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Dated: October 1, 2021

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**MONTGOMERY COUNTY BOARD
OF ELECTIONS**

and

**BUCKS COUNTY BOARD
OF ELECTIONS**

Petitioners,

v.

No. _____

**VERONICA DEGRAFFENREID
ACTING SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA**

Respondents.

**PETITION FOR REVIEW IN THE NATURE OF AN
ACTION FOR DECLARATORY JUDGMENT**

The Plaintiffs, Montgomery County and Bucks County Boards of Elections, bring this action for declaratory judgment against the Defendant, Veronica Degraffenreid, the Acting Secretary of the Commonwealth of Pennsylvania, seeking a declaration from the Court to determine whether votes from a ballot contained in an undated ballot envelope should be counted.

In support of this action for declaratory judgment, the Plaintiffs County Boards of Election aver the following:

I. The Parties

1. Montgomery County Board of Elections consists of the county commissioners and has its principal offices at One Montgomery Plaza, Suite 602, Norristown, PA 19404-0311. The Montgomery County Board of Elections has jurisdiction over the conduct of primary, special, and general elections in Montgomery County. 25 P.S. § 2642.

2. Bucks County Board of Elections consists of the county commissioners and has its principal offices at 55 E. Court Street, Doylestown, PA 18901. The Bucks County Board of Elections has jurisdiction over the conduct of primary, special, and general elections in Bucks County. 25 P.S. § 2642.

3. Veronica Degraffenreid, Acting Secretary of the Commonwealth (“Secretary Degraffenreid”), currently leads the Department of State (“DOS”), an agency of the Commonwealth of Pennsylvania maintaining its principal offices at 302 North Office Building, 401 North Street Harrisburg, PA 17120. DOS promotes the integrity of the electoral process in Pennsylvania. The powers and duties of the Secretary of Commonwealth are outlined in the Election Code. 25 P.S. § 2621.

II. Nature of Action and Jurisdiction

4. This is an action for declaratory judgment brought pursuant to the Declaratory Judgments Act, 42 Pa. C.S.A. §7531, et seq. This action falls within

the original jurisdiction of the Commonwealth Court of Pennsylvania pursuant to 42 Pa. C.S.A. §761(a)(1).

III. Factual Background

5. Pennsylvania's Election Code (25 P.S. §§2601-3354) was first enacted in 1937, establishing a county-based system for administering elections. *See* 25 P.S. §2641(a).

6. The Election Code vests each county board of elections with discretion to conduct elections and implement procedures intended to ensure the honesty, efficiency, and uniformity of Pennsylvania's elections. 25 P.S. §§2641(a), 2642(g); Perles v. Hoffman, 419 Pa. 400, 213 A.2d 781, 783 (1965). The Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice. Id. at 784.

7. In October 2019, the General Assembly of the Commonwealth of Pennsylvania enacted Act 77, bipartisan legislation that made significant changes to the Election Code. Act 77 provided, *inter alia*, the opportunity for all qualified electors in Pennsylvania to vote by mail, without any excuse required. 25 P.S. §§ 3150.11-3150.17.

8. The Election Code provides direction for the submission of Absentee and Mail-in ballots as follows:

[O]n or before eight o'clock P.M. the day of the primary or election, the mail-in elector shall, in secret, proceed to

mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then *fill out, date and sign the declaration printed* on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

25 P.S. §§ 3150.16(a), 3146.6(a) (emphasis added).

9. The Election Code also outlines the process for counties to canvass official absentee ballots and mail-in ballots. 25 P.S. § 3146.8.

10. On September 11, 2020, the Secretary of the Commonwealth, Kathy Boockvar, ("Secretary Boockvar"), issued guidance to the counties for examining absentee and mail-in ballot envelopes during pre-canvassing and canvassing. (Attached as Exhibit A). The guidance stated definitely that "if the Voter's Declaration on the return envelope is blank, that ballot return envelope must be set aside and not counted."

11. Secretary Boockvar's guidance allowed the counties discretion to determine if the Voter's Declaration was sufficiently completed to be approved for canvassing.

