

**IN THE SUPREME COURT OF PENNSYLVANIA**

\_\_\_\_\_  
**112 MM 2024**  
\_\_\_\_\_

**NEW PA PROJECT EDUCATION FUND, *et al.*,**

**Petitioners,**

**v.**

**AL SCHMIDT, SECRETARY OF THE COMMONWEALTH, *et al.*,**

**Respondents.**

\_\_\_\_\_  
**THE SECRETARY OF THE COMMONWEALTH'S RESPONSE TO  
THE APPLICATION FOR THE EXERCISE OF KING'S BENCH  
JURISDICTION**

Secretary of the Commonwealth Al Schmidt does not take a position as to whether the Court should exercise its King's Bench jurisdiction over this case, but offers the following for the consideration of the Court:

1. If the Court decides to exercise its King's Bench authority in this matter, it should also address whether the interpretation of the Election Code advanced in *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020), and *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), was correct. As the Secretary has previously explained, in 1968, the General Assembly specifically *removed* language from the Election Code requiring counties to "set aside" ballots

with declaration dates that were later than the deadline for completing the ballot.<sup>1</sup> It did so because it had aligned the deadline for *completing* absentee ballots with the deadline for *returning* them—so a ballot received on time was necessarily completed on time.<sup>2</sup> As a result, it was no longer necessary for the counties to examine the handwritten dates on ballot return envelopes and reject those with noncompliant dates, so the legislature removed the requirement altogether.

2. The Secretary does not dispute that the Election Code “means what it says.” *In re Canvass of Provisional Ballots in 2024 Primary Election* (“*In re 2024 Canvass*”), 55 MAP 2024, 2024 WL 4181584, at \*10 (Pa. Sept. 13, 2024) (Wecht, J., concurring). Rather, the Secretary contends that, properly interpreted, the Election Code does not direct counties to reject ballots based on errors in the handwritten declaration date—much less do so in a way that is “clear and free from all ambiguity.”

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<sup>1</sup> See Br. for the Secy. of the Com., *Black Pol. Empowerment Project v. Schmidt, et al.*, 68 MAP 2024, at 17–29 (Pa. Sept. 4, 2024) (“*BPEP*”) (attached as Exhibit A).

<sup>2</sup> Prior to 1968, absentee ballots had to be completed by Election Day but could be returned to the county several days afterwards; as a result, the General Assembly required counties to set aside ballot return envelopes with a date after Election Day.

1 Pa.C.S. § 1921(b). He has reached this conclusion for several reasons, including:

i. Because the General Assembly removed the requirement that county boards review the handwritten dates on declaration envelopes in 1968, all that remains is the requirement that counties determine that the declarations are “sufficient,” Exh. A at 22-29. That sufficiency determination has been a part of the Election Code since 1937 and has never included reviewing declaration dates.

ii. In the context of voting, there are different conceivable consequences for non-compliance with different rules. When the General Assembly intends for non-compliance with a certain rule to result in a ballot being rejected, it says so explicitly—just as this Court recognized in its recent *In re 2024 Canvass* decision. *See* 2024 WL 4181584, at \*5 (Pa. Sept. 13, 2024) (“The General Assembly has thus spelled out the consequences for an elector’s failure to sign the outer envelope – a factor that distinguishes this case from *Absentee & Mail-In 2020, Shambach*, and *Luzerne County Return Board*.”).

It has not done so here—in fact, it specifically removed such a requirement.

iii. The Election Code has, for decades, instructed *absentee* voters to “fill out, date and sign” the declaration on their ballot return envelopes, 25 P.S. § 3146.6(a), and, as far as the Department is aware, no county or court has ever interpreted this language to require rejecting absentee ballots with declaration date errors prior to the passage of Act 77.

3. Furthermore, if the Court were to agree with the Secretary’s interpretation of the Election Code, it would obviate the need to address the constitutional issue presented by this case. *See, e.g., In re Fiori*, 673 A.2d 905, 909 (1996) (acknowledging “the sound tenet of jurisprudence that courts should avoid constitutional issues when the issue at hand may be decided upon other grounds”).

4. This issue is extremely important. As things now stand, this year’s election will be the first involving a high-turnout presidential race in which counties are directed to set aside both undated and “wrongly” dated ballots. It is conceivable that tens of thousands of votes could be rejected as a result. Furthermore, it is disproportionately elderly voters

who will be affected, as they both vote more often by mail and return ballots with declaration-date errors at a significantly higher rate than younger voters.

5. This Court has recently held in two successive cases raising issues relating to the counting of votes that the Secretary was not an indispensable party. *See BPEP*, 2024 WL 4181592, at \*1 (Pa. Sept. 4, 2024); Order, *BPEP*, at 1-2 (Sept. 19, 2024); *Zimmerman v. Schmidt*, No. 63 MAP 2024, slip op. at 1 (Pa. Sept. 25, 2024). In *BPEP*, this Court further held that all 67 counties were indispensable parties (while all 67 counties were named in *Zimmerman*). As a result, the Court did not address the merits of either case.

6. These decisions will limit the ability of Pennsylvania courts to consider and properly resolve timely-filed pre-election challenges.<sup>3</sup> In

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<sup>3</sup> The recent King's Bench petition filed in *RNC et al. v. Schmidt et al.*, No. 108 MM 2024 (Sept. 18, 2024), presents very different circumstances, given how long the RNC waited before filing it and the fact that it seeks to halt practices that county election officials have used for years and that are being implemented *right now*. That petition (or a complaint in a lower court) could have been filed months (or years) ago, but instead was brought just as the 2024 election began. As the responses in opposition filed by numerous counties make abundantly clear, granting that petition would be incredibly disruptive to the administration of the 2024 election.

all candor, the Secretary is concerned about the impact these recent decisions will have on the orderly resolution of disputes relating to the 2024 election and future elections. Questions relating to the counting of votes are almost always better resolved before elections, when the impact on results is unknown.<sup>4</sup>

7. As Petitioners note, however, there is currently pending a statutory *post*-election challenge raising the same issues as in this case. See Pet. at 31 n.21. The statutory post-election challenge process does provide a vehicle for resolving disputes over the proper interpretation of the Election Code, *see* 25 P.S. § 3157 although, of necessity, it does not allow for participation by all counties as parties.

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<sup>4</sup> See Matthew Queen and Richard L. Hansen, Ready for the Storm? What Judges Should Know About Election Law, 108 *Judicature* 34, 35–36 (2024), *available at*: <https://judicature.duke.edu/articles/what-judges-should-know-about-election-law/> (last visited Sept. 26, 2024) (“The worst situation is when a judge is called upon to make outcome-determinative rulings .... [I]t is far better, when possible, to rule on the substantive legal issues before it is clear who would politically benefit from such a ruling ....”).

September 26, 2024

Respectfully submitted,

Kathleen M. Kotula (No. 86321)  
Kathleen A. Mullen (No. 84604)  
Pennsylvania Department of State  
306 North Office Bldg.  
401 North Street  
Harrisburg, PA 17120

*/s Michael J. Fischer*  
\_\_\_\_\_  
Michael J. Fischer (No. 322311)  
Jacob B. Boyer (No. 324396)  
Aimee D. Thomson (No. 326328)  
Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717) 831-2847  
mjfischer@pa.gov

*Counsel for Secretary of the Commonwealth Al Schmidt*

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## 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: September 26, 2024

*/s Michael J. Fischer*

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Michael J. Fischer

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# Exhibit A

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**IN THE SUPREME COURT OF PENNSYLVANIA**

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**68 MAP 2024**

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**BLACK POLITICAL EMPOWERMENT PROJECT, *et al.*,**  
**Petitioners-Appellees,**

**v.**

**AL SCHMIDT, SECRETARY OF THE COMMONWEALTH, *et al.*,**  
**Respondents-Appellees**

**Appeal of: Republican National Committee and Republican  
Party of Pennsylvania, Interveners-Appellants**

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**THE SECRETARY OF THE COMMONWEALTH'S BRIEF**

Kathleen M. Kotula (No. 86321)  
Kathleen A. Mullen (No. 84604)  
Pennsylvania Department of State  
306 North Office Bldg.  
401 North Street  
Harrisburg, PA 17120-0500

September 4, 2024

Michael J. Fischer (No. 322311)  
Jacob B. Boyer (No. 324396)  
Aimee D. Thomson (No. 326328)  
Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717) 460-6786  
jacobboyer@pa.gov

*Counsel for Secretary of the Commonwealth Al Schmidt*

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## INTRODUCTION

In 1968, the General Assembly amended the Election Code to eliminate a requirement that election officials set aside absentee ballots based on issues with the date of the voter's declaration. It did so after separate amendments to the Code aligned the deadline for completing an absentee ballot and the deadline for the receipt of an absentee ballot, making the declaration date inconsequential.

For the ensuing decades, officials did not discard ballots based on missing or incorrect dates. But after Act 77 of 2019 made mail voting widely available, issues regarding the declaration date spawned multiple lawsuits, including *In re Canvass of Absentee & Mail-in Ballots of November 3 2020 General Election*, 241 A.3d 1058 (Pa. 2020) and *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023).

The upshot of these decisions is that election officials are now operating under the pre-1968 rules. And as a result, tens of thousands of timely ballots from eligible voters have been thrown out because of an inconsequential voter error in the handwritten declaration date. Indeed, in the numerous cases that have addressed this issue, one critical fact

has become unimpeachably clear: no election official ever uses the handwritten declaration date for any election purpose—other than to disenfranchise voters who made mistakes.

Commonwealth Court’s decision should be affirmed for two separate reasons.

First, the text, structure, and historical development of the Election Code all demonstrate that the legislature did not intend for ballots to be set aside because the voter made an error in the handwritten date. Requiring such ballots to be set aside has proven to be a chaotic and unworkable rule that has created inconsistencies across the Commonwealth and has imposed needless burdens on election officials. Principles of stare decisis supply insufficient reason to proceed under the rule announced in *In re Canvass and Ball*, which (just as this Court forecasted) have raised more questions than they answered.

Second, rejecting mail ballots due to declaration-date errors violates the Free and Equal Clause of the Pennsylvania Constitution. That clause, at minimum, prohibits denying an individual’s right to vote for not complying with a rule that serves no purpose in election administration. And while the handwritten date once served a purpose, it no longer

does—and has not since 1968. Commonwealth Court, like other courts before it, recognized this fact and correctly held that discarding ballots based on declaration-date errors therefore violates the Constitution.

As Pennsylvania's chief elections official, the Secretary has a responsibility to ensure that elections across the Commonwealth are administered smoothly and, where the Election Code or Constitution requires statewide practices, are administered consistent with those practices. And, like county officials of all political persuasions, he seeks to ensure that eligible, registered voters can vote and have their vote counted, so that election outcomes reflect the will of the voters. Requiring county boards to disregard ballots with date errors impedes the smooth running of elections and disenfranchises voters for no purpose whatsoever. Neither the Election Code nor the Constitution permit this outcome.

## STATEMENT OF THE QUESTIONS INVOLVED

**Question 1.** Does the Election Code, contrary to this Court's holdings in *In re Canvass of Absentee & Mail-in Ballots of November 3 2020 General Election*, 241 A.3d 1058 (Pa. 2020) and *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), prohibit rejecting timely mail ballots from qualified voters on the basis that the voter failed to correctly write a date on the declaration returned with a mail ballot?

*Suggested answer:* Yes

**Question 2.** Does rejecting timely mail ballots from qualified voters because the voter failed to correctly write a date on the declaration returned with a mail ballot violate the Pennsylvania Constitution?

*Suggested answer:* Yes

**Question 3.** Would ruling that it is unconstitutional to reject timely mail ballots from qualified voters on the basis that the voter failed to correctly write a date on the declaration returned with a mail ballot invalidate all of Act of October 31, 2019, P.L. 552, No. 77?

*Suggested answer:* No

**Question 4.** Did Commonwealth Court have jurisdiction?

*Suggested answer:* Yes.

## STATEMENT OF THE CASE

### I. Mail Voting in Pennsylvania

Pennsylvanians may vote if on Election Day they are at least 18 years old, have been a citizen and lived in their election district for 30 days, and are not imprisoned for a felony conviction. Pa. Const. art. VII, § 1; 25 P.S. § 2811; 25 Pa.C.S. § 1301(a). Information on registered voters is housed in county-specific voter rolls within the Statewide Uniform Registry of Electors (“SURE”) system.

Historically, registered Pennsylvanians voted in person, with limited exceptions for absentee voting. In 2019, however, Pennsylvania expanded mail voting to all registered voters. Act of Oct. 31, 2019, P.L. 552, No. 77 (“Act 77”). As a result, registered, eligible Pennsylvanians may now submit a ballot: (i) in person; (ii) absentee; or (iii) through no-excuse mail-in voting. Procedures applicable to absentee ballots and no-excuse mail ballots (collectively, “mail ballots”) are materially identical.

To vote by mail ballot, a registered voter must apply to their county board of elections and provide proof of their eligibility to vote. 25 P.S. §§ 3146.2, 3150.12; *see also id.* §§ 3146.2b, 3150.12b. Shortly before an election, county boards send anyone approved to vote by mail a package with a ballot, a secrecy envelope, and a pre-addressed return envelope



specific to that election. *Id.* §§ 3146.4, 3150.14. Each return envelope has a pre-printed declaration stating that the voter is qualified to vote in the election and has not already voted. *Id.* §§ 3146.4, 3150.14. It also has a pre-printed SURE barcode unique both to the voter requesting the mail ballot and the election. *Pa. State Conf. of NAACP v. Schmidt* (“*NAACP I*”), 703 F. Supp. 3d 632, 666 (W.D. Pa. 2023), *rev’d and remanded Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.* (“*NAACP II*”), 97 F.4th 120 (3d Cir. 2024).<sup>1</sup>

Voters are instructed to complete their ballot, place it in the secrecy envelope, and then place the secrecy envelope in the return envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). The Election Code states that voters “shall

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<sup>1</sup> It was proper to rely on facts from *NAACP I*, and the other cases cited later in this brief. Those facts, developed after discovery from the Secretary, every county board of election, and several experts, are “not subject to reasonable dispute” because they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Pa.R.E. 201(b)(2). Courts “may take judicial notice of pleadings and judgments in other proceedings where appropriate. That is particularly so where [] the other proceedings involve the same parties.” *Moss v. Pa. Board of Probation and Parole*, 193 A.3d 1130, 1137 n.11 (Pa. Cmwlth. 2018); *see also Lycoming Cnty. v. Pa. Labor Relations Bd.*, 943 A.3d 333, 335 n.8 (Pa. Cmwlth. 2007). The Third Circuit reversed *NAACP I* but noted its agreement that declaration dates “serve little apparent purpose.” *NAACP II*, 97 F.4th at 125.

then fill out, date and sign the [return-envelope] declaration.” *Id.* §§ 3146.6(a), 3150.16(a). Voters must complete their ballot before 8 p.m. on Election Day. *Id.* §§ 3146.6(a), 3150.16(a).

Counties’ canvassing of mail ballots is governed by Section 1308 of the Election Code, which pre-dated Act 77. Act 77, § 7; *see also* 25 P.S. § 3146.8.

Further, counties must maintain records of when each mail ballot was received. *Id.* §§ 3146.9(b)(5), 3150.17(b)(5). The Department of State advises counties to “stamp the date of receipt on the ballot-return envelope” and “record the receipt of absentee and mail-in ballots daily in the [SURE] system.” *See Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes*, Version 4.0 (Apr. 3, 2023).<sup>2</sup> Counties follow this guidance. *See NAACP I*, 703 F. Supp. 3d at 666-67; *Chapman v. Berks Cnty. Bd. of Elections*, 355 MD 2022, 2022 WL 4100998, at \*6 (Pa. Cmwlth. Aug. 19, 2022) (describing county commissioners’ testimony).

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<sup>2</sup> Available at: <https://www.pa.gov/content/dam/copapwp-pa-gov/en/dos/resources/voting-and-elections/directives-and-guidance/2023-04-03-Examination-Absentee-Mail-In-Ballot-Return-Envelopes-4.0.pdf>.

Counties also scan the return envelope's barcode into the SURE system to create an electronic record of when a ballot was received. *NAACP I*, 703 F. Supp. 3d at 666-67; *Berks*, 355 MD 2022, 2022 WL 4100998, at \*6, \*19. These independent measures confirm a mail ballot was received (and thus necessarily completed) by the statutory deadline.

When canvassing timely mail ballots, county election officials must be satisfied that a voter's "declaration is sufficient." 25 P.S. § 3146.8 (g)(3). If a county is satisfied that the declaration is sufficient (and other conditions not relevant here are met), the ballots "shall be counted and included with the returns of the applicable election." *Id.* § 3146.8(g)(4).

After the county has completed its canvassing, it must submit its final and accurate returns to the Secretary. *Id.* §§ 3154(f), 3158. Counties must certify their final and accurate results to the Secretary within 20 days of Election Day. *Id.* § 2642(k). The Secretary must then complete his own tabulation, computation, and canvassing of the votes cast for certain offices. *Id.* § 3159.

## II. Relevant Litigation History

Before 2020, election officials routinely canvassed mail ballots without regard to the handwritten date on the return envelope. Only after the General Assembly expanded the availability of mail-in voting did anyone challenge ballots returned in envelopes with undated or misdated declarations. As a result, there has been litigation about this issue in almost all subsequent elections.

Most relevant here, this Court has addressed declaration dates twice.

It first did so just weeks after the 2020 general election, when the Court considered challenges to the decisions of the Allegheny and Philadelphia County boards of elections to count mail ballots returned with undated declarations. *See generally In re Canvass of Absentee & Mail-in Ballots of Nov. 3 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020).

Five days after granting applications to exercise extraordinary jurisdiction (which were filed two weeks after Election Day), this Court issued a 3-3-1 decision that the ballots should be counted in 2020. Three Justices concluded that, under the Election Code, mail ballots returned

with a signed but undated declaration should be canvassed under all circumstances. *Id.* at 1076-78 (announcing judgment). One Justice disagreed with that statutory conclusion but agreed that omitting a date should not disqualify voters under the facts of that case. *Id.* at 1085-89 (Wecht, J., concurring). Three other Justices wrote that ballots returned with undated declarations must always be rejected. *Id.* at 1090-91 (Dougherty, J., dissenting).

Then, in a case filed directly in this Court just three weeks before the 2022 general election, a six-member Court issued a brief order directing that county boards must “refrain from counting any absentee and mail-in ballots received for the November 8, 2022 general election that are contained in undated or incorrectly dated outer envelopes.” *Ball v. Chapman*, 284 A.3d 1189, 1192 (Pa. 2022). A supplemental order issued four days later (and three days before Election Day) directed what constituted an “incorrect” date for that election. *Suppl. Order, Ball v. Chapman*, 102 MM 2022 (Pa. Nov. 5, 2022).

Opinions in *Ball* came several months later. The lead opinion explained that *In re Canvass* was binding precedent requiring that mail

ballots returned with any declaration-date error be rejected. *Ball v. Chapman*, 289 A.3d 1, 20-22 (Pa. 2023).

### **III. Thousands of Eligible Voters Make Declaration-Date Errors Each Election**

Experience has shown that since Act 77 created no-excuse mail voting, thousands of registered, eligible electors in every election fail to write a correct date on the declaration returned with their timely mail ballot. App. 12, 17.

In the only presidential election since Act 77, 2,349 eligible voters in Allegheny County alone returned a mail ballot by the statutory deadline with a signed but undated declaration. *In re Canvass*, 241 A.3d at 1063 (announcing judgment). In Philadelphia County, 8,329 eligible voters returned a mail ballot by the statutory deadline with a signed declaration on which the voter had neglected to handwrite either a date or the voter's name or address (the last two of which are no longer required). *Id.*

For the 2022 general election, around 1,244,000 people returned a mail ballot. And counties set aside about 10,500 timely returned mail ballots from eligible voters solely because the declaration returned with the ballot was not correctly dated. *NAACP I*, 703 F. Supp. 3d at 668. Re-

jection rates varied significantly among counties: in Philadelphia, for example, more than two percent of mail ballots were set aside due to date errors. *See id.* at 678 (Philadelphia set aside 2617 ballots); Allegheny & Philadelphia Br. at 4 n.5, 283 MD 2024 (Pa. Cmwlth. June 24, 2024) (Philadelphia received 129,000 mail ballots total).

For the 2023 primary election, about 597,000 voters returned a mail ballot. Based on SURE—which underreports rejected ballots—counties reported cancelling about 4,918 of those ballots because of date errors.<sup>3</sup>

For the 2023 general election, about 613,746 voters returned a mail ballot. Because of the timing of the ruling in *NAACP I* some, but not all, counties canvassed mail ballots in the 2023 general election with declaration-date errors. In the 52 counties known to have rejected ballots for declaration-date errors, 1,354 ballots were reported as being cancelled out of about 250,580 mail ballots returned.

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<sup>3</sup> Counties use SURE to track the status of mail ballots. Starting with the 2023 primary, the Department adjusted SURE to allow counties to indicate a mail ballot was cancelled because of a declaration-date error (as well as other error types). Data from SURE entries underreports the number of date errors because not all counties enter cancellation codes and those that do can assign a ballot only one error type. For example, if a voter neither signed nor dated the declaration, that may be reported in SURE as a ballot cancelled either for a signature error or a date error.

For the 2024 primary election, around 715,811 people returned a mail ballot. Counties reported cancelling about 4,468 of those ballots because of date errors.

## SUMMARY OF ARGUMENT

1. During canvassing of mail ballots, declarations returned with the ballot are reviewed to confirm the “declaration is sufficient.” 25 P.S. § 3146.8(g)(3). If the declaration is (and there are no other issues under the Code) the ballot “shall be counted.” *Id.* § 3146.8(g)(4). The plain meaning of “sufficient” and the history of the Election Code unambiguously dictate that a mail ballot cannot be rejected because the declaration lacks a correctly written date. The contrary conclusion reintroduces a requirement that the General Assembly removed from the Code in 1968, which is when declaration dates ceased to serve any purpose. While this Court reached a contrary conclusion *In re Canvass and Ball*, every factor relevant to applying the doctrine of stare decisis weighs against continuing forward with those decisions.

2. Our Constitution prohibits depriving eligible voters of the right of suffrage for failing to perform an act that that has no relationship



to ensuring orderly and free, honest, and fair elections. If under the Election Code declarations without a correct date are insufficient, and the accompanying ballots may not be canvassed, then that rule violates the Pennsylvania Constitution. And because declaration dates have served no function since 1968, rejecting timely mail ballots from qualified voters for declaration-date errors fails that enduring constitutional standard.

3. Such a constitutional ruling would not invalidate all of Act 77. The requirement that ballots with insufficient declarations be rejected comes from the original version of the Election Code, not Act 77's amendments to it.

4. The Secretary, who is the routine defendant in matters regarding required statewide election practices, is an indispensable party here. Commonwealth Court, therefore, had jurisdiction. If there is any doubt, this Court can exercise jurisdiction under 42 Pa.C.S. § 726.

## ARGUMENT

### **I. This Court Should Rule That the Election Code Does Not Allow Rejecting Ballots Because of Declaration-Date Errors**

Before Commonwealth Court, the Secretary noted that “if this case advances to the Supreme Court the Secretary will urge the Supreme Court to revisit its interpretation of the Election Code.” Secretary Br. at 1, 283 MD 2024 (Pa. Cmwlth. June 24, 2024).<sup>4</sup>

That time has come. Under the Election Code, timely mail ballots from qualified electors cannot be rejected on the basis that the voter neglected to correctly handwrite a date on the mail ballot’s return envelope. This Court held otherwise in *In re Canvass and Ball*. But in each, the Court was forced to consider this critically important statutory question on exceedingly abridged schedules and without fully developed legal or factual arguments. Now, the Court, for the first time, has the time, relevant legal arguments, and factual record needed to properly resolve this issue. Stare decisis does not provide a sufficient reason to adhere to the past decisions.

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<sup>4</sup> Commonwealth Court, too, observed that the parties had announced that intention. App. 82-83 n.61; *see also* RNC Br. at 28.

### **A. The Election Code Does Not Allow Rejecting Ballots Because of Declaration-Date Errors**

Since its enactment in 1937, the Election Code has provided for some form of voting by mail. And since that time, it has separated instructions to voters on how to complete a mail ballot from instructions to election officials on how to canvass those ballots. Requirements to set aside ballots for delineated deficiencies are consistently placed in the canvassing section. *See generally* 25 P.S. § 3146.8.

From the beginning, the Code's canvassing section has required election officials to determine whether a mail ballot declaration (or its historic corollary) is "sufficient"; if it is, and if there are no other applicable instructions to set the ballot aside, then the ballot must be counted. That sufficiency review has never included evaluating the declaration date. Rather, for the period that declaration dates served a purpose (1945-1968), there was an explicit instruction in the canvassing section that election officials must set aside mail ballots for certain dating issues. But the General Assembly eliminated that explicit requirement in 1968 when separate amendments to the Election Code eliminated the declaration date's purpose. Since then, the Code has not permitted setting aside mail ballots due to declaration-date errors.

## 1. The Election Code Separately Addresses Canvassing Mail Ballots and Voting Mail Ballots

Different sections of the Election Code govern how voters should complete a mail ballot and how election officials should canvass mail ballots. While 25 P.S. § 3146.6 describes “voting by absentee electors,” and 25 P.S. § 3150.16 does the same for “voting by mail-in electors,” it is Section 1308 of the Code, codified at 25 P.S. § 3146.8, that governs the “canvassing of official absentee ballots and mail-in ballots.” All mail ballots “shall be canvassed in accordance” with that subsection. *Id.* § 3146.8(a).

Consistent with that, where there are explicit instructions not to canvass certain mail ballots, those instructions are found in § 3146.8. For example, except for certain military and overseas ballots not relevant here, mail ballots must be received by 8 p.m. on Election Day to be canvassed. 25 P.S. § 3146.8(g)(i)(ii). Ballots returned by someone who died before Election Day must be rejected. *Id.* § 3146.8(d). Ballots returned in a secrecy envelope with a mark that reveals a voter’s identity, political affiliation, or preferred candidate shall be “declared void.” *Id.* § 3146.8(g)(4)(ii).

This Court has recognized that § 3146.8 supplies the relevant standards for resolving disputes about the canvassing of mail ballots.

That section guided this Court's determination that mail ballots cannot be rejected based on an analysis of the voter's signature. *In re Nov. 3 2020 Gen. Election*, 240 A.3d 591, 605-11 (Pa. 2020). Likewise, this Court reviewed § 3146.8 to determine if county boards may canvass and count mail ballots not placed in the inner secrecy envelope. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 375, 378-80 (Pa. 2020).

Past and proposed amendments to the Election Code corroborate that § 3146.8 governs when, as a statutory matter, mail ballots are canvassed.

For example, in 1945, the General Assembly added the "shall ... date" language to the Code in the section instructing voters on absentee procedures. Act of Mar. 9, 1945, P.L. 29, No. 17, § 10 (amending Section 1306 of the Code), App. 543-544. At the same time, the General Assembly added to the separate section *governing canvassing* a mandate that county boards examine return envelopes and "set aside unopened" envelopes on which the "jurat bears a date later than the date of the election." *Id.* § 10 (amending what was then Section 1307 of the Code), App. 544-545.

The General Assembly did the same in 1963, when it added the declaration still used today. Voters were instructed that they “shall ... fill out, date and sign the declaration printed on [the outer ballot-return] envelope.” Act of Aug. 13, 1963, P.L. 707, No. 379, § 22 (amending Section 1306 of the Code), App. 578-579. But in the separate canvassing section, the Code instructed that each “county board of election shall examine the declaration and if the same bears a date later than the date of such primary or election, the envelope shall be set aside unopened.” *Id.* § 24 (amending Section 1308 of the Code), App. 583-585.

Likewise, in 2021, when the General Assembly passed sweeping changes to the Election Code (which the Governor vetoed), the amendments would have added language *to the canvassing section* directing that county boards could not canvass ballots returned with an undated declaration. *See* HB 1300, Session of 2021, § 20 (proposing amendments to Section 1308 of the Code); *Ball*, 289 A.3d at 15 n.68.

Recognizing that the Code separately directs which mail ballots county boards must canvass or not obviates the need to parse the Code’s voter instructions to “weigh in each instance whether to interpret the

mandatory statutory language as being mandatory in fact.” *In re Canvass*, 241 A.3d at 1081 (Wecht, J.). The “shall ... date” language certainly is an instruction that voters are meant to follow. But that instruction does not clearly dictate what consequence follows from failing to comply.

Indeed, the Election Code is replete with instructions directed to everyone involved in the voting process: voters, candidates, political parties, county boards, district election workers, the Secretary of the Commonwealth, and others. The word “shall” appears thousands of times, in connection with virtually every step to be taken in the planning and execution of an election. *E.g.*, 25 P.S. § 3004 (“The county election board shall provide machines in good working order, and shall preserve and keep them in repair.”); *id.* § 2673 (“The county board shall be notified immediately upon the determination of any such tie vote [for judge or inspector of elections].”); *id.* § 2838.1 (“The secretary of any political party shall certify and forward to the Secretary of the Commonwealth a copy of the party rules ....”); *id.* § 3031.10(g) (“The members of the district election board shall arrive at the polling place at least one-half hour before the opening of the polls.”); *id.* § 3055(a) (voters “shall retire to one of the voter compartments, and draw the curtain or shut the screen door”); *id.*

§ 3055(d) (voters “shall fold [their] ballot ... in the same way it was folded when received” before returning it). The purpose of many of these requirements is plainly not to impose specific consequences for failure to take certain steps.<sup>5</sup>

In this regard, the voter directions for mail ballots fit in logically with the rest of the Code. The “shall ... date” text appears among instructions to voters, along with the deadline for completing the mail ballot, that the ballot should be completed in secret, and with a certain color pen or pencil. 25 P.S. §§ 3146.6(a), 3150.16(a). Yet, the mere existence of an instruction that voters “shall ... date” the mail ballot declaration does not mean the General Assembly intended that ballots with an undated declaration be set aside any more than it means the intended consequence was for the county to, for example, rely on its own stamped date instead, or send the voter’s ballot back to them to be fixed, or invite the voter to write a date, or count the ballot regardless. Instead, whether a ballot with

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<sup>5</sup> This is an ordinary construct. For example, it is unlawful to litter in certain water ways. 30 Pa.C.S. § 2503(a). But that prohibition itself says nothing about what happens if someone does litter. The penalty must be separately defined. *Id.* § 2503(c).



an incorrectly dated declaration should be canvassed is determined by what the General Assembly instructs in Section 1308.

**2. A Declaration is Sufficient Without the Date, Which Has Served No Purpose Since 1968.**

Under Section 1308, canvassing of mail ballots requires election officials to be “satisfied that the declaration is sufficient.” 25 P.S. § 3146.8(g)(3). If the declaration is, and there is no provision of § 3146.8 that requires setting the ballot aside, then the mail ballot “shall be counted and included with the returns of the applicable election district.” *Id.* § 3146.8(g)(4). The current version of § 3146.8 makes no mention of declaration date, much less instructs county boards to set mail ballots aside for declaration-date errors. Any consideration of declaration date, therefore, must occur as part of the sufficiency analysis.

1. The central statutory question, then, is what makes a declaration “sufficient,” which must be determined based on evidence of the General Assembly’s intention. 1 Pa.C.S. § 1921(a). Statutory text is the best evidence, *id.* § 1921(b), and text should be read in context, with words bearing their common meaning. *Crown Castle NG E. LLC v. Pa. Pub. Util. Comm’n*, 234 A.3d 665, 674 (Pa. 2020). The “former law” may also assist understanding the General Assembly’s intention. 1 Pa.C.S. § 1921(c); *In*

*re Nov. 3 Gen. Election*, 240 A.3d at 609 (looking to the history of § 3146.8(g)(3) to determine if county boards were authorized to reject mailed ballots based on signature analysis).

The longstanding definition of “sufficient,” (a word included as part of the original Election Code, *see infra* at 24-25) is “[o]f a quantity, extent, or scope adequate to a certain purpose or object.” *Sufficient*, Oxford English Dictionary (2d ed.) (dating this use of “sufficient” to 1380). By choosing the word “sufficient,” the legislature made clear that less than perfect compliance with the voting instructions was acceptable for a ballot to be counted, so long as the declaration achieves its purpose.

The purpose of the declaration is for the voter to swear to their eligibility. *See* 25 P.S. §§ 3146.4, 3150.14. Indeed, the entire purpose of a county boards’ review under § 3146.8(g)(3) is to consult various sources—including the declaration and voter lists—to confirm that the sources “verif[y] his right to vote.” *Id.* § 3146.8(g)(3).

A signature alone is sufficient for a voter to attest to their eligibility, and thus for the declaration to serve its particular purpose in county boards’ eligibility verification. A signed, but undated, declaration is no less an affirmative statement by the voter than is a signed and dated one

(and the date itself serves no further function, *infra* at 49-55). In fact, the Election Code clearly treats a signature alone as sufficient for the declaration to achieve its purpose, as it imposes criminal penalties on anyone who falsely *signs* a declaration. *See* 25 P.S. § 3553. If a signature alone is sufficient to treat the declaration as an affirmative statement by the signatory where it is false, it surely is sufficient to do so where the declaration is true.

2. The history of the Election Code confirms that a signed but undated declaration is “sufficient” and must be canvassed.

**1937.** When the Code was first enacted only some active military members could vote absentee. Act of June 3, 1937, P.L. 1333, No. 320, §§ 1327-1330, App. 525-527.

Absentee ballots were returned in an envelope printed with “the affidavit of the [voter], together with the jurat of the officer in whose presence the ballot is marked and before whom the affidavit is made.” *Id.* § 1328, App. 525-526. Voters had to “subscribe and swear to the affidavit” and the jurat had to “be subscribed by the [witnessing] officer,” but neither the affidavit nor jurat had to be dated. *Id.* § 1329, App. 526.

During canvassing, county boards were required to “compare the signature of such absent voter with his signature upon any register or other record in their possession.” *Id.* § 1330, App. 525-527. If a county board was “satisfied that the signatures correspond and that the affidavit and jurat are *sufficient*,” it was supposed to process the ballot. *Id.* (emphasis added), App. 526.

Because there was no instruction to date either the affidavit or jurat, the boards’ determination of whether the affidavit and jurat were “sufficient” did not include any assessment of whether either was dated.

**1941.** When the General Assembly amended the Code in 1941, it retained a direction that voters must complete their absentee ballot on or before Election Day as well as language that county boards should canvass ballots received by the second Friday *after* Election Day. Act of Aug. 1, 1941, P.L. 672, No. 273, § 4 (amending Sections 1303 and 1306 of the Code), App. 533-534. The amendments added a new requirement that county boards “set aside” during canvassing any ballot with a return envelope that “bear[s] a postmark later than the date of the particular Election Day involved.” *Id.* § 4 (amending what was then Section 1307 of the Code), App. 534-535. *After* setting aside those untimely ballots, county

boards were to review whether the “affidavit and jurat are sufficient.” *Id.*, App. 535.

**1945.** In 1945, the General Assembly added language stating that voters’ jurat “shall be ... dated.” Act of Mar. 9, 1945, P.L. 29, No. 17, § 10 (amending Section 1306 of the Code), App. 543-544. Voters still had to complete the ballot on or before election day, *id.*, App. 543, and for a general election a ballot could be counted if received by the second Friday after Election Day, *id.* § 10 (amending what was then Section 1307 of the Code), App. 544. Consistent with the new dating instruction to voters, counties were specifically directed to “set aside” all ballots in which the “jurat bears a date later than the date of the election.” *Id.*, App. 544-545. The written date, then, replaced the postmark as the necessary evidence a ballot was *timely completed*. Again, after setting aside ballots based on the jurat date, counties were to review the remaining ballots to determine whether “the affidavit and jurat are sufficient.” *Id.*, App. 545.

**1963.** Amendments in 1963 consolidated civilian and military absentee procedures and replaced the separate affidavit and jurat with the single declaration in use today. Act of Aug. 13, 1963, P.L. 707, No. 379, § 22 (amending Section 1304 of the Code), App. 576-577. The previous

instruction to date the jurat became an instruction that the “elector shall ... fill out, date and sign the declaration printed on [the outer ballot-return] envelope.” *Id.* § 22 (amending Section 1306 of the Code), App. 578-579. Voters still had to mark the ballot on or before election day, and it would be counted if received before the second Friday after Election Day. *Id.*, § 24 (amending Section 1308 of the Code), App. 583-585. The Code’s canvassing section was amended to instruct counties to set aside ballots returned with declarations bearing a date after Election Day. *Id.*, App. 583. After setting aside ballots based on the declaration date, counties were to review whether the “declaration is sufficient.” *Id.*, App. 584.

**1968.** In 1968, the General Assembly aligned, for the first time, the deadline for absentee voters to complete their ballot and for county boards to receive those ballots (making each deadline 5 p.m. the Friday before Election Day). Act of Dec. 11, 1968, P.L. 1183, No. 375, § 8, (amending Section 1308 of the Code), App. 603.<sup>6</sup> After creating a single deadline, the General Assembly *removed* the requirement that counties

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<sup>6</sup> Act 77 changed this uniform deadline to 8 p.m. on Election Day.

set aside ballots based on the date appearing on the ballot-return declaration. *Id.*, App. 603. In all other ways—including reviewing the declaration for sufficiency—the Code was materially unchanged.

**2019.** When Act 77 was passed, all registered, qualified voters were given the option to vote by mail. Act 77 adopted wholesale the pre-existing text and procedures for absentee voting. The General Assembly did not create a new canvassing section, but instead directed that no-excuse mail-in ballots be canvassed under the same procedures for absentee ballots.

This statutory genealogy confirms, first, that when the General Assembly meant for counties to set aside ballots based on an examination of the date, it said so explicitly. That explicit instruction was removed in 1968 when it became unnecessary. It is improper to now assume that the General Assembly meant for declaration-date issues to result in cancelling ballots when the General Assembly removed that very instruction.

Second, this history proves that what it means for a declaration to be “sufficient” is unrelated to its date. Assessing if a “declaration is sufficient” has *never* included review of a date. Instead, before 1968, the Election Code consistently instructed county boards of elections to *first* set

aside mail ballots bearing dates or postmarks after election day, and *then* to examine whether the declaration is sufficient. When the General Assembly aligned the deadlines in 1968, it removed the requirement to set ballots aside based on the date but retained the sufficiency assessment.

\* \* \*

To determine whether the General Assembly intended a ballot to be set aside, the Court must look to § 3146.8 and its instructions to county boards. Because this section no longer requires county boards to set aside mail ballots based on the declaration date, and because a declaration is sufficient without regard to the declaration date, the Election Code does not authorize setting aside ballots based on declaration-date errors.

**B. *In re Canvass* and *Ball* Should Not Be Followed**

Although this Court reached a different conclusion in *In re Canvass*, as the discussion above shows, that decision was, respectfully, incorrect. It (and *Ball*) should be overruled.

Stare decisis is an insufficient reason to continue forward under this Court's prior decisions. Stare decisis promotes predictability and important reliance interests but does not "demand unseeing allegiance to things past." *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*,



309 A.3d 808, 850 (Pa. 2024). Whether it is appropriate to keep to past decisions depends on the “quality of [the past decision’s] reasoning, the workability of the rule it established, its consistency with other related decisions” as well as “reliance on the decision” and the age of the decision (older decisions requiring a more compelling case to be overturned). *Commonwealth v. Alexander*, 243 A.3d 177, 196-97 (Pa. 2020). In this instance, every consideration cuts decisively in favor of correcting the statutory analysis from *In re Canvass* and *Ball*.

1. Through no fault of the Court’s, the reasoning behind *In re Canvass* and *Ball* is incomplete. In *In re Canvass*, this Court had granted an application for extraordinary jurisdiction that was filed two weeks after the day of the 2020 general election. *See* Appl. for Extraordinary Relief, *In re Canvass*, 89 EM 2020 (Pa.). There was a need for urgent resolution. This Court acted accordingly, issuing its order just five days after granting applications for extraordinary jurisdiction, allowing for the election to move toward the Secretary’s final certification. But the need to move quickly interfered with the ability of the parties (which did not include the Secretary) to present this Court with fully developed arguments on

what was then a novel issue. Nor had there been any factual development regarding the use of declaration dates.

Unsurprisingly under the circumstances, the Court's opinion could not account for the history of the Election Code described above, was not as attuned to the structure of the Code or the text of the section governing canvassing of mail ballots, and offered hypotheses that the parties did not yet have the factual record to conclusively address.

When this Court revisited the question in *Ball*, the matter again arose in an expedited posture, on a King's Bench petition just three weeks before the 2022 general election. Although the parties had better developed the relevant legal arguments, the factual record remained underdeveloped. *Ball*, 289 A.3d at 14-16. And while the parties disagreed about whether *In re Canvass* was binding precedent, no party asked the Court to overturn *In re Canvass* if the Court concluded that decision was precedent requiring treating declaration-date errors as disqualifying. *Ball*, 289 A.3d at 20 (summarizing parties' positions). As a result, although this Court acknowledged arguments that were not before it in *In re Canvass*, *id.* at 14-16, its conclusion that *In re Canvass* was precedent and

required rejecting ballots with declaration-date errors was the end of the matter, *id.* at 20-22.

Because of the timing of *In re Canvass* and because no party in *Ball* asked this Court to revisit *In re Canvass*, this Court has not yet had the opportunity to fully engage the statutory analysis presented above.

2. Further, the rule that emerged from *In re Canvass* and *Ball* is unworkable.<sup>7</sup> In *Ball*, this Court rightly forecasted the practical challenge of determining whether a declaration date is correct. *Ball*, 289 A.3d at 23; *see also id.* at 36 (Brobson, J., concurring and dissenting) (suggesting that counties can reject ballots with “facially correct [declaration] date[s]” after further scrutiny). In the elections since *Ball*, there have been persistent questions about what qualifies as a correct date.

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<sup>7</sup> The RNC, which filed *Ball* a mere three weeks before the 2022 election, brazenly claims that Commonwealth Court’s decision here “threatens to unleash chaos.” RNC Br. at 1. Affirming here, however, will relieve counties of the burden of having to review the date on *every single* mail-ballot envelope and making difficult determinations about whether a date is correct. It will not cause any “voter confusion,” *contra* RNC Br. at 59, or negatively affect voters at all. Voters instead will be protected from losing their right to vote based on an inconsequential error.

The Department has tried to aid counties with guidance, App. 259, 357-58, and minimize the opportunity for error by redesigning the declaration, *see* Directive Concerning the Form of Absentee and Mail-in Ballot Materials, Version 2.0 (July 1, 2024), App.151-156; *see also* Directive Concerning the Form of Absentee and Mail-in Ballot Materials, Version 1.0 (Nov. 28, 2023).<sup>8</sup> But guidance is not binding (though usually followed) and cannot address every conceivable question. Nor can design work solve all problems. *Contra* RNC Br. at 37-38. And evidence has shown that counties are inconsistent in their application of the rule announced in *In re Canvass and Ball*. App. 61; *NAACP I*, 703 F. Supp. 3d at 681-82. More to the point, requiring election officials to review declaration dates impairs sound election administration. *Infra* at 57-59.

3. Additionally, as discussed above, the analytical approach in *In re Canvass*—looking to the mail voting instruction sections instead of the county canvassing instruction section—is out of line with other decisions

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<sup>8</sup> Available at: <https://www.pa.gov/content/dam/copapwp-pa-gov/en/dos/resources/voting-and-elections/directives-and-guidance/archived/2023-Directive-Absentee-Mail-in-Ballot-Materials.pdf>.

of this Court determining what ballots should be canvassed and the structure of the Election Code. *Supra* at 17-18.

4. Nor have *In re Canvass* and *Ball* engendered reliance interests or settled expectations. *Allegheny Reprod.*, 309 A.3d at 888. Rather, the consequence of failing to correctly date a declaration, and what constitutes a correct date, has been the focus of persistent (and still on-going) litigation. In fact, challenges under the U.S. Constitution to rejecting timely mail ballots from qualified voters because of declaration-date errors remain pending in federal courts. Docket, *Pa. State Conf. of NAACP v. Schmidt*, 22-339 (W.D.Pa.); Docket, *Eakin v. Adams Cnty. Bd. of Elections*, 22-340 (W.D.Pa.).

Other cases have challenged, or attempted to challenge, what constitutes a correct date. *E.g.*, *In re Six Ballots in 2024 Gen. Primary Election*, No. 629 CD 2024, 2024 WL 3290384 (Pa. Cmwlth. July 3, 2024); *In re Contest of Nov. 7 2023 Election of Towamencin Twp.*, 318 A.3d 420 (Pa. Cmwlth. 2024); *Schellberg v. Centre Cnty. Bd. of Elections*, 2024-1220 (Centre Cnty. C.C.P. May 24, 2024). But these cases have barely scratched the surface of this issue. *See NAACP I*, 703 F. Supp. 3d at 681 (discussing rejected ballots where the voter “omitted the year; omitted

the month; omitted the day; included a day that does not exist; put the date elsewhere on the envelope; or included a cross-out to correct an erroneous date” as well as “[a]dditional inconsistencies [from] differing utilization of standard dating conventions”) (cleaned up).

Moreover, there may still be more challenges coming based, at least, on the fact that the rule from *In re Canvass* and *Ball* disproportionately affects older voters. App. 16, 61; County Amicus at 10-15.

5. Nor has there been any legislation enacted based on this Court’s decisions. *Allegheny Reprod.*, 309 A.3d at 888. Moreover, because *In re Canvass* and *Ball* implicate the franchise, it is less likely that the ordinary legislative process will result in the correction of judicial errors. *Cf. United States v. Carolene Prod. Co.*, 304 U.S. 144, 152 n.4 (1938).

6. Finally, *In re Canvass* and *Ball* are very recent decisions that have not generated subsequent legal development that rely on their outcome. *Allegheny Reprod.*, 309 A.3d at 887.

## **II. Rejecting Ballots Because a Voter Failed to Correctly Write a Declaration Date Is Unconstitutional**

If this Court instead concludes that a mail ballot declaration is sufficient only if correctly dated, enforcing that requirement by rejecting timely ballots from qualified voters is unconstitutional. That is because elections are not free, and the right of suffrage is not freely exercised, *see* Pa. Const. art. I, § 5, if voters must perform acts that have no relationship to ensuring orderly and free, honest, and fair elections as a prerequisite to having their ballot counted.

### **A. Pennsylvania’s Constitution Protects Against Unreasonable Interferences with the Right of Suffrage**

In Pennsylvania, “the right to vote is fundamental and pervasive of other basic civil and political rights.” *Banfield v. Cortes*, 110 A.3d 155, 176 (Pa. 2015) (cleaned up). Eligible Pennsylvanians have a constitutionally guaranteed right to vote in elections that are “free and equal.” Pa. Const. art. I, § 5; *see also* Pa. Const. art. I, § 26; Pa. Const. art. VII, § 1. And “no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5.<sup>9</sup>

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<sup>9</sup> These rights have been guaranteed in every version of Pennsylvania’s Constitution. Pa. Const. of 1776, art. I, § VII & art. II, § 6; Pa. Const. (*continued*)...

Section 5 (or the Free and Equal Clause) is written in “the broadest possible terms,” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018), and affords an array of important protections. Its assurance of both the “free exercise of the right of suffrage” and that elections be “free and equal” requires that: “[1] all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, [2] conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.” *League of Women Voters*, 178 A.3d at 804.

To keep the electoral process open and unrestricted to the greatest degree possible, the Free and Equal Clause strikes “at all regulations of law which shall impair the right of suffrage rather than facilitate or reasonably direct the manner of its exercise.” *Id.* at 809 (quoting Charles R. Buckalew, *An Examination of the Constitution of Pennsylvania. Exhibiting The Derivation and History of Its Several Provisions*, Article I at 10 (1883)). This Court has been “consistent over the years,” *id.*, that Section

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of 1790, art. III, § 1 & art. IX, § 5; Pa. Const. of 1838, art. III, § 1 & art. IX, § 5; Pa. Const. of 1874, art. I, § 5 & art. VIII, § 1.



5 demands, at a minimum, that elections must be “public and open to all qualified electors alike”; that every voter must have “the same right as every other voter”; that every voter must have “the right to cast his ballot and have it honestly counted”; that regulations “of the right to exercise the franchise [may] not deny the franchise itself, or make it so difficult as to amount to a denial”; and that “no constitutional right of the qualified elector [may be] subverted or denied him,” *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914).

Further, all aspects of the electoral process must be free of unreasonable burdens on the right of suffrage. Regulations that impair (or outright deny) the right of suffrage but further no interest in ensuring orderly and honest elections impose unreasonable, and thus unconstitutional, burdens. Pennsylvania’s election regulations have been tested against this standard for over a century. *E.g.*, *Independence Party Nomination*, 57 A. 344, 345 (Pa. 1904) (“[The right of suffrage] cannot be denied, qualified, or restricted, and is only subject to such regulation as to the manner of exercise as is necessary for the peaceable and orderly exercise of the same right in other electors.”); *see also Banfield*, 110 A.3d at

176-77 (“[T]he state may enact substantial regulation containing reasonable, non-discriminatory restrictions to ensure honest and fair elections that proceed in an orderly and efficient manner.”); *In re Recount of Ballots Cast in Gen. Election on Nov. 6, 1973*, 325 A.2d 303, 308 (Pa. 1974) (“Unreasonable impairment or unnecessary restrictions upon [the right of suffrage] cannot be tolerated.”).<sup>10</sup>

Consistent with this standard, this Court has held that compliance with neutral rules that do not reasonably further an interest in orderly and honest elections cannot be enforced by denying a qualified elector their right to vote. *Contra* RNC Br. at 30-31. These decisions have ensured that the right to suffrage remains free. Pa. Const. art. I, § 5.

In *Appeal of Norwood*, for example, this Court held that a ballot marked with a “✓” should be counted, even though the Election Code specifically directed that, “Any ballot marked by any other mark than an (X) in the space provided for that purpose shall be void and not counted.” 116 A.2d 552, 553 (Pa. 1955) (citing 25 P.S. § 3063). Echoing the text of Section 5, the Court noted that “the right of suffrage is the most treasured

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<sup>10</sup> Because rejecting mail ballots is unconstitutional under this standard, App. 84 n.62, the Court need not decide if strict scrutiny applies. *Contra* RNC Br. at 38-42.

prerogative of citizenship.” *Id.* That right can be conditioned on compliance with rules that serve an election interest, such as preserving voter anonymity, but not on compliance with rules that do not. *Id.* at 554-55.

Likewise, in *Appeal of Gallagher*, a ballot with several stray marks next to the name of the voter’s preferred candidate and the words “no good” next to the disfavored candidate was not rejected despite § 3063’s clear instruction that it must be. 41 A.2d 630, 631-32 (Pa. 1945). Ballots, this Court reasoned, should not be discarded for “minor irregularities”; instead, “voters are not to be disenfranchised at an election except for compelling reasons.” *Id.* at 632; see also *In re Petitions to Open Ballot Boxes*, 188 A.2d 254, 256-57 (Pa. 1963) (holding that non-compliance with § 3063 could not result in rejecting ballots even after statutory amendments made following *Norwood*).

Similarly, clear statutory language that a ballot must be marked in blue or black ink did not permit rejecting ballots marked in red ink. *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972). The use of a different color ink did not make the ballot identifiable or otherwise interfere with any discernable election-administration interest. *Id.*

Likewise, in *In re Recount*, a ballot returned without removal of a pre-printed number was counted despite that text of the Election Code unambiguously stating that “[a]ny ballot deposited in a ballot box ... without having the said number torn off shall be void and shall not be counted.” *In re Recount*, 325 A.2d at 308 (citing 25 P.S. § 3055). Echoing the text of Section 5, the Court wrote:

[I]t is important to be reminded that the right of suffrage is the most treasured prerogative of citizenship in this nation and this Commonwealth. It is this right that made the American dream distinctive, where men were to be governed not by the state but by themselves. Unreasonable impairment or unnecessary restrictions upon this right cannot be tolerated whether the contest be for the selection of the President of the United States or the district committeeman.

*Id.* So, while legislation that furthers actual election aims—such as voter anonymity, the integrity of the vote, and timely resolution of an election, to name a few—is permissible and necessary, “regulatory measures must not ever be permitted to unduly infringe upon the exercise of the right to vote” and must not amount to an unreasonable encroachment upon the franchise and the legislative enactment should not be interpreted to require such a result.” *Id.* at 309.

Although the RNC brushes these cases away as statutory interpretation cases rather than cases protecting Pennsylvania’s constitutional

right to vote freely, RNC Br. at 39-40, in each of *Norwood*, *Gallagher*, *In re Luzerne*, and *In re Recount*, this Court confronted unambiguous statutory language. And in each, this Supreme Court explained that (notwithstanding that statutory text) non-compliance with unambiguous voting rules cannot be used to impair the right of suffrage if the voting rule is divorced from any election-related purpose.

This Court also has interpreted ambiguity or silence in the Election Code to avoid needlessly depriving eligible voters of the franchise. *Shambach v. Bickart*, 845 A.3d 793, 798 (Pa. 2004); *In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, 843 A.3d 1223, 1231 (Pa. 2004); *Appeal of James*, 105 A.2d 64, 65-66 (Pa. 1954); *Appeal of McCaffery*, 11 A.2d 893, 895-96 (Pa. 1940). This statutory-interpretation principle derives from the objectives that animate the Free and Equal Clause: “[A]n honest and just election” that ascertains “the intention of the voter.” *Appeal of James*, 105 A.2d at 65. To achieve that end, election laws must be interpreted “in favor of the right to vote” and “statutes tending to limit the citizen in his exercise of the right of suffrage should be liberally construed in his favor.” *Id.* (quoting 29 C.J.S. Elections, § 7). Indeed, Pennsylvania’s long-minted rule of statutory interpretation follows from the

“constitutionally protected right to an equal, nondiscriminatory electoral process.” *Berks*, 355 MD 2022, 2022 WL 4100998, at \*13.

Although Pennsylvania’s strong constitutional protections of the right to vote have no equally forceful federal counterpart, *see League of Women Voters*, 178 A.3d at 804, the U.S. Constitution imposes similar limits. It, too, demands that burdens on voting rights be justified by sufficient regulatory interests. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *see also Pa. Democratic Party*, 238 A.3d at 384-85 (comparing protections under Pennsylvania Constitution to those described in *Burdick*); *Banfield*, 110 A.3d at 177 (same).

Likewise, weighing a regulations’ purpose against the burdens imposed on the right to vote is a common protection in states that are constitutionally compelled to keep their elections “free and equal” (or even just “free” or “free and open”) and that shield voters from interference with “the free exercise of the right of suffrage.” *E.g., Montana Democratic Party v. Jacobsen*, 545 P.3d 1074, 1089-93 (Mt. 2024) (citing Mont. Const. art. II, § 13); *League of Women Voters of Delaware, Inc. v. Dep’t of Elections*, 250 A.3d 922, 934-36 (Del. Ch. 2020) (citing Del. Const. art. I, § 3); *Chelsea Collaborative, Inc. v. Sec’y of Commonwealth*, 100 N.E.3d 326,

330-32 & n.17 (Mass. 2018) (citing Mass. Const. Part I, art. IX); *Crum v. Dunn*, 390 P.3d 971, 973-74 (N.M. 2017) (citing N.M. Const. art. II, § 8); *Guare v. New Hampshire*, 117 A.3d 731, 735-36 (N.H. 2015) (citing N.H. Const. Part. 1, art. XI); *Meyer v. Lamm*, 846 P.2d 862, 874-76 (Colo. 1993); *Craig v. Peterson*, 233 N.E.2d 345, 348 (Ill. 1968) (citing what is now Ill. Const. Art. III, § 3).

Protecting voting rights from unreasonable regulations is commonplace even among states with less muscular protections than those enshrined in the Pennsylvania Constitution. *State ex rel. Frederick v. Zimmerman*, 37 N.W.2d 473, 480 (Wisc. 1949) (“Legislation regulating the exercise of the elective franchise ... must be reasonable.”); *State v. Erickson*, 137 N.W. 385, 386 (Minn. 1912) (holding election regulation “must be reasonable, uniform, and impartial; they must not be such as to defeat indirectly the constitutional rights of an elector or unnecessarily obstruct the exercise thereof”); see also *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740 N.W.2d 444, 463 (Mich. 2007); *Burr v. Voorhis*, 128 N.E. 220, 221-22 (N.Y. 1920).

The standard that this Court should apply here is therefore both deeply rooted in Pennsylvania and common throughout the country.<sup>11</sup>

**B. This Court May Answer the Constitutional Question Raised Here**

There is no basis, as the RNC urges, for this Court to abdicate its responsibility to ensure compliance with Pennsylvania’s constitutional protections of free elections and the free exercise of suffrage.

1. The constitutional question raised here was not resolved in *Pennsylvania Democratic Party*. *Contra* RNC Br. at 26-27.<sup>12</sup> This Court ruled that the Constitution does not require county boards to contact voters whose mail ballots will be rejected for fatal defects but did not address the antecedent issue of which errors might be fatal. *Pa. Democratic Party*, 238 A.3d at 374. The same is true of *Ball*. *Contra* RNC Br. at 27. The

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<sup>11</sup> Application of this enduring and common standard would not violate the U.S. Constitution. *Contra* RNC Br. at 54-55. For one, the U.S. Constitution demands a similar (but less robust) evaluation. *Burdick*, 504 U.S. 434. For another, the U.S. Constitution’s “Elections Clause does not insulate state legislatures from the ordinary exercise of judicial review.” *Moore v. Harper*, 600 U.S. 1, 22 (2023).

<sup>12</sup> This Court resolved only that *In re Canvass* had already held that the Election Code requires rejecting mail ballots for declaration-date errors. *Ball*, 289 A.3d at 20-22.



constitutional issue raised here was not one of the three granted for review. King's Bench Order, *Ball v. Chapman*, 102 MM 2022 (Pa. Oct. 21, 2022).

2. Nothing in this Court's precedent suggests Section 5 serves only the "three functions" that the RNC invents based on *League of Women Voters*. RNC Br. at 29-30. That decision repeatedly expounded upon "expansive sweep" of the clause's text, which mandates "in the broadest possible terms" that all elections must be "kept open and unrestricted to the voters of our Commonwealth." 178 A.3d at 804.

3. Nothing in the Pennsylvania Constitution silently creates a discrete class of elections regulations (which the RNC characterizes as "ballot-casting rules") completely insulated from constitutional review. *Contra* RNC Br. at 24, 43. Rather, the Pennsylvania Constitution (like the U.S. Constitution) protects "all aspects of the electoral process." *League of Women Voters*, 178 A.3d at 804; *see also United States v. Classic*, 313 U.S. 299, 315 (1941) ("Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections.").

**C. Rejecting Ballots Because a Voter Failed to Write a Declaration Date Unreasonably Interferes with the Right of Suffrage**

Requiring election officials to deny the right to vote to anyone who fails to properly write a declaration date is an unreasonable burden because such a rule does not advance any interest in free, honest, or fair elections. Since 1968, there has been no reason for officials to review a voter's declaration date or to reject a ballot based on the content (or absence) of that date.

**1. Rejecting Ballots for Declaration-Date Errors Burdens the Right of Suffrage**

Cancelling mail ballots because of declaration-date errors "impairs the right of suffrage." *League of Women Voters*, 178 A.3d at 809.

For an individual voter, it leads to disenfranchisement. *Ball*, 289 A.3d at 20-22. Across the Commonwealth, cancelling ballots for declaration-date errors produces a constitutionally "intolerable ratio of rejected ballots." *Pa. Democratic Party*, 238 A.3d at 389 (Wecht, J., concurring); *see also supra* at 11-13 (noting thousands of ballots reported as cancelled for date errors in each election). In some recent elections, the number of voters who fail to write a correct date has been greater than the margin separating candidates in certain contests. *In re Contest of Nov. 7, 2023*

*Election of Towamencin Twp.*, 318 A.3d 420 (Pa. Cmwlth. 2024); *Migliori v. Cohen*, 36 F.4th 153, 163-64 (3d Cir. 2022), vacated as moot by *Ritter v. Migliori*, 143 S.Ct. 297 (2022).

The RNC insists that “there is nothing difficult” about correctly dating the declaration and that the number of people who fail to comply with the rule is irrelevant. RNC Br. at 32-35. It is hard, however, to conceive of evidence more indicative of the difficulty of complying with the dating requirement than the number of people who fail. And the thousands of (predominately older) voters who fail to handwrite a correct declaration date in election after election makes clear that for a meaningful portion of the electorate the difficulty of compliance is not trivial.

Moreover, the RNC’s view of the burden is overly narrow. This Court has not tolerated disenfranchising voters for failing to perform a subjectively “easy” task. In *Norwood* and *Gallagher*, for example, voters had not complied with the requirement to mark their ballot with an “x.” *Supra* at 39-40. Writing an “x” is easier than writing a correct date. In *In re Luzerne*, the issue was what color ink could be used. *Supra* at 40. Writing in the most readily available ink colors is no harder than writing a correct date, and yet this Court concluded using red ink was allowed.

These decisions make sense because jumping through pointless hoops as a condition of having a ballot counted is not a “usual burden” of voting, *contra* RNC Br. at 34, no matter how “easy” it might be to do so. Here, then, the burden to weigh must account for the absolute disenfranchisement imposed for failing to perform an inconsequential task.

## **2. Rejecting Ballots for Declaration-Date Errors Serves No State Interest**

The burden here is unreasonable because rejecting ballots for declaration-date errors serves no election purpose.

**1. The Date Serves No Function.** The Election Code creates detailed rules for Pennsylvania’s qualified, registered electors who opt to vote by mail. Most significant here, everyone who votes by mail must complete their ballot, place the ballot in a secrecy envelope, and place the secrecy envelope in a larger pre-addressed return envelope. *Supra* at 5-7. Each return envelope has printed on it a declaration that requires the voter to attest they are qualified to vote in the election and have not already voted. *Id.* Voters are directed to “fill out, date and sign the declaration.” *Id.* And voters must complete their ballot before 8 p.m. on Election Day. *Id.*

Most of these rules have a reasonable connection to advancing the administration of Pennsylvania's election. By signing the declaration, the voter swears, under penalty of perjury, that they are qualified to vote the ballot being returned. 25 P.S. § 3553. The secrecy envelope can reasonably be understood to further a constitutional interest in secret ballots. Pa. Const. art. VII, § 4. Return deadlines allow election officials to timely perform their responsibilities so that winning candidates can assume office without delay.

But as Commonwealth Court found, declaration dates do not have a legal or factual purpose. App. 76-78, 82. Indeed, the lack of purpose has been repeatedly and conclusively demonstrated in numerous state and federal cases, most compellingly in two with extensive evidence about the date's function.

In the first case, the Department of State's Deputy Secretary of Elections and county commissioners from three counties that refused to canvass mail ballots with undated declarations testified about declaration dates and the canvassing of mail ballots. *See Berks*, 355 MD 2022, 2022 WL 4100998, at \*5-6. Their testimony confirmed that the date is not

used to determine a voter's qualifications, determine whether they already voted, preserve confidentiality, or confirm a ballot was completed and returned on time. *Id.* at \*18-\*20. Nor did the Election Code suggest any purpose for writing a date or how the date is used. *Id.* at \*18. As a result, Commonwealth Court concluded that “there is **no factual or legal basis** for concluding that the dating provision serves [any identified] interest.” *Id.* at \*18 (emphasis in original).

In the second case, discovery was taken from every county board of elections, the Department of State, and expert witnesses about the date's function. The undisputed facts showed that counties do not rely on the declaration date to track whether a ballot was returned on time—counties independently track whether ballots were received on time through measures such as scanning the ballot envelope into the SURE system or time stamping. *NAACP I*, 703 F. Supp. 3d at 666-67, 679. Further, “county boards of elections did not use the handwritten date on the return envelope for any purpose related to determining a voter's age, citizenship, county or duration of residence, or felony status.” *Id.* at 679-80. In fact, the undisputed record established that the declaration date is “wholly

irrelevant.” *Id.* at 678. The date a voter signs the declaration “is untethered from any other requirement on the ballot” because the only significant date under the Election Code is the date the ballot is received. *Id.* at 679.

Other courts that have reviewed Pennsylvania’s date requirement also have readily concluded that the declaration date serves no function. *NAACP II*, 97 F.4th at 125 (“The date requirement, it turns out, serves little apparent purpose.”); *Migliori*, 36 F.4th at 163-64 (explaining that the handwritten declaration date serves no function).

In fact, before *In re Canvass* and *Ball* required otherwise, counties would count ballots no matter what date a voter wrote. *Migliori*, 36 F.4th at 163-64; *Berks*, 355 MD 2022, 2022 WL 4100998, at \*18. That it did not matter what date a voter wrote further confirms that the date no longer serves a purpose.

Even in *Ball*, five Justices expressly recognized that there is no connection between the handwritten date on the return envelope and a voter’s qualifications. 289 A.3d at 24 & n.139 (announcing judgment); *see also id.* at 39 (Brobson, J., concurring and dissenting) (observing that the

declaration date would not “have any bearing on determining voter qualification at all.”).

As for theories about what the date *might* do, robust factual development has proven otherwise.

First, the date does not confirm a ballot was completed within the required time frame. *Contra* RNC Br. at 45. Ballots and ballot return envelopes are unique to each election. No ballot can be completed before being mailed to the voter. And because the deadlines to complete and return a ballot are the same, if a ballot is timely received by a county board, it necessarily was timely completed by the voter. Counties independently track timeliness by time stamping mail-ballot envelopes, by logging them in SURE, and by separating timely and untimely ballots. *NAACP I*, 703 F. Supp. 3d at 666-67, 679; *Berks*, 355 MD 2022, 2022 WL 4100998, at \*6, \*19; *see also Ball*, 289 A.3d at 16 n.77. The RNC imagines the date might be useful as a backstop, RNC Br. at 45, but no county uses declarations in that way. *See NAACP I*, 703 F. Supp. 3d at 678-81. Nor could dates function in such a way because there is no way to verify that the date written is accurate and, even if accurate, the date does not indicate when a ballot was received.



Second, dates do not establish the moment for measuring voter eligibility. Eligibility is evaluated as of election day, not the day the voter dated the return envelope. *See* 25 P.S. § 2811; 25 Pa.C.S. § 1301; *see also Ball*, 289 A.3d at 16 n.77. And because the handwritten date does not identify any meaningful point in time, it also does not prevent fraud. Backdating an envelope cannot lead to a ballot being counted if it has not been delivered by the statutory deadline. There is no point in backdating a declaration if the date is not used to determine whether the ballot was timely received and otherwise carries no importance. Only where the date affects whether the ballot will be counted could a motivation to alter it could possibly exist.

The RNC cites a criminal complaint from Lancaster County as supposed evidence of the date's anti-fraud function, RNC Br. at 46-47, but Lancaster election officials have twice stated under oath that the date had no relevance to detecting that the ballot at issue was invalid.<sup>13</sup> To

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<sup>13</sup> A Lancaster County Commissioner testified that the date “did not affect whether [we] counted that ballot.” App. 617-620. Likewise, Lancaster County’s election director—the complaining witness referenced in the criminal affidavit—testified that “regardless of the date written on the envelope, that vote would not have counted.” App. 508.

the extent the date had any non-electoral utility in this circumstance, affirming Commonwealth Court here would not undermine it. The Election Code would still instruct voters to date the declaration. The only change would be that counties could not reject ballots with missing or incorrect declaration dates. *Bonner v. Chapman*, 298 A.3d 153, 168 (Pa. Cmwlth. 2023).

Third, a declaration date does not help election officials determine if an elector intended to vote by mail ballot rather than in person. Anyone who has requested a mail ballot cannot vote at a polling place on election day unless they bring their mail ballot to the polls and surrender it. 25 P.S. §§ 3146.6(b)(3), 3150.16(b)(3). Someone who arrives at their polling place on election day having requested a mail ballot but without that ballot can vote only provisionally. *Id.* §§ 3146.6(b)(1)-(2), 3150.16(b)(1)-(2). And if the voter both successfully returns a mail ballot and casts a provisional ballot at the polling place, only the mail ballot may count. *Id.* § 3050(a.4)(5)(ii)(F); *see also Ball*, 289 A.3d at 16 n.77.

Fourth, the General Assembly has not embraced the solemnity that the RNC ascribes to the date. RNC Br. at 45-46. The declaration a voter is instructed to sign is an attestation of their eligibility to vote in that

election. 25 P.S. §§ 3146.4, 3150.14. ***By signing the declaration alone***, an elector subjects himself to criminal charges if he knows the statement is false. *Id.* § 3553.

**2. Declaration Dates are a Relic.** Tracing the Election Code's history confirms that the date rule was meant to confirm the ballot was completed on time during a period in history when the deadline to complete a ballot and return it were different. *Supra* at 24-28. But dates stopped serving that—or any—function once the completion and receipt deadline were aligned in 1968. *Supra* at 27-28. Notably, after aligning the two deadlines, the General Assembly ***removed*** the prior instruction to set aside mail ballots bearing dates after the deadline to complete the ballot. *Id.*

When the General Assembly passed Act 77, it adopted wholesale the existing procedures for absentee ballots—including the dating remnant. *Compare* 25 P.S. §§ 3146.1-3146.7 (absentee) *with id.* §§ 3150.11-3150.16 (no-excuse mail in); *see also, e.g.*, Cutler Amicus at 17 (explaining that Act 77 adopted identical procedures to those that applied to absentee voting).

The declaration date, then, is among the “vestiges remaining in the Election Code” of prior voting rules. *In re Nov. 3 Gen. Election*, 240 A.3d 591 at 610 n.24. While rejecting absentee ballots based on a declaration date once served a legitimate function, it is now the case that a rule “once considered constitutionally permissible may come to significantly interfere with the fundamental right to vote in light of conditions existing in contemporary society.” *Chelsea Collaborative*, 100 N.E.3d at 334.

**3. Reviewing Declaration Dates Harms Election Administration.** Not only is there no utility to rejecting mail ballots for declaration-date errors, requiring that county boards reject mail ballots returned in envelopes they deem to have a date error impairs free, honest, and fair elections in at least three discrete ways.

First, election officials have significant and demanding responsibilities between Election Day and the deadline to certify an election’s returns to the Secretary, which is just 20 days after an election. 25 P.S. § 2642(k). The Secretary has his own certification obligations that follow those of the counties. 25 P.S. § 3159. If officials must reject mail ballots because of declaration-date errors, they must engage in the laborious process of reviewing voters’ handwritten dates and determining if they are

correct. Forcing already burdened election officials to engage in this time-intensive but gratuitous work occupies resources that can, and should be spent, performing tasks that further the free, honest, and fair administration of an election. County Amicus at 17-18.

Second, as experience has shown, requiring counties to review and reject mail ballots based on declaration dates leads to inconsistent and varying practices within and across counties, specifically as to what qualifies as a sufficient date. App. 61; *NAACP I*, 703 F. Supp. 3d at 680-82. Requiring election officials to do so also demands disenfranchising undisputedly qualified individuals even where the county is certain their ballot was completed and returned on time, as happened in the 2022 general election. *NAACP I*, 703 F. Supp. 3d at 680-82 These variations and acts of disenfranchisement do not advance voter confidence, which “is essential to the functioning of our participatory democracy.” *Pa. Democratic Party*, 238 A.3d at 387 (Wecht, J., concurring); see also *League of Women Voters*, 178 A.3d at 814 (recognizing the importance of election rules that do not discourage participation in election). Affirming will provide a return to uniformity that has been disrupted since *Ball*.

Third, ascribing importance to the date requirement introduces risks that would not otherwise exist. If counties need not review the handwritten date, there is no incentive for anyone to manipulate it. But requiring that voters write a correct date for their declaration to be “sufficient” makes the date a piece of information that can be manipulated such that a timely completed, properly returned ballot is not counted. While the Secretary is not aware of any evidence that such manipulation has occurred, no similar risk exists if counties simply count timely-received ballots cast by registered voters regardless of whether the voter wrote the correct date on the ballot envelope.

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Depriving thousands of qualified electors of their right to vote for failing to perform what is now an entirely meaningless act is not a reasonable regulation needed to ensure a free, honest, and fair election. *Banfield*, 110 A.3d at 176-77; *accord Pa. Democratic Party*, 238 A.3d at 369. Nor is erecting gratuitous roadblocks and then disenfranchising eligible voters who stumble over them consistent with the constitutional impera-

tive that “all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth.”

*Pa. Democratic Party*, 238 A.3d at 369.

### **III. Affirming Commonwealth Court’s Judgment Would Not Invalidate All of Act 77**

Act 77 includes a clause that reads: “Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are non-severable. If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.” Act 77, § 11. Commonwealth Court correctly held that its finding that rejecting timely received mail ballots from qualified voters who made a declaration-date error would not invalidate all of Act 77 under this provision.

While Commonwealth Court reached the correct result, the relevant analysis is, in the first instance, simpler than that which it performed. The constitutional infirmity here arises if, under § 3146.8(g)(3), a declaration must be correctly dated to be “sufficient.” Holding that such a rule is unenforceable as a constitutional matter does not invalidate any provision of Act 77 because § 3146.8(g)(3) and the sufficiency standard are not from Act 77. *See* Act 77, § 7. The sufficiency standard has been in

the Election Code since 1937. *Supra* at 24-25. That should be the end of the severability analysis.

But there can be more. Non-severability provisions are not “inexorable commands.” *Stilp v. Commonwealth*, 905 A.2d 918, 972 (Pa. 2006); *see also Pa. Democratic Party*, 238 A.3d at 397 n.4 (Donahue, J., concurring and dissenting). Rather than apply boilerplate non-severability provisions, severability is governed by the common law principle (now codified) that statutory provisions are severable” except when “the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one” or when “the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.” 1 Pa.C.S. § 1925. This standard is “specific [and] cogent,” and “both emphasizes the logical and essential interrelationship of the void and valid provisions, and also recognizes the essential role of the Judiciary in undertaking the required analysis.” *Stilp*, 905 A.2d at 970.



Applying the correct standard, Act 77 can stand—and fulfill its purpose—if mail ballots returned with declaration-date errors are canvassed and counted.

Act 77 was a sea change to Pennsylvania’s elections. Among other things, it eliminated straight-ticket voting, *see* Act 77, § 6; created no-excuse mail-in voting, *id.* § 8; changed voting machine requirements, *id.* § 3; and moved the voter registration deadline from 30 to 15 days before an election, *id.* § 4. It is absurd to think that the legislature intended to invalidate the entirety of Act 77—and to nullify “years of careful [legislative] consideration and debate ... on the reform and modernization of elections in Pennsylvania,” *McLinko v. Dep’t of State*, 279 A.3d 529, 543 (Pa. 2022)—because non-compliance with a demand that voters provide inconsequential information cannot result in disenfranchisement, App. 88. That is tautologically true as the basis for an order here would be that rejecting mail ballots because of declaration-date errors serves no purpose.<sup>14</sup>

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<sup>14</sup> By contrast, the remainder of Act 77 likely would have been invalid if this Court had ruled in *McLinko* that no-excuse mail-in voting is unconstitutional.

Enforcing a non-severability clause like that found in Act 77 would create exactly the problems 1 Pa.C.S. § 1925 aims to avoid. Act 77 is an amendatory statute that added some new provisions to the Election Code and modified others. Both the newly added and modified sections have been subject to further amendments four times since Act 77 was passed. See Act of Nov. 27, 2019, P.L. 673, No. 94; Act of Mar. 27, 2020, P.L. 41, No. 12; Act of Jul. 11, 2022, P.L. 745, No. 66; Act of Jul. 11, 2022, P.L. 1577, No. 88. Carving out just the parts of the Code that were added through Act 77 would render significant parts of it incoherent.

Further, amendatory statutes do not exist in their own right. When an amendatory statute is passed, “the amendment shall be construed as merging into the original, become a part thereof, and replace the part amended, and the remainder of the original statute and the amendment shall be read together and viewed as one statute passed at one time.” 1 Pa.C.S. § 1953. In other words, once an amendatory statute is enacted, it ceases to have an independent identity and there is nothing left to be invalidated under a non-severability clause.

This analysis tracks Justice Donahue’s concurring opinion in *Pennsylvania Democratic Party*. Act 77 set 8 p.m. on Election Day as the deadline for mail ballots to be received. Act 77, § 7. For the 2020 general election, this Court ordered that mail ballots could be canvassed even if received after that deadline. *Pa Democratic Party*, 238 A.3d at 370-72. Appellants here argued that the Court’s order should trigger the non-severability provision. *Id.* at 367. But this Court did not adopt that view and Justice Donahue, joined by Chief Justice Saylor and Justice Mundy, specifically questioned whether Act 77’s non-severability provision was enforceable at all and whether its “boilerplate” language could govern the Court’s review of any severability questions. *Id.* at 397 n.4 (Donahue, J., concurring and dissenting). Similarly, if Act 77’s non-severability clause applies here, then this Court’s order in *In re Canvass* should have triggered the non-severability provision. Yet not a single Justice even suggested the provision might have that effect despite that this court considers severability “even where the parties failed to argue [it].” *Stilp*, 905 A.2d at 970.

Last, as an *en banc* panel of Commonwealth Court previously and correctly held, declaring that timely mail ballots from qualified voters

cannot be rejected for declaration-date errors does not invalidate any statute—whether in Act 77 or otherwise. *Bonner*, 298 A.3d at 168. Such a declaration does not strike any language from the Election Code or direct electors not to date their declaration. *Id.* at 168; *see also* App. 89. There is no Pennsylvania precedent that a non-severability clause is triggered by a judicial order “that did not declare the provision invalid.” *Bonner*, 298 A.3d at 169.

#### **IV. Commonwealth Court Had Jurisdiction**

Finally, Commonwealth Court had jurisdiction.<sup>15</sup>

Commonwealth Court has original jurisdiction when the Commonwealth or a Commonwealth officer is an indispensable party to the action. 42 Pa.C.S. § 761(a)(1). An officer is indispensable where the specific “claim and the relief sought” implicate a “right or interest” of the Commonwealth party that is “essential to the merits of the issue.” *Centolanza v. Lehigh Valley Diaries, Inc.*, 658 A.2d 336, 339 (Pa. 1995).

The Secretary is Pennsylvania’s chief election official. He has critical responsibilities for administering Pennsylvania’s elections. *See* 25

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<sup>15</sup> If this Court disagrees, it should assume plenary jurisdiction over this matter. 42 Pa.C.S. § 726.

P.S. § 2621. Consequently, he (or the Department) is routinely a party when declaratory actions raise what the Election Code, the Pennsylvania Constitution, or federal law requires in Pennsylvania as a statewide election practice.<sup>16</sup>

Specifically, the Secretary prescribes the form of the declaration at issue and has redesigned it in the last year in response to this Court's decisions. *Supra* at 33. He also has issued guidance about when ballots with declaration-date errors should be counted. App. 47; *see also* App. 258-59, 274-75. That guidance is not binding but counties routinely solicit and follow it.

Beyond that, resolution of this appeal will dictate whether a certain class of ballots “shall be counted and included with the returns” that are transmitted from the counties to the Secretary. *Id.* § 3146.8(g)(4); *see also id.* §§ 2642(k), 3154(f), 3158. Even more, upon receipt of those returns,

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<sup>16</sup> *E.g.*, *NAACP II*, 97 F.4th 120 (declaration-date errors); *Ball*, 289 A.3d 1 (declaration-date errors); *McLlinko*, 279 A.3d 539 (constitutionality of no-excuse mail-in voting); *In re Nov. 3 Gen. Election*, 240 A.3d 591 (signature analysis for mail ballots); *Pa. Democratic Party*, 238 A.3d 345 (five statewide voting questions, including some about mail ballot rules); *Bonner*, 298 A.3d 153 (non-severability of Act 77); *Zimmerman v. Secretary*, 33 MD 2024, 2024 WL 3979110 (Pa. Cmwlth. Aug. 23, 2024) (canvassing locations).

the Secretary “shall forthwith proceed to tabulate, compute and canvass the votes cast for all” statewide races, judicial race, and state and federal congressional races “and shall thereupon certify and file in his office the tabulation thereof.” *Id.* § 3159; *see also id.* § 2621(f).<sup>17</sup> Resolution of this appeal will directly bear on these aspects of the Secretary’s duties. *See Berks*, 355 MD 2022, 2022 WL 4100998, at \*9 (concluding that these statutory duties gave the Secretary an interest in whether returns received from the counties include all ballots that must legally be counted).

The RNC’s contrary argument, RNC Br. at 12, rests on a single-judge, unpublished (although correct) decision that “is easily distinguished.” App. 47. In *RNC v. Schmidt*, the RNC challenged “several County Boards [that had] taken it upon themselves to develop and implement” so-called “notice and cure” procedures. *RNC v. Chapman* (“*RNC I*”), 447 MD 2022, 2022 WL 16754061, at \*1 (Pa. Cmwlth. 2022) (denying preliminary injunction); *see also* App. 46. Counties’ varying procedures were implemented under the ***discretionary powers*** that the Election

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<sup>17</sup> The *Ball* petition—filed by the RNC, *cf.* RNC Br. at 14 (discussing “the *Ball* petitioners”)—also cited § 2621(f) and § 3159 as reasons to name the Secretary. Pet. at 9, *Ball*, 102 MM 2022 (Oct. 16, 2022).

Code affords county boards to makes rules necessary for the guidance of electors. 25 P.S. § 2642(f); *see also RNC I*, 447 MD 2022, 2022 WL 16754061, at \*4, \*18. The Code does not require or forbid any particular practice and the Secretary (although he supports counties that opt to develop some form of notice and cure procedure) **had not** (and has not) issued guidance to counties about notice-and-cure procedures. *Contra RNC Br.* at 12-13; *see also RNC v. Schmidt*, 447 MD 2022 (Pa. Cmwlth. Mar. 23, 2023), App. 381. The RNC had alleged the Secretary was indispensable based on the guidance he issued regarding the issue involved *in this appeal*, which did not make him indispensable for an action about an unrelated election practice. App. 374, 379-80. The circumstances there do not resemble those here.

Nor did including only two county boards in this action deprive Commonwealth Court of jurisdiction. This case is positioned similarly to *In re Canvass* (which this Court later explained in *Ball* had announced the interpretation of the Election Code all counties were expected to follow), in which the Philadelphia and Allegheny Boards of Elections were

the only two participating counties. 241 A.3d at 1062-63. Just as there was no issue in *In re Canvass*, there is no issue here.<sup>18</sup>

The suggestion that failing to join the remaining counties will lead to inter-county variation is meritless. *See* RNC Br. at 19. Whether a county board is a party here or not, it must follow what the Code and Pennsylvania Constitution require of it, as definitively interpreted by this Court. That is a common consequence of litigation. Definitive statutory and constitutional interpretations are followed by entities subject to those laws whether they were a party to litigation or not.

*Ball* is no impediment. *Contra id.* The **orders** entered in *Ball* required only that counties exclude certain ballots during the 2022 general election. *Ball*, 284 A.3d 1189; Suppl. Order, *Ball*, 102 MM 2022 (Pa. Nov. 5, 2022). For every election after the 2022 general election, county boards and the Secretary follow *In re Canvass* and *Ball* not as a matter of their

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<sup>18</sup> Mandating that every county board be included in every case raising a statewide election issue would, in many cases, be a practical impossibility because a petitioner may not have standing to name every county board of election. Such a rule also would also needlessly burden over-taxed county boards, *see* Chew Amicus at 15 n.5., many of which are regularly inactive (even as a party) in litigation that might ultimately determine how the board performs its duties.



orders, but as precedent as to what the Election Code requires of them. There is recourse available against any official that flouts what the Constitution requires of them.

A judicial declaration that timely mail ballots from qualified voters cannot be rejected for declaration-date errors can easily be implemented uniformly. *Contra Bush v. Gore*, 531 U.S. 98, 106 (2000) (“The problem here inheres in the absence of specific standards to ensure its equal application.”); *contra* RNC Br. at 20. Indeed, such a judicial declaration would **remedy** inconsistencies that have resulted following *Ball. NAACP I*, 703 F. Supp. 3d at 679-81 (describing those inconsistencies).

## CONCLUSION

For the reasons above, Commonwealth Court’s judgment should be affirmed.

September 4, 2024

Respectfully submitted,

Kathleen M. Kotula (No. 86321)  
Kathleen A. Mullen (No. 84604)  
Pennsylvania Department of State  
306 North Office Bldg.  
401 North Street  
Harrisburg, PA 17120

Michael J. Fischer (No. 322311)

*/s/ Jacob B. Boyer*

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Jacob B. Boyer (No. 324396)  
Aimee D. Thomson (No. 326328)  
Office of General Counsel  
Deputy General Counsel  
333 Market Street, 17th Floor  
Harrisburg, PA 17101  
(717) 460-6786  
jacobboyer@pa.gov

*Counsel for Secretary of the Commonwealth Al Schmidt*

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**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: September 4, 2024

*/s/ Jacob B. Boyer*  
\_\_\_\_\_  
Jacob B. Boyer

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## **CERTIFICATE OF LENGTH**

I certify that this brief complies with the word count requirement set forth in Pennsylvania Rule of Appellate Procedure 2135(a)(1). Excluding matters identified in Pennsylvania Rule of Appellate Procedure 2135(b), this brief is 13,969 words. I have relied on Word's word count function to determine the length of this brief.

Dated: September 4, 2024

*/s/ Jacob B. Boyer*

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Jacob B. Boyer

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# Supplemental Appendix

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been defective, all such bonds, securities, and obligations, sold under defective publication of the notices of such sale, are hereby made valid and binding obligations of every such county, city, borough, township, school district, or other municipality or incorporated district: Provided, That all the other requirements of law concerning such procedure, election, and issue of bonds have been complied with.

Section 2. The provisions of this act shall become When effective. effective immediately upon its final enactment.

APPROVED—The 3d day of June, A. D. 1937.

GEORGE H. EARLE

No. 320

AN ACT

Concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections.

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Section 1. Be it enacted, &c., That the laws relating to general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests are hereby codified, revised and consolidated as follows:

## ARTICLE I

### Preliminary Provisions

Section 101. Short Title.—This act shall be known, and may be cited, as the “Pennsylvania Election Code.”

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

(a) The word “candidate” shall, unless the context otherwise requires, include both candidates for nomination and election.

(b) The word “county” shall mean any county of this Commonwealth.

(c) The words “county board” or “board” shall mean the county board of elections of any county herein provided for.

(d) The words “district election board” or “election board” shall mean the election officers required to conduct primaries and elections in any election district in accordance with the provisions of this act.

(e) The words “district register” shall mean the cards containing all or any part of the registry list of qualified electors of the same election district, as prepared by the registration commissions.

(f) The word “election” shall mean any general, municipal, special or primary election, unless otherwise specified.

(g) The words “election district” shall mean a district, division or precinct, established in accordance with the provisions of this act, within which all qualified electors vote at one polling place.

(h) The words “general election” shall mean the election which the Constitution of this Commonwealth requires to be held in even-numbered years.

(i) The words “independent nomination” shall mean the selection by an independent political body, in accordance with the provisions of this act, of a candidate for a public office authorized to be voted for at an election.

(j) The words “municipal election” shall mean the election which the Constitution of this Commonwealth requires to be held in odd-numbered years.

(k) The word “nomination” shall mean the selection, in accordance with the provisions of this act, of a candidate for a public office authorized to be voted for at an election.



## ARTICLE XIII

## Voting by Persons in Actual Military Service

Section 1301. **Qualified Electors in Actual Military Service.**—Whenever any of the qualified electors of this Commonwealth shall be in any actual military service, under a requisition from the President of the United States or by the authority of this Commonwealth, and as such, absent from their place of residence on the days appointed by law for holding the general or municipal elections within this State, or on the days for holding special elections to fill vacancies, such electors shall be entitled, at such times, to exercise the right of suffrage, as fully as if they were present at their usual places of election, in the manner prescribed in this article and, whether at the time of voting, such electors shall be within the limits of this State or not; and the right of voting shall not be affected by reason of the failure of any elector to have been registered in his place of residence.

Section 1302. **Polls to Be Opened in Each Military Unit; Detached Electors.**—A poll shall be opened in each military or naval unit, composed in whole or in part of Pennsylvania soldiers, at the quarters of the captain or other officer thereof, and all electors belonging to such unit who shall be within one mile of such quarters, on the day of election, and not prevented by orders of their commanders, or proximity of the enemy, from returning to their unit quarters, shall vote at such poll and at no other place; officers, other than those of a unit, and other electors detached and absent from their units, or in any military or naval hospital, or in any vessel or navy yard, may vote at such other polls as may be most convenient for them; and when there shall be ten or more electors at any place, who shall be unable to attend any unit poll, or their proper place of election as aforesaid, the electors present may open a poll, at such place as they may select, and certify in the poll-book, which shall be a record of the proceedings at said election, substantially in manner and form as hereinafter directed.

Section 1303. **Time of Opening and Closing Polls.**—The polls shall be opened as early as practicable on said day and remain open at least three hours, and if necessary in the opinion of the election officers, in order to receive the votes of all the electors, they may keep the polls open until seven o'clock P. M. of said day; proclamation thereof shall be made at or before the opening of the polls and one hour before closing them.

Section 1304. **Election Officers.**—Before opening the poll on the day of election, the electors present at each of the places aforesaid, shall elect viva voce three persons, present at the time, and having the qualifications

of electors, for judge and inspectors of said election, and the inspectors so elected shall then appoint two of the persons present, who shall be qualified, to act as clerks of said election; and the judge shall prepare boxes or other suitable receptacles for the ballots.

Section 1305. Oaths of Election Officers.—Before any votes shall be received, said judge, inspectors and clerks shall each take an oath or affirmation that he will perform the duties of judge, inspector or clerk, as the case may be, of said election, according to law, and to the best of his abilities, and that he will studiously endeavor to prevent fraud, deceit or abuse in conducting the same, which oath or affirmation any of the said judges, inspectors or clerks so elected or appointed may administer to each other; and the same shall be in writing, or partly written and partly printed, and signed by said judge, inspectors and clerks, and certified to by the party administering the same, and attached to or entered upon the poll-book, and there signed and certified as aforesaid.

Section 1306. Manner of Election; Challenges.—All elections under this article shall be by official ballots provided in the manner herein prescribed, and the judge and inspectors of elections may, and upon challenge of any elector shall, examine under oath or affirmation the applicant to vote (which oath or affirmation any of said judges or inspectors may administer), in respect to his right to vote, and his qualifications to vote in the particular election district, ward, precinct, city, borough, township or county of this State, in which he claims residence; and before issuing a ballot to any applicant to vote, the judge and inspectors, or majority of them, shall be satisfied that such applicant is a qualified elector of such place. The judge of election shall arrange one or more voting compartments, suitably curtained in which the electors may mark their ballots.

Section 1307. Poll-Books.—Separate poll-books shall be kept, and separate returns made, for the electors of each county; the poll-books shall name the unit and organization and the place, post or hospital, in which said election is held; the county and township, city, borough, ward or election district of each elector shall be indorsed opposite his name on the poll-books, so that there may be a double list of voters.

Section 1308. Ballots.—Ballots for use by persons in military service under the provisions of this article shall be prepared sufficiently in advance by the Secretary of the Commonwealth, and shall be by him distributed through the commissioners hereinafter provided, or in such other manner as he may think proper, to the various military or naval units containing Pennsylvania soldiers entitled to vote at any election. Such ballots

shall be in substantially the form prescribed by Article X of this act for ballots to be used at the same elections within this Commonwealth, but in cases where it is, in the opinion of the Secretary of the Commonwealth, not feasible to print on said ballots the names of the various candidates for district, county and local offices, the ballots shall contain blank spaces only under the titles of such offices in which the voters may insert the names of the candidates for whom they desire to vote, and in such cases the Secretary of the Commonwealth shall furnish to the judge of election a sufficient number of printed lists containing the names of all the candidates who have been regularly nominated under the provisions of this act for the use of the electors in preparing their ballots.

Section 1309. Casting of Ballot.—The judge or one of the inspectors shall, upon the application of an elector to vote, pronounce his name audibly, and if no objection is made to him, and the judge and inspectors are satisfied that said elector is a citizen of the United States, and legally entitled, according to the Constitution and laws of this State, to vote at said election, shall issue a ballot to such elector first folding it so that the words printed on the back shall be the only words visible. The elector, after receiving his ballot, shall retire to one of the voting compartments and draw the curtain and shall there prepare his ballot. He shall then fold his ballot without displaying the markings in the same way it was folded when received by him, and he shall then leave the voting compartment and deposit the ballot thus folded in the ballot box or other receptacle therefor, and the clerks shall enter the name of the elector in the poll-book of his county, together with the ward, election district, city, borough, township and county of his residence.

Section 1310. Counting of Votes.—At the close of the polls, the number of voters who have voted shall be counted and set down at the foot of the list of voters, and certified and signed by the judge and inspectors and attested by the clerks.

Section 1311. Manner of Counting Ballots.—After the poll-books are signed, the ballot box shall be opened and the ballots therein contained shall be taken out, one at a time, by the judge, who shall read distinctly while the ballot remains in his hand, the names of the candidates voted for therein for the several offices voted for, and then deliver it to one of the inspectors, who shall examine the same and pass it to the other inspector, who shall place the same in an envelope prepared for the ballots of such count, and carefully preserve the same; the same method shall be pursued as to each ballot taken out, until all the votes are counted.

Section 1312. Rejection of Ballots.—No ballot which is so marked as to be capable of identification shall be counted, and if a ballot is marked for more candidates for any office than the number an elector is entitled to vote for for such office, the same shall not be counted for that office, but shall be counted for all other candidates properly marked.

Section 1313. Tally Lists.—As a check in counting, each clerk shall keep a tally list for each county from which votes shall have been received, which tally list shall constitute a part of the poll-books.

Section 1314. Enumeration of Votes.—After the examination of the ballots shall be completed, the number of votes for each person in the county poll-books, as aforesaid, shall be enumerated under the inspection of the judge and inspectors, and set down in the poll-books.

Section 1315. Form of Poll-Book and Returns.—The form of the poll-books to be used at such elections shall be determined by the Secretary of the Commonwealth, who shall also prescribe the form of return to be made by the election officers in each poll-book of the ballots cast by the electors of the county for which such poll-book is kept.

Section 1316. Disposition of Poll-Books and Returns.—After canvassing the votes in manner aforesaid, the judge shall put in an envelope, one of the poll-books with its tally list and return of each county, together with the ballots of such county, and transmit the same, properly sealed up and directed, through the nearest post office, or by express, as soon as possible thereafter, to the county board of elections of the county in which such electors would have voted if not in the military service aforesaid (being the county for which the poll-book was kept); and the other poll-book of said county, enclosed in an envelope and sealed as aforesaid, and properly directed, shall be delivered to one of the commissioners hereinafter provided for, if such commissioner calls for the same in ten days, and if not so called for, the same shall be transmitted by mail or by express, as\* soon as possible thereafter, to the Secretary of the Commonwealth, who shall carefully preserve the same, and on demand of the proper county board, deliver to said county board, under his hand and official seal, a certified copy of the return of votes, so transmitted to and received by him, for said county.

Section 1317. Duties of County Boards.—In the case of any election at which votes are cast by persons in military service, under the provisions of this article, it shall be the duty of each county board of elections to withhold the completion of the computation of the returns of the county until the third Friday after such election, within which period all returns of votes cast

\* "so" in the original.

by electors of the county in military service, as provided in this article, shall be added to and included in its computation of the returns of such election.

Section 1318. Returns of Federal and State Offices.—In all general elections for Federal and State offices at which votes are cast by persons in the military service, under the provisions of this article, it shall be the duty of the Secretary of the Commonwealth before finally computing and certifying the returns of such elections, to add to the returns received by him from the various county boards of election any returns of the votes cast by persons in the military service received by him under the provisions of this act, which, upon an examination of the returns received from the county boards, clearly appear not to have been added to and included in such returns by the respective county boards.

Section 1319. Contested Elections.—All said elections shall be subject to contest in the manner provided by Article XVII of this act; and in all cases of contested elections, all legal returns which shall have been bona fide forwarded by said judge and inspectors, in the manner hereinbefore prescribed, shall be counted, although the same may not have arrived or been received by the proper officers to be counted in the manner hereinbefore directed, before issuing the certificates of election to the persons appearing to have a majority of the votes then received, and the said returns shall be subject to all such objections, as other returns are liable to when received in due time.

Section 1320. Duties of Secretary of the Commonwealth.—The Secretary of the Commonwealth shall cause to be printed a sufficient number of copies of this article, with such extracts from the other portions of this act as shall be deemed important to accompany the same, and blank forms of poll-books, together with ballots, tally lists, returns and envelopes, as prescribed in this article, which, with the necessary postage stamps, to defray expenses and postage on returns, shall in sufficient time before any such election, be forwarded by said secretary, at the expense of the Commonwealth, by commissioners or otherwise, as shall be deemed most certain to insure delivery thereof, to the captain or commanding officer of each unit, or in case of detached voters, to the officer having charge of the post or hospital, who shall retain the same until the day of election, and then deliver the same to the judge elected as provided in this article. No election shall be invalidated by reason of the neglect or failure of the said secretary to cause the delivery of said poll-books, ballots and other supplies to the proper persons as aforesaid.

