returns:

The public has the opportunity to view the results returned from the poll workers on election night via the live feed of security cameras displayed on large televisions in the public meeting

room located on the ground floor of the Crossroads Center, 95 W Beau St, Washington. The public will enter the building via the Franklin Street entrance.

One authorized representative per candidate on the ballot and one authorized representative per political party on the ballot are permitted to view the return of the results via pre-determined and marked areas inside the Elections Office; a letter on candidate letterhead or political party letterhead identifying you as the authorized representative to view election returns must be provided for access.

No food or drink is permitted and no photography.

Mr. Maggi seconded the motion.

Motion unanimously approved.

The next Board of Elections meeting will be May 13, 2024 at a time to be announced at a later date.

There being no further business, Chairman Sherman declared the meeting adjourned at 11:45 am.

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EXHIBIT

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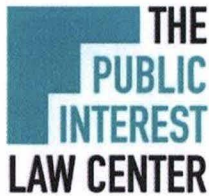
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April 16, 2024

Via email to gsweat@sweatlaw.com



Gary Sweat, Esq.
Washington County Solicitor
Crossroads Center
95 West Beau Street, Suite 605
Washington, PA 15301



Action. Access. Progress.

Dear Mr. Sweat,

We have received complaints about the recent decision of the Washington County Board of Elections (“Board”) not to notify mail-ballot voters of mistakes they made when completing the declaration form on the outer return envelope, and to disallow them from “curing” such defects. An April 12 news account¹ indicates the

Board’s decision to change the County’s past notice-and-cure practices was prompted by a recent federal appeals court decision that a civil rights statute does not require counting of ballots in undated and misdated mail-ballot-return envelopes.² As lawyers representing good-government organizations, voters, and amici in that U.S. Third Circuit Court of Appeals case, we wish to advise you that the Board is misreading the decision, which in no way prevents the election office from either notifying voters that their return envelopes are deficient or allowing them to cure. The Board’s decision to discontinue notice-and-cure practices not only risks needlessly disenfranchising potentially hundreds of eligible Washington County voters, but could ensnare the Board in litigation.

In *Pennsylvania State Conference of NAACP Branches v. Secretary Commonwealth of Pennsylvania*, the U.S. Third Circuit Court of Appeals ruled only that the state-law requirement to handwrite the date on the outer-envelope-declaration form did not violate the Materiality Provision of the Civil Rights Act of 1964. ___ F 4th ___, 2024 WL 1298903 (3d Cir. 2024). The case did not raise notice and cure issues, nor did the court’s decision reach them.

Whether a mail-in ballot transmitted in a return envelope that lacks a date or bears the wrong date can be counted is irrelevant to the Board’s decision whether to notify voters of facially obvious defects on the return envelopes or allow them to cure such defects. In other words, the ruling did not change current Pennsylvania law: mail ballots with undated or incorrectly dated envelopes will not be counted, but county Boards may still notify affected voters and allow them to “cure” the mistakes before 8:00 p.m. on Election Day. Pennsylvania courts have held that the Election Code does not prohibit such policies, and therefore counties are free to implement a “notice and cure”

¹ Mike Jones, *Washington County won’t allow voters to ‘cure’ defective mail-in ballots*, Washington Observer-Reporter (April 12, 2024), available at <https://www.observer-reporter.com/news/local-news/2024/apr/12/washington-county-wont-allow-voters-to-cure-defective-mail-in-ballots/>.

² *Pennsylvania State Conference of NAACP Branches v. Secretary Commonwealth of Pennsylvania*, ___ F 4th ___, 2024 WL 1298903 (3d Cir. 2024), pet’n for re’hrng filed April 10, 2024, and pending.

process without fear of violating the Election Code. See *Republican Nat'l Comm. v. Chapman*, No. 447 M.D. 2022, 2022 WL 16754061 (Pa. Commw. Ct. Sept. 29, 2022) *aff'd by an equally divided court*, 284 A.3d 207 (Pa. 2022). Most Pennsylvania counties have adopted “cure” policies, which have “generally been accepted in order to fulfill the longstanding and overriding policy in this Commonwealth to protect the elective franchise.” *Id.* at 4. Our understanding is that until last week’s decision, the Washington County Board allowed mail-in voters whose envelopes were missing a signature to “cure” at the election office and allowed voters with an incorrect or missing date to apply for a new ballot or vote provisionally on Election Day.³

If the Board’s April 11 decision remains in effect, hundreds of otherwise eligible Washington County voters will be needlessly disenfranchised. Local news reports indicate that even as of last week there were already 62 mail-in ballots in Washington County with fatal deficiencies on the outer envelope, and that Director Ostrander expects this number to increase. We strongly urge the Board to reconsider last week’s misguided decision—and do so quickly—so that at least some mail-ballot voters can learn of fatal deficiencies on their ballot-return packets and have an opportunity to preserve their votes by curing the defect on or before Election Day.

We are in a critical window before Election Day: The Washington County election office has already determined that it will not count certain voters’ ballots due to an error, and the Board has now *chosen* not to notify them while they still have an opportunity to remedy the loss of their right to vote. That determination raises serious constitutional procedural due process concerns. See, e.g., *Mathews v. Eldridge*, 424 U.S. 319 (1976). As Pennsylvania’s Supreme Court wrote recently, “‘a democratic government must . . . practice fairness . . . [which] can rarely be obtained by secret, one-sided determinations of facts decisive of rights.’” *Washington v. Pa. Dep’t of Corr.*, 306 A.3d 263, 266 (Pa. 2023) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170 (1951)). As it currently stands, the County’s elections office knows which voters have made an error that will prevent the ballot from being counted and is choosing to keep that fact a secret from the affected voters until it is too late for the voters to remedy the problem. That is unfair to the voters and to the candidates who have attracted their vote. Government officials should not knowingly disenfranchise any voters—especially when there is a ready solution to avoid the harm.

The solution to notify affected voters is straightforward. As Director Ostrander explained, counties can enter codes into the SURE system that trigger an automatic email to voters who have provided an email address. But rather than doing that, it appears that the Board’s most recent directive calls for election staff to enter the ballots as “received”—even when the return-envelope is obviously deficient—which will email the voter *only* that the mail ballot has arrived in the election office. Moreover, the email message, in our understanding, advises the voter that they may not vote at their polling place on Election Day. That admonition is inaccurate because voters whose mail ballots will not count can cast a provisional ballot and preserve their fundamental right to vote. Absent a hint of any problem, these voters will reasonably believe their ballots will be counted—which is not true. That misleading email is unfair.

Rather than marking defective mail ballots as “received,” Board staff should enter the appropriate “canceled” or “pending” codes provided by the Department of State. These options will generate an automatic email that notifies the affected voters that their mail-in ballot will *not* be counted, thereby giving the individual time before 8:00 p.m. on Election Day to cure the defect and preserve

³ Mike Jones, *Washington County elections officials considering options for ballot ‘curing,’* Washington Observer-Reporter (March 13, 2024), available at <https://www.observer-reporter.com/news/local-news/2024/mar/13/washington-county-elections-officials-considering-options-for-ballot-curing/>

their vote. For instance, the PEND-OTHER code⁴ notifies voters that the county has “noticed an error” on the ballot envelope and instructs voters that they may “go to [their] polling place on election day and cast a provisional ballot.”

This straightforward SURE-system protocol—which is not burdensome on the election office—will notify voters that their ballot will not be counted and give them critical information about an *existing* procedure to salvage their vote under the Election Code. *See Keohane v. Delaware Cnty. Bd. of Elections*, No. 2023-004458 (Ct. Comm. Pls. Sept. 21, 2023) (ordering the Delaware County Board of Elections to count provisional ballots cast by voters who learned that their mail-in ballot had been canceled due to errors on the outer envelope). Inputting the rejection into SURE to make the voter aware that their vote will not count is a *minimal* due process protection that the Board of Elections can readily provide to protect the fundamental right to vote and ensure that this sacred right is not irremediably denied.

The Board’s April 11 decision not to notify or allow voters with facially deficient mail-ballot-return envelopes to cure the deficiency—based on a serious misreading of a case being handled by some of undersigned counsel—risks violating Washington County voters’ constitutional due process rights under the Pennsylvania Constitution. We urge the Board to reverse course and direct Election staff to enter “pending” or “canceled” codes in the SURE system. That is the least the Board could do to protect its residents’ right to vote. The County could go a step further, as some counties do, by contacting the affected voters and advising about the provisional ballot process, or by publishing a list of voters to non-profit organizations and political parties who can do that outreach. We urge the Board to take both steps to minimize how many Washington County voters will be disenfranchised. Please feel free to contact us at ksteiker-ginzberg@aclupa.org.

Public Interest Law Center

Mimi McKenzie
Legal Director

Benjamin Geffen
Senior Attorney

ACLU of Pennsylvania

Witold Walczak
Legal Director

Marian K. Schneider
Senior Policy Counsel for Voting Rights

Stephen Loney
Senior Supervising Attorney

Kate Steiker-Ginzberg
Voting Rights Legal Fellow

cc: Chairman Nick Sherman (*via email c/o Administrative Assistant*)
Vice Chair Electra Janis (*via email c/o Administrative Assistant*)
Commissioner Larry Maggi (*via email c/o Administrative Assistant*)
Election Director Melanie Ostrander (*via email*)

⁴ Based on current information, the PEND-OTHER code generates an automatic email to voters that reads: “The county has noticed an error with your ballot envelopes, which means your ballot may not be counted. If you cannot fix the errors in time, you can go to your polling place on election day and cast a provisional ballot.”

EXHIBIT

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County of Washington

COMMONWEALTH OF PENNSYLVANIA

Commissioners

NICK SHERMAN
Chairman

ELECTRA S. JANIS
Vice Chair

LARRY MAGGI
Commissioner



DARYL W. PRICE
Chief of Staff

CYNTHIA B. GRIFFIN
Chief Clerk

95 W. BEAU ST., SUITE 605 - WASHINGTON, PA 15301 - 724-228-6724

May 17, 2024

SENT VIA EMAIL: ksteiker-ginzberg@aclupa.org

Kate Steiker-Ginzberg
ACLU of Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102

Dear Ms. Steiker-Ginzberg:

Thank you for writing to Washington County with your request for records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. § 67.101 *et seq.* Your RTKL request was received on May 10, 2024, and your request was reviewed, and a response is set forth below.

Requests

A complete list of mail-in ballot voters in the April 23, 2024 primary election whose ballots were timely received, but were set aside and not counted due to one of the following reasons: (1) missing or incorrect date on the outer envelope declaration; (2) missing signature on the outer envelope declaration; (3) missing secrecy envelope. Please provide each individual's name, the date the ballot was received at the election office, and the reason the ballot was set aside.

Responses

In response to your request above, this request is granted, and the document is attached to this email.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Regards,

Cynthia B. Griffin

Cynthia B. Griffin
Chief Clerk and Agency Open-Records Officer for Washington County

/cbg