Steps to Enhance Election Integrity

SUMMARY

- In 2020, Pennsylvania's newly amended election law struggled under unprecedented mail-in voting. In addition, last-minute state guidance and judicial decisions skirted state election law, further delaying results and causing confusion.

- According to the state constitution, election law changes must occur via the legislative process.[1]

- To preserve the integrity of elections, state law must impose manageable mail-in ballot deadlines to ensure timely, accurate processing and clarify a remediation processes for flawed ballots.

- A majority of voters from all political parties support election reform proposals, including earlier deadlines to apply for and submit mail-in ballots.[2]

THE PROBLEM

- **Act 77 of 2019 approved "no-excuse" mail-in voting. An unanticipated 3.1 million mail-in ballot requests during the 2020 election (and 2.7 million cast) far exceeded the 262,000 absentee ballots cast in 2016**.[3] Several notable issues arose.

  - **Delayed ballot processing**. County officials could not begin pre-canvassing (prepping, but not tabulating) mail-in ballots until 7 a.m. on Election Day.[4] Many election officials struggled to process mail-in ballots and simultaneously operate the polls, which postponed voting results for days.

  - **Unrealistic ballot application deadlines.** Voters can request mail-in ballots up to seven days prior to the election, but delays in receiving and completing mail-in ballots compromised voters' ability to meet the 8 p.m. voting deadline. Consequently, a reported 100,000 voters instead cast time-consuming provisional ballots at the polls.

  - **Ballot "curing" confusion**. The Election Code states that ballots with missing signatures or secrecy envelopes ("naked ballots") should be voided, yet it is silent on if, and how, voters could

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[1] Pennsylvania General Assembly, the Constitution of Pennsylvania, Article VII Elections, https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=00&div=0&chpt=7.

[2] "Post-Election Voter Sentiment Survey," Bullfinch Group, commissioned by the Commonwealth Foundation. Includes 401 2020 Pennsylvania voters survey between December 15‑18, 2020, with a 4.9% margin of error.

[3] Pennsylvania General Assembly, "Act 77 of 2019," https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2019&sessInd=0&act=77; "Election Reform Preliminary Report," County Commissioners Association of Pennsylvania (January 2021), https://www.pacounties.org/GR/Documents/CCAPElectionsReformReportJanuary2021.pdf; "Analysis of Absentee/mail-in Voting, 2016—2018," Ballotpedia, https://ballotpedia.org/Analysis_of_absentee/mail-in_voting,_2016-2018.

[4] Pennsylvania General Assembly, "Act 12 of 2020," https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2020&sessInd=0&act=12.

be notified and allowed to cure their ballots—leading counties to seek guidance that opened the door for inconsistent treatment of ballots across counties.[5]

- **Judicial rulings and Department of State guidance complicated election procedures and at times contradicted election law**. County officials were confused by changing Department of State (DOS) guidance, questioning whether it was statutory or "truly guidance/best practices."[6]

  - **Altering voting deadlines.** Act 77 pushed the mail-in ballot submission deadline from the Friday before an election to 8 p.m. Election Day. Yet in September 2020, the Pennsylvania Supreme Court circumvented the statutory deadline to receive mail-in ballots by extending it three days regardless of postmarks.[7] DOS then issued last-minute, conflicting instructions on canvassing those ballots.[8]

  - **Determining ballot defect procedures outside of state law**. DOS told counties mail-in ballots could not be rejected because of signature analysis[9] and that they could alert voters—or political parties as the intermediary—of ballot defects in order to submit provisional ballots at the polls. State courts upheld these directives just prior to Election Day.[10]

- **The off-year May 2021 primary election ran more smoothly without the rush of state and court orders, yet counties still struggled in the lead-up to the election and amidst higher-than-expected turnout—including over 550,000 mail-in/absentee ballots**.

  - About one-third of election directors left their positions amidst increased staffing hours and expense required for implementing elections after Act 77. Tasks included mailing the annual mail-in ballot list applications, processing voter registration, processing mail-in ballot applications, counting ballots, and preparing the polls for Election Day.[11]

  - Numerous day-of errors occurred throughout the state. York and Delaware counties ran out of ballots, Luzerne County mislabeled ballots, and Lancaster and Fayette counties erroneously printed mail-in ballots. Steps were taken to accurately count votes, including separate storage and hand counting, yet voter complaints caused delayed results.[12]

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[5] The Election Code allows a six-day period post-election to verify ballots cast without proof of identity.

[6] "Election Reform Preliminary Report," County Commissioners Association of Pennsylvania (January 2021), https://www.pacounties.org/GR/Documents/CCAPElectionsReformReportJanuary2021.pdf.

[7] *Pa. Democratic Party* v. *Boockvar, et al.*, No. 133 MM (2020), http://www.pacourts.us/assets/opinions/Supreme/out/J-96-2020mo%20-%20104548450113066639.pdf. The case was brought by the Democratic Party and officials and aligned with advocacy by the Wolf administration. They further ruled ballot drop boxes are legal, a practice not authorized via state statute, and upheld the statutory poll watcher residency requirement as constitutional.

[8] DOS's initial instructions were to separate and not canvass the ballots received during the extended deadline, only three days later instructing counties to canvass the segregated ballots as soon as possible, drawing the attention of the U.S. Supreme Court.

[9] *In Re November 3, 2020 General Election,* No. 149 MM (2020), https://www.leagle.com/decision/inpaco20201026a01. The decision was ultimately supported by the court on October 23. The court rejected Boockvar's petition that "absentee and mail-in ballots and the applications for those ballots may not be challenged by third-parties based on signature comparison at any time."

[10] A Commonwealth Court judge ruled county election boards could still count provisional ballots cast by voters who were alerted to mistakes.

[11] Marie Albiges, "A New Wave of Election Directors Step in to Fill Pa.'s Many Vacancies—with Little Training and Varying Experiences," Spotlight PA (May 17, 2021), https://www.spotlightpa.org/news/2021/05/pa-primary-voting-ballot-election-directors-county-training/.

[12] Michael Rubinkam, "Polling Places Run Out of Ballots in Pennsylvania Primary," AP (May 19, 2021), https://apnews.com/article/pa-state-wire-pennsylvania-wilkes-barre-elections-97a47c896e73aeedaa63d234630a245a.

SOLUTIONS

Pennsylvania's election law was minimally updated since 1937 until the major changes of Act 77. As revealed from the testimony of over 50 experts and state and county officials during the Pennsylvania House State Government Committee's 10 hearings—as outlined in their final report—and reinforced through independent research, Pennsylvania election processes require fine-tuning to ensure officials can uphold voter security and uniformity across the state.[13]

1. **Move the mail-in ballot application deadline from seven to at least 15 days before an election to ensure every vote counts**.

    - An earlier deadline will provide voters enough time to apply, receive, and cast their votes. This timeline ensures voters receive their confirmation email, eliminating the doubt driving voters to the polls to vote provisionally as a fail-safe. At the same time, counties will have more time to assure poll books are as current as possible. This aligns with USPS and County Commissioners Association of Pennsylvania (CCAP) recommendations, as well as with states that have long used mail-in ballots.

2. **Institute a consistent window within which counties must send mail-in ballots, including a three- to four-week, pre-Election Day deadline**.

    - Requiring counties to send mail-in ballots to applicants "when ballots are official"[14] and three to four weeks before Election Day—and within 48 hours for subsequent applications until the application deadline—will guarantee more voters receive and submit accurate ballots by the Election Day deadline. As a county official testified, a uniform mail date allows for consistent statewide messaging.[15]

3. **Require jurisdictions to begin processing absentee ballots the Friday before Election Day to improve the timeliness of results**.

    - Pre-canvassing before Election Day will help prevent long delays in vote counting and is supported by county election officials, commissioners, and Governor Tom Wolf.