12. On September 28, 2020, the Secretary issued additional guidance that stated that ballot materials should include a “pre-addressed outer ballot-return envelope that contains a declaration which the voter must sign and date.” (Attached as Exhibit B). “A ballot-return envelope with a declaration that is filled out, dated, and signed by an elector who was approved to receive an absentee or mail-in ballot is sufficient and counties should continue to pre-canvass and canvass these ballots.”

13. In an Opinion dated November 23, 2020, the Pennsylvania Supreme Court (the “PA Supreme Court”) considered the question of whether the Election Code requires a county board of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot's outer envelope but did not handwrite their name, their address, and/or a date, where no fraud or irregularity has been alleged. In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election, 241 A.3d 1058 (Pa 2020).

14. One of the appeals reviewed by the PA Supreme Court was that of Nicole Zicarelli (“Zicarelli”), a candidate for the Pennsylvania Senate in the 45th Senatorial District (Allegheny-Westmoreland counties) who challenged the November 10, 2020 decision of the Allegheny County Board of Elections (the “Allegheny County Board”) to canvass 2,349 mail-in ballots that contained a signed – but undated – declaration.

15. Before the PA Supreme Court, Zicarelli argued “in regard to outer envelopes not containing a voter-supplied date, this Court's opinion in In Re: Nov. 3, 2020 General Election, No. 149 MM 2020, 2020 WL 6252803 (Pa. Oct. 23, 2020) definitively speaks to the mandatory nature of the date requirement and, without much extrapolation, requires that such ballots not be counted. The Allegheny County Board agrees with its Philadelphia counterpart. It counters Zicarelli's reliance on In Re Nov. 3, 2020 General Election by noting that Zicarelli's challenge to the ballots for lack of a date is based on the premise that the date is essential to the validity of the signature. Allegheny County Board points out this is the precise type of challenge that was disavowed in the case upon which Zicarelli relies.” In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election, 241 A.3d at 1070.

16. A four-justice majority of the PA Supreme Court held that the ballots were not invalid, and thus, Allegheny County could properly count them. Relying on its Opinion in Pa. Democratic Party v. Boockvar, 238 A.3d 345, 356 (Pa. 2020), the PA Supreme Court explained that “while both mandatory and directory provisions of the Legislature are meant to be followed, the difference between a mandatory and directory provision is the consequence for non-compliance: a failure to strictly adhere to the requirements of a directory statute will not nullify the validity of the action involved.” Pa. Democratic Party, 238 A.3d at 378.

Accordingly, the PA Supreme Court ruled that although failure to include a date in the voter declaration on the back of the ballot envelope constituted a technical violation of the Election Code, it did not warrant the resultant disenfranchisement of thousands of Pennsylvania voters. The PA Supreme Court specifically held that a county board of elections must have a compelling reason for refusing to canvass a ballot due to mere minor irregularities.

17. The PA Supreme Court's Opinion was authored by Justice Donohue. Justices Baer and Todd joined in the opinion. Justice Wecht concurred in the PA Supreme Court's result and filed a separate Opinion. Justice Dougherty filed a concurring and Dissenting Opinion that Chief Justice Saylor and Justice Mundy joined.

18. In his Concurring Opinion, Justice Wecht qualified his agreement to count the ballots that were the subject of the appeal and explained that in future elections, the date requirement should be viewed as "mandatory," rather than "directory" and prospectively, the omission of a date would be sufficient to invalidate the ballot in question. In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election, 241 A.3d at 1079.

19. Judge Wecht's decision that the challenged ballots should be counted was based, in part, on his belief that voters were not adequately informed of the consequences of failing to include the date along with a signature in the Voter's

Declaration. Id. at 1089. In finding that the date should be required in future elections, Judge Wecht expressed confidence that the issues raised during the 2020 General Election would be addressed by the legislature. “[B]ecause this is the second time this Court has been called upon to address the declaration requirement, it seems clear that the General Assembly might clarify and streamline the form and function of the declaration, perhaps prescribing its form to advance clarity and uniformity across the Commonwealth.” Id.