Section 1321. Appointment of Commissioners; Oath.—For the purpose of more effectually carrying out the

provisions of this article, the Governor may appoint and commission, under the great seal of the Commonwealth, such number of commissioners, having the qualifications of an elector in this State, as he shall deem necessary, not exceeding one to each regiment or equivalent organization of Pennsylvania soldiers in the service of this State, or of the United States, and shall apportion the work among the commissioners and supply such vacancies as may occur in their number. Such commissioners, before they act, shall take and subscribe an oath or affirmation and cause the same to be filed with the Secretary of the Commonwealth, to the following effect:

"I, . . . . . appointed commissioner, under Article XIII of the Election Law regulating elections by persons in actual military service, do solemnly swear (or affirm), that I will support the Constitution of the United States, and the Commonwealth of Pennsylvania, and impartially, fully, and without reference to political preference or results, perform, to the best of my knowledge and ability, the duties imposed on me by the said act; and that I will studiously endeavor to prevent fraud, deceit and abuse, not only in the elections to be held under the same, but in the returns thereof."

Section 1322. Duties of the Commissioners.—Such commissioners shall deliver, as far as practicable, at least four of the copies of this article, and other extracts from this act and the rules and regulations issued hereunder, published as hereinbefore directed, and at least two blank forms of poll-books, tally lists and returns entrusted to them, together with a suitable number of ballots, and other supplies, to the commanding officers of every unit, or part thereof, of Pennsylvania soldiers in the actual military or naval service of the United States, or of this State; and make suitable arrangements and provision for the opening of polls under this article. The said commissioners, as soon as practicable after the day of election, shall call upon the judge of the election, and procure one poll-book, containing the returns of the election, and safely preserve and deliver the same, without delay, to the Secretary of the Commonwealth.

Section 1323. Compensation of Commissioners.—Said commissioners shall receive, in full compensation for their services under this article, ten cents (.10) per mile in going to and returning from their respective organizations, estimating the distance of travel by the usually traveled route; and the accounts therefor shall be audited and paid out of the State Treasury in the same manner as other claims are now audited and paid. All commanding and other officers shall be required to aid the commissioners herein appointed, and to give

them all proper facilities to enable them to carry out the design and intention of this article.

Section 1324. Informalities Not to Invalidate Elections.—No mere informality in the manner of carrying out or executing any of the provisions of this article, shall invalidate any election held under the same, or authorize the returns thereof to be rejected or set aside; nor shall any failure on the part of the commissioners to reach or visit any unit or organization, or the failure of any unit, or part thereof, to vote, invalidate any election which may be held under this article.

Section 1325. Powers of Election Officers.—The several officers authorized to conduct such election, shall have the like powers, and they, as well as other persons who may attend, vote, or offer to vote at such election, shall be subject to the like penalties and restrictions as are declared or provided in the case of elections by the citizens at their usual places of election; and all of the provisions of this act, so far as applicable and not inconsistent with the provisions of this article, nor supplied thereby, shall apply to all elections held under this article.

Section 1326. No Compensation for Election Officers.—No compensation shall be allowed to any judge, inspector or clerk under this article.

Section 1327. Rights of Detached Electors.—When any of the electors mentioned in section 1301, less than ten (10) in number, shall be members of companies of another state or territory or for any sufficient and legal cause shall be separated from their proper unit or shall be in a hospital, navy yard, vessel or on recruiting, provost, or any other duty, whether within or without this State, under such circumstances as shall render it probable that they will be unable to rejoin their proper unit or to be present at their proper place of election on or before the day of any election, said electors shall have the right to vote in the following manner.

Section 1328. Ballots and Envelopes for Detached Electors.—The Secretary of the Commonwealth shall prepare and distribute to the said detached electors through the commissioners provided for by this article or in such manner as he may think proper, additional official ballots to be known as detached soldier's ballots. Such ballots shall be prepared and printed in the same form as the ballots provided for by section 1308 of this act, but shall have in addition printed thereon the words "Detached Soldier's Ballot." The Secretary of the Commonwealth shall also provide and distribute as aforesaid, three envelopes for each detached soldier's ballot of such size and shape that will permit the placing of one within the other. On the first shall be printed only the words "Detached Soldier's Ballot."

On the second shall be printed the affidavit of the detached elector, together with the jurat of the officer in whose presence the ballot is marked and before whom the affidavit is made, such affidavit and jurat to be in form prescribed by the Secretary of the Commonwealth. On the third shall be placed the name and address of the county board of elections of the proper county.

Section 1329. Voting by Detached Electors.—Any such detached elector may make application prior to the day of any election to one of the commissioners appointed under the provisions of this article or to the Secretary of the Commonwealth for a "Detached Soldier's Ballot." At any time after receiving such detached soldier's ballot, but on or before the day of the election, such elector may appear before any commissioned officer of the military or naval forces, either within or without the Commonwealth, and mark such ballot under the scrutiny of such officer in the following manner. The voter shall first display the ballot to such officer as evidence that the same is unmarked, and shall then proceed to mark the ballot in the presence of such officer, but in such manner that such officer is unable to see how the same is marked, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed "Detached Soldier's Ballot." This envelope shall then be placed in the one on which is printed the affidavit of the elector and the jurat of the officer before whom the elector appears, and such envelope sealed in like manner by the elector. The elector shall then make out, subscribe and swear to the affidavit printed on the face of such envelope and the jurat shall be subscribed by the officer before whom the affidavit was taken. Such ballot and envelope shall then be securely sealed in the third envelope which the elector shall send by registered mail to the county board of elections of the proper county.

Section 1330. Receipt and Counting of Detached Soldiers' Ballots.—The county board of elections upon receipt of such registered letter shall safely keep the same in their office until they meet to canvass the vote of such election under the provisions of this act, at which time they shall open such registered letter and after examining the affidavit and jurat, shall compare the signature of such absent voter with his signature upon any register or other record in their possession. If the county board is satisfied that the signatures correspond and that the affidavit and jurat are sufficient, they shall announce the name of the elector and shall give any person present an opportunity to challenge the same in like manner and for the same causes as such elector could have been challenged had he presented himself in his own district to cast his vote. If



there are no challenges, they shall open the second envelope in such manner as not to destroy the affidavit and jurat printed thereon, which envelope shall be kept in their office for a period of one year thereafter. All envelopes on which are printed the words "Detached Soldier's Ballot" and containing the ballots, shall be put into one depository at one time and said depository well shaken, and the envelopes containing the ballots mixed before any ballot is taken therefrom. The county board shall then break the seals of such envelopes and record the said ballots in the same manner as district election officers are required to record votes under the provisions of this act. In like manner all detached soldier's ballots received, prior to completion of the computation of the returns of the county, shall be counted and recorded and upon the completion of the computation of the returns of the county the votes cast upon the detached soldier's ballots shall then be added to the votes cast within the county, city, borough, township, ward or election district, as designated on each ballot. Detached soldier's ballots shall be safely kept by the county board of elections for a period of one year.

#### ARTICLE XIV

##### Returns of Primaries and Elections

Section 1401. Offices of County Boards to Remain Open During Primaries and Elections and Until Completion of Count; Reports and Returns to Be Made Public.—Each county board of elections shall cause its office to remain open, in charge of one or more members of the board, during the entire duration of each primary and election, and after the close of the polls, until all the ballot boxes and returns have been received in the office of the county elections board, or received in such other place as has been designated by the board.

Section 1402. Returns to Be Open to Public Inspection; Exceptions.—The general returns from the various districts which have been returned unsealed shall be open to public inspection at the office of the county board as soon as they are received from the judges of election. None of the envelopes sealed by election officers and entrusted to the judge of election for delivery to the county board shall be opened by any person, except by the order of the return board, or of the court of common pleas.

Section 1403. Place of Meeting for Computation of Votes; Notice; Papers to Be Prepared; Assistants to Be Sworn.—

(a) The county board of elections shall arrange for the computation and canvassing of the returns of votes cast at each primary and election at its office or at some other convenient public place at the county seat

Cancellation of registration of persons in military service

expiration of the time specified in such notice, cancel the registration of such person unless he personally appears and proves his qualifications as an elector: *Provided, however, That the registration of any person in military service shall not be cancelled by reason of the failure of such person to reside at the address appearing upon the district register, if such person did reside at such address on the date of entering military service.*

Said act, section 30, amended by adding new subsection (h).

Section 7. Section thirty-six of the said act is hereby amended by adding thereto subsection (h) to read as follows:

Right of persons in military service to vote

(h) *Persons in military service shall be entitled to vote, if duly registered in a manner provided by this act. Persons in military service, and by reason thereof absent from their places of residence on the day of any election, shall be entitled to vote in such manner as may now or hereafter be provided by law, unaffected by the provisions of this section in so far as they relate to the manner of voting.*

Act effective immediately.

Section 8. This act shall become effective immediately upon final enactment.

APPROVED—The 1st day of August, A. D. 1941.

ARTHUR H. JAMES

No. 273

AN ACT

To amend the act, approved the third day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand three hundred thirty-three), entitled, "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections", by changing the procedure for, and regulating voting in elections by, persons in actual military service; conferring powers and imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections and county commissioners; providing for reimbursement of counties for actual expenses incurred for canvassing the vote of electors in actual military service.

Elections.

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

Pennsylvania Election Code.

Act of June 3, 1937, P. L. 1333, section 102, amended.

Section 1. Section one hundred two of the act, approved the third day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand three hundred thirty-three), entitled, "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections;

imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections", is hereby amended to read as follows:

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

(a) The word "candidate" shall, unless the context otherwise requires, include both candidates for nomination and election.

(b) The word "county" shall mean any county of this Commonwealth.

(c) The words "county board" or "board" shall mean the county board of elections of any county herein provided for.

(d) The words "district election board" or "election board" shall mean the election officers required to conduct primaries and elections in any election district in accordance with the provisions of this act.

(e) The words "district register" shall mean the cards containing all or any part of the registry list of qualified electors of the same election district, as prepared by the registration commissions.

(f) The word "election" shall mean any general, municipal, special or primary election, unless otherwise specified.

(g) The words "election district" shall mean a district, division or precinct, established in accordance with the provisions of this act, within which all qualified electors vote at one polling place.

(h) The words "general election" shall mean the election which the Constitution of this Commonwealth requires to be held in even-numbered years.

(i) The words "independent nomination" shall mean the selection by an independent political body, in accordance with the provisions of this act, of a candidate for a public office authorized to be voted for at an election.

(j) The words "municipal election" shall mean the election which the Constitution of this Commonwealth requires to be held in odd-numbered years.

(k) The word "nomination" shall mean the selection, in accordance with the provisions of this act, of a candidate for a public office authorized to be voted for at an election.

(l) The words "November election" shall mean either the general or municipal election, or both, according to the context.

(m) The word "oath" shall include affirmation and the word "swear" shall include affirm.

(n) The word "party" shall mean a political party, as defined in section 801 of this act.

(o) The words "party nomination" shall mean the selection by a political party, in accordance with the

provisions of this act, of a candidate for a public office authorized to be voted for at an election.

(p) The words "political body" shall mean an independent body of electors, as defined in section 801 of this act.

(q) The words "polling place" shall mean the room provided in each election district for voting at a primary or election.

(r) The words "primary" or "primary election" shall mean any election held for the purpose of electing party officers and nominating candidates for public offices to be voted for at an election.

(s) The words "public office" shall include every public office to which persons can be elected by a vote of the electors under the laws of this State.

(t) The words "qualified elector" shall mean any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, shall obtain such qualifications before the next ensuing election.

(u) The words "registered and enrolled member of a political party" shall mean any qualified elector who shall be registered according to political designation, in accordance with the provisions of the registration acts.

(v) The words "special election" shall mean any election other than a regular general, municipal or primary election.

(w) *"Electors in actual military service" shall mean qualified electors of this Commonwealth who are or may be by enlistment, enrollment or draft in the military or naval service of the United States, or any branch or unit thereof, or in the military service of the Commonwealth.*

"Electors in actual military service", defined.

Said act, section 305, amended.

Section 2. Section three hundred and five of said act is hereby amended to read as follows:

Section 305. Expenses of County Boards and of Primaries and Elections to Be Paid by County; Expenses of Special Elections; Boards to Be Provided with Offices.—

(a) The county commissioners or other appropriating authorities of the county shall appropriate annually, and from time to time, to the county board of elections of such county, the funds that shall be necessary for the maintenance and operation of the board and for the conduct of primaries and elections in such county, including the payment of the compensation of the employes of the board, custodians, election officers, and other assistants and employes herein provided for, and the fees of witnesses as herein provided; for the purchase or printing, under contracts made by the board, of all ballots and other primary and election supplies required by this act, or which the board shall consider necessary to carry out the provisions of this act; for the purchase, under contracts made by the board, and maintenance, of voting machines, when adopted as herein provided, and of all other primary and

election equipment required by this act, or which the board shall consider necessary to carry out the provisions of this act; for the publication of notices authorized by this act, under contracts made by the board, and for all other necessary expenses hereunder: Provided, however, That bonds or other evidences of indebtedness, payable not later than ten years from their dates of issuance, may be issued by the county commissioners or other appropriating authorities of the county in accordance with the provisions of law relating to the increase of indebtedness of such county, to meet all or any part of the cost of voting machines.

1. The county shall be liable for the expenses of holding special elections for any city, borough, township, school district or other municipality or incorporated district contained therein, which is held on the day of any general, municipal or primary election, and on any special question which is required by law to be, or which is, at the discretion of the county board, as hereinafter provided, printed on the regular ballot after the list of the candidates, or on the same voting machine as the list of candidates.

2. Any city, borough, township, school district or other municipality or incorporated district contained in any county, holding a special election, as authorized by law, on the question of increase of indebtedness or any other question to be voted on by the electors of such subdivision, which special election is held on the day of any general, municipal or primary election and which is required by law to be conducted or at the discretion of the county board, as hereinafter provided, is conducted by special ballots for such question, shall be liable to the county for the expenses necessarily incurred in the printing of such special ballots.

3. If any other day than the day of any general, municipal or primary election be fixed by the corporate authorities of any municipality, school district or incorporated district for the holding of a special election on the question of increase of indebtedness or any other question, as authorized by law, such municipality, school district or incorporated district shall be liable for and pay the entire expense of holding such election, including the cost of printing ballots and supplies, pay of election officers, the rental of polling places, and the cost of canvassing and computing the votes cast.

(b) The county commissioners or other appropriating authorities of the county shall provide the county board with suitable and adequate offices at the county seat, properly furnished for keeping its records, holding its public sessions and otherwise performing its public duties, and shall also provide such branch offices for the board in cities other than the county seat, as may be necessary.

Reimbursement of counties by Commonwealth for expense of canvassing military vote.

(c) *The Commonwealth shall reimburse each county for election expenses incurred at every election for the preparation, handling and mailing of ballots for electors in actual military service, in the sum of forty-three cents for each ballot mailed to an elector in actual military service in such manner as is now or may hereafter be provided by law.*

Statement of number of ballots to be filed with Department of State.

*Each county board of elections shall file in the Department of State, not later than thirty days after every election, on a form prescribed by the Department of State, a statement of the number of ballots mailed in such manner as is now or may hereafter be provided by law to electors in actual military service upon the written application of each such elector. Such applications shall be preserved by each county board of elections until reimbursement is made as herein provided, subject to inspection or production in the Department of State, if demanded by the Department of State.*

Department of State to determine and requisition payment of amount due.

*The Department of State shall ascertain and fix the amount due, as herein provided, to each county for election expenses incurred for the preparation, handling and mailing of ballots to electors in actual military service, and by requisition in the usual course shall provide for payment of such amounts so found due from moneys appropriated to the Department of State for such purpose, or shall prorate the moneys so appropriated among the several counties to be reimbursed, if the amount so appropriated shall not be sufficient for the payment in full to each county of the amount found to be due.*

Said act, Article XIII, repealed absolutely.

Section 3. Article thirteen of said act is hereby repealed absolutely.

Said act amended by adding new Article XIII.

Section 4. Said act is hereby amended by adding\* thereto a new article thirteen to read as follows:

**ARTICLE XIII  
VOTING BY PERSONS IN ACTUAL MILITARY SERVICE**

Electors in actual military service to have right of suffrage at any election.

*Section 1301. Qualified Electors in Actual Military Service.—Whenever any of the qualified electors of this Commonwealth shall be in any actual military service and as such absent from their place of residence on the days appointed by law for holding any election within this State, or on the days for holding special elections to fill vacancies, such electors shall be entitled at such times to exercise the right of suffrage as fully as if they were present at their usual places of election in the manner prescribed in this article, and whether at the time of voting such electors shall be within the limits of this State or not.*

Preparation and distribution of ballots for use of persons in military service.

*Section 1302. Ballots.—Ballots for use by electors in actual military service under the provisions of this article shall be prepared sufficiently in advance by the county boards of election and shall be by such boards distributed as hereinafter provided to the electors in actual military service entitled to vote at any election. Such ballots shall be in substantially the form prescribed by article ten of this act for*

\*"adding" repeated in original.

ballots to be used at the same elections within this Commonwealth, but in cases where there is not time in the opinion of the county boards of elections to print on said ballots the names of the various candidates for district, county and local offices, the ballots shall contain blank spaces only under the titles of such offices, in which the voters may insert the names of the candidates for whom they desire to vote, and in such cases the county boards of elections shall furnish to the elector in actual military service a sufficient number of printed lists containing the names of all the candidates who have been regularly nominated under the provisions of this act for the use of the elector in preparing his ballot.

**Section 1303. Duties of County Boards.**—In the case of any election at which votes are cast by electors in actual military service under the provisions of this article, it shall be the duty of each county board of elections to withhold the completion of the computation of the returns of the county until the second Friday after such election, within which period all votes cast by electors of the county in actual military service as provided in this article shall be added to and included in its computation of the returns of such election, but not afterwards.

County boards to include military vote in computation of returns of any election.

**Section 1304. Manner of Voting by Electors in Actual Military Service.**—Electors mentioned in section one thousand three hundred and one shall have the right to apply, not less than thirty (30) days, and not more than fifty (50) days, before any election for a "military ballot". The application shall be in writing signed by the applicant in his own hand and addressed to the county board of elections of the county wherein the applicant is registered to vote and shall state the county and the city, borough or township, and the precise ward or election district in, or the street and number at, which the applicant is registered to vote. If the application is for a ballot for a primary election, it shall also state the political party in which the applicant is enrolled.

Application for ballot by person in military service.

**Section 1305. Ballots and Envelopes for Electors in Actual Military Service.**—The county boards of elections shall prepare, and, upon request, deliver to the said electors in actual military service a ballot by registered mail, with return receipt required, in an envelope addressed to each such elector at the address furnished by the elector in his application for a military ballot. Such ballots shall be prepared and printed in the same form as the ballots provided for by section one thousand three hundred and two of this act, but shall have in addition printed, stamped or endorsed thereon the words "Military Ballot". The county boards of elections shall also provide and deliver, as aforesaid, three envelopes for each military ballot of such size and shape that will permit the placing of one within the other. On the first shall be printed, stamped or endorsed only the words "Military Ballot". On the second shall be printed the affidavit of the elector, together with the jurat of the officer in whose presence the ballot is marked and before whom the affidavit is made, such affidavit and jurat to be in

Method of preparing and distributing ballots for use by persons in military service.

form prescribed by the Secretary of the Commonwealth. On the third shall be placed the name and address of the county board of elections of the proper county. All military ballots and envelopes shall be mailed at least fifteen (15) days before the election involved to the electors requesting them.

List of applicants for ballots for use by electors in military service to be posted.

Each county board of elections shall print and post in a conspicuous public place at its office a list, setting forth the name, present location, the local voting district or ward of every elector to whom a military ballot has been sent. This list shall be posted at least ten (10) days before the primary or election involved and shall also set forth the total number of military ballots prepared by the county board of elections. Copies of such list shall be furnished upon request to the county chairman of each political party and political body.

Manner of marking and handling ballot by person in military service.

Section 1306. Voting by Electors in Actual Military Service.—Any such elector may make application within the time prescribed by section one thousand three hundred and four to the county boards of elections for a "Military Ballot". At any time after receiving such military ballot, but on or before the day of the election, such elector in actual military service may appear before any commissioned officer of the military or naval forces, either within or without the Commonwealth, or before any officer of this or\* any other state or territory of the United States authorized to administer oaths, and mark such ballot under the scrutiny of such officer in the following manner. The voter shall first display the ballot to such officer as evidence that the same is unmarked, and shall then proceed to mark the ballot in the presence of such officer, but in such manner that such officer is unable to see how the same is marked, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Military Ballot". This envelope shall then be placed in the one on which is printed the affidavit of the elector and the jurat of the officer before whom the elector appears, and such envelope sealed in like manner by the elector. The elector shall then make out, subscribe and swear to the affidavit printed on the face of such envelope, and the jurat shall be subscribed by the officer before whom the affidavit was taken. Such ballot and envelope shall then be securely sealed in the third envelope which the elector shall send by mail to the county board of elections of the proper county with postage prepaid.

Receipt and counting of military ballots by county boards.

Section 1307. Receipt and Counting of Military Ballots.—The county board of elections upon receipt of such third envelope shall safely keep the same in their office until they meet to canvass the vote of such election under the provisions of this act.

At such time the members of the county board of elections may in person dispose of military ballots in the manner hereinafter set forth, or they may designate a sufficient number of clerks to perform such duties. When it is determined that clerks shall be appointed, the total number shall

\*"or" repeated in original.



*in every case be in multiples of three; each member of the county board of elections shall appoint an equal number thereof.*

*Watchers appointed in the manner prescribed by, and subject to the restrictions imposed by section four hundred and seventeen of this act, in so far as applicable, shall be permitted to be present whenever any of the envelopes containing military ballots are opened\* and whenever any such ballots are counted and recorded.*

Watchers.

*In disposing of military ballots the county board of elections, or the clerks designated as aforesaid, shall first examine the third envelope and set aside unopened all such envelopes which bear a postmark later than the date of the particular election day involved. The envelopes thus set aside shall be retained for a period of one year and then destroyed unopened.*

Disposal of ballots and envelopes.

*They shall then open the third envelopes not thus set aside, and after examining the affidavit and jurat, shall compare the signature of such absent voter with his signature upon any register or other record in their possession. If the county board is satisfied that the signatures correspond, that the affidavit and jurat are sufficient and that the voter has been duly registered as provided by law, they shall announce the name of the elector and shall give any person present an opportunity to challenge the same in like manner and for the same causes as such elector could have been challenged had he presented himself in his own district to cast his vote. If there are no challenges, they shall open the second envelope in such manner as not to destroy the affidavit and jurat printed thereon, which envelope shall be kept in their office for a period of one year thereafter. All envelopes on which are printed, stamped or endorsed the words "Military Ballot", and containing the ballots, shall be put into one depository at one time and said depository well shaken, and the envelopes containing the ballots mixed before any ballot is taken therefrom. The county board shall then break the seals of such envelopes and record the said ballots in the same manner as district election officers are required to record votes under the provisions of this act. In like manner all military ballots received prior to completion of the computation of the returns of the county shall be counted and recorded, and, upon completion of the computation of the returns of the county, the votes cast upon the military ballots shall then be added to the votes cast within the county, city, borough, incorporated town, township, ward or election district as designated on each ballot. Military ballots shall be safely kept by the county board of elections for a period of one year.*

**\*\*Section 5.** This act shall become effective immediately upon final enactment.

Act effective immediately.

APPROVED—The 1st day of August, A. D. 1941.

ARTHUR H. JAMES

\*"opened" in original.

\*\*All of Section 5 italicized in original.

## No. 17

## AN ACT

To further amend the act, approved the third day of June, one thousand nine hundred thirty-seven (Pamphlet Laws, one thousand three hundred thirty-three), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," by further regulating elections during the time of the present war and for six months thereafter; authorizing and providing a procedure for the voting of qualified electors in actual military service as herein defined, who are absent from their place of residence while in, attached to, or serving with the armed forces of the United States; imposing additional duties upon the various county boards of elections and election officers; chairmen of political parties or committees, and officers and employes of certain political subdivisions; placing costs upon the Commonwealth; authorizing appropriations by cities of the first class and counties; further regulating the last day for filing nomination petitions and nomination papers; the withdrawal of nominated candidates; the payment of fees by persons nominated at primary elections; the filing of substitute nomination certificates to fill vacancies caused by the withdrawal of candidates, and further regulating the date of the primary election.

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

Section 1. Section one hundred two (w) of the act, approved the third day of June, one thousand nine hundred thirty-seven (Pamphlet Laws, one thousand three hundred thirty-three), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," is hereby amended to read as follows:

Section 102. (w) ["Electors in actual military service" shall mean qualified electors of this Commonwealth, who are or may be by enlistment, enrollment, or draft in the military or naval service of the United

Elections.

Section 102 (w),  
act of June 3,  
1937, P. L. 1333,  
as amended by  
act of August 1,  
1941, P. L. 672,  
further amended

"Qualified  
elector in actual  
military service"  
defined.

States, or any branch or unit thereof, or in the military service of the Commonwealth.] *The term "qualified elector in actual military service" shall mean a qualified elector of this Commonwealth, who is or may be in the military or naval service of the United States or any branch or unit thereof, or in the Merchant Marine of the United States, or serving in the American Red Cross, the Society of Friends, the Women's Auxiliary Service Pilots, the American Field Service or the United Service Organizations attached to and serving with the armed forces of the United States, and regardless of whether such person is registered or enrolled in accordance with law.*

Section 305 (c), act of June 8, 1937, P. L. 1333, as amended by act of August 1, 1941, P. L. 672, further amended.

Section 2. Section three hundred five (c) of said act is hereby amended to read as follows:

Section 305. (c) [The Commonwealth shall reimburse each county for election expenses incurred at every election for the preparation, handling and mailing of ballots for electors in actual military service, in the sum of forty-three cents for each ballot mailed to an elector in actual military service in such manner as is now or may hereafter be provided by law.] *The Commonwealth shall reimburse each city of the first class and county for the actual expenses incurred in and incidental to preparing, handling, mailing, delivering, counting and storing official military ballots as herein provided in a sum not to exceed forty cents (40¢) for each such ballot mailed or delivered.*

Cities of the first class and counties shall be reimbursed by Commonwealth in sum not to exceed 40¢ for each ballot mailed or delivered.

County boards of election to file statement of number of ballots mailed or delivered with Secretary of Commonwealth.

Each county board of elections shall file in the Department of State, not later than thirty days after every election, on a form prescribed by the Department of State, a statement of the number of ballots mailed or delivered in such manner as is now or may hereafter be provided by law to electors in actual military service. [upon the written application of each elector. Such applications shall be preserved by each county board of elections until reimbursement is made as herein provided, subject to inspection or production in the Department of State, if demanded by the Department of State.]

Department of State shall fix amount due and provide for payment.

The Department of State shall ascertain and fix the amount due, as herein provided, to each [county] *city of the first class and county for actual election expenses incurred [for the preparation, handling and mailing of ballots to electors in actual military service], and by requisition in the usual course shall provide for payment of such amounts so found due from moneys appropriated to the Department of State for such purpose, or shall prorate the moneys so appropriated among the several [counties] cities of the first class and counties to be reimbursed, if the amount so appropriated shall*

not be sufficient for the payment in full to each [county] *city of the first class and county* of the amount found to be due.

Section 3. Section six hundred four of said act is hereby amended to read as follows:

Section 604. [Fall] *Summer* Primary; Officers to Be Nominated.—There shall be a [Fall] *Summer* primary preceding each municipal election which shall be held on the [second] *third* Tuesday of [September] *June* in all odd-numbered years. Candidates for all offices to be filled at the ensuing municipal election shall be nominated at the [Fall] *Summer* primary.

Section 4. Sections nine hundred four, nine hundred five, nine hundred six and subsection (d) of section nine hundred thirteen of said act are hereby amended to read as follows:

Section 904. Municipal Clerks and Party Chairmen to Furnish Information as to Offices to Be Filled.—To assist the respective county boards in ascertaining the offices to be filled, it shall be the duty of the clerks or secretaries of the various cities, boroughs, towns, townships, school districts and poor districts, with the advice of their respective solicitors, on or before the [tenth] *thirteenth* Tuesday preceding the [Fall] *Summer* primary, to send to the county boards of their respective counties a written notice setting forth all city, borough, town, township, school district and poor district offices to be filled in their respective subdivisions at the ensuing municipal election, and for which candidates are to be nominated at the ensuing primary. It shall also be the duty of the chairman of the State committee of each political party to forward to the Secretary of the Commonwealth and to the respective county boards, on or before the [tenth] *thirteenth* Tuesday preceding the Spring primary, a written notice setting forth the number of delegates and alternate delegates to the National convention of such party who are to be elected in the State at large at the ensuing primary, and the number of such delegates and alternate delegates who are to be elected at said primary in such county, or in any district within such county, or of which it forms a part. The said notice shall also set forth the number of members of the National committee, if any, who, under the national party rules, are to be elected at the said primary in the State at large, and the number of members of the State committee to be elected at the said primary in such county, or in any district, or part of a district within such county. It shall also be the duty of the chairman of the county committee and, in cases where a city is coextensive with a county, the chairman of the city committee of each party, on or before the [tenth]

Section 604, act of June 3, 1937, P. L. 1333, amended.

Primary date in odd-numbered years changed.

Sections 904, 905 and 906 and subsection (d) of 913, act of June 3, 1937, P. L. 1333, amended.

Time for municipal clerks and party chairmen to furnish information changed.

*thirteenth* Tuesday preceding the Spring primary, to send to the county board of such county a written notice setting forth all party offices to be filled in the county at the ensuing primary.

Time for Secretary of Commonwealth to notify county boards of vacancies changed.

Section 905. Secretary of the Commonwealth to Notify County Board of Certain Nominations to Be Made.—On or before the [tenth] *thirteenth* Tuesday preceding each primary, the Secretary of the Commonwealth shall send to the county board of each county a written notice designating all the offices for which candidates are to be nominated therein, or in any district of which such county forms a part, or in the State at large, at the ensuing primary, and for the nomination to which candidates are required to file nomination petitions in the office of the Secretary of the Commonwealth, including that of President of the United States; and shall also in said notice set forth the number of presidential electors, United States Senators, Representatives in Congress and State officers, including senators, representatives and judges of courts of record, to be elected at the succeeding November election by a vote of the electors of the State at large, or by a vote of the electors of the county, or of any district therein, or of any district of which such county forms a part.

Time for publication of notice of vacancies changed.

Section 906. Publication of Notice of Officers to Be Nominated and Elected.—Beginning not earlier than [nine] *twelve* weeks, nor later than [eight] *eleven* weeks before any regular Spring or [Fall] *Summer* primary, the county board of each county shall publish in newspapers, as provided by section 106 of this act, a notice setting forth the number of delegates and alternate delegates to the National convention of each party who are to be elected in the State at large at the ensuing primary, and the number of delegates and alternate delegates who are to be elected at the said primary in said county, or in any district of which said county or part thereof forms a part, and also setting forth the names of all public offices for which nominations are to be made, and the names of all party offices, including that of members of the National committee, if any, and State committee, for which candidates are to be elected at said primary in said county, or in any district of which such county or part thereof forms a part, or in the State at large. Said notice shall contain the date of the primary, and shall be published once each week for two successive weeks.

Filing of nomination petitions 71 days before primary.

Section 913. (d) All nomination petitions shall be filed at least [fifty (50)] *seventy-one (71)* days prior to the primary.

Section 5. Section nine hundred fifty-three (c) of said act is hereby amended to read as follows:

Section 953. (c) All nomination papers must be filed at least [twenty (20)] *forty-one (41)* days prior to the date of the primary election.

Section 6. Section nine hundred seventy-eight of said act is hereby amended to read as follows:

Section 978. Withdrawal of Nominated Candidates.

—Any person who has been nominated by any political party or political body, in accordance with the provisions of this act, as a candidate for the office of presidential elector, United States Senator, Representative in Congress or for any State office, including that of senator, representative and judge of court of record, may withdraw his name from nomination by request in writing, signed by him and acknowledged before an officer qualified to take acknowledgment of deeds, and filed in the office of the Secretary of the Commonwealth. Any person who has been similarly nominated as a candidate for any other office may withdraw his name from nomination by similar request, filed with the county board of elections of the proper county. Such written withdrawals shall be filed with the Secretary of the Commonwealth or the county board of elections, as the case may be, at least one hundred five days previous to the day of the general *or municipal* election [and at least twenty-five days previous to the day of the municipal election]. Such withdrawals to be effective must be received in the office of the Secretary of the Commonwealth not later than five (5) o'clock P. M. on the last day for filing same, and in the office of any county board of elections not later than the ordinary closing hour of said office on the last day for filing same. No name so withdrawn shall be printed upon the ballot or ballot labels. No candidate may withdraw any withdrawal notice already received and filed, and thereby reinstate his nomination.

Section 7. Section nine hundred seventy-eight and one-tenth\* of said act, added by the act, approved the twenty-seventh day of May, one thousand nine hundred forty-three (Pamphlet Laws, seven hundred forty-seven), is hereby amended to read as follows:

Section 978.1. Vacancy in Party Nomination by Failure to Pay Filing Fee.—Every person nominated at any primary election as the candidate of any political party for any office, who has not paid the filing fee required by section nine hundred thirteen of this act, as amended, for the filing of a nomination petition for such office, shall pay the amount of such fee to the [State Treasurer] *Secretary of the Commonwealth*, or to the [county treasurer] *county board of elections* as the case

Section 953 (c), act of June 3, 1937, P. L. 1333, amended.

Filing of nomination papers 41 days before primary.

Section 978, act of June 3, 1937, P. L. 1333, as amended by Act No. 3 of May 5, 1944, further amended.

Withdrawals filed 105 days previous to November election.

Section 978.1, act of June 3, 1937, P. L. 1333, added by act of May 27, 1943, P. L. 747, as amended by Act No. 3 of May 5, 1944, further amended.

Nominees who have not paid filing fee shall pay same 105 days previous to November election.

\* "one-tenth" in original.

may be, at least one hundred five days previous to the day of the general or municipal election [or at least twenty-five days previous to the day of the municipal election] at which such candidate's name would appear on the ballot. Failure to pay such fee within the time herein prescribed shall result in a vacancy in such party nomination. Such vacancy shall be filled in the manner hereinafter provided for the filling of such vacancies happening by reason of the death or withdrawal of any candidate.

Section 981 (a), act of June 8, 1937, P. L. 1333, amended by Act No. 8 of May 5, 1944, further amended.

Substituted nomination certificates to fill vacancies filed 95 days prior to November election.

Article XIII of act of June 3, 1937, P. L. 1333, as amended, repealed.

New Article XIII added to act of June 3, 1937, P. L. 1333.

Absentee qualified electors in actual military service entitled to vote.

Applications for official military ballots.

Section 8. Section nine hundred eighty-one (a) of said act is hereby amended to read as follows:

Section 981. Time for Filing Substituted Nomination Certificates.—

(a) Substituted nomination certificates to fill vacancies caused by the withdrawal of candidates nominated at primaries or by nomination papers shall be filed with the Secretary of the Commonwealth or proper county board of elections, as the case may be, at least ninety-five days before the day of the general or municipal election [and at least twenty days before the day of the municipal election].

Section 9. Article Thirteen of said act as amended is hereby repealed absolutely.

Section 10. Said act is hereby amended by adding thereto a new Article Thirteen to read as follows:

### ARTICLE XIII VOTING BY PERSONS IN ACTUAL MILITARY SERVICE

Section 1301. *Qualified Electors in Actual Military Service.*—Whenever any qualified elector in actual military service is absent from his place of residence on any day appointed by law for holding a general, municipal or primary election within this Commonwealth, such elector shall be entitled to exercise the right of suffrage as fully as if he were present at his place of election, in the manner prescribed in this act, whether at the time of voting such elector shall be within the limits of this Commonwealth or not, and regardless of whether such elector is registered or enrolled.

Section 1302. *Applications for Official Military Ballots.*—Any qualified elector in actual military service may apply at any time before any election for an official military ballot on Form USWBC Form No. 1 or any other form supplied by the Federal Government, or by post card, letter or other writing, addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of election of the county wherein the voting residence of the elector is located.

The application shall contain the following information: Residence, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident of voting district, voting district, party choice in case of primary, name, rank or grade, military address, branch of service and serial number. When such application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

Contents of application.

The application for a military ballot in any November election may be made or information supplied over the signature of any person who is familiar with the voting qualifications of the military elector, as required in the preceding paragraph.

Applications for November election.

The various county boards of election, upon receipt of any application, shall ascertain from the information on such applications, district register or from any other source that such applicant possessed all the qualifications of a qualified elector other than being registered or enrolled.

Duty of county boards of election when application received.

**Section 1303. Official Military Ballots.**—Ballots for use by such military electors under the provisions of this act shall be prepared sufficiently in advance by the county boards of election and shall be distributed by such boards as hereinafter provided. Such ballots shall be marked "Official Military Ballot" but shall not be numbered and shall otherwise be in substantially the form for ballots required by article ten of this act, which form shall be determined and prescribed by the Secretary of the Commonwealth.

Form, preparation and distribution of official military ballots.

In cases where there is not time, in the opinion of the county boards of election, to print on said ballots the names of the various candidates for district, county and local offices, the ballots shall contain blank spaces only under the titles of such offices in which electors may insert the names of the candidates for whom they desire to vote, and in such cases the county boards of election shall furnish to electors lists containing the names of all the candidates who have been regularly nominated under the provisions of this act, for the use of such electors in preparing their ballots.

Candidate's name need not appear on ballot for local offices.

**Section 1304. Envelopes for Official Military Ballots.**—The county boards of election shall provide two additional envelopes for each official military ballot, of such size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official Military Ballot," and nothing else. On the larger of the two envelopes, to be

Form of envelopes prescribed by Secretary of Commonwealth.



enclosed within the mailing envelope, shall be printed the affidavit of the elector, together with the jurat of the person in whose presence the ballot is marked and before whom the affidavit is made, and the name and address of the county board of election of the proper county. Said affidavit, jurat and envelope shall be in the form prescribed by the Secretary of the Commonwealth and shall contain among other things a statement of elector's qualifications. The mailing envelope addressed to the elector shall contain the two envelopes, the official military ballot, lists of candidates, when authorized by section 1303 of this act, the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else.

Time for mailing military ballots.

**Section 1305. Duties of County Boards.**—The county boards of election shall at least thirty-eight days prior to the election deliver or mail official military ballots to all electors whose names and addresses have been ascertained; as additional names and addresses of electors are ascertained, the board shall deliver or mail official military ballots to such additional electors within forty-eight hours after ascertaining their names and addresses.

Posting of military file.

Each county board of election shall post in a conspicuous public place at its office a master list, arranged alphabetically by election districts, setting forth the name, residence and the local voting district or ward of every elector to whom an official military ballot has been sent. This posted list shall not contain the elector's military address or military organization. This list shall be known as the "Military File" and shall be posted at least five days before the election day involved, and shall also set forth the total number of such ballots prepared for use in such election. Copies of such military files shall be furnished upon request to the county chairmen of each political party and political body, and shall also be furnished to registration commissions.

Method of absentee military voting.

**Section 1306. Voting by Electors in Actual Military Service.**—At any time after receiving an official military ballot, but on or before the day of the election, the elector, for the purpose of voting, may appear before any commissioned or noncommissioned officer, not below the rank of sergeant or petty officer third class, of the military or naval forces or any member of the Merchant Marine of the United States designated for the purpose by the Administrator of the War Shipping Administration. Such persons are hereby authorized and empowered to administer oaths as required herein. Such elector may also appear before any person of this or any other state or territory of the United States authorized to administer oaths. The elector shall first display the ballot to such person as evidence that the same is un-

marked, and then shall proceed to mark the ballot with pencil, crayon, indelible pencil or ink, in the presence of such person, but in such manner that the person administering the oath is unable to see how the same is marked, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Military Ballot". This envelope shall then be placed in the second one, on which is printed the affidavit of the elector, the jurat of the person before whom the elector appears, and the address of the elector's county board of election. The elector shall then fill out, subscribe and swear to the affidavit printed on such envelope, and the jurat shall be subscribed and dated by the person before whom the affidavit was taken. Such envelope shall then be securely sealed and the elector shall send same by mail to said county board of election.

**Section 1307. Canvassing of Official Military Ballots.**  
 --The county boards of election, upon receipt of such envelopes, shall safely keep the same until they meet to canvass official military ballots, which canvass shall begin immediately following the official civilian canvass for all primary elections. After the November election, the canvass of official military ballots shall begin at ten o'clock A. M., Eastern Standard Time, on the second Friday following the election. No such ballots shall be counted which are received in their offices later than ten o'clock A. M., Eastern Standard Time, of the first Tuesday following the primary election, and ten A. M., Eastern Standard Time, of said second Friday following the November election. At such time the members of the return boards or the county boards of election shall in person dispose of official military ballots in the manner hereinafter\* set forth. The county boards of election may designate a sufficient number of clerks to perform such duties. When it is determined that clerks shall be appointed, the total number shall in every case be in multiples of three, and each member of a county board of election shall appoint an equal number thereof.

Time and method of canvassing military ballots.

Each candidate for nomination or election shall be entitled to appoint one watcher and each political party or body which has nominated candidates shall be entitled to appoint three watchers. Watchers shall be permitted to be present when the envelopes\*\* containing official military ballots are opened and when \*\*\* such ballots are counted and recorded.

Watchers.

In disposing of an official military ballot the county return board or the county board of election shall examine the affidavit and jurat and if the jurat bears a

Disposition of official military ballots.

\* "herinafter" in original.  
 \*\* "envelope" in original.  
 \*\*\* "then" in original.

*date later than the date of the election, the envelope shall be set aside unopened.*

**Challenges and recordation of votes.**

*The board shall then further examine the affidavit and jurat of each envelope not so set aside and shall compare the informatio. thereon with that contained in the military file. If the board is satisfied that the affidavit and jurat are sufficient and that the elector has qualified, and the board has utilized the information contained in the military file to verify his right to vote, the board shall announce the name of the elector and shall give any person present an opportunity to challenge in like manner and for the same cause, except failure to register or enroll, as the elector could have been challenged had he presented himself in his own district to vote other than by official military ballot. If no challenges are sustained, the board shall open the envelope in such manner as not to destroy the affidavit and jurat printed thereon. All envelopes on which are printed, stamped or endorsed the words "Official Military Ballot" shall be placed in one or more depositories at one time and said depository or depositories well shaken, and the envelopes mixed before any envelope is taken therefrom. The board shall then break the seals of such envelopes, remove the ballots and record the votes in the same manner as district election officers are required to record votes. Upon completion of the computation of the returns of the county, the votes cast upon the official military ballots shall be added to the other votes cast within the county.*

**Military ballots, etc., declared public records.**

*Section 1308. Public Records.—All official military ballots, military files, applications for such ballots and envelopes on which the jurats and affidavits appear, and all information and lists are hereby designated and declared to be public records and shall be safely kept for a period of two years, except that no information shall be made public which is expressly forbidden by the War Department because of military security.*

**Cities of first class empowered to appropriate money.**

*Section 11. Cities of the first class and counties are hereby authorized and empowered to appropriate the moneys necessary to carry out the provisions of this amendment.*

**Purpose of act and liberal construction.**

*Section 12. The purpose of this amendment is to enable every qualified elector of this Commonwealth in actual military service, as herein defined, during the continuance of the present war and for six months thereafter, to vote, notwithstanding the fact that such elector may be absent on election day from the election district in which he resides, whether such person is within or without this Commonwealth or within or without the United States, and regardless of whether such person is*

registered or enrolled as a qualified elector, and this amendment shall be liberally construed to effectuate such purpose.

Section 13. The following supplements, acts or parts of acts are hereby repealed absolutely.

Acts repealed.

Supplement No. 1, approved the fifth day of May, one thousand nine hundred and forty-four supplementing the act, approved the third day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand three hundred thirty-three), known as the "Pennsylvania Election Code".

Supplement No. 1 of May 5, 1944, repealed.

Act No. 4, approved the fifth day of May, one thousand nine hundred and forty-four, entitled "An act relating to voting by official military ballot; conferring powers and imposing duties upon the State Council of Defense, local and district councils of defense, county boards of election, election officers and the Secretary of the Commonwealth; providing for the promulgation of rules, regulations and orders; and providing penalties".

Act No. 4 of May 5, 1944, repealed.

Section 14. This act shall remain in effect until the termination of hostilities in the present war, and for six months hereafter. The termination of hostilities in the present war shall be the time proclaimed as such by the President of the United States, or the date specified as such in a concurrent resolution of the two houses of Congress.

Effective for present war and 6 months thereafter.

Section 15. The provisions of this act shall become effective immediately upon final enactment.

Act effective immediately.

APPROVED—The 9th day of March, A. D. 1945.

EDWARD MARTIN

No. 18

AN ACT

To amend sections three hundred ten and three hundred eleven of Article III of the act, approved the third day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand two hundred twenty-five), entitled "An act concerning game and other wild birds and wild animals; and amending, revising, consolidating, and changing the law relating thereto," by providing for monthly returns and payments by certain issuing agents and requiring that amount of bond of issuing agents shall be fixed by Secretary of Revenue.

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

Wild birds and animals.

Section 1. Sections three hundred ten and three hundred eleven of Article III of the act, approved the third day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand two hundred twenty-five), entitled "An act concerning game and

Article III, sections 310 and 311, act of June 3, 1937, P. L. 1225, amended.

contains and is confined to examples of the face amount of the loan instrument, the proceeds to the borrower exclusive of the charge, and the amount, number and intervals of the required payments.

(b) The aggregate amount of unpaid principal due from any one borrower on one or more installment loans granted pursuant to the provisions of [this clause (4)] *subclause (a) hereof* shall not at any time exceed [thirty-five hundred dollars] *the principal amounts set forth in such subclause (a).*

\* \* \* \* \*

Section 2. This act shall take effect immediately.

Act effective immediately.

APPROVED—The 13th day of August, A. D. 1963.

WILLIAM W. SCRANTON

No. 379

AN ACT

Amending the act of June 3, 1937 (P. L. 1333), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," authorizing and providing procedures whereby certain qualified registered electors absent from or unable to attend their regular polling places may cast their votes; authorizing and providing procedures for the absentee voting by certain personnel of the Federal Government and of this Commonwealth, including their spouses and dependents in the event they are qualified registered electors; imposing additional duties upon the Secretary of the Commonwealth, various county boards of elections and election officers, courts, various registration commissions, chairmen of political parties or committees, and officers and employees of certain political subdivisions; changing the method of marking ballots; further regulating the procedures for the voting of qualified electors serving in the armed forces of the United States and certain qualified bedridden or hospitalized veterans; authorizing and providing assistance in voting for certain absentee voters; further regulating the dates for furnishing information as to offices to be filled for filing and circulating nomination petitions and nomination papers; further regulating the time within which writs of election may issue for holding special elections to fill vacancies occurring in the offices of United States Senators, Representatives in Congress, Representatives in either House of the General Assembly, councils or legislative bodies of cities, boroughs, towns and townships, and further regulating the dates for filing nomination certificates, withdrawals of nominated candidates, vacancies for failure to pay filing fees or for failure to file loyalty oath, substituted nomination certificates and fur-

ther regulating the date for certification of nominees by the Secretary of the Commonwealth; and providing penalties.

Pennsylvania  
Election Code.

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

Clauses (w), (x) and (y), section 102, act of June 8, 1937, P. L. 1333; clause (w) reenacted and amended March 6, 1951, P. L. 3; clause (x) added March 6, 1951, P. L. 3; and clause (y) added January 8, 1960, P. L. (1959) 2135, further amended.

Section 1. Clauses (w) (x) and (y) of section 102, act of June 3, 1937 (P. L. 1333), known as the "Pennsylvania Election Code;" clause (w), reenacted and amended March 6, 1951 (P. L. 3); clause (x), added March 6, 1951 (P. L. 3); and clause (y), added January 8, 1960 (P. L. (1959) 2135), are amended to read:

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

\* \* \* \* \*

(w) [The term "qualified elector in actual military service" shall mean a qualified elector of this Commonwealth, who is or may be in the military or naval service of the United States or any branch or unit thereof, and regardless of whether such person is registered or enrolled in accordance with law.

(x) The term "qualified bedridden or hospitalized veteran" shall mean any qualified elector of this Commonwealth who may be unavoidably absent from the State or county of his residence because of his being bedridden or hospitalized due to illness or physical disability contracted or suffered in connection with, or as a direct result of, his military service.

(y) The term "absentee elector" shall mean any qualified elector of this Commonwealth properly registered and enrolled, who (1) on the occurrence of any election is unavoidably absent from the county of his voting residence by reason of his duties, business or occupation, or who (2) on the occurrence of any election is unable to attend at his proper polling place by reason of illness or physical disability, but shall not include a "qualified elector in actual military service" or a "qualified bedridden or hospitalized veteran," as defined in this section, or any person committed to and confined in a penal institution or a mental institution.]

*The words "qualified absentee elector" shall mean:*

(1) *Any qualified elector who is or who may be in the military service of the United States regardless of whether at the time of voting he is present in the election district of his residence or is within or without this Commonwealth and regardless of whether he is registered or enrolled; or*

(2) *Any qualified elector who is a spouse or dependent residing with or accompanying a person in the military service of the United States if at the time of voting such*

spouse or dependent is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(3) Any qualified elector who is or who may be in the service of the Merchant Marine of the United States if at the time of voting he is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(4) Any qualified elector who is a spouse or dependent residing with or accompanying a person who is in the service of the Merchant Marine of the United States if at the time of voting such spouse or dependent is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(5) Any qualified elector who is or who may be in a religious or welfare group officially attached to and serving with the armed forces if at the time of voting he is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(6) Any qualified elector who is a spouse or dependent residing with or accompanying a person in a religious or welfare group officially attached to and serving with the armed forces if at the time of voting such spouse or dependent is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(7) Any qualified elector who is or who may be a civilian employee of the United States outside the territorial limits of the several States of the United States

and the District of Columbia, whether or not such elector is subject to civil-service laws and the Classification Act of 1949 and whether or not paid from funds appropriated by the Congress, if at the time of voting he is absent from the State or county of his residence: Provided, however, That said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(8) Any qualified elector who is a spouse or dependent residing with or accompanying a person who is a civilian employee of the United States outside the territorial limits of the several States of the United States and the District of Columbia whether or not such person is subject to civil-service laws and the Classification Act of 1949 and whether or not paid from funds appropriated by the Congress if at the time of voting such spouse or dependent is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(9) Any qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability if he is unavoidably absent from the Commonwealth or county of his residence and regardless of whether he is registered and enrolled; or

(10) Any qualified, registered and enrolled elector who expects to be or is unavoidably absent from the Commonwealth or county of his residence during the entire period the polls are open for voting on the day of any primary or election; or

(11) Any qualified, registered and enrolled elector who is unable to attend his polling place because of illness or physical disability; or

(12) Any qualified, registered and enrolled elector who is a spouse or dependent accompanying a person employed in the service of this Commonwealth or in the service of the Federal Government within the territorial limits of the several States of the United States and the District of Columbia in the event the duties, profession or occupation of such person require him to be absent from the Commonwealth or county of his residence:

Provided, however, That the words "qualified absentee elector" shall in nowise be construed to include persons confined in a penal institution or a mental institution nor shall it in anywise be construed to include a person



*not otherwise qualified as a qualified elector in accordance with the definition set forth in section 102 (t) of this act.*

*(x) The words "members of the Merchant Marine of the United States" mean persons (other than persons in military service) employed as officers or members of crews of vessels documented under the laws of the United States or of vessels owned by the United States or of vessels of foreign flag registry under charter to or control of the United States, and persons (other than persons in military service) enrolled with the United States for employment or for training for employment or maintained by the United States for emergency relief service as officers or members of crews of any such vessels, but does not include persons so employed or enrolled for such employment or for training for employment or maintained for such emergency relief on the Great Lakes or the Inland waterways.*

Section 2. Section 102 of the act is amended by adding, after clause (x) thereof, four new clauses to read:

Section 102 of act, amended by adding four new clauses (y), (z), (z-1) and (z-2).

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

\* \* \* \* \*

*(y) The word "dependent" means any person who is in fact a dependent.*

*(z) The words "person authorized to administer oaths" shall mean any person who is a commissioned officer in military service or any member of the Merchant Marine of the United States designated for this purpose by the United States Secretary of Commerce or any civilian official empowered by any State or Federal law to administer oaths.*

*(z-1) The words "in military service" shall mean the uniformed services as defined in section 102 of the Career Compensation Act of 1949 (63 Stat. 804 U. S. Code, Title 37, Par. 231).*

*(z-2) The words "unavoidably absent" shall mean absence in good faith by reason of duties, occupation or business.*

Section 3. Subsection (c) of section 305 of the act, reenacted and amended March 6, 1951 (P. L. 3), is amended to read:

Subsection (c), section 305 of act, reenacted and amended March 6, 1951, P. L. 3, further amended.

Section 305. Expenses of County Boards and of Primaries and Elections to Be Paid by County; Expenses of Special Elections; Boards to Be Provided with Offices.—

\* \* \* \* \*

(c) The Commonwealth shall reimburse each city of the first class and county for election expenses incurred in and incidental to preparing, handling, mailing, delivering, counting and storing official [military] *absentee* ballots [and veterans' official ballots] *requested by any elector in military service, Federal employment overseas, Merchant Marine, and in any religious group or welfare agency assisting the Armed Forces, including spouses and dependents, and bedridden and hospitalized veterans* as herein provided in the sum of forty cents (40¢) for each such ballot mailed or delivered.

Each county board of elections shall file in the Department of State, not later than thirty days after every election, on a form prescribed by the Department of State, a statement of the number of ballots mailed or delivered in such manner as is now or may hereafter be provided by law to electors in actual military service, *Federal employment overseas, Merchant Marine, and in any religious group or welfare agency assisting the Armed Forces, including spouses and dependents, and to bedridden or hospitalized veterans.*

The Department of State shall ascertain and fix the amount due, as herein provided, to each city of the first class and county for election expenses incurred, and by requisition in the usual course shall provide for payment of such amounts so found due from moneys appropriated to the Department of State for such purpose, or shall prorate the moneys so appropriated among the several cities of the first class and counties to be reimbursed, if the amount so appropriated shall not be sufficient for the payment in full to each city of the first class and county of the amount found to be due.

Sections 626 and 627 of act, amended.

Section 4. Sections 626 and 627 of the act are amended to read:

Section 626. Special Elections for United States Senator; Nominations.—Whenever a vacancy shall occur in the office of United States Senator, said vacancy shall be filled for the unexpired term by the vote of the electors of the State at a special election to be held at the time of the next general or municipal election, occurring at least [forty(40)] *ninety (90)* days after the happening of such vacancy, and it shall be the duty of the Governor to issue writs of election to the various county boards of elections and to the Secretary of the Commonwealth [accordingly] *within ten (10) days after the happening of said vacancy.* Candidates to fill vacancies in the office of United States Senator shall be nominated by political parties, in accordance with the party rules relating to the filling of vacancies, by means of nomination certificates, in the form prescribed in section 630 of this act; and by political bodies, by means of nomina-

tion papers, in accordance with the provisions of sections 951, 952 and 954 of this act. Said nomination certificates and nomination papers shall be filed in the office of the Secretary of the Commonwealth at least [thirty (30)] *sixty (60)* days prior to the date of said special election. Until such time as said vacancy shall be filled by an election as herein provided, the Governor of the Commonwealth may make a temporary appointment to fill said vacancy.

Section 627. Special Elections for Representative in Congress.—Whenever a vacancy shall occur or exist in the office of Representative in Congress from this State during a session of Congress, or whenever such vacancy shall occur or exist at a time when the members of Congress shall be required to meet at any time previous to the next general election, the Governor shall issue, within ten days after the happening of said vacancy, or after the calling of an extraordinary session of Congress during the existence of said vacancy, a writ of election to the proper county board or boards of election and to the Secretary of the Commonwealth, for a special election to fill said vacancy, which election shall be held on a date named in said writ, which shall not be less than [thirty (30)] *sixty (60)* days after the issuance of said writ. In all other cases no such special election to fill said vacancy shall be held. The Governor may fix, in such writ of election, the date of the next ensuing primary or municipal election as the date for holding any such special election.

Section 5. Section 628 of the act, amended April 13, 1942 (P. L. 20), is amended to read:

Section 628. Special Elections for Senator and Representative in the General Assembly.—Whenever a vacancy shall occur in either house of the General Assembly whether or not it then be in session, the presiding officer of such house shall issue a writ of election to the proper county board or boards of election and to the Secretary of the Commonwealth, for a special election to fill said vacancy, which election shall be held on a date named in the writ, which shall be not less than [thirty (30)] *sixty (60)* days after the issuance of said writ. The presiding officer may fix, in such writ of election, the date of the next ensuing primary, municipal or general election as the date for holding any such special election: Provided, however, That should the Governor after the issuance of the said writ of election advise the presiding officer that the General Assembly will be called into extraordinary session prior to the date set for such special election, the presiding officer may countermand the writ theretofore issued and

Section 628 of act, amended April 13, 1942, P. L. 20, further amended.

shall issue a new writ of election, fixing therein such earlier date therefor as is deemed expedient, but which shall not be less than [thirty (30)] *sixty (60)* days after the issuance of said writ.

Section 628.1 of act, added May 23, 1949, P. L. 1656, amended.

Section 6. Section 628.1 of the act, added May 23, 1949 (P. L. 1656), is amended to read:

Section 628.1. Special Elections for Members of Councils or Legislative Bodies of Cities, Boroughs, Towns and Townships.—In all cases where under any law now or hereafter enacted, a special election is required to fill any vacancy in the office of member of the council or legislative body of any city, borough, town or township, such election shall be held on the day fixed in the writ for the special election or on such day as may be otherwise provided by such law, which day shall [not be less than thirty (30)] *be within sixty (60)* days after the issuance of the writ or after the happening of the vacancy, as the case may be, notwithstanding any provisions in such law requiring the special election to be held on an earlier day. This section shall not be construed as requiring a special election in any case where such election is not required under any law now or hereafter enacted.

Sections 629 and 636 of act, amended May 23, 1949, P. L. 1656, further amended.

Section 7. \*Sections 629 and 636 of the act, amended May 23, 1949 (P. L. 1656), are amended to read:

Section 629. Nominations for Special Election for Representative in Congress, Senator and Representative in the General Assembly and Member of Council or Legislative Body of Cities, Boroughs, Towns and Townships.—Candidates to fill vacancies in the offices of Representative in Congress, Senator and Representative in the General Assembly and member of the council or legislative body of any city, borough, town or township shall be nominated by political parties, in accordance with the party rules relating to the filling of vacancies, by means of nomination certificates, in the form prescribed in section 630 of this act; and by political bodies, by means of nomination papers, in accordance with the provisions of sections 951, 952 and 954 of this act. Said nomination certificates and nomination papers for the office of Representative in Congress shall be filed in the office of the Secretary of the Commonwealth not later than [ten (10)] *fifteen (15)* days after the issuance of the writ of election, and said nomination certificates and nomination papers for the office of Senator and Representative in the General Assembly shall be filed in the office of the Secretary of the Commonwealth, and for the office of member of the council or legislative body of a city, borough, town or township, in the office of the

\* "Section" in original.

county board of elections wherein such city, borough, town or township is situate, not later than [the twentieth day before the day of the election] *fifteen (15) days after the issuance of the writ of election.*

Section 636. Certification by Secretary of the Commonwealth of Candidates for Special Elections.—The Secretary of the Commonwealth shall, not later than the [tenth (10th)] *thirtieth (30th)* day next preceding the day fixed for any special election to fill a vacancy in the offices of United States Senator, Representative in Congress, Senator and Representative in the General Assembly, certify to the proper county board or boards the names and residences of, and parties or political bodies represented by, all candidates whose nomination certificates or papers have been filed with him, as herein provided, for such election, and have not been found and declared invalid, and to be voted for in the county or any district or districts thereof, substantially in the form of the ballots to be used therein.

Section 8. Section 901 of the act is amended to read:

Section 901 of act, amended.

Section 901. Determination and Certification of State-wide and County-wide Parties.—(a) The Secretary of the Commonwealth shall determine which organizations are political parties within the State, within the meaning of section 801(a) of this act, and not later than the [tenth] *thirteenth* Tuesday preceding each primary shall transmit to each county board a list of said political parties which shall be entitled to nominate candidates at primaries.

(b) Each county board shall determine which organizations are political parties within the county, within the meaning of section 801 (b), and not later than the [tenth] *thirteenth* Tuesday preceding each primary shall transmit to the Secretary of the Commonwealth a list of said political parties which shall be entitled to nominate candidates at primaries in said county.

Section 9. Section 904 of the act, amended January 14, 1952 (P. L. 1937), is amended to read:

Section 904 of act, amended January 14, 1952, P. L. 1937, further amended.

Section 904. Municipal Clerks and Party Chairmen to Furnish Information as to Offices to Be Filled.—To assist the respective county boards in ascertaining the offices to be filled, it shall be the duty of the clerks or secretaries of the various cities, boroughs, towns, townships and school districts [and poor districts], with the advice of their respective solicitors, on or before the [twelfth] *thirteenth* Tuesday preceding the Municipal primary, to send to the county boards of their respective counties a written notice setting forth all city, borough, town, township and school district [and poor district]

offices to be filled in their respective subdivisions at the ensuing municipal election, and for which candidates are to be nominated at the ensuing primary. It shall also be the duty of the chairman of the State committee of each political party to forward to the Secretary of the Commonwealth and to the respective county boards, on or before the [twelfth] *thirteenth* Tuesday preceding the General primary, a written notice setting forth the number of delegates and alternate delegates to the National convention of such party who are to be elected in the State at large at the ensuing primary, and the number of such delegates and alternate delegates who are to be elected at said primary in such county, or in any district within such county, or of which it forms a part. The said notice shall also set forth the number of members of the National committee, if any, who, under the National party rules, are to be elected at the said primary in the State at large, and the number of members of the State committee to be elected at the said primary in such county, or in any district, or part of a district within such county. It shall also be the duty of the chairman of the county committee and, in cases where a city is coextensive with a county, the chairman of the city committee of each party, on or before the [twelfth] *thirteenth* Tuesday preceding the General primary, to send to the county board of such county a written notice setting forth all party offices to be filled in the county at the ensuing primary.

Section 905 of act, amended March 6, 1951, P. L. S, further amended.

Section 10. Section 905 of the act, amended March 6, 1951 (P. L. S), is amended to read:

Section 905. Secretary of the Commonwealth to Notify County Board of Certain Nominations to Be Made.—On or before the [twelfth] *thirteenth* Tuesday preceding each primary, the Secretary of the Commonwealth shall send to the county board of each county a written notice designating all the offices for which candidates are to be nominated therein, or in any district of which such county forms a part, or in the State at large, at the ensuing primary, and for the nomination to which candidates are required to file nomination petitions in the office of the Secretary of the Commonwealth, including that of President of the United States; and shall also in said notice set forth the number of presidential electors, United States Senators, Representatives in Congress and State officers, including senators, representatives and judges of courts of record, to be elected at the succeeding November election by a vote of the electors of the State at large, or by a vote of the electors of the county, or of any district therein, or of any district of which such county forms a part.

Section 11. Section 906 of the act, amended January 14, 1952 (P. L. 1937), is amended to read:

Section 906 of act, amended January 14, 1952, P. L. 1937, further amended.

Section 906. Publication of Notice of Officers to Be Nominated and Elected.—Beginning not earlier than [eleven] *twelve* weeks, nor later than [ten] *eleven* weeks before any [regular] General or Municipal primary, the county board of each county shall publish in newspapers, as provided by section 106 of this act, a notice setting forth the number of delegates and alternate delegates to the National convention of each party who are to be elected in the State at large at the ensuing primary, and the number of delegates and alternate delegates who are to be elected at the said primary in said county, or in any district of which said county or part thereof forms a part, and also setting forth the names of all public offices for which nominations are to be made, and the names of all party offices, including that of members of the National committee, if any, and State committee, for which candidates are to be elected at said primary in said county, or in any district of which such county or part thereof forms a part, or in the State at large. Said notice shall contain the date of the primary, and shall be published once each week for two successive weeks in counties of the first and second class and once in all other counties.

Section 12. Section 908, subsection (d) of section 913 and subsections (b) and (c) of section 953 of the act, amended March 6, 1951 (P. L. 3), are amended to read:

Section 908, subsection (d), section 913, and subsections (b) and (c), section 953 of act, amended March 6, 1951, P. L. 3, further amended.

Section 908. Manner of Signing Nomination Petitions; Time of Circulating.—Each signer of a nomination petition shall sign but one such petition for each office to be filled, and shall declare therein that he is a registered and enrolled member of the party designated in such petition: Provided, however, That where there are to be elected two or more persons to the same office, each signer may sign petitions for as many candidates for such office as, and no more than, he could vote for at the succeeding election. He shall also declare therein that he is a qualified elector of the county therein named, and in case the nomination is not to be made or candidates are not to be elected by the electors of the State at large, or the political district therein named, in which the nomination is to be made or the election is to be held. He shall add his occupation and residence, giving city, borough or township, with street and number, if any, and shall add the date of signing, expressed in words or numbers: Provided, however, That if the said political district named in the petition lies wholly within any city, borough or township, or is coextensive with

same, it shall not be necessary for any signer of a nomination petition to state therein the city, borough or township of his residence. No nomination petition shall be circulated prior to [twenty (20) days before the last day on which such petition may be filed] *the thirteenth Tuesday before the primary*, and no signature shall be counted unless it bears a date [within twenty (20) days of the last day of filing the same] *affixed not earlier than the thirteenth Tuesday nor later than the tenth Tuesday prior to the primary.*

**Section 913. Place and Time of Filing Nomination Petitions; Filing Fees.—**

\* \* \* \* \*

(d) All nomination petitions shall be filed [at least sixty-four (64) days] *on or before the tenth Tuesday prior to the primary.*

\* \* \* \* \*

**Section 953. Place and Time of Filing Nomination Papers.—**

\* \* \* \* \*

(b) No nomination paper shall be circulated prior to [twenty (20) days before the last day on which such paper may be filed] *the tenth Wednesday prior to the primary*, and no signature shall be counted unless it bears a date [within twenty (20) days of the last day of filing the same] *affixed not earlier than the tenth Wednesday prior to the primary nor later than the seventh Wednesday prior to the primary.*

(c) All nomination papers must be filed [at least forty-four (44) days prior to the date of the primary election] *on or before the seventh Wednesday prior to the primary.*

Sections 978, 978.1 and subsection (a), section 981 of act, amended March 6, 1951, P. L. 3, further amended.

**Section 13. Sections 978, 978.1 and subsection (a) of section 981 of the act, amended March 6, 1951 (P. L. 3), are amended to read:**

**Section 978. Withdrawal of Nominated Candidates.**—Any person who has been nominated by any political party or political body, in accordance with the provisions of this act, as a candidate for the office of presidential elector, United States Senator, Representative in Congress or for any State office, including that of senator, representative and judge of court of record, may withdraw his name from nomination by request in writing, signed by him and acknowledged before an officer qualified to take acknowledgement of deeds, and filed in the office of the Secretary of the Commonwealth. Any person who has been similarly nominated as a candidate for any other office may withdraw his name from nomination by similar request, filed with the county



board of elections of the proper county. Such written withdrawals shall be filed with the Secretary of the Commonwealth or the county board of elections, as the case may be, at least [sixty-five (65)] *eighty-five (85)* days previous to the day of the general or municipal election. Such withdrawals to be effective must be received in the office of the Secretary of the Commonwealth not later than five (5) o'clock P. M. on the last day for filing same, and in the office of any county board of elections not later than the ordinary closing hour of said office on the last day for filing same. No name so withdrawn shall be printed upon the ballot or ballot labels. No candidate may withdraw any withdrawal notice already received and filed, and thereby reinstate his nomination.

Section 978.1. Vacancy in Party Nomination by Failure to Pay Filing Fee or for Failure to File Loyalty Oath.—Every person nominated at any primary election as the candidate of any political party for any office, other than a borough, town, township, school district or poor district office, or the office of alderman, justice of the peace, or constable, who has not paid the filing fee required by section nine hundred thirteen of this act, as amended, for the filing of a nomination petition for such office, or who has not filed the loyalty oath required by section 14, act of December 22, 1951 (P. L. 1726), known as the "Pennsylvania Loyalty Act," as last amended June 19, 1961 (P. L. 446), shall pay the amount of such fee to and file such oath with the Secretary of the Commonwealth, or [to] the county board of elections, as the case may be, at least [sixty-five (65)] *eighty-five (85)* days previous to the day of the general or municipal election at which such candidate's name would appear on the ballot. Failure to pay such fee or file such oath within the time herein prescribed shall result in a vacancy in such party nomination. Such vacancy shall be filled in the manner hereinafter provided for the filling of such vacancies happening by reason of the death or withdrawal of any candidate.

Section 981. Time for Filing Substituted Nomination Certificates.—(a) Substituted nomination certificates to fill vacancies caused by the withdrawal of candidates nominated at primaries or by nomination papers shall be filed with the Secretary of the Commonwealth or proper county board of elections, as the case may be, at least [fifty-five (55)] *seventy-five (75)* days before the day of the general or municipal election: Provided, however, That no substituted nomination certificate by a political body may be filed until after the primary election.

\* \* \* \* \*

Section 984 of  
act, amended.

Section 14. Section 984 of the act is amended to read:

Section 984. Certification of Nominees by Secretary of the Commonwealth to County Boards.—The Secretary of the Commonwealth shall, [at least fifteen days previous to the day of] *as soon as possible after the last day fixed for the filing of substituted nomination certificates* for any November election of presidential electors, United States Senator, Representative in Congress or State officers, including judges of courts of record, senators and representatives, or upon constitutional amendments or other questions to be submitted to the electors of the State at large, transmit to the county board of elections of each county, in which such election is to be held, an official list, certified by him, of all of the candidates who have been nominated in accordance with the provisions of this act, to be voted for in such county at such election, substantially in the form of the ballots to be used therein, and also a copy of the text of all constitutional amendments and other questions to be voted upon at such election, together with a statement of the form in which they are to be printed on the ballots or ballot labels.

Subsection (b),  
section 993  
of act, added  
August 26, 1958,  
P. L. 1479,  
amended.

Section 15. Subsection (b) of section 993 of the act, added August 26, 1958 (P. L. 1479), is amended to read:

Section 993. Filling of Certain Vacancies in Public Office by Means of Nomination Certificates and Nomination Papers.—

\* \* \* \* \*

(b) Said nomination certificates and nomination papers for State public offices and judges of courts of records shall be filed in the office of the Secretary of the Commonwealth at least [forty-five (45)] *fifty (50)* days prior to a general or municipal election, as the case may be. Nomination certificates and nomination papers for public offices in counties, cities, boroughs, towns, townships, wards and school districts and for the offices of aldermen and justices of the peace shall be filed in the office of the county board of elections at least [forty-five (45)] *fifty (50)* days prior to a municipal election.

\* \* \* \* \*

Subsection (a),  
section 1002  
of act, amended  
January 8, 1960,  
P. L. 2142,  
further amended.

Section 16. Subsection (a) of section 1002 of the act, amended January 8, 1960 (P. L. 2142), is amended to read:

Section 1002. Form of Official Primary Ballot.—

(a) At primaries separate official ballots shall be prepared for each party which shall be in substantially the following form:

Official ..... Primary Ballot.  
 (Name of Party)  
 ..... District, ..... Ward, City of .....  
 County of ....., State of Pennsylvania  
 ..... Primary election held on the ..... day of .....,  
 19.....

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

President of the United States.  
 (Vote for one)

John Doe  
 Richard Roe  
 John Stiles

United States Senator.  
 (Vote for one)

John Doe  
 Richard Roe  
 John Stiles

Governor.  
 (Vote for one)

John Doe  
 Richard Roe  
 John Stiles

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

John Doe  
 Richard Roe  
 John Stiles

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

John Doe  
 (Promises to support popular choice of party in the  
 State for President.)

John Stiles  
 (Does not promise to support popular choice of party  
 in the State for President.)

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

John Doe  
 (Promises to support popular choice of party in .....  
 District for President.)

John Stiles

(Does not promise to support popular choice of party in ..... District for President.)

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

John Doe  
Richard Roe  
John Stiles

Member of State Committee.  
(Vote for one)

John Doe  
Richard Roe  
John Stiles

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

John Doe  
Richard Roe  
John Stiles

\* \* \* \* \*

Section 1003, subsection (a) of act last amended January 8, 1960 (1959) P. L. 2142, and subsections (b) and (d) of act last amended April 24, 1947, P. L. 68, further amended.

Section 17. Section 1003, subsection (a) of the act as last amended January 8, 1960 (1959) (P. L. 2142) and subsections (b) and (d) of the act as last amended April 24, 1947 (P. L. 68), are amended to read:

Section 1003. Form of Official Ballot.—

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

OFFICIAL BALLOT

..... District, ..... Ward,  
City of ....., County of .....,  
State of Pennsylvania .....  
Election held on the ..... day of ....., 19....

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

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

To vote for a person whose name is not on the ballot, write, print or paste his name in the blank space provided for that purpose. A cross (X) or check (✓) mark

in the square opposite the names of the candidates of any party for President and Vice-President of the United States indicates a vote for all the candidates of that party for presidential elector. To vote for individual candidates for presidential elector, write, print or paste their names in the blank spaces provided for that purpose under the title "Presidential Electors." Mark ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen; use the same pencil or pen for all markings you place on the ballot [; use the same mark either a cross (X) or check (✓) for all markings].

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

Citizens

United States Senator.  
(Vote for one)

Richard Roe ..... Democratic  
 John Doe ..... Republican  
 Richard Stiles ..... Socialist

Governor.  
(Vote for one)

Richard Roe ..... Democratic  
 John Doe ..... Republican  
 Richard Stiles ..... Socialist

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

Richard Roe ..... Democratic  
 John Doe ..... Republican  
 Richard Stiles ..... Socialist

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

John Doe .....Democratic  
Richard Roe .....Republican

(b) On the back of each ballot shall be printed in prominent type the words "Official Ballot," followed by the designation of the election district for which it is prepared, the date of the election and the facsimile signatures of the members of the county board of elections. The names of candidates shall be arranged under the title of the office for which they are candidates, and shall be printed thereunder in the order of the votes obtained by the parties or bodies at the last gubernatorial election, beginning with the party obtaining the highest number of votes: Provided, however, That in the case of parties or bodies not represented on the ballot at the last gubernatorial election, the names of the candidates of such parties shall be arranged alphabetically, according to the party name or political appellation. In the case of offices for which two or more candidates are to be voted for, the candidates of each party shall be arranged together in the order of the number of votes obtained by them at the primary, beginning with the candidates obtaining the highest number of votes, and the candidates of each political body shall be arranged in the order in which their names were placed in their nomination paper. Opposite or under the name of each candidate shall be printed the name or appellation of the political party or political body nominating him, and at the right of such name or appellation there shall be a square of sufficient size for the convenient insertion of a cross (X) or check (✓) mark.

\* \* \* \* \*

(d) Whenever any candidate shall receive more than one nomination for the same office, his name shall be printed once, and the names of each political party so nominating him shall be printed opposite the name of such candidate, arranged in the same order as candidates names are required to be arranged. At the right of every party name or appellation shall be a square of sufficient size for the convenient insertion of a cross (X) or check (✓) mark.

\* \* \* \* \*

Section 1007 of act, amended.

Section 18. Section 1007 of the act is amended to read:

Section 1007. Number of Ballots to Be Printed; Specimen Ballots.—The county board of each county shall provide for each election district in which a primary is to be held, one book of fifty official ballots of each

party for every forty-five registered and enrolled voters of such party and fraction thereof, appearing upon the district register, and shall provide for each election district in which an election is to be held one book of fifty official ballots for every forty-five registered electors and fraction thereof appearing upon the district register. They [shall] *may* also, in addition to the number of ballots required to be printed for general distribution, have printed for each election district in which a primary is to be held not less than one book of fifty official ballots of each party for the use of the absentee electors and for each election district in which an election is to be held not less than one book of official ballots for the use of the absentee electors. They shall also, in addition to the number of ballots required to be printed for general distribution, have printed ten (10) per centum of such number, to be known as reserve official ballots, and, on tinted paper, two (2) per centum of such number to be known as reserve specimen ballots, which ballots shall be kept at the office of the county board for the use of any district, the ballots for which may be lost, destroyed or stolen. They shall also cause to be printed on tinted paper, and without the facsimile endorsements, permanent binding or stubs, copies of the form of ballots provided for each voting place at each primary or election therein, which shall be called specimen ballots, and which shall be of the same size and form as the official ballots, and at each election they shall deliver to the election officers, in addition to the official ballots to be used at such election, specimen ballots for the use of the electors equal in number to one-fifth of the number of official ballots delivered to such election officers. At each primary, specimen ballots of each party shall be furnished, equal in number to one-fifth of the number of official ballots of such party furnished to the election officers as above provided.

Section 19. Subsection (a) of section 1223 of the act, amended January 8, 1960 (P. L. 2142), is amended to read:

Subsection (a), section 1223 of act, amended January 8, 1960, P. L. 2142, further amended.

Section 1223. What Ballots Shall Be Counted; Manner of Counting; Defective Ballots.—(a) No ballot which is so marked as to be capable of identification shall be counted. Any ballot that is marked in blue, black or blue-black ink, in fountain pen or ball point pen, or black lead pencil or indelible pencil, shall be valid and counted: Provided, That all markings on the ballot are made by the same pen or pencil [and that all markings on the ballot are the same type of marking either a cross (X) or check (✓)]. Any ballot marked by any other mark than an (X) or check (✓) in the spaces provided for that purpose shall be void and not counted: Provided,

however, That no vote recorded thereon shall be declared void because a cross (X) or check (✓) mark thereon is irregular in form. Any erasure, mutilation or defective marking of the straight party column at November elections shall render the entire ballot void, unless the voter has properly indicated his choice for candidates in any office block, in which case the vote or votes for such candidates only shall be counted. Any erasure or mutilation in the vote in any office block shall render void the vote for any candidates in said block, but shall not invalidate the votes cast on the remainder of the ballot, if otherwise properly marked. Any ballot indicating a vote for any person whose name is not printed on the ballot, by writing, stamping or sticker, shall be counted as a vote for such person, if placed in the proper space or spaces provided for that purpose, whether or not an (X) or check (✓) is placed after the name of such person: Provided, however, That if such writing, stamping or sticker is placed over the name of a candidate printed on the ballot, it shall render the entire vote in said office block void. If an elector shall mark his ballot for more persons for any office than there are candidates to be voted for for such office, or if, for any reason, it may be impossible to determine his choice for any office, his ballot shall not be counted for such office, but the ballot shall be counted for all offices for which it is properly marked. Ballots not marked, or improperly or defectively marked, so that the whole ballot is void, shall be set aside and shall be preserved with the other ballots.

\* \* \* \* \*

Article heading  
and sections  
1301 and 1302  
of act, added  
March 6, 1951,  
P. L. 3, amended.

Section 20. The article heading and sections 1301 and 1302 of the act, added March 6, 1951 (P. L. 3), are amended to read:

### Article XIII

#### Voting By [Persons in Actual Military Service] *Qualified Absentee Electors*

Section 1301. [Qualified Electors in Actual Military Service.—Any qualified elector in actual military service may vote under the provisions of this act in any election held in this Commonwealth, regardless of whether at the time of voting he is present in the election district of his residence, or is within or without this Commonwealth, and regardless of whether he is registered or enrolled.] *Qualified Absentee Electors.*—*The following persons shall be entitled to vote by an official absentee ballot in any primary or election held in this Commonwealth in the manner hereinafter provided:*



(a) Any qualified elector who is or who may be in the military service of the United States regardless of whether at the time of voting he is present in the election district of his residence or is within or without this Commonwealth and regardless of whether he is registered or enrolled; or

(b) Any qualified elector who is a spouse or dependent residing with or accompanying a person in the military service of the United States if at the time of voting such spouse or dependent is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(c) Any qualified elector who is or who may be in the service of the Merchant Marine of the United States if at the time of voting he is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(d) Any qualified elector who is a spouse or dependent residing with or accompanying a person who is in the service of the Merchant Marine of the United States if at the time of voting such spouse or dependent is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(e) Any qualified elector who is or who may be in a religious or welfare group officially attached to and serving with the armed forces if at the time of voting he is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or

(f) Any qualified elector who is a spouse or dependent residing with or accompanying a person in a religious or welfare group officially attached to and serving with the armed forces if at the time of voting such spouse or dependent is absent from the State or county of his

*residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or*

*(g) Any qualified elector who is or who may be a civilian employe of the United States outside the territorial limits of the several States of the United States and the District of Columbia, whether or not such elector is subject to civil-service laws and the Classification Act of 1949 and whether or not paid from funds appropriated by the Congress, if at the time of voting he is absent from the State or county of his residence: Provided, however, That said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or*

*(h) Any qualified elector who is a spouse or dependent residing with or accompanying a person who is a civilian employe of the United States outside the territorial limits of the several States of the United States and the District of Columbia, whether or not such person is subject to civil-service laws and the Classification Act of 1949 and whether or not paid from funds appropriated by the Congress, if at the time of voting such spouse or dependent is absent from the State or county of his residence: Provided, however, That the said elector has been registered or enrolled according to law or is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting; or*

*(i) Any qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability if he is unavoidably absent from the Commonwealth or county of his residence and regardless of whether he is registered and enrolled; or*

*(j) Any qualified registered and enrolled elector who expects to be or is unavoidably absent from the Commonwealth or county of his residence during the entire period the polls are open for voting on the day of any primary or election; or*

*(k) Any qualified registered and enrolled elector who is unable to attend his polling place because of illness or physical disability;*

*(l) Any qualified registered and enrolled elector who is a spouse or dependent accompanying a person employed in the service of this Commonwealth or in the service of the Federal Government within the territorial limits*

*of the several States of the United States and the District of Columbia in the event the duties, profession or occupation of such person require him to be absent from the Commonwealth or county of his residence:*

*Provided, however, That the words "qualified absentee elector" shall in nowise be construed to include persons confined in a penal institution or a mental institution nor shall it in anywise be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition set forth in section 102 (t) of this act.*

Section 1302. Applications for Official [Military] Absentee Ballots.—(a) Any qualified elector [in actual military service] defined in preceding section 1301, subsections (a) to (h), inclusive, may apply at any time before any primary or election for any official [military] absentee ballot on [Form USWBC Form No. 1] post card application or any other form supplied by the Federal Government, or by post card, letter or other writing, addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of election of the county in which his voting residence is located.

(b) The application shall contain the following information: [Residence] *Home residence* at the time of entrance into actual military service or *Federal employment*, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident of voting district, voting district *if known*, party choice in case of primary, name *and, for a military elector, his rank or grade, military address, branch of service and serial number. Any elector other than a military elector shall in addition specify the nature of his employment, the address to which ballot is to be sent, relationship where necessary, and such other information as may be determined and prescribed by the Secretary of the Commonwealth.* When such application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

(c) The application of any qualified military elector, as defined in preceding section 1301 subsection (a), for [a military] an official absentee ballot in any primary or election may be made or information supplied over the signature of any person who is familiar with the voting qualifications of the [military] elector, as required in the preceding subsection.

(d) [The various county boards of election, upon receipt of any application, shall ascertain from the information on such application, district register or from any other source that such applicant possessed all the qualifications of a qualified elector other than being registered or enrolled.]

*The application of any qualified elector, as defined in preceding section 1301, subsections (b) to (h), inclusive, for an official absentee ballot in any primary or election shall be signed by the applicant.*

*(e) Any qualified bedridden or hospitalized veteran unavoidably absent from the State or county of his residence, regardless of whether he is registered or enrolled, may apply at any time before any primary or election for an official absentee ballot by post card, letter or other writing, addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of elections of the county in which his voting residence is located.*

*The application shall contain the following information: Residence at the time of becoming bedridden or hospitalized, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident in voting district, voting district if known, party choice in case of primary, name and address of present residence or hospital at which hospitalized. When such application is received by the Secretary of the Commonwealth, it shall be forwarded to the proper county board of elections.*

*The application for an official absentee ballot for any primary or election may be made or information supplied over the signature of any person who is familiar with the voting qualifications of the bedridden or hospitalized veteran as required in the preceding subsection (f). Any qualified registered elector, including a spouse or dependent referred to in subsection (l) of section 1301, who expects to be or is unavoidably absent from the Commonwealth or county of his residence on the day of any primary or election and any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and any qualified registered bedridden or hospitalized veteran in the county of residence, may apply to the county board of elections of the county in which his voting residence is located for an Official Absentee Ballot. Such application or request may be made upon an application form supplied by the county board of elections. Such application form shall be determined and prescribed by the Secretary of the Commonwealth of Pennsylvania.*

*(1) The application of any qualified registered elector, including spouse or dependent referred to in subsection (l), who expects to be or is unavoidably absent from the Commonwealth or county of his residence on the day of any primary or election, shall be signed by the applicant and shall include the surname and christian name or names of the applicant, his occupation, date*

of birth, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, the reason for his absence, and such other information as shall make clear to the county board of elections the applicant's right to an official absentee ballot.

(2) The application of any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and the application of any qualified registered bedridden or hospitalized veteran in the county of residence shall be signed by the applicant and shall include surname and christian name or names of the applicant, his occupation, date of birth, residence at the time of becoming bedridden or hospitalized, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, and such other information as shall make clear to the county board of elections the applicant's right to an official ballot. In addition, the application of such electors shall include a declaration stating the nature of their disability or illness and the name of their attending physician, if any, together with a supporting declaration signed by such attending physician, or, if none, by a registered elector unrelated by blood or marriage of the election district of the residence of the applicant: Provided, however, That in the event any elector entitled to an absentee ballot under this subsection be unable to sign his application because of illness or physical disability, he shall be excused from signing upon making a statement which shall be witnessed by one adult person in substantially the following form: I hereby state that I am unable to sign my application for an absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

..... (Mark)  
(Date)  
.....  
(Complete Address of Witness) (Signature of Witness)  
.....

Section 21. The act is amended by adding, after section 1302, three new sections to read:

Act amended by adding three new sections 1802.1, 1802.2, and 1802.3.

Section 1302.1. Date of Application for Absentee Ballot.—

Applications for absentee ballots unless otherwise specified shall be received in the office of the county board of elections not earlier than fifty (50) days before the primary or election and not later than five o'clock

*P. M. of the first Tuesday prior to the day of any primary or election: Provided, however, That in the event any elector otherwise qualified who is so physically disabled or ill on or before the first Tuesday prior to any primary or election that he is unable to file his application or who becomes physically disabled or ill after the first Tuesday prior to any primary or election and is unable to appear at his polling place or any elector otherwise qualified who because of the conduct of his business, duties or occupation will necessarily be absent from the State or county of his residence on the day of the primary or election, which fact was not and could not reasonably be known to said elector on or before the first Tuesday prior to any primary or election, shall be entitled to an absentee ballot at any time prior to five o'clock P. M. on the day preceding any primary or election upon execution of an Emergency Application in such form prescribed by the Secretary of the Commonwealth.*

*In the case of an elector who is physically disabled or ill on or before the first Tuesday prior to a primary or election or becomes physically disabled or ill after the first Tuesday prior to a primary or election, such Emergency Application shall contain a supporting affidavit from his attending physician stating that due to physical disability or illness said elector was unable to apply for an absentee ballot on or before the first Tuesday prior to the primary or election or became physically disabled or ill after that period.*

*In the case of an elector who is necessarily absent because of the conduct of his business, duties or occupation under the unforeseen circumstances specified in this subsection, such Emergency Application shall contain a supporting affidavit from such elector stating that because of the conduct of his business, duties or occupation said elector will necessarily be absent from the State or county of his residence on the day of the primary or election which fact was not and could not reasonably be known to said elector on or before the first Tuesday prior to the primary or election.*

**Section 1302.2. Approval of Application for Absentee Ballot.—**

*(a) The county board of elections, upon receipt of any application filed by a qualified elector not required to be registered under preceding section 1301, shall ascertain from the information on such application, district register or from any other source that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked approved. When so approved, the county board of elections shall*

cause the applicant's name and residence (and at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilians Absentee Voters File as provided in section 1302.3, subsection (b): Providing, however, That no application of any qualified elector in military service shall be rejected for failure to include on his application any information if such information may be ascertained within a reasonable time by the county board of elections.

(b) The county board of elections, upon receipt of any application filed by a qualified elector who is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting as provided under preceding section 1301, shall ascertain from the information on such application or from any other source that such applicant possesses all the qualifications of a qualified elector. If the board is satisfied that the applicant is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting and that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." When so approved, the county board of elections shall cause the applicant's name and residence (and at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3 subsection (b).

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of preceding section 1301, shall determine the qualifications of such applicant by comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." When so approved, the registration commission shall cause the applicant's permanent registration card to be removed from the district register and the county board of elections shall cause same to be inserted in the Registered Absentee Voters File as provided in section 1302.3 subsection (a):

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the removal of the original registration card of any elector from the district register as set forth in section 1305 shall include only such applications as are received on or before the first Tuesday prior to the

primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before five o'clock P. M. on the day prior to the primary or election, the county board of elections shall determine the qualifications of such applicant by comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b). In addition, the county boards of elections shall, upon canvassing the official absentee ballots under section 1308, examine the voting check list of the election district of said elector's residence and satisfy itself that such elector did not cast any ballot other than the one properly issued to him under his absentee ballot application. In all cases where the examination of the county board of elections discloses that an elector did vote a ballot other than the one properly issued to him under the absentee ballot application, the county board of elections shall thereupon cancel said absentee ballot and said elector shall be subject to the penalties as hereinafter set forth.

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval.

**Section 1302.3. Absentee Electors Files and Lists.—**

(a) The county board of elections shall maintain at its office a file containing the original registration cards of every registered elector to whom an absentee ballot has been sent. Such original registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards so filed shall constitute the Registered Absentee Voters File for the Primary or Election of (date of primary or election) and shall be kept on file for a period commencing the Thursday prior to the day of the primary or election until the third Monday following the primary or election or the day the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations.

(b) The county board of elections shall post in a conspicuous public place at its office a master list arranged in alphabetical order by election districts setting forth



the name and residence, and at primaries, the party enrollment, of (1) every military elector to whom an absentee ballot is being sent, each such name to be prefixed with an "M"; (2) every bedridden or hospitalized veteran outside the county of his residence who is not registered and to whom an absentee ballot is being sent, each such name to be prefixed with a "V"; and (3) every registered elector who has filed his application for an absentee ballot \*too late for the extraction of his original registration card and to whom a ballot is being sent and every qualified elector who has filed his application for an absentee ballot and is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting, each such name to be prefixed with a "C." This list shall be known as the Military, Veterans and Emergency Civilians Absentee Voters File for the Primary or Election of (date of primary or election) and shall be posted for a period commencing the day of the primary or election until the third Monday following the primary or election or the day on which the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations. This posted list shall not contain any military address or reference to any military organization.

Section 22. Sections 1303, 1304, 1305 and 1306 of the act, added March 6, 1951 (P. L. 3), are amended to read:

Section 1303. Official [Military] Absentee Voters Ballots.—(a) [Ballots] In districts in which ballots are used, the ballots for use by such [military] absentee electors under the provisions of this act shall be [prepared sufficiently in advance by the county boards of election and] the official ballots printed in accordance with sections 1002 and 1003: Provided, however, That the county board of elections when detaching the official ballots for absentee electors shall be required to indicate on the stub of each ballot so detached the name of the applicant to which that precise ballot is being sent. The county board of elections shall also be required to remove the numbered stub from each such ballot and shall thereupon print, stamp or endorse in red color upon such official ballots the words, Official Absentee Ballot. Such ballots shall be distributed by such boards as hereinafter provided. [Such ballots shall be marked "Official Military Ballot" but shall not be numbered and shall otherwise be in substantially the form for ballots required by

Sections 1303,  
1304, 1305 and  
1306 of act,  
added March 6,  
1951, P. L. 3,  
amended.

\* "to" in original.

article ten of this act, which form shall be determined and prescribed by the Secretary of the Commonwealth.]

(b) *In districts in which voting machines are used and in those districts in which paper ballots are used and the county board of elections therein do not print official absentee ballots in accordance with sections 1002 and 1003, the ballots for use by such absentee electors under the provisions of this act shall be prepared sufficiently in advance by the county board of elections and shall be distributed by such boards as hereinafter provided. Such ballots shall be marked Official Absentee Ballot but shall not be numbered and shall otherwise be in substantially the form for ballots required by article ten of this act, which form shall be determined and prescribed by the Secretary of the Commonwealth.*

In cases where there is not time, in the opinion of the county boards of election, to print on said ballots the names of the various candidates for district, county, and local offices, the ballots shall contain blank spaces only under the titles of such offices in which electors may insert the names of the candidates for whom they desire to vote, and in such cases the county boards of election shall furnish to electors lists containing the names of all the candidates named in nomination petitions or who have been regularly nominated under the provisions of this act, for the use of such electors in preparing their ballots.

**Section 1304. Envelopes for Official [Military] Absentee Ballots.—**

The county boards of election shall provide two additional envelopes for each official [military] absentee ballot of such size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official [Military] Absentee Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the [affidavit] form of the declaration of the elector, [together with the jurat of the person in whose presence, the ballot is marked and before whom the affidavit is made,] and the name and address of the county board of election of the proper county. Said [affidavit, jurat] form of declaration and envelope shall be [in the form] as prescribed by the Secretary of the Commonwealth and shall contain among other things a statement of the elector's qualifications, together with a statement that such elector has not already voted in such primary or election. The mailing envelope addressed to the elector shall contain the two

envelopes, the official [military] absentee ballot, lists of candidates when authorized by section 1303 subsection (b) of this act, the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else: *Provided, however, That envelopes for electors qualified under preceding section 1301, \*subsections (a) to (h), inclusive, shall have printed across the face of each transmittal or return envelope two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed, in the upper right corner of each such envelope in a box, the words "Free of U. S. Postage, Including Air Mail;" that all printing on the face of each such envelope be in \*\*red, and that there be printed in red, in the upper left corner of each such envelope, the name and address of the county board of elections of the proper county or blank lines for return address of the sender:*

*Provided further, That the aforesaid envelope addressed to the elector may contain absentee registration forms and instructions where required, together with return envelope upon which is printed the name and address of the registration commission of the proper county, which envelope shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed in the upper right corner of each such envelope in a box the words "Free of U. S. Postage, Including Air Mail," and, in the upper left corner of each such envelope, blank lines for return address of the sender; that all printing on the face of each such envelope be in red.*

**Section 1305. [Duties of County Boards] Delivering or Mailing Ballots.—**

(a) The county boards of election upon receipt of an application filed by any elector qualified in accordance with the provisions of section 1301, subsections (a) to (h), inclusive, shall [at least twenty-five days prior to the election] as soon as possible after the respective district ballots are printed and in no event later than the second Tuesday prior to the day of the primary or elec-

\* "subsection" in original.

\*\* "read" in original.

*tion commence to deliver or mail official [military] absentee ballots to all such electors whose [names and addresses] applications have been [ascertained] approved; as additional [names and addresses] applications of such electors are [ascertained] received, the board shall deliver or mail official [military] absentee ballots to such additional electors within forty-eight hours after [ascertaining] approval of their [names and addresses] application.*

(b) [Each county board of election shall post in a conspicuous public place at its office a master list, arranged alphabetically by election districts, setting forth the name, residence and local voting district or ward of every elector to whom an official military ballot has been sent. This posted list shall not contain the elector's military address or military organization. This list shall be known as the "Military File" and shall be posted at least five days before the election day involved, and shall also set forth the total number of such ballots prepared for use in such election. Copies of such military files shall be furnished upon request to the county chairman of each political party and political body, and shall also be furnished to registration commissions.]

*The county board of elections upon receipt and approval of an application filed by any elector qualified in accordance with the provisions of section 1301, subsections (i) to (l), inclusive, shall commence to deliver or mail official absentee ballots on the second Tuesday prior to the primary or election. As additional applications are received and approved, the board shall deliver or mail official absentee ballots to such additional electors within forty-eight hours.*

Section 1306. Voting by Absentee Electors [in Actual Military Service].—(a) At any time after receiving an official [military] absentee ballot, but on or before the day of the primary or election, the elector [, for the purpose of voting, may appear before any person of this or any other state or territory of the United States authorized to administer oaths by Federal, State or military laws. The elector shall first display the ballot to such person as evidence that the same is unmarked, and then] shall, *in secret*, proceed to mark the ballot [with] *only in black lead pencil, [crayon,] indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen,* [in the presence of such person, but in such manner that the person administering the oath is unable to see how the same is marked,] and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official [Military] Absentee Ballot." This envelope shall then be placed in the second one, on which is printed

the [affidavit] form of declaration of the elector, [the jurat of the person before whom the elector appears,] and the address of the elector's county board of election. The elector shall then fill out, [subscribe] date and [swear to] sign the [affidavit] declaration printed on such envelope [, and the jurat shall be subscribed and dated by the person before whom the affidavit was taken]. Such envelope shall then be securely sealed and the elector shall send same by mail postage prepaid, except where franked, or deliver it in person or by representative to said county board of election:

*Provided, however, That any elector, spouse of the elector or dependent of the elector, qualified in accordance with the provisions of section 1301, subsections (e), (f), (g) and (h) to vote by absentee ballot as herein provided, shall be required to include on the form of declaration a supporting declaration in form prescribed by the Secretary of the Commonwealth, to be signed by the head of the department or chief of division or bureau in which the elector is employed, setting forth the identity of the elector, spouse of the elector or dependent of the elector:*

*Provided further, That any elector who has filed his application in accordance with section 1302, subsection \*(f) (2), and is unable to sign his declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form: I hereby declare that I am unable to sign my declaration for voting my absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.*

..... (Mark)

.....