4. **Require absentee ballots to be received by the time polls close and allow voters to submit their mail-in ballots at the polls on Election Day**.[16]

    - An Election Day deadline to receive all ballots will eliminate the possibility of post-election voting and minimize vote-counting delays.

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[13] House State Government Committee, "A Comprehensive Review of Pennsylvania's Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System," Pennsylvania House of Representatives (May 10, 2021), http://www.repgrove.com/Display/SiteFiles/418/OtherDocuments/2021/Election%20Oversight%20Hearing%20Final%20Report.pdf.
[14] Currently, voters can request and submit their mail-in or absentee ballots up to 50 days before the election—a point before which ballots and candidates are finalized.
[15] House State Government Committee, "A Comprehensive Review of Pennsylvania's Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System," Pennsylvania House of Representatives (May 10, 2021), http://www.repgrove.com/Display/SiteFiles/418/OtherDocuments/2021/Election%20Oversight%20Hearing%20Final%20Report.pdf.
[16] Current exemptions for overseas and military voters should continue, as they constitute a small voting block that will not significantly delay results.

- Allowing voters to drop off their mail-in ballots at the polls will address voter concerns of missing the voting deadline and reduce confusion about whether someone appearing at the polls without a voided mail-in ballot actually voted or needs a provisional ballot.

5. **Institute good government guardrails against private or third-party funding of election administration and ballot mailing**.

   - Private organizations provided millions of dollars in grant money directly to several local governments to administer the 2020 elections.[17]

   - Managing elections is a core responsibility of government. Pennsylvania law should outline which level of government can accept money from corporations or nonprofits to administer elections—and subsequently the distribution formula and process—to protect against election interference from any political party, campaign, or special interest.

   - According to Pennsylvania election officials, limiting outside groups from mailing prefilled voter and mail-in ballot applications, and requiring parties to identify themselves on the applications, will reduce confusion caused by third parties.[18]

6. **Provide legislative clarity on drop boxes to ensure consistent ballot and voting standards**.

   - Statutory direction on the location, staffing, security, and location of drop boxes will help protect against concerns of illegal "ballot harvesting" by third parties, promote uniform voting security standards, and provide secure opportunities for Pennsylvanians to vote before Election Day.

   - Drop boxes should be treated with the same security standards as any polling place by requiring proper accessibility, public staffing, and access to bipartisan observers. Measures utilized by the eight states expressly permitting drop boxes and recommended by the United States Cybersecurity and Infrastructure Security Agency can guide best practices, including placing drop boxes in highly visible well-lit areas with constant camera or human monitoring.[19]

7. **Institute uniform identification and security standards for mail-in voting and ballot remediation to ensure elections are consistent and each voter is treated equally**.

   - Currently, voters requesting ballots must provide either a valid Pennsylvania driver's license or photo ID or the last four digits of their social security number. If unable to provide identification, voters are issued a ballot that will be counted six days post-election if subsequent identification is provided. A mailed-in ballot requires a voter declaration compared against voter files.

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[17] "Non-profits Providing Vote by Mail Support to City and County Election Offices," Ballotpedia, https://ballotpedia.org/Non-profits_providing_vote_by_mail_support_to_city_and_county_election_offices.

[18] House State Government Committee, "A Comprehensive Review of Pennsylvania's Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System," Pennsylvania House of Representatives (May 10, 2021), http://www.repgrove.com/Display/SiteFiles/418/OtherDocuments/2021/Election%20Oversight%20Hearing%20Final%20Report.pdf.

[19] Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group, "Ballot Drop Box," Cybersecurity and Infrastructure Security Agency (2020), https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf; "VOPP: Table 9: Ballot Drop Box Definitions, Design Features, Location and Number," National Conference of State Legislatures (April 23, 2021), https://www.ncsl.org/research/elections-and-campaigns/vopp-table-9-ballot-drop-box-definitions-design-features-location-and-number.aspx; Marc Hyden and Steven Greenhut, "The Case Against Restricting Voting Access," RStreet (February 15, 2021), https://www.rstreet.org/2021/02/15/the-case-against-restricting-voting-access/; John Finnerty, "Senate Begins Election Review," The Tribune-Democrat (March 15, 2021), https://www.tribdem.com/news/senate-begins-election-review/article_a2514ecf-4814-5556-9adf-d93c2161028e.html?mc_cid=122b568429&mc_eid=24b5ca5507.