20. Since the date of Judge Wecht’s Concurring Opinion, the legislature has failed to provide any clarification for voters or county boards of election regarding the Voter’s Declaration.

21. Zicarelli filed a separate action in the Western District of Pennsylvania, contending that even though a majority of the PA Supreme Court determined that Allegheny County could count ballots in envelopes with undated declarations, she interpreted the decision to mean that those ballots were invalid under Pennsylvania’s election code. Zicarelli v. Allegheny Cty. Bd. of Elections, 2021 WL 101683,*1 (W.D. Pa., Jan. 12, 2021).

22. Zicarelli argued that the decision of the PA Supreme Court was not controlling and that, instead, reading Justice Wecht’s concurring opinion together with the other dissenting opinions shows that four justices found that the date requirement was “mandatory,” such that the ballots are per se invalid under

Pennsylvania law, and thus cannot be counted. Judge Ranjan disagreed and instead found that the correct interpretation of the PA Supreme Court's decision on Zicarelli's state-court appeal was that the challenged ballots were valid and should be counted.

23. The 2021 Pennsylvania Primary was held on May 18, 2021. During its pre-canvass and canvass, the Montgomery County and Bucks County Boards of Election approved the canvassing of ballots received by 8:00 p.m. on Election Day and in envelopes with a signed declaration but no date. The ballots were counted based on the decisions issued in In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election, 241 A.3d 1058 (Pa 2020) and Zicarelli v. Allegheny Cty. Bd. Of Elections, 2021 WL 101683, *1 (W.D.Pa., Jan. 12, 2021), as well as the guidance issued by the Secretary in September of 2020.

24. In the 2021 Primary Election, 176 voters returned ballots in undated envelopes which amounts to approximately .000029 percent of the total returned ballots. In the 2020 General Election, a very similar percentage of returned ballots were in undated envelopes. These numbers show that voters have not become more aware that a failure to date a ballot envelope disqualifies their votes.

25. On June 1, 2021, Jonathan Marks, Deputy Secretary for Elections & Commissioners at the DOS sent an e-mail communication to counties. (A copy of

the e-mail is attached as Exhibit C). The e-mail communication stated the following:

Since the Municipal Primary on May 18, the department has seen several news articles suggesting that some counties are continuing to accept and count ballots that do not contain both a signature and a date on the voter's declaration.

As you know, the department updated the content and the instructions on the declaration envelope to ensure that voters know they must **sign and date** the envelope for their ballot to be counted. Furthermore, our updated guidance is consistent with the Supreme Court's ruling last September in *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, wherein the Court held that in future elections a voter's declaration envelope must be both signed and dated for the ballot to count. Though we share your desire to prevent the disenfranchisement of any voter, particularly when it occurs because of a voter's inadvertent error, we must strongly urge all counties to abide by the Court's interpretation of this statutory requirement.

We also believe that it is prudent to again remind you of our previous clarification of 10/25/2020. As noted in that communication, there is no basis to reject a ballot for putting the "wrong" date on the envelope, nor is the date written used to determine the eligibility of the voter. You should process these ballots normally.

If you have any questions about the guidance posted on the department's website, please contact us and please consult with your solicitor.

IV. Declaratory Relief Sought

26. Pennsylvania courts ruled that ballots submitted without a dated Voter's Declaration should be counted in the 2020 General Election.

27. A question remains as to how these ballots should be treated in future elections.

28. The Plaintiff County Boards of Election, therefore, seek to have this Court declare that ballot envelopes that have a signed but undated Voter's Declaration should be accepted for canvassing by county boards of election.

29. Without the declaration, voters will be disenfranchised in future elections.

WHEREFORE, the Plaintiffs hereby request the entry of an Order declaring that ballot envelopes that have a signed but undated Voter Declaration should be accepted for canvassing by county boards of election.

Respectfully submitted,
MONTGOMERY COUNTY SOLICITOR

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(215) 348-6464

Attorneys for the Petitioners

Dated: October 1, 2021

VERIFICATION

I, Lee A. Soltysiak, Chief Clerk of the Montgomery County Board of Elections, hereby state that I am authorized to make this verification on behalf of the Plaintiffs, and that the statements made in the foregoing Action for Declaratory Judgment are true and correct to the best of my knowledge, information and belief. I understand that this statement is being made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Lee A. Soltysiak

Dated: October 1, 2021

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.

/s/ Maureen E. Calder
Maureen E. Calder, Esquire

Dated: October 1, 2021

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MONTGOMERY COUNTY BOARD
OF ELECTIONS

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No. _____

VERONICA DEGRAFFENREID
ACTING SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Petition to Review upon the following by certified mail, which service satisfies the requirements of Pa.R.A.P. 121:

Veronica Degraffenreid
Acting Secretary
Commonwealth of Pennsylvania
302 North Office Building
401 North Street
Harrisburg, PA 17120

Josh Shapiro
Attorney General
Commonwealth of Pennsylvania
15th Floor
Strawberry Square
Harrisburg, PA 17120

/s/ Maureen E. Calder
Maureen E. Calder, Esquire

Dated: October 1, 2021

EXHIBIT A

TLP: WHITE



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

Date: September 11, 2020

Version: 1.0

EXAMINATION OF ABSENTEE AND MAIL-IN BALLOT RETURN ENVELOPES

1 BACKGROUND:

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

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

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

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

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

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

3 EXAMINATION OF DECLARATION ON BALLOT RETURN ENVELOPES:

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

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

After setting aside ballots of elector's who died prior to the opening of the polls, the county board of elections shall examine the Voter's Declaration on the outer envelope of each returned ballot and compare the information on the outer envelope, i.e., the voter's name and address, with the information contained in the "Registered Absentee and Mail-in Voters File, the absentee voter's list and/or the Military Veterans' and Emergency Civilians Absentee Voters File."

If the Voter's Declaration on the return envelope is blank, that ballot return envelope must be set aside and not counted. If the board determines that a ballot should not be counted, the final ballot disposition should be noted in SURE. The ballot return status (Resp Type) should be noted using the appropriate drop-down selection.

If the Voter's Declaration on the return envelope is signed and the county board is satisfied that the declaration is sufficient, the mail-in or absentee ballot should be approved for canvassing unless challenged in accordance with the Pennsylvania Election Code.

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

Version	Date	Description	Author
1.0	9.11.2020	Initial document release	

EXHIBIT B

TLP: WHITE



**GUIDANCE CONCERNING CIVILIAN ABSENTEE AND MAIL-IN
BALLOT PROCEDURES**

Date: September 28, 2020

Version: 1.0

GUIDANCE CONCERNING CIVILIAN ABSENTEE AND MAIL-IN BALLOT PROCEDURES

1 MAIL-IN AND CIVILIAN ABSENTEE BALLOTING – GENERAL PROVISIONS

Qualified voters may apply at any time on or before 5:00 p.m. on the Tuesday before any primary or election for a mail-in or civilian absentee ballot, and county boards of elections must begin processing applications at least fifty (50) days before the primary or election. County boards of elections may process applications earlier than fifty (50) days before the primary or election, if the county board of elections determines that it is better for its operational needs to do so.

1.1 WHO MAY REQUEST AN ABSENTEE OR MAIL-IN BALLOT?

All qualified voters in Pennsylvania are eligible to vote by mail-in ballot, and no excuse is required. For example, even if a voter will be present in their municipality on Election Day, but would simply prefer to vote from home, they may request a mail-in ballot.

Absentee ballots may be voted by domestic voters who will be absent from their municipality on Election Day due to work or vacation, voters who are celebrating a religious holiday, and voters such as college students who also may be away from the municipality on Election Day, if they don't choose to vote where they go to school. Absentee ballots are also for those who are unable to attend their polling place due to illness or physical disability.

A voter may only qualify for and vote one ballot.

2.2 Permanent Voter Lists

Any qualified voter can request to be placed on the permanent **mail-in** voter list at any time.

For the permanent annual **absentee** ballot list, only voters with a permanent illness or disability are eligible; this section does not apply to voters expecting to be absent from the municipality. Absentee voters who request to be placed on the permanent absentee list do not have to renew their physician's certification of continued disability every four (4) years or list it on each application.

If voters wish to request to become an annual permanent voter:

- For annual permanent **mail-in** list requests: these requests may be submitted when completing their online mail-in ballot request application.
- For annual permanent **absentee** list requests: this may be submitted by paper application only due to the physician's certification requirement.

Each year the county must send an application to any voter on the permanent absentee and mail-in voter lists by the first (1st) Monday in February. The yearly application, once approved, serves as a standing request for a mail-in or absentee ballot to be mailed to that voter for every election that calendar year and for any special election until the third (3rd) Monday in February the next year.

If a permanent mail-in or permanent absentee voter no longer wishes to receive a ballot for the upcoming election or wishes to cancel her permanent status, the voter can submit a cancellation form to the county board of elections. The cancellation form can be found at VotesPA.com.

2 REQUESTING AN ABSENTEE OR MAIL-IN BALLOT

There are three (3) ways by which voters can apply for mail-in or absentee ballots:

1. By Mail
2. In Person
3. Online

2.1 MAIL REQUESTS

A voter may submit a paper application via mail to the county board of elections for absentee and mail-in ballot applications.

2.2 IN-PERSON (OVER THE COUNTER) REQUESTS

Act 77 of 2019 allows voters to request and cast an absentee or mail-in ballot over the counter in advance of Election Day. After ballots are finalized by a county, voters may apply at a County Election Office (CEO) during established business hours to receive and cast a mail-in or absentee ballot in person while the voter is in the office.

Once the voter is determined to be qualified and the application for an absentee or mail-in ballot is approved, the county board of elections **must promptly present** the voter with the voter's mail-in or absentee ballot. Under Section 1305 of the Election Code, 25 P.S. § 3146.5, a county board of elections may not deny the eligible voter's request to have the ballot presented to the voter while the voter is at the office unless there is a bona fide objection to the absentee or mail-in ballot application. Voters still need to provide proof of identification (as defined in the Election Code) to be verified by county boards of elections to vote an absentee or mail-in ballot. Proof of identification for civilian absentee and mail-in voting include a valid driver's license number, the last four digits of the voter's social security number or other valid photo identification.

Voters who receive a mail-in or absentee ballot in person must be provided an opportunity to privately and secretly mark their ballot. **Note:** *The marking of the ballot in secret does not have to take place in the election offices. It can be provided in a nearby location.*

2.2.1 Satellite County Election Offices

County election boards may provide for mail-in and absentee application processing and balloting at more than one location within county borders.

Counties may establish additional business hours for CEOs; hours do not have to be limited to weekdays or to typical business hours. Counties are encouraged to offer business hours outside of these time frames, including weeknights or weekend hours to enable maximum flexibility and convenience for voters.

When a county decides to provide additional mail-in and absentee balloting by establishing additional CEOs, the county must account for all of the following:

- Each CEO must be staffed by appointed elections personnel in municipal or county-owned or leased locations selected by the county board of elections for processing applications and in-person voting of both mail-in and absentee ballots.
- Each CEO must have a secure county network connection that is capable of connecting to the Statewide Uniform Registry of Electors (SURE), and staff trained and approved to access SURE. NOTE: The Department will work with counties to establish secure connections; the county network extension must be approved by the Department.
- Each CEO must either have copies of all ballot styles available to be voted in the county, or an on-demand ballot printer capable of printing all ballot styles available to be voted in the county.
- Each CEO must have a secure ballot collection receptacle to store voted mail-in or absentee ballots submitted at the location. County boards of election are required to keep voted ballots in a sealed or locked container until the time of pre-canvassing.
- Please see the Department of State’s August 19, 2020 Absentee and Mail-In Ballot Return Guidance for more information and guidance on choosing a location for a CEO.

2.3 ONLINE REQUESTS

A voter may submit either an absentee or mail-in ballot request online via the Department’s online portal at PA Voter Services.

Online applications must be processed according to the same statutory requirements as an application submitted by-mail or in person, including the proof of identification requirements defined in the Election Code.

3 DELIVERY OF MAIL-IN AND ABSENTEE BALLOTING MATERIALS

Counties must begin delivering mail-in or absentee ballots as soon they are certified and available. Counties may await the outcome of pending litigation that affects the contents of the ballots, but in any event the county must begin delivering mail-in or absentee ballots no later than the 2nd Tuesday prior to Election Day.

Once the counties begin delivering their ballots, as additional applications are received and approved, the county must deliver or mail ballots to such additional voters within forty-eight (48) hours of receipt of approved applications.

3.1 BALLOTING MATERIALS

The absentee and mail-in balloting materials must include the following:

1. The voter’s proper ballot style based on the voter’s registration address.
2. A white, inner (or “secrecy”) envelope that indicates official ballot.

3. A pre-addressed outer ballot-return envelope that contains a declaration which the voter must sign and date.

The ballot must be returned within the inner envelope, which must be placed in the pre-addressed outer envelope.

With regard to the inner envelope:

- The Pennsylvania Supreme Court held on September 17, 2020, that any ballot that is not returned in the official ballot envelope (secrecy envelope) must be set aside and declared void. These ballots have been referred to as “naked ballots.” In accordance with that ruling, all ballots that are not returned within the inner envelope must be set aside and may not be counted. **Counties are strongly encouraged to include an instructional insert which describes how the voter should mark and return their ballot and to clearly warn that ballots must be returned in the secrecy envelopes or they will not be counted.** The Department encourages county boards of election to publicize the requirement that ballots must be returned within the inner envelope, including on the county’s website, in their offices, at ballot collection sites, and in other locations that may assist and educate voters.
- If any voted ballot’s inner (or “secrecy”) envelope contains any text, mark, or symbol which reveals the identity of the voter, the voter’s political affiliation (party), or the voter’s candidate preference, the envelopes and the ballots inside them must be set aside, declared void and may not be counted.

With regard to the outer ballot-return envelope:

- A ballot-return envelope with a declaration that is filled out, dated, and signed by an elector who was approved to receive an absentee or mail-in ballot is sufficient and counties should continue to pre-canvass and canvass these ballots.
- A ballot-return envelope with a declaration that is not filled out, dated, and signed is not sufficient and must be set aside, declared void and may not be counted. Ballot-return envelopes must be opened in such a manner as not to destroy the declarations executed thereon.
- All ballot-return envelopes containing executed declarations must be retained for a period of two years in accordance with the Election Code.

3.2 BALLOT DESIGN REQUIREMENTS

Act 12 of 2020 changed the law with respect to the surrender process for voters who request mail-in or absentee ballots.

Pursuant to Act 12 of 2020, a warning notice is required to be listed on both the absentee and mail-in ballots, which states:

WARNING: If you receive an absentee or mail-in ballot and return your voted ballot by the deadline, you may not vote at your polling place on election day. If you are unable to return your voted absentee or mail-in ballot by the deadline, you may only vote a provisional ballot at your polling place on election day, unless you surrender your absentee or mail-in ballot and envelope to the judge of elections to be voided to vote by regular ballot.

4 RETURN OF BALLOTS BY VOTERS

4.1 VOTER MUST RETURN OWN BALLOT

A voter must return his or her own completed absentee or mail-in ballot by 8:00 pm on Election Day to the county board of elections or other county-designated drop-off location. Third-person delivery of absentee or mail-in ballots is not permitted, and any ballots delivered by someone other than the voter are required to be set aside. The only exceptions are voters with a disability who have designated in writing an agent to deliver their ballot for them. Agency forms may be found at VotesPA.com. Emergency absentee ballots also may be delivered by a designated agent.

4.2 COLLECTION OF MAIL-IN AND ABSENTEE BALLOTS

In addition to the main CEO and satellite CEOs, counties may provide for other secure ballot collection locations that the county deems appropriate to accommodate in-person return of voted mail-in and absentee ballots. ***Please refer to the Department's August 19, 2020 Absentee and Mail-In Ballot Return Guidance for more information and guidance regarding ballot collection locations and procedures.***

County boards of election are required to keep absentee and mail-in ballots in a sealed or locked container(s) until the time of pre-canvassing.

4.3 SURRENDER PROCESS FOR VOTERS WHO REQUEST MAIL-IN OR ABSENTEE BALLOTS

Once a voter requests a civilian absentee or mail-in ballot, they should vote and return that mail-in or absentee ballot by mail, or deliver it in person to a county elections office (CEO) or other designated drop-off location prior to 8:00 P.M. on Election Day.

However, if a voter has not voted their mail-in or absentee ballot, they may take it to their polling place on election day to surrender it. (NOTE: This is a different procedure than was in place for the June 2020 primary. Act 12 of 2020 changed the procedures for voters who request mail-in or absentee ballots, but later appear at their polling place. These changes take effect for the first time in the November 2020 General Election.)

Specifically, a voter who requests a mail-in or absentee ballot and who is not shown on the district register as having voted the ballot may vote at their polling place on Election Day if (1) the voter surrenders the original mail-in or absentee ballot and its outer envelope to the judge of elections to be spoiled, and (2) the voter signs a statement subject to the penalties under 18 Pa. C.S. § 4904 in substantially the following form:

I hereby declare that I am a qualified registered elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast my absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot and the envelope containing the declaration of the elector to the judge of elections at my polling place to be spoiled and therefore request that my absentee ballot or mail-in ballot be voided.

If the voter turns in (surrenders) his or her ballot and outer envelope and signs the statement, the voter is permitted to vote by regular ballot at the polling place.

If a voter whose record in the district poll book indicates that the voter requested a mail-in or absentee ballot but the voter does not surrender their ballot and declaration envelope and sign the required statement, the voter should be provided a provisional ballot. Even if the voter asserts that they did not cast a mail-in or absentee ballot and is eligible to vote, the voter should only be provided a provisional ballot.

5 ABSENTEE AND MAIL-IN VOTING PROCESSES FOR COUNTY ELECTION OFFICIALS

5.1 POLL BOOK PROCESSES

The poll books will be divided into two sections.

The main section will include a) voters who have not requested a mail-in or absentee ballot for this election and b) voters who requested an absentee or mail-in ballot but who did not return their ballot by the date the pollbooks were printed. There will be a special watermark in the poll book indicating that voters who did not return their ballot by the date the pollbooks were printed must either surrender their ballot as described in Section 4.3 above or vote provisionally if they appear at the polling place on Election Day.

The secondary section of the pollbook will contain a list of voters who have both requested and returned their ballot (cast their vote) by the time the poll book was printed.

Voters who requested but have not returned their absentee or mail-in ballot may vote in person at their polling place on election day ONLY if they surrender their ballot and the declaration envelope that accompanies it, as described in Section 4.3 above. The poll worker shall take the surrendered ballot and declaration envelope and mark them as "VOID." There is a location in the poll book where the poll worker must indicate that the items were surrendered. The voided ballot and declaration envelope, and the signed surrender declaration should be placed in a secure envelope or container and returned to the county election office with other polling place materials at the end of the voting day. The surrendered ballot materials must be preserved.

As noted above, the poll book record for voters whose cast absentee or mail-in ballot has already been received will indicate that the voter's ballot was cast and they are not eligible to vote at the polling place. This will aid poll workers when checking in voters to easily determine that these voters are not eligible to vote on the voting equipment but may vote provisionally if the voter believes they are eligible to vote.

The watermarks in the poll books as listed above also apply to voters with a permanent flag on their voter record. In either case, the poll worker will be able to determine the appropriate course of action when reviewing the poll book on election day.

5.2 PRE-CANVASSING AND CANVASSING ABSENTEE AND MAIL-IN BALLOTS

The Act 12 of 2020 amendments provide for a pre-canvass period beginning on the morning of Election Day to canvass all ballots received prior to the pre-canvass meeting. The amendments further provide for a canvass meeting beginning no earlier than the close of polls to canvass all ballots not included in the pre-canvass meeting.

Pre-canvass Meeting

- The **pre-canvass** may begin no earlier than 7:00 AM on Election Day. County boards of election must provide notification of the time and location of a pre-canvass meeting at least 48 hours prior to the meeting by posting notice on its website.
- The county board of elections must provide a list of the names of the voters whose absentee or mail-in ballots are to be pre-canvassed.
- One authorized representative for each candidate and one authorized representative for each political party must be permitted to remain in the room where the pre-canvass meeting occurs.
- Persons observing, attending or participating in the pre-canvass meeting MAY NOT disclose the result of any portion of the pre-canvass prior to the close of polls on Election Day.
- The Department strongly urges all counties to begin pre-canvassing at the earliest time allowed to ensure that results can be tabulated promptly.

Canvass Meeting

- The **canvass** of mail-in and absentee ballots may begin no earlier than the close of polls and no later than the 3rd day following the election. County boards of election must provide notification of the time and location of the **canvass** meeting at least 48 hours prior to the meeting by posting notice on its website.
- The county board of elections must provide a list of the names of the voters whose absentee or mail-in ballots are to be canvassed.
- The canvass process must continue through the 8th day following the election to include valid military and overseas ballots received by 5:00 PM on the 7th day following the election.
- One authorized representative for each candidate and one authorized representative for each political party must be permitted to remain in the room where the canvass meeting occurs.
- The Department strongly urges all counties to begin canvassing at the earliest time allowed to ensure that results can be tabulated and reported promptly.

Pre-canvass and Canvass Procedures

At the pre-canvass or canvass, as the case may be, the county board of elections should:

- Segregate the unopened ballots of voters whose applications were challenged by the challenge deadline (5:00 PM on the Friday before the election).
 - These ballots must be placed in a secure, sealed container until the board of elections holds a formal hearing on the challenged ballots.
 - Ballot applications can only be challenged on the basis that the applicant is not qualified to vote.
- Set aside the ballot of any voter who was deceased before election day.

- Set aside any ballots without a filled out, dated and signed declaration envelope.
- Set aside any ballots without the secrecy envelope and any ballots in a secrecy envelope that include text, mark, or symbol which reveals the identity of the voter, the voter’s political affiliation (party), or the voter’s candidate preference.

The Election Code does not permit county election officials to reject applications or voted ballots based solely on signature analysis.

No challenges may be made to mail-in or absentee ballot applications after 5:00 pm on the Friday before the election.

No challenges may be made to mail-in and absentee ballots at any time based on signature analysis.

NOTE: For more information about the examination of return envelopes, please refer to the Department’s September 11, 2020 *Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes*.

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Version History:

Version	Date	Description
1.0	9.28.2020	Initial document release

EXHIBIT C

From: [Marks, Jonathan](#)
To: [Marks, Jonathan](#)
Subject: DOS Email: Reminder Regarding Requirement to Sign AND Date Declaration Envelopes
Date: Tuesday, June 1, 2021 9:20:44 AM

Good morning everyone.

Since the Municipal Primary on May 18, the department has seen several news articles suggesting that some counties are continuing to accept and count ballots that do not contain both a signature and a date on the voter's declaration.

As you know, the department updated the content and the instructions on the declaration envelope to ensure that voters know they must **sign and date** the envelope for their ballot to be counted. Furthermore, our updated guidance is consistent with the Supreme Court's ruling last September in *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, wherein the Court held that in future elections a voter's declaration envelope must be both signed and dated for the ballot to count. Though we share your desire to prevent the disenfranchisement of any voter, particularly when it occurs because of a voter's inadvertent error, we must strongly urge all counties to abide by the Court's interpretation of this statutory requirement.

We also believe that it is prudent to again remind you of our previous clarification of 10/25/2020. As noted in that communication, there is no basis to reject a ballot for putting the "wrong" date on the envelope, nor is the date written used to determine the eligibility of the voter. You should process these ballots normally.

If you have any questions about the guidance posted on the department's website, please contact us and please consult with your solicitor.

Thank you for everything that you do.

Kind Regards,

Jonathan M. Marks
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