(Date)

.....

(Signature of Witness)

.....

(Complete Address of Witness)

*(b) In the event that any such elector, excepting an elector in military service or any elector unable to go to his polling place because of illness or physical disability, entitled to vote an official absentee ballot shall be in the county of his residence on the day for holding the primary or election for which the ballot was issued, or in the event any such elector shall have recovered from his illness or physical disability sufficiently to permit him to present himself at the proper polling place for the purpose of casting his ballot, such absentee bal-*

\* "(g)" in original.

lot cast by such elector shall, upon challenge properly sustained, be declared void.

However, any such elector referred to in this subsection, who is within the county of his residence, shall be permitted to vote upon presenting himself at his regular polling place in the same manner as he could have voted had he not received an absentee ballot; Provided, That such elector has first presented himself before the court of common pleas of his county between the hours of seven o'clock A. M. and five o'clock P. M. on the day of any primary or election and has procured an "Emergency Voting Form" signed by the court, which form entitles the elector to vote at his regular polling place upon the signing of a voter's certificate; Provided, however, That the court may require the surrender of said elector's absentee ballot where he has not already voted, which shall thereupon be marked "cancelled" by said court and transmitted to the county board of elections. In the event such elector has already voted, then the court shall direct the county board of elections to set such ballot aside unopened.

Act amended by  
adding a new  
section 1306.1.

Section 23. The act is amended by adding, after section 1306, one new section to read:

**Section 1306.1. Assistance in Voting by Certain Absentee Electors.**

Any elector qualified to vote an official absentee ballot in accordance with the provisions of section 1301, subsection (b), may receive assistance in voting (1) if there is recorded on his registration card his declaration that he has a physical disability which renders him unable to see or mark the official absentee ballot, the exact nature of such disability being recorded on such registration card; (2) if such elector requiring assistance submits with his application for an official absentee ballot, a statement setting forth the precise nature of the disability which renders him unable to see or mark the official absentee ballot and that to the best of his knowledge and belief he will still suffer from the said physical disability at the time of voting his official absentee ballot. He shall acknowledge the same before an officer qualified to take acknowledgement of deeds. Such statement shall be in substantially the following form:

Statement of Absentee Elector Requiring Assistance  
I, ....., hereby state  
(Name of voter requiring assistance)  
that I require assistance in marking the official absentee  
ballot for the primary or election held .....,  
(Date)

19. . . , that will be issued to me for the following reason:

(Insert nature of disability)

(Signature or mark of elector)

(Date of signature or mark)

Commonwealth of Pennsylvania: } as
County of . . . . . }

On this . . . . . day of . . . . . , 19. . . , before me,
. . . . . , the undersigned officer personally
appeared . . . . . , known to me (or satis-
factorily proven) to be the person whose signature or
mark appears on the within instrument and acknowl-
edged the same for the purposes therein contained.

In witness whereof, I have hereunto set my hand and
official seal

(Title of Officer)

Upon receipt of the official absentee ballot, such elector
requiring assistance may select an adult person to assist
him in voting such assistance to be rendered in secret.
The adult person rendering the assistance in voting
should be required to fill out, date and sign the declara-
tion in such form approved by the Secretary of the Com-
monwealth, or substantially in the form as set forth be-
low, as he has caused the elector's ballot to be marked
in accordance with such elector's desires and instruc-
tion. Such declaration form shall be returned to the
county board of elections in the mailing envelope ad-
dressed to the county board of elections within which
the small "official absentee ballot" is returned.

Declaration of Person Rendering Assistance

I, . . . . . , an adult per-
(Name of Person rendering assistance)
son hereby declare that I have witnessed the aforesaid
elector's signature or mark and that I have caused the
aforesaid elector's ballot to be marked in accordance
with the desires and instructions of the aforesaid elector.

(Signature of Person Rendering Assistance)

(Address)

Section 24. Sections 1307, 1308 and 1309 of the act,
added March 6, 1951 (P. L. 3), are amended to read:

Sections 1307,
1308 and 1309 of
act, added March
6, 1951, P. L. 3,
amended.

Section 1307. [Military] Certain Electors Voting in
Districts of Residence.—

(a) Whenever any qualified elector in actual military service is present in his voting district of residence on any primary, *special*, municipal or general election day and has not already voted in such election, he may apply [to his district election board] *in person at the office of the county board of election of the county of his residence and he shall then and there execute his application* for an official *absentee* ballot [and vote it in such election].

(b) Each such application shall be in the form and shall contain the information required by this act together with a statement by the applicant that he has not already voted in the election. [All such applications shall be transmitted to the county board of election immediately upon the closing of the polls.]

*The county board of elections shall ascertain from the information on such application or from any other source that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "Approved." When so approved, the county board of elections shall cause the applicant's name and residence (and at primaries, the party enrollment) to be inserted in the "Military, Veterans and Emergency Civilian Absentee Voters File" as provided in section 1302.3 subsection (b).*

(c) Upon receiving an official *absentee* ballot and envelopes therefor, he shall, in secret, in the [polling place] *office of the county board of elections* vote the ballot and [prepare it for execution of the affidavit and jurat] *execute the declaration* as prescribed by this act. [The affidavit shall be executed before the judge or either inspector of election, and the jurat subscribed by the person before whom the affidavit is taken.] The [military] elector shall then securely seal the second envelope and hand it to the [judge] *chief clerk of the county board of election who shall securely keep same in accordance with the provisions of section 1308.* [The judge of election shall place all such envelopes in a container marked "Official Military Ballots" which shall be sealed immediately upon the closing of the polls and transmitted to the county board of election.

(d) Each district election board shall prepare a separate list of the names of all such voters, which shall be attached to the lists of voters required by the act to which this is an amendment.

(e) Each county board of election shall prepare and deliver to each district election board on such election days an adequate supply of official ballots, envelopes and other supplies as required by this act.



(f) Each county board of election, before the day fixed by this act for the canvassing of official ballots, shall post, attached to the "Military File," an alphabetically arranged list setting forth the name, residence, the local voting district and ward of every military elector voting under the provisions of this section. The list shall not contain the elector's military address or military organization. Copies of such lists may be furnished as in the case of copies of the military file.]

**Section 1308. Canvassing of Official [Military] Absentee Ballots.—**

(a) The county boards of election, upon receipt of official [military] *absentee* ballots in such envelopes, shall safely keep the same *in sealed or locked containers* until they meet to canvass official [military] *absentee* ballots, which canvass shall begin immediately following the official civilian canvass for [all] *the primary or [elections] November election or the second Friday following the primary or November election, whichever date is later.* [After the November election, the canvass of official military ballots shall begin at ten o'clock A. M., Eastern Standard Time, on the second Friday following the election.] *Said canvass to commence at ten o'clock A. M., Eastern Standard Time.* No such ballots shall be counted which are received in their offices later than ten o'clock A. M., Eastern Standard Time, of the second Friday following the primary election or the November election. At such time the members of the return boards or the county boards of election shall in person dispose of official [military] *absentee* ballots in the manner hereinafter set forth. The county boards of election may designate a sufficient number of clerks to perform such duties. When it is determined that clerks shall be appointed, the total number shall in every case be in multiples of three, and each member of a county board of elections shall appoint an equal number thereof.

(b) Each candidate for nomination or election shall be entitled to appoint one watcher and each political party or body which has nominated candidates shall be entitled to appoint three watchers. Watchers shall be permitted to be present when the envelopes containing official [military] *absentee* ballots are opened and when such ballots are counted and recorded.

(c) In disposing of an official [military] *absentee* ballot the county return board or the county board of election shall examine the [affidavit and jurat] *declaration* and if the [jurat] *same* bears a date later than the date of [the] *such primary or election*, the envelope shall be set aside unopened.

(d) *Whenever it shall appear by due proof that any absentee elector who has returned his ballot in accordance with the provisions of this act has died prior to the opening of the polls on the day of the primary or election, the ballot of such deceased elector shall be rejected by the canvassers but the counting of the ballot of an elector thus deceased shall not of itself invalidate any nomination or election.*

(e) *The board shall then further examine the [affidavit and jurat of] declaration on each envelope not so set aside and shall compare the information thereon with that contained in the "Registered Absentee Voters File" and the "Military, Veterans and Emergency Civilians Absentee Voters File" [military file]. If the board is satisfied that the [affidavit and jurat are] declaration is sufficient and that the elector has qualified, and the board has utilized the information contained in the [military] "Registered Absentee Voters File" and the "Military, Veterans and Emergency Civilians Absentee Voters File" [file] to verify his right to vote, the board shall announce the name of the elector and shall give any [person] watcher present an opportunity to challenge in like manner and for the same cause, except the failure of qualified electors set forth in preceding section 1901, \*subsections (a) to (i), inclusive, to register or enroll, as the elector could have been challenged had he presented himself in his own district to vote other than by official [military] absentee ballot; Provided further, That any watcher may challenge any absentee elector upon the ground or grounds (1) that the absentee elector is not a qualified absentee elector as defined in this act; or (2) that the absentee elector was within the county of his residence on the day of the primary or election during the period the polls were open, except where he was in military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (3) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, the board shall mark "challenged" on the envelope together with the reason or reasons therefor, and the same shall be set aside unopened pending decision. [If no challenges are sustained] Thereupon, the board shall open the envelope of every unchallenged absentee elector in such manner as not to destroy the [affidavit and jurat*

\* "subsection" in original.

printed] *declaration executed* thereon. All of such envelopes on which are printed, stamped or endorsed the words "Official [Military] *Absentee Ballot*" shall be placed in one or more depositories at one time and said depository or depositories well shaken and the envelopes mixed before any envelope is taken therefrom. The board shall then break the seals of such envelopes, remove the ballots and record the votes in the same manner as district election officers are required to record votes. *With respect to the challenged ballots, the board shall fix a time and place for a formal hearing of all such challenges and notice shall be given where possible to all absentee electors thus challenged and to every attorney, watcher or candidate who made such challenge. The time for the hearing shall not be later than ten (10) days after the date of challenge. On the day fixed for said hearing, the board shall proceed without delay to hear said challenges and, in hearing the testimony, the board shall not be bound by technical rules of evidence. The testimony presented shall be stenographically recorded and made part of the record of the hearing. The decision of the board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any person aggrieved by the decision of the county board. Such appeal shall be taken, within two (2) days after such decision shall have been made, whether reduced to writing or not, to the court of common pleas setting forth the objections to the board's decision and praying for an order reversing same. Pending the final determination of all appeals, the board shall suspend any action in canvassing and computing all challenged ballots irrespective of whether or not appeal was taken from the board's decision. Upon completion of the computation of the returns of the county, the votes cast upon the official [military] absentee ballots shall be added to the other votes cast within the county.*

**Section 1809. Public Records.—**

All official [military] *absentee ballots*, [military] files, applications for such ballots and envelopes on which the *executed [jurats and affidavits] declarations* appear, and all information and lists are hereby designated and declared to be public records and shall be safely kept for a period of two years, except that no information concerning a *military elector* shall be made public which is expressly forbidden by the War Department because of *military security*.

Section 25. Section 1853 of the act, amended January 8, 1960 (P. L. 2135), is amended to read:

Section 1853. Violations of Provisions Relating to Absentee Electors Ballots.—If any person shall sign an

Section 1853 of  
act, amended  
January 8, 1960.  
P. L. 2135,  
further amended.

application for absentee ballot or declaration of elector on the [form] *forms* prescribed [by section 1302-B] knowing any matter declared therein to be false, or shall vote any ballot other than one properly issued to him, or vote or attempt to vote more than once in any election for which an absentee ballot shall have been issued to him, or shall violate any other provisions of Article XIII [-B] of this act, he shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000), or be imprisoned for a term not exceeding one year, or both, at the discretion of the court.

If any chief clerk or member of a board of elections, member of a return board or member of a board of registration commissioners, shall neglect or refuse to perform any of the duties prescribed by Article XIII [-B] of this act, or shall reveal or divulge any of the details of any ballot cast in accordance with the provisions of Article XIII [-B] of this act, or shall count an absentee ballot knowing the same to be contrary to Article XIII [-B], or shall reject an absentee ballot without reason to believe that the same is contrary to Article XIII [-B], or shall permit an elector to cast his ballot at a polling place knowing that there has been issued to the elector an absentee ballot, he shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding one thousand dollars (\$1000), or be imprisoned for a term of one year, or both, at the discretion of the court.

Articles XIII-A  
and XIII-B of  
act repealed.

Section 26. Articles XIII-A and XIII-B of the act and its amendments are repealed.

All other acts or parts of acts are hereby repealed in so far as they are inconsistent with the provisions of this act.

Cities of first  
class.

Section 27. Cities of the first class and counties are hereby authorized and empowered to appropriate the moneys necessary to carry out the provisions of this amendment.

Effective date.

Section 28. This act shall take effect January 1, 1964.

APPROVED—The 13th day of August, A. D. 1963.

WILLIAM W. SCRANTON

No. 380

AN ACT

Amending the act of April 29, 1937 (P. L. 487), entitled, as amended, "An act to provide for the permanent personal registration of electors in cities of the second class, cities of the sec-

monwealth, subject to the limitations provided in any current capital budget, money not exceeding in the aggregate the sum of [twenty-four million one hundred seventy thousand dollars (\$24,170,000)] twenty-four million two hundred eighty-three thousand six hundred ninety dollars (\$24,283,690) as may be found necessary to carry out the acquisition and construction of transportation assistance projects heretofore specifically itemized in a capital budget.

Section 2. This act shall take effect immediately.

APPROVED—The 11th day of December, A. D. 1968.

RAYMOND P. SHAFER.

No. 375

AN ACT

HB 1908

Amending the act of June 3, 1937 (P. L. 1333), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," revising provisions relating to absentee voting and providing penalties.

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

Section 1. Subclauses (9) and (10) of clause (w) of section 102, act of June 3, 1937 (P. L. 1333), known as the "Pennsylvania Election Code," added or amended August 13, 1968 (P. L. 707), are amended, and section 102 is amended by adding after clause (a),<sup>1</sup> and clause (r)<sup>2</sup> respectively<sup>3</sup> new clauses, to read:

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

\* \* \*

(a.1) "Canvass" includes gathering the ballots after the election and counting, computing and tallying the votes.

<sup>1</sup> "and" not in original.

<sup>2</sup> "respectively" not in original.

<sup>3</sup> "and clause (z-2)" in original.

\* \* \*

(r. 1) "Public institution" means institutions primarily maintained by the Federal, State or local governments and includes but is not limited to veterans' hospitals and homes, State hospitals, poorhouses and county homes.

\* \* \*

(w) The words "qualified absentee elector" shall mean:

\* \* \*

(9) Any qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability if he is [unavoidably] absent from the Commonwealth or county of his residence and unable to attend his polling place because of such illness or physical disability regardless of whether he is registered and enrolled; or

(10) Any qualified, registered and enrolled elector who expects to be or is [unavoidably] absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere during the entire period the polls are open for voting on the day of any primary or election; or

\* \* \*

Section 2. Clause (z-2) of section 102 of the act is repealed.

Section 3. Section 102 of the act, amended August 18, 1968 (P. L. 707), is amended by adding at the end thereof, a new clause to read:

<sup>1</sup> Section 102. Definitions.—The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:

\* \* \*

(z-8) The words "duties, occupation or business" shall include leaves of absence for teaching or education, vacations, sabbatical leaves, and all other absences associated with the elector's duties, occupation or business, and also include an elector's spouse who accompanies the elector.

Section 4. Subsections (i) and (j) of section 1801 of the act, amended August 18, 1968 (P. L. 707), are amended to read:

Section 1801. Qualified Absentee Electors.—The following persons shall be entitled to vote by an official absentee ballot in any primary or election held in this Commonwealth in the manner hereinafter provided:

<sup>1</sup> "Section 102. Definitions.—The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:" not in original.

\* \* \*

(i) Any qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability if he is [unavoidably] absent from the Commonwealth or county of his residence and unable to attend his polling place because of such illness or physical disability regardless of whether he is registered and enrolled; or

(j) Any qualified registered and enrolled elector who expects to be or is [unavoidably] absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere during the entire period the polls are open for voting on the day of any primary or election; or

\* \* \*

Section 5. Subsections (a), (b), (c) and (e) of section 1802 of the act, amended August 18, 1968 (P. L. 707), are amended to read:

Section 1802. Applications for Official Absentee Ballots.—(a) Any qualified elector defined in preceding section 1801, subsections (a) to (h), inclusive, may apply at any time before any primary or election for any official absentee ballot in person, on [post card application or] any [other] form supplied by the Federal Government, or [by post card, letter or other writing,] on any official county board of election form addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of election of the county in which his voting residence is located. An application shall be issued only to an elector who appears in person at the office of the county board of election and signs for the application, or who, by mail, requests an application with a written and signed communication. No more than one application for an absentee ballot shall be issued to any elector. A copy of the request for the application shall be kept on record at the office of the county board of election.

(b) The application shall contain the following information: Home residence at the time of entrance into actual military service or Federal employment, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident of voting district, voting district if known, party choice in case of primary, name and, for a military elector, his [rank or grade,] stateside military address, [branch of service] FPO or APO number and serial number.

Any elector other than a military elector shall in addition specify the nature of his employment, the address to which ballot is to be sent, relationship where necessary, and such other information as may be

determined and prescribed by the Secretary of the Commonwealth. When such application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

(c) The application of any qualified military elector, as defined in preceding section 1301 subsection (a), for an official absentee ballot in any primary or election may not be made [or information supplied] over the signature of any person [who is familiar with the voting qualifications of the elector], other than the qualified elector or an adult member of his immediate family, as required in the preceding subsection.

\* \* \*

(e) Any qualified bedridden or hospitalized veteran [unavoidably] absent from the State or county of his residence and unable to attend his polling place because of such illness or physical disability, regardless of whether he is registered or enrolled, may apply at any time before any primary or election for an official absentee ballot [by post card, letter or other writing,] on any official county board of election form addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of elections of the county in which his voting residence is located. The request for an application shall be in writing, signed and transmitted by mail.

The application shall contain the following information: Residence at the time of becoming bedridden or hospitalized, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident in voting district, voting district if known, party choice in case of primary, name and address of present residence or hospital at which hospitalized. When such application is received by the Secretary of the Commonwealth, it shall be forwarded to the proper county board of elections.

The application for an official absentee ballot for any primary or election [may] shall be made [or] on information supplied over the signature [of any person who is familiar with the voting qualifications] of the bedridden or hospitalized veteran as required in the preceding subsection [(f)]. Any qualified registered elector, including a spouse or dependent referred to in subsection <sup>1</sup>(1) of section 1301, who expects to be or is [unavoidably] absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election and any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or

<sup>1</sup>“(1)” in original.



physical disability and any qualified registered bedridden or hospitalized veteran in the county of residence, may apply to the county board of elections of the county in which his voting residence is located for an Official Absentee Ballot. Such application [or request may] shall be made upon an official application form supplied by the county board of elections. Such official application form shall be determined and prescribed by the Secretary of the Commonwealth of Pennsylvania. An application shall be issued only to an elector who appears in person at the office of the county board of election and signs for the application, or who, by mail, requests an application with a written and signed communication. A copy of the request for the application shall be kept on record at the office of the county board of elections.

(1) The application of any qualified registered elector, including spouse or dependent referred to in subsection (1) of section 1801, who expects to be or is [unavoidably] absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election, shall be signed by the applicant and shall include the surname and christian name or names of the applicant, his occupation, date of birth, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, the reason for his absence, and such other information as shall make clear to the county board of elections the applicant's right to an official absentee ballot.

(2) The application of any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and the application of any qualified registered bedridden or hospitalized veteran in the county of residence shall be signed by the applicant and shall include surname and christian name or names of the applicant, his occupation, date of birth, residence at the time of becoming bedridden or hospitalized, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, and such other information as shall make clear to the county board of elections the applicant's right to an official ballot. In addition, the application of such electors shall include a declaration stating the nature of their disability or illness, and the name of their attending physician, if any, together with a supporting dec-

<sup>1</sup> "(1)" in original.  
<sup>2</sup> "this" in original.

laration signed by such attending physician, or, if none, by a registered elector unrelated by blood or marriage of the election district of the residence of the applicant: Provided, however, That in the event any elector entitled to an absentee ballot under this subsection be unable to sign his application because of illness or physical disability, he shall be excused from signing upon making a statement which shall be witnessed by one adult person in substantially the following form: I hereby state that I am unable to sign my application for an absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

..... (Date) ..... (Mark)

..... (Complete Address of Witness) ..... (Signature of Witness)

No more than one application for an absentee ballot shall be issued to any elector. A copy of the request for the application shall be kept on record at the office of the county board of election.

Section 6. Section 1302 of the act is amended by adding after subsection (e), three new subsections to read:

Section 1302. Applications for Official Absentee<sup>1</sup> Ballots.—\* \* \*  
(f) The county chairman of each political party or the head of each political body shall designate one representative from his respective political party or body for each public institution. The representatives so appointed shall, at the same time on a date fixed by the county board of election visit every public institution situate in the county for the purpose of obtaining the names and addresses of public institution residents who desire to receive applications for absentee ballots and to act as an election board as provided in subsection (g) of this section. The list of names and addresses thus obtained shall then be submitted by said representatives to the board which shall furnish applications individually to those appearing in the written request. If the chairman or head of a political party or body fails to appoint a representative within fifteen days from written

<sup>1</sup> "Ballot" in original.

notice from the county board of election, the county board of election shall appoint a representative from the political party or body.

(g) The county board of election shall appoint teams of three members for each public institution that shall go to the public institutions and hold the election on the first Friday prior to election day. Each member of the board shall appoint one member on every team. After the votes are cast, the teams shall collect the ballots and return them to the county board of election where they shall be placed unopened in a secure, safe and sealed container in the custody of the board until they shall be distributed to the respective absentee voters' election district as provided in section 1808 of this act where they shall be counted with the other absentee ballots, if any.

(h) The county board of election shall number, in chronological order, the applications for an official absentee ballot, which number shall likewise appear on the official absentee ballot for the qualified elector. The numbers shall appear legibly and in a conspicuous place but before the ballots are distributed the number on the ballot shall be torn off by the county board of election. This number information shall be appropriately inserted and become a part of the Registered Absentee Voters File and the Military, Veterans and Emergency Civilian Absentee Voters File provided in section 1802.3 of this act.

Section 7. Sections 1802.1, 1802.2 and 1802.3 of the act, added August 18, 1968 (P. L. 707), are amended to read:

Section 1802.1. Date of Application for Absentee Ballot.—

Applications for absentee ballots unless otherwise specified shall be received in the office of the county board of elections not earlier than fifty (50) days before the primary or election and not later than five o'clock P. M. of the first Tuesday prior to the day of any primary or election: Provided, however, That in the event any elector otherwise qualified who is so physically disabled or ill on or before the first Tuesday prior to any primary or election that he is unable to file his application or who becomes physically disabled or ill after the first Tuesday prior to any primary or election and is unable to appear at his polling place or any elector otherwise qualified who because of the conduct of his business, duties or occupation will necessarily be absent from the State or county of his residence on the day of the primary or election, which fact was not and could not

reasonably be known to said elector on or before the first Tuesday prior to any primary or election, shall be entitled to an absentee ballot at any time prior to five o'clock P. M. on the [day] first Friday

preceding any primary or election upon execution of an Emergency Application in such form prescribed by the Secretary of the Commonwealth.

In the case of an elector who is physically disabled or ill on or before the first Tuesday prior to a primary or election or becomes physically disabled or ill after the first Tuesday prior to a primary or election, such Emergency Application shall contain a supporting affidavit from his attending physician stating that due to physical disability or illness said elector was unable to apply for an absentee ballot on or before the first Tuesday prior to the primary or election or became physically disabled or ill after that period.

In the case of an elector who is necessarily absent because of the conduct of his business, duties or occupation under the unforeseen circumstances specified in this subsection, such Emergency Application shall contain a supporting affidavit from such elector stating that because of the conduct of his business, duties or occupation said elector will necessarily be absent from the State or county of his residence on the day of the primary or election which fact was not and could not reasonably be known to said elector on or before the first Tuesday prior to the primary or election.

**Section 1302.2. Approval of Application for Absentee Ballot.—**

(a) The county board of elections, upon receipt of any application filed by a qualified elector not required to be registered under preceding section 1301, shall ascertain from the information on such application, district register or from any other source that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked approved such approval decision shall be final and binding except that challenges may be made only on the ground that the applicant did not possess qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to 5:00 o'clock P. M. on the first Friday prior to the election. When so approved, the county board of elections shall cause the applicant's name and residence (and at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilians Absentee Voters File as provided in section 1302.3, subsection (b): Providing, however, That no application of any qualified elector in military service shall be rejected for failure to include on his application any information if such information may be ascertained within a reasonable time by the county board of elections.

(b) The county board of elections, upon receipt of any application filed by a qualified elector who is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting as provided under preceding section 1301, shall ascertain from the information on such application or from any other source that such applicant possesses all the qualifications of a qualified elector. If the board is satisfied that the applicant is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting and that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector prior to or concurrently with the time of voting. Such challenges must be made to the county board of elections prior to 5:00 o'clock P. M. on the first Friday prior to the election. When so approved, the county board of elections shall cause the applicant's name and residence (and <sup>1</sup> at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3 subsection (b).

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of preceding section 1301, shall determine the qualifications of such applicant by comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding, except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to 5:00 o'clock P. M. on the first Friday prior to the election. When so approved, the registration commission shall cause [the applicant's permanent registration card to be removed from the district register and the county board of elections shall cause same to be inserted in the Registered Absentee Voters File as provided in section 1302.3 subsection (a):] an absentee voter's temporary registration card to be inserted in the district register on top of and along with the

<sup>1</sup> "at" not in original.

permanent registration card. The absentee voter's temporary registration card shall be in the color and form prescribed in subsection (e) of this section:

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the [removal] insertion of the [original] absentee voter's temporary registration card of any elector from the district register as set forth in section [1305] 1302.2 shall include only such applications and emergency applications as are received on or before the first Tuesday prior to the primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before five o'clock P. M. on the [day] first Friday prior to the primary or election, the county board of elections shall determine the qualifications of such applicant by comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b). In addition, the [county] local district boards of elections shall, upon canvassing the official absentee ballots under section 1308, examine the voting check list of the election district of said elector's residence and satisfy itself that such elector did not cast any ballot other than the one properly issued to him under his absentee ballot application. In all cases where the examination of the [county] local district board of elections discloses that an elector did vote a ballot other than the one properly issued to him under the absentee ballot application, the [county] local district board of elections shall thereupon cancel said absentee ballot and said elector shall be subject to the penalties as hereinafter set forth.

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval.

(e) The absentee voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the absentee voter's name and address and shall conspicuously contain the words "Absentee Voter." Such card shall

also contain the affidavit required by subsection (b) of section 1306.

Section 1302.3. Absentee Electors Files and Lists.—(a) The county board of elections shall maintain at its office a file containing the [original] duplicate absentee voter's temporary registration cards of every registered elector to whom an absentee ballot has been sent. Such [original] duplicate absentee voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards so filed shall constitute the Registered Absentee Voters File for the Primary or Election of (date of primary or election) and shall be kept on file for a period commencing the [Thursday] Tuesday prior to the day of the primary or election until the [third Monday] day following the primary or election or the day the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations.

(b) The county board of elections shall post in a conspicuous public place at its office a master list arranged in alphabetical order by election districts setting forth the name and residence, and at primaries, the party enrollment, of (1) every military elector to whom an absentee ballot is being sent, each such name to be prefixed with an "M"; (2) every bedridden or hospitalized veteran outside the county of his residence who is not registered and to whom an absentee ballot is being sent, each such name to be prefixed with a "V"; and (3) every registered elector who has filed his application for an absentee ballot too late for the extraction of his original registration card and to whom a ballot is being sent and every qualified elector who has filed his application for an absentee ballot and is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting, each such name to be prefixed with a "C." This list shall be known as the Military, Veterans and Emergency Civilians Absentee Voters File for the Primary or Election of (date of primary or election) and shall be posted for a period commencing the Tuesday prior to the day of the primary or election until the [third Monday] day following the primary or election or the day on which the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations. This posted list shall not contain any military address or references to any military organization. Upon written request, the county board shall furnish a copy of such list to any candidate or party county chairman.

(c) Not less than five days preceding the election, the chief clerk shall prepare a list for each election district showing the names and post office addresses of all voting residents thereof to whom official absentee ballots shall have been issued. Each such list shall be prepared in duplicate, shall be headed "Persons in (give identity of election district) to whom absentee ballots have been issued for the election of (date of election)," and shall be signed by him not less than four days preceding the election. He shall post the original of each such list in a conspicuous place in the office of the county election board and see that it is kept so posted until the close of the polls on election day. He shall cause the duplicate of each such list to be delivered to the judge of election in the election district in the same manner and at the same time as are provided in this act for the delivery of other election supplies, and it shall be the duty of such judge of election to post such duplicate list in a conspicuous place within the polling place of his district and see that it is kept so posted throughout the time that the polls are open. Upon written request, he shall furnish a copy of such list to any candidate or party county chairman.

Section 8. Sections 1304 and 1306, subsection (b) of section 1307 and section 1308 of the act, amended August 13, 1963 (P. L. 707), are amended to read:

Section 1304. Envelopes for Official Absentee Ballots.—

The county boards of election shall provide two additional envelopes for each official absentee ballot of such size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official Absentee Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector, and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the absentee voter. Said form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth



and shall contain among other things a statement of the elector's qualifications, together with a statement that such elector has not already voted in such primary or election. The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, lists of candidates when authorized by section 1303 subsection (b) of this act, the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else: Provided, however, That envelopes for electors qualified under preceding section 1301, subsections (a) to (h), inclusive, shall have printed across the face of each transmittal or return envelope two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed, in the upper right corner of each such envelope in a box, the words "Free of U. S. Postage, Including Air Mail;" that all printing on the face of each such envelope be in red, and that there be printed in red, in the upper left corner of each such envelope, the name and address of the county board of elections of the proper county or blank lines for return address of the sender:

Provided further, That the aforesaid envelope addressed to the elector may contain absentee registration forms [and instructions] where required, and shall contain detailed instructions on the pro-

cedures to be observed in casting an absentee ballot as prescribed

by the Secretary of the Commonwealth, together with return envelope upon which is printed the name and address of the registration commission of the proper county, which envelope shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed in the upper right corner of each such envelope in a box the words "Free of U. S. Postage, Including Air Mail," and, in the upper left corner of each such envelope, blank lines for return address of the sender; that all printing on the face of each such envelope be in red.

Section 1306. Voting by Absentee Electors.—(a) At any time after receiving an official absentee ballot, but on or before [the day of] five o'clock P. M. on the Friday prior to the primary or

election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is

printed, stamped or endorsed "Official Absentee Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person [or by representative] to said county board of election:

Provided, however, That any elector, spouse of the elector or dependent of the elector, qualified in accordance with the provisions of section 1301, subsections (e), (f), (g) and (h) to vote by absentee ballot as herein provided, shall be required to include on the form of declaration a supporting declaration in form prescribed by the Secretary of the Commonwealth, to be signed by the head of the department or chief of division or bureau in which the elector is employed, setting forth the identity of the elector, spouse of the elector or dependent of the elector:

Provided further, That any elector who has filed his application in accordance with section 1302 [ subsection (f) ] subsection (e) (2), and is unable to sign his declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form: I hereby declare that I am unable to sign my declaration for voting my absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

..... (Mark)

.....  
 (Date)

.....  
 (Signature of Witness)

.....  
 (Complete Address of Witness)

(b) In the event that any such elector, excepting an elector in military service or any elector unable to go to his polling place because of illness or physical disability, entitled to vote an official absentee ballot shall be in the county of his residence on the day for holding the primary or election for which the ballot was issued, or in the event any such elector shall have recovered from his

illness or physical disability sufficiently to permit him to present himself at the proper polling place for the purpose of casting his ballot, such absentee ballot cast by such elector shall, [upon challenge properly sustained,] be declared void.

[However, any] Any such elector referred to in this subsection, who is within the county of his residence must present himself at his polling place and, shall be permitted to vote upon presenting himself at his regular polling place in the same manner as he could have voted had he not received an absentee ballot: Provided, That such elector has first presented himself [before the court of common pleas of his county between the hours of seven o'clock A. M. and five o'clock P. M. on the day of any primary or election and has procured an "Emergency Voting Form" signed by the court, which form entitles the elector to vote at his regular polling place upon the signing of a voter's certificate: Provided, however, That the court may require the surrender of said elector's absentee ballot where he has not already voted, which shall thereupon be marked "cancelled" by said court and transmitted to the county board of elections. In the event such elector has already voted, then the court shall direct the county board of elections to set such ballot aside unopened.] to the judge of elections in his local election district and shall have signed the affidavit on the absentee voter's temporary registration card, which affidavit shall be in substantially the following form:

I hereby swear that I am a qualified registered elector who has obtained an absentee ballot, however, I am present in the county of my residence and physically able to present myself at my polling place and therefore request that my absentee ballot be voided.

(Date)

.....  
(Signature of Elector)

.....  
(Local Judge of Elections)

An elector who has received an absentee ballot under the emergency application provisions of section 1302.1, and for whom, therefore, no temporary absentee voter's registration card is in the district register, shall sign the aforementioned affidavit in any

case, which the local judge of elections shall then cause to be inserted in the district register with the elector's permanent registration card.

Section 1307. Certain Electors Voting in Districts of Residence.—

\* \* \*

(b) Each such application shall be in the form and shall contain the information required by this act together with a statement by the applicant that he has not already voted in the election.

The county board of elections shall ascertain from the information on such application or from any other source that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "Approved," subject to the limitations set out in section 1302.2 of this act. When so approved, the

county board of elections shall cause the applicant's name and residence (and at primaries, the party enrollment) to be inserted in the "Military, Veterans and Emergency Civilian Absentee Voters File" as provided in section 1302.3 subsection (b).

\* \* \*

Section 1308. Canvassing of Official Absentee Ballots.—

(a) The county boards of election, upon receipt of official absentee ballots in such envelopes, shall safely keep the same in sealed or locked containers until they [meet to canvass official absentee ballots, which canvass shall begin immediately following the official civilian canvass for the primary or November election or the second Friday following the primary or November election, whichever date is later. Said canvass to commence at ten o'clock A. M., Eastern Standard Time. No such ballots shall be counted which are received in their offices later than ten o'clock A. M., Eastern Standard Time, of the second Friday following the primary election or the November election. At such time the members of the return boards or the county boards of election shall in person dispose of official absentee ballots in the manner hereinafter set forth. The county boards of election may designate a sufficient number of clerks to perform such duties. When it is determined that clerks shall be appointed, the total number shall in every case be in multiples of three, and each member of a county board of elections shall appoint an equal number thereof.] distribute same to the appropriate local election districts in a manner prescribed by the Secretary of the Commonwealth.

The county board of elections shall then distribute the absentee ballots, unopened, to the absentee voter's respective election dis-

trict concurrently with the distribution of the other election supplies. Absentee ballots shall be canvassed immediately and continuously without interruption until completed after the close of the polls on the day of the election in each election district. The results of the <sup>1</sup> canvass of the absentee ballots shall then be included in and returned to the county board with the returns of that district. No absentee ballot shall be counted which is received in the office of the county board of election later than five o'clock P. M. on the Friday immediately preceding the primary or November election.

(b) [Each candidate for nomination or election shall be entitled to appoint one watcher and each political party or body which has nominated candidates shall be entitled to appoint three watchers.] Watchers shall be permitted to be present when the envelopes containing official absentee ballots are opened and when such ballots are counted and recorded.

[ (c) In disposing of an official absentee ballot the county return board or the county board of election shall examine the declaration and if the same bears a date later than the date of such primary or election, the envelope shall be set aside unopened.]

(d) Whenever it shall appear by due proof that any absentee elector who has returned his ballot in accordance with the provisions of this act has died prior to the opening of the polls on the day of the primary or election, the ballot of such deceased elector shall be rejected by the canvassers but the counting of the ballot of an elector thus deceased shall not of itself invalidate any nomination or election.

(e) [The] At such time the local election board shall then further examine the declaration on each envelope not so set aside and shall compare the information thereon with that contained in the "Registered Absentee Voters File," the absentee voters' list and the "Military Veterans and Emergency Civilians Absentee Voters File." If the local election board is satisfied that the declaration is sufficient [and that the elector has qualified,] and [the board has utilized] the information contained in the "Registered Absentee Voters File," the absentee voters' list and the "Military Veterans and Emergency Civilians Absentee Voters File" [to verify] verifies his right to vote, the local election board shall announce

<sup>1</sup> "canvass" in original.

the name of the elector and shall give any watcher present an opportunity to challenge [in like manner and for the same cause, except the failure of qualified electors set forth in preceding section 1301, subsections (a) to (i), inclusive, to register or enroll, as the elector could have been challenged had he presented himself in his own district to vote other than by official absentee ballot: Provided further, That any watcher may challenge] any absentee elector upon the ground or grounds (1) that the absentee elector is not a qualified [absentee] elector: [as defined in this act;] or (2) that the absentee elector was within the county of his residence on the day of the primary or election during the period the polls were open, except where he was in military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (3) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein the local election board shall mark "challenged" on the envelope together with the reason or reasons therefor, and the same shall be set aside for return to the county board unopened pending decision by the county board and shall not be counted. All absentee ballots not challenged for any of the reasons provided herein shall be counted and included with the general return of paper ballots or voting machines, as the case may be as follows. Thereupon, the local election board shall open the envelope of every unchallenged absentee elector in such manner as not to destroy the declaration executed thereon. All of such envelopes on which are printed, stamped or endorsed the words "Official Absentee Ballot" shall be placed in one or more depositories at one time and said depository or depositories well shaken and the envelopes mixed before any envelope is taken therefrom. If any of these envelopes shall contain any extraneous marks or identifying symbols other than the words "Official Absentee Ballot," the envelopes and the ballots contained therein shall be set aside and declared void. The local election board shall then break the seals of such envelopes, remove the ballots and record the votes in the same manner as district election officers are required to record votes. With respect to the challenged ballots, [the board] they shall be returned

to the county board with the returns of the local election district where they shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges and notice shall be given where possible to all absentee electors thus challenged and to every attorney, watcher or candidate who made such challenge. The time for the hearing shall not be later than [ten (10)] seven (7) days after the date of said challenge. On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges and, in hearing the testimony, the county board shall not be bound by technical rules of evidence.

The testimony presented shall be stenographically recorded and made part of the record of the hearing. The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any person aggrieved by the decision of the county board. Such appeal shall be taken, within two (2) days after such decision shall have been made, whether reduced to writing or not, to the court of common pleas setting forth the objections to the county board's decision and praying for an order reversing same.

Pending the final determination of all appeals, the county board shall suspend any action in canvassing and computing all challenged ballots irrespective of whether or not appeal was taken from the county board's decision. Upon completion of the computation of the returns of the county, the votes cast upon the challenged official absentee ballots shall be added to the other votes cast within the county.

(f) Any person challenging an application for an absentee ballot or an absentee ballot for any of the reasons provided in this act shall deposit the sum of ten dollars (\$10.00) in cash with the local election board, in cases of challenges made to the local election board and with the county board in cases of challenges made to the county board for which he shall be issued a receipt for each challenge made, which sum shall only be refunded if the challenge is sustained or if the challenge is withdrawn within five

<sup>1</sup> "challenge" in original.  
<sup>2</sup> "challenger" in original.

(5) days after the primary or election. If the challenge is dismissed by any lawful order then the deposit shall be forfeited. All deposit money received by the local election board shall be turned over to the county board simultaneously with the return of the challenged ballots. The county board shall deposit all deposit money in the general fund of the county.

Notice of the requirements of subsection (b) of section 1306 shall be printed on the envelope for the absentee ballot.

Section 9. The act is amended by adding after section 1330, a new section to read:

Section 1331. Violation of Provisions Relating to Absentee Voting.

—Any person who shall violate any of the provisions of this act relating to absentee voting shall, unless otherwise provided, be subject to the penalties provided for in section 1850 of this act.

Section 10. This act shall take effect immediately.

APPROVED—The 11th day of December, A. D. 1968.

RAYMOND P. SHAFER.

No. 376

AN ACT

SB 1086

Prohibiting the interception and interference of certain police and fire radio broadcasts; regulating the manufacture, conversion, sale, possession and use of certain equipment adaptable for such purpose and prescribing penalties.

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

Section 1. Police and Fire Radio Broadcasts.—(a) Police or fire radio broadcasts as used herein shall mean broadcasts on frequencies from one hundred fifty-four to one hundred fifty-six megacycles and four hundred fifty-three to four hundred fifty-nine megacycles only.

(b) No unauthorized person shall interfere with or broadcast on any police or fire radio broadcast. No person shall intercept any such broadcast for the purpose of aiding himself or others in the perpetra-



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEIGH M. CHAPMAN, Acting :  
Secretary of the Commonwealth :  
and the Pennsylvania :  
Department of State, :  
Petitioners :  
:  
v. : NO. 355 M.D. 2022  
:  
BERKS COUNTY BOARD OF :  
ELECTIONS, FAYETTE COUNTY :  
Board of Elections, and :  
LANCASTER COUNTY BOARD OF :  
ELECTIONS, :  
Respondents :

Pages 1 through 263

Courtroom 3001  
PA Judicial Center  
601 Commonwealth Avenue  
Harrisburg, Pennsylvania

Thursday, July 28, 2022

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

HON. RENÉE COHN JUBELIRER, President Judge

APPEARANCES:

MICHAEL J. FISCHER, Esquire  
JACOB B. BOYER, Esquire  
Office of Attorney General  
1600 Arch Street, Suite 300  
Philadelphia, Pennsylvania 19103  
(For the Petitioners)

JEFF BUKOWSKI, Esquire  
Smith Bukowski  
1050 Spring Street, Suite 1  
Wyomissing, Pennsylvania 19610  
(For Respondents, Berks County Board of  
of Elections and Lancaster County Board  
of Elections)

APPEARANCES (continued):

THOMAS W. KING, III, Esquire  
THOMAS E. BRETH, Esquire  
Dillon McCandless King Coulter & Graham L.L.P.  
128 West Cunningham Street  
Butler, Pennsylvania 16001  
(For Respondent, Fayette County Board of  
Elections)

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C O N T E N T S					
	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
1	Jonathan Marks				
4	(By Mr. Fischer)	16	--	111	--
5	(By Mr. Bukowski)	--	36	--	120
6	(By Mr. King)	--	61	--	121
7	Scott Dunn				
8	(By Mr. Fischer)	125	--	--	--
9	(By Mr. King)	--	138	--	--
10	Ray D'Agostino				
11	(By Mr. Fischer)	141	--	157	--
12	(By Mr. Bukowski)	--	150	--	159
13	(By Mr. King)	--	155	--	--
14	Christian Leinbach				
15	(By Mr. Boyer)	160	--	181	--
16	(By Mr. Bukowski)	--	167	--	183
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1 MR. HOLLAND: Please raise your right hand.

2 Whereupon,

3 RAY D'AGOSTINO,

4 having been duly sworn, testified as follows.

5 MR. HOLLAND: Please be seated.

6 DIRECT EXAMINATION (as on Cross)

7 BY MR. FISCHER:

8 Q. Good afternoon, Mr. D'Agostino.

9 A. Good afternoon. And sorry, I don't know your  
10 name.

11 Q. Mr. Fischer with the Attorney General's office,  
12 Michael Fischer.

13 A. Mr. Fischer, good afternoon.

14 Q. Thank you. You currently serve on the Lancaster  
15 County Board of Commissioners; is that correct?

16 A. That is correct.

17 Q. And as a result you have certain responsibilities  
18 with respect to elections in Lancaster County?

19 A. That is correct.

20 Q. And did you hear all of Mr. Dunn's testimony  
21 earlier?

22 A. I did.

23 Q. Would you agree that his description of how  
24 Fayette County administers elections at least as to your  
25 responsibilities is roughly similar to how Lancaster County

1 administers them?

2 A. I would agree we have oversight of elections. I  
3 would just say that we have oversight of elections in  
4 connection with and making sure that we abide by the  
5 Election Code and all decisions of the Courts of competent  
6 jurisdiction.

7 Q. And you do in that role you receive guidance from  
8 the Department of State occasionally, correct?

9 A. Yes, we do.

10 Q. But you do not treat that guidance as binding  
11 upon the Commissioners; is that correct?

12 A. That is correct.

13 Q. But you do treat judicial decisions as binding?

14 A. Judicial decisions, yes, as long as they're  
15 applicable.

16 Q. Yes, certainly. Is it your understanding that  
17 the deadline for the receipt -- I'm sorry. Let me strike  
18 that. I want to focus now on absentee and mail-in ballots.  
19 Is it your understanding that the deadline for receipt of  
20 absentee and mail-in ballots is 8:00 p.m. on Election Day?

21 A. Correct.

22 Q. And does Lancaster County time-stamp ballots when  
23 they are received?

24 A. We do time-stamp ballots.

25 Q. And do you use that time stamp to determine



1 whether a ballot is timely received?

2 A. We do use that as one method.

3 Q. And if a ballot is received at the Board of  
4 Elections at 8:01 on Election Day, would that ballot be  
5 counted?

6 A. No.

7 Q. Would it matter when that ballot had been filled  
8 out to the decision whether to count it?

9 A. Repeat the question.

10 Q. Certainly. If a ballot is received at 8:01,  
11 would it matter when the voter filled it out in determining  
12 whether to count it?

13 A. Potentially, yes.

14 Q. And how so?

15 A. Well, there is the provision that the declaration  
16 has to be dated and signed. The date which is the date  
17 that's put on there by presumably the voter could make a  
18 difference in whether that ballot is actually counted or  
19 not.

20 Q. So there are circumstances under which a ballot  
21 received after the 8:00 p.m. deadline would nonetheless be  
22 counted because of what that voter wrote?

23 A. No. That was by accident what you asked me.

24 Q. Okay. So just to clarify, in determining whether  
25 a ballot was received by the deadline, you use the time

1 stamp on the envelope, correct?

2 A. We time-stamp them, yes.

3 Q. And do you also enter information about the  
4 ballot into the SURE system?

5 A. Yes.

6 Q. Now, with respect to the date on the outer  
7 envelope, in the May, 2022 election, did Lancaster County  
8 refuse to count any ballots that had dates based on what  
9 the date was?

10 A. There were -- there was one occasion where the  
11 date -- we do check the date. We do believe that the date  
12 is material, that it could go to the validity and  
13 authenticity of the ballot received. And so depending on  
14 the date, it may be set aside for further research and  
15 determination whether it should go forward and count or  
16 not.

17 Q. So in May, I'm just asking about the May, 2022  
18 primary --

19 A. Yes.

20 Q. -- did you decline to count any ballots based on  
21 the date that was written?

22 A. Based on the date, we are aware of a voter fraud  
23 case that we did not count the ballot because of the date.  
24 It was determined -- it was found out that the voter fraud  
25 occurred because of that date.

1 Q. Explain to me the circumstances of that voter  
2 fraud case.

3 A. Sure. So we received mail ballots or absentee  
4 ballots. When I say mail ballots, I mean absentee and no  
5 excuse mail ballots. We receive them. They are  
6 date-stamped and then they are scanned to go into the SURE  
7 system.

8 In this one case it happened to be our Chief  
9 Clerk of the Board of Elections that scanned this  
10 particular ballot that came in the outer envelope, the  
11 declaration; and the SURE system popped up and said that  
12 the person was deceased. Our Chief Clerk put that aside to  
13 then look at later; and when the Chief Clerk looked at it  
14 again, realized that the date that someone put on that  
15 declaration was a date after the person had died.

16 And so at that point she did more research and  
17 actually pulled up the obituary and found out that person  
18 was deceased, referred it to our District Attorney's  
19 office. Our District Attorney's office is now prosecuting  
20 that person and that person has admitted to voter fraud.

21 Q. So in that case it led to a criminal  
22 investigation, correct?

23 A. That is correct.

24 Q. But it did not affect whether you counted that  
25 ballot, correct?

1 A. Not that one but there can be instances where it  
2 could be. So, for instance, if it was a person who moved  
3 and is alive, we may not count that ballot because we've  
4 determined that the date is different than the date they  
5 may have moved out. So it is material to us, and we do  
6 treat it as such.

7 The plain language of the law says that obviously  
8 if -- I say obviously -- that if there's no date, you set  
9 them aside. We treat those that have dates as potentially  
10 ones that can be processed; but depending on the date  
11 that's put in there, it may not be.

12 Q. So just so I understand, Lancaster County  
13 election officials review every date on every mail-in  
14 ballot that you receive?

15 A. There's instances where it depends on whether the  
16 date looks to be something that makes sense like within the  
17 time period of the election. It might cause our staff to  
18 then take another look.

19 Q. But just to clarify my question was, you look at  
20 every date on every mail-in ballot; is that correct?

21 A. I'm not the one that does it, but I understand  
22 the staff does take it seriously. It does look at the  
23 dates, but I can't say for certain whether every single  
24 one.

25 Q. And with respect to a voter who moves, is it your

1 understanding that a vote cast by a voter who moves before  
2 Election Day can nonetheless still be counted? Moves from  
3 the Commonwealth.

4 A. Say that again. I'm sorry.

5 Q. If a voter moves before Election Day having sent  
6 in a mail-in ballot, is it your understanding that that  
7 ballot can be counted?

8 A. I can't say unless I look at the situation and  
9 the law itself. I can't say.

10 Q. Have there been any specific situations in which  
11 Lancaster has used the date written to exclude a ballot  
12 cast by a voter who moved?

13 A. I'm sorry. Say the question again.

14 Q. So you testified that a voter could move before  
15 Election Day, and you could use the date to determine  
16 whether the ballot was filled out before or after the voter  
17 had moved; do you recall that?

18 A. Yes.

19 Q. Has that ever presented itself?

20 A. I'm not aware. It doesn't mean it didn't happen.  
21 I'm not aware of it, though.

22 Q. But it is your understanding that if a voter  
23 fills out a ballot, sends it in, and then moves from the  
24 Commonwealth before Election Day, that vote should be  
25 counted?

1 A. Again I'm not sure.

2 Q. So let me just get back to my earlier question.

3 Are you aware of any instance in the May, 2022 primary  
4 where the date written on the ballot was used to exclude  
5 that ballot from being counted? On the envelope, sorry.

6 A. To exclude it based on the date itself other than  
7 the case I mentioned, no.

8 Q. Other than the fraud case?

9 A. Other than the fraud case.

10 Q. And you would agree that ballot should not have  
11 counted regardless of the date?

12 A. That is correct.

13 Q. Because if a voter dies before Election Day, we  
14 can agree their ballot doesn't count?

15 A. Right. But our mantra in Lancaster County is our  
16 election should be having integrity, veracity, and  
17 transparency. And so to us that date does fit into  
18 integrity, veracity, and transparency of our elections  
19 which is of utmost importance.

20 Q. And this person was referred for prosecution,  
21 correct?

22 A. That is correct.

23 Q. And Lancaster County submitted a list of  
24 certified returns in early June; is that correct, to the  
25 Secretary?

1 A. I believe it's on June the 6th.

2 Q. And those certified returns did not include  
3 totals from undated ballots?

4 A. Certified results did not, but we did submit  
5 separately in accordance with the Court order the results  
6 of the undated ballots. We did do what the Court order  
7 said.

8 Q. So you complied with this Court's June 2nd order  
9 directing --

10 A. Yes.

11 Q. -- canvass of those ballots, and you counted them  
12 and submitted two sets of returns?

13 A. That is correct.

14 Q. And just so we're clear, when we're talking about  
15 undated ballots, these are all ballots cast by legal voters  
16 with no other deficiencies, correct?

17 A. Maybe. Again it depends on the case. I mean as  
18 I said, the person wasn't legally allowed to cast that  
19 ballot, so I can't say that.

20 Q. So if for instance the voter omitted the  
21 signature and date, there's no dispute that ballot wouldn't  
22 be counted?

23 A. That's correct.

24 Q. Okay. And if a voter omitted the date and also  
25 didn't use the secrecy envelope, that ballot would not be

1 counted, correct?

2 A. Correct.

3 Q. No dispute about that?

4 A. Correct.

5 Q. So we're not talking about those types of ballots  
6 in this case. Can we agree on that?

7 A. Sure.

8 Q. Okay. We're talking about ballots where the only  
9 deficiency identified is the omission of the date?

10 A. If the date is omitted, it will not count.

11 Q. Okay. And Lancaster was a party to the McCormick  
12 case, correct?

13 A. Correct.

14 Q. Okay. And as you testified, you complied with  
15 the Court's order and submitted two sets of returns to the  
16 Secretary?

17 A. Correct.

18 MR. FISCHER: Nothing further, Your Honor.

19 CROSS-EXAMINATION (as on Redirect)

20 BY MR. BUKOWSKI:

21 Q. Good afternoon, Mr. D'Agostino. The case of the  
22 voter fraud that you were referring to, is that the case  
23 that's now pending, Commonwealth of Pennsylvania versus  
24 Cheryl Mihaliak?

25 A. Correct.



1 MR. BUKOWSKI: I have the police criminal  
2 complaint, Your Honor, and the Magisterial District Judge  
3 docket. I'd like to add that and admit it as an exhibit  
4 for the record since it came up during Mr. D'Agostino's  
5 testimony. I don't need to spend time with this witness on  
6 it if they agree to its admission.

7 MR. FISCHER: Your Honor, this is the first  
8 we've seen this, so I haven't had time to review it. I  
9 can't say it's admissible certainly. We exchanged exhibits  
10 yesterday, and this was never mentioned.

11 MR. KING: I have no objections, Your Honor.

12 MR. BUKOWSKI: And we just learned of it  
13 actually, you know, after we had submitted our exhibits,  
14 Your Honor. We think the Court can take judicial notice of  
15 it anyway. I think for completeness of the record we ought  
16 to include this and we move to admit it.

17 MR. FISCHER: We would reserve the right to  
18 object just based on the fact that we haven't reviewed it  
19 and can't really assess relevance or anything.

20 JUDGE COHN JUBELIRER: Okay. I'll tell you  
21 what. I will wait to rule on your request to admit it and  
22 give counsel the opportunity. Do you have any objection?  
23 Were you going to ask him any questions about it?

24 MR. BUKOWSKI: I'm actually not, Your Honor,  
25 because I think the testimony covered it. I just wanted

1 the Court to have the benefit of some of the details for  
2 its record.

3 JUDGE COHN JUBELIRER: Sure.

4 MR. BUKOWSKI: And frankly --

5 JUDGE COHN JUBELIRER: As a judicial record  
6 I believe I could take judicial notice of it, but if you  
7 want to give me the docket number or any of the --

8 MR. BUKOWSKI: Sure. The docket number is  
9 it's for Magisterial District Judge 02-2-02. So the docket  
10 number is MJ-02202-CR-0000126-2022.

11 JUDGE COHN JUBELIRER: Thank you.

12 MR. BUKOWSKI: And I would just point out  
13 this came into the record. The answer that Mr. D'Agostino  
14 gave was in response to the question about the materiality  
15 of dates on the voter declaration, and I'm sure Ms.  
16 Mihaliak would agree that her putting the date on that  
17 voter declaration has become very material to her.

18 But I'm not going ask questions about these  
19 documents, Your Honor, and we'll let the Court take  
20 judicial notice and hopefully admit it into the record.

21 BY MR. BUKOWSKI:

22 Q. Mr. D'Agostino, getting back to the Lancaster  
23 County board's practices during the 2022, May, 2022 primary  
24 election. You were asked questions about whether  
25 incorrectly dated ballots were counted or not counted; do

1 you recall that?

2 A. Yes.

3 Q. And how does Lancaster County handle incorrectly  
4 dated ballots or ballots that where the date might be in  
5 question?

6 A. They're set aside and then there's more research  
7 done; and if it can be determined that there is more  
8 follow-up to be done, that can be done. I would also note  
9 that there's a potential of a challenge to ballots that  
10 come in. So that's something we take notice of as well.

11 Q. Yeah. And that was going to my next question.  
12 Are those incorrectly dated ballots or ballots that have  
13 dates that may or may not be correct, those are subject to  
14 challenge by voters and candidates; is that correct?

15 A. That is correct.

16 Q. Are you aware of any instance in which a voter or  
17 candidate in the 2022 May election did challenge the date  
18 on a ballot because it had a date that was incorrect?

19 A. No.

20 Q. Okay. And in that instance when there is no  
21 challenge, then what happens in Lancaster County?

22 A. If there's a date, the plain reading of the  
23 language of the Code is that we'll count that ballot.

24 Q. Okay. And is that consistent with guidance sent  
25 to the county Boards of Elections by the Department of

1 State?

2 A. Yes.

3 Q. And I think you said that the dates -- the  
4 undated ballots are not counted; is that right?

5 A. That is correct.

6 Q. And why is that?

7 A. Again, the plain reading of the language of the  
8 Code, the Election Code is that it should not be counted.

9 Q. As a member of the Lancaster --

10 MR. FISCHER: I have an objection. This is  
11 a legal opinion. I mean if that's his understanding,  
12 that's fine. But that's --

13 JUDGE COHN JUBELIRER: And thank you for the  
14 clarification.

15 I don't think you intended to ask him for  
16 his legal opinion.

17 MR. BUKOWSKI: I wasn't and although when  
18 someone says the plain language of the statute says this  
19 and it does, I'm not sure that's a legal opinion; but I  
20 wasn't trying to elicit a legal opinion. We'll save that  
21 for argument.

22 MR. FISCHER: Your Honor?

23 THE WITNESS: I would say, though, that as  
24 my role as a Board of Commissioner and Board of Elections  
25 member that I can be called upon to interpret the Code.

1 That's one of our jobs that we've already stipulated and so  
2 that my opinion on how that is one vote of three.

3 BY MR. BUKOWSKI:

4 Q. And you're guided by a solicitor; is that right?

5 A. That is correct.

6 Q. And in your role as a member of the Lancaster  
7 County Board of Elections, do you believe you have the  
8 discretion to ignore what you understand to be the plain  
9 language of the Election Code?

10 A. No.

11 MR. BUKOWSKI: I have nothing further, Your  
12 Honor.

13 MR. KING: Very briefly, Your Honor.

14 MR. FISCHER: I thought Mr. King had no  
15 questions.

16 MR. BUKOWSKI: That was me.

17 CROSS-EXAMINATION (as on Redirect)

18 BY MR. KING:

19 Q. Commissioner, do you know how many democratic and  
20 republican undated ballots there were in Lancaster? I can  
21 give you the numbers.

22 A. I don't know the breakdown. I'm pretty sure it  
23 was 82 total, but I don't remember the breakdown.

24 Q. I think it was 50-some and 40-some if I'm not  
25 mistaken but somewhere in that neighborhood.

1 A. That sounds familiar.

2 Q. That's not my question but my question is, do you  
3 know whether if you had to go back and recertify this  
4 election, would you have to recertify all the positions  
5 that were on the ballot?

6 A. All the positions on the ballot?

7 Q. Well, for example, state committee post,  
8 democrat, republican, local committee?

9 A. Well, sure.

10 Q. Those are all on the ballot?

11 A. Those are all on the ballot so we have to  
12 recertify.

13 Q. Do you know whether if you were ordered to  
14 recertify this election, do you know whether that would  
15 make any difference potentially in the down-ballot races,  
16 committee posts? Were some of them decided by a vote or  
17 two?

18 A. It could. I don't know for sure but it could.

19 Q. What about the House races or the Senate races or  
20 the --

21 A. No.

22 Q. -- other races?

23 A. No. Those were decided handily.

24 Q. But they might change the result, for example, in  
25 those down-ballot races?

1 A. It could. I'd have to look at it obviously but  
2 it could.

3 MR. KING: Thank you.

4 MR. FISCHER: Thank you. Just a few more  
5 questions, Your Honor. We do not object to the admission  
6 of the exhibits. We don't necessarily concede that they're  
7 relevant, but we don't object to their admission at this  
8 point.

9 JUDGE COHN JUBELIRER: Okay.

10 (Whereupon, the documents were marked as  
11 Berks - Lancaster Exhibit Number 6 for  
12 identification and received in evidence.)

13 REDIRECT EXAMINATION (as on Recross)

14 BY MR. FISCHER:

15 Q. Sir, when the board or when the county receives a  
16 mail-in or absentee ballot, do you confirm that it was  
17 submitted by a registered voter?

18 A. Well, I told you we do. It comes in and then  
19 it's scanned. It goes into the SURE system, and then it's  
20 processed from there.

21 Q. And if a voter was not on the rolls, would the  
22 SURE system reflect that fact?

23 A. If they were not on the rolls?

24 Q. Yes.

25 A. Well, sure. They wouldn't show up.

1 Q. They wouldn't show up, okay. Now, could you look  
2 at the police criminal complaint? Do you have a copy of  
3 that?

4 A. I do not have a copy of that.

5 (Documents handed to the witness.)

6 BY MR. FISCHER:

7 Q. I'll direct you to page 4 which is the Affidavit  
8 of Probable Cause. Do you see that?

9 A. Yes.

10 Q. Can you take a look at paragraph 2?

11 A. Yes.

12 Q. It says Christa Miller stated she received a  
13 mail-in ballot from Teresa J. Mihaliak signed and dated  
14 April 26th, 2022, correct?

15 A. Correct.

16 Q. And then it says the ballot for the democrat  
17 primary was received on April 28th, 2022, by her office?

18 A. Correct.

19 Q. And then it says, however, Christa Miller  
20 reported that Teresa J. Mihaliak was deceased on April  
21 14th, 2022, correct?

22 A. Correct.

23 Q. So that's two weeks before the date the ballot  
24 was received?

25 A. Correct.



1 Q. Christa Miller said this was confirmed by an  
2 obituary and records for the Department of Health. She  
3 said Teresa J. Mihaliak was removed from the voter rolls on  
4 April 25th, 2022; is that correct?

5 A. That's correct.

6 MR. FISCHER: Nothing further, Your Honor.

7 MR. BUKOWSKI: I just have one brief  
8 redirect based on Mr. King's question which was Mr.  
9 D'Agostino because I wasn't sure if your answer included  
10 this.

11 RECROSS-EXAMINATION (as on Further Redirect)

12 BY MR. BUKOWSKI:

13 Q. As you know, the Secretary has refused to certify  
14 the statewide election results that include votes from  
15 Berks, Lancaster, and Fayette Counties. Do you have an  
16 understanding of whether any of those elections would be  
17 affected -- the outcome of any of those elections that the  
18 Secretary has to certify would be from the counting or not  
19 counting of any of the undated absentee or mail-in ballots  
20 in question?

21 A. I'm not aware of any of those races that would be  
22 affected.

23 MR. BUKOWSKI: That's all I have.

24 MR. FISCHER: Nothing further, Your Honor.

25 JUDGE COHN JUBELIRER: Thank you.

1 Thank you very much, Mr. D'Agostino. We  
2 appreciate your time today and your testimony.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 MR. BOYER: Thank you, Your Honor. We're  
6 going to call Mr. Christian Leinbach as if on cross.

7 JUDGE COHN JUBELIRER: Okay. Thank you.

8 MR. HOLLAND: Raise your right hand.

9 Whereupon,

10 CHRISTIAN LEINBACH,  
11 having been duly sworn, testified as follows.

12 MR. HOLLAND: Please be seated.

13 DIRECT EXAMINATION (as on Cross)

14 BY MR. BOYER:

15 Q. Good afternoon, Mr. Leinbach.

16 A. Good afternoon.

17 Q. My name is Jacob Boyer. I'm an attorney with the  
18 Office of Attorney General and represent the Department of  
19 State and the Acting Secretary in this matter. Are you a  
20 member of the Berks County Commissioners?

21 A. Yes, I am.

22 Q. And what's your role on that commission?

23 A. I chair the Board of Commissioners.

24 Q. Okay. As the Chair of the Board of

25 Commissioners, do you have certain responsibilities for the