- Incentivizing earlier identification verification for ballot applications will streamline processes for more timely results. Meanwhile, identity verification of mail-in ballots must be applied consistently across counties, integrating best practices from other states.[20] Options include:

    - Signature verification, typically comparing registration and ballot signatures, should integrate best practices in training election workers or bipartisan teams and/or using automation.

    - Similarly, alternative identification information on mail-in ballots—if implemented to protect privacy—could avoid the difficulty in signature matching.

- State statute should specify the remediation process, with deadlines, for ballots that are incomplete, incorrectly completed, or have signature flaws, and outline how voters are notified.

    - At least 20 states require notifying voters of, and giving them an opportunity to correct, ballot discrepancies or missing information. Specific measures, including a reasonable deadline by which to fix ballots, can prevent concerns of ballot impropriety.

8. **Outline clear, attainable, and uniform voter identification standards, with pathways to verification early in the election process to promote security and accessibility**.

- Pennsylvanians must provide a state driver's license, PennDOT ID card, or the last four digits of their social security number to register to vote. When voting for the first time—including for the first time in a new precinct—Pennsylvanians must provide poll workers valid ID such as a driver's license, employee ID, County Voter Registration Office confirmation, or a current utility bill.

- However, according to DOS, "[t]here is no explicit federal requirement or state requirement that requires that identification to be validated." If residents claim they lack a driver's license or social security number, DOS guides counties to still process and place them on the voter rolls—which allows them to request and submit mail-in ballots that counties must verify six days post-election.

    - As with mail-in ballot applications, incentivizing verification of registrants' identities prior to issuing ballots will reduce post-election fixes and smooth election processes for officials and voters.

    - Looking to states balancing identification requirements with accessibility should guide the uniformity of election laws that experts highlight as crucial for election integrity. For instance, of the 36 states requiring ID to vote in person, 15 states do not require photo ID, as did Pennsylvania's court-invalidated Act 18 of 2012—and many provide alternative methods by which voters can both cast their ballots and attest to their identify.[21]

    - Such considerations, including state funding for an ID, should work in conjunction with more reasonable deadlines, ballot-curing processes, and improved cross-checks with other government entities to ensure accurate enfranchisement.

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[20] "VOPP: Table 14: How States Verify Voted Absentee Ballots," National Conference of State Legislatures (April 17, 2020), https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx.
[21] "Voter Identification Requirements: Voter ID Laws," National Conference of State Legislatures (August 25, 2020), https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx.

9. **Pursue additional reforms utilizing Pennsylvania election data and best practices**.

- Election officials across the state must be equipped to implement fair elections uniformly; clear statutory language can achieve this while reducing the need for administrative guidance. This requires improving timely exchange of data from other states and among counties, evaluating best-practice training, accessible and uniform rulebooks, codifying state online voter registration, and adjusting or eliminating the "permanent" mail-in ballot list that confuses voters and burdens officials.

- Outlining proven audit procedures of all election processes, including voter registration, list maintenance, operations and resource allocation, training, and post-election result confirmation, with transparency throughout the process, will ensure accountability and increase trust and best practices.

POLLING

- **Polling of Pennsylvania voters shows 60% of voters have confidence in election integrity, but strongly support proposed election reform proposals**.[22] Notably:

  - A mail-in ballot application deadline 15 days before election: 76%.

  - A county ballot mailing deadline two weeks before the election: 71%.

  - Allowing voters to drop off mail-in ballots at polls on Election Day: 72%.

  - Allowing pre-canvassing on the Friday before Election Day: 69%.

  - Accepting only mail-in ballots received by Election Day: 65%.

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[22] "Post-Election Voter Sentiment Survey," Bullfinch Group, commissioned by the Commonwealth Foundation.