

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

HOUSE STATE GOVERNMENT COMMITTEE HEARING

STATE CAPITOL
IRVIS OFFICE BUILDING ROOM G-50 AND VIRTUAL
HARRISBURG, PENNSYLVANIA

THURSDAY, JANUARY 21, 2021

IN RE: ELECTION OVERSIGHT
PA DEPARTMENT OF STATE'S ELECTION GUIDANCE

BEFORE:

HONORABLE SETH GROVE, MAJORITY CHAIRMAN
HONORABLE MARGO DAVIDSON, MINORITY CHAIRWOMAN
HONORABLE RUSS DIAMOND
HONORABLE MATT DOWLING
HONORABLE DAWN KEEFER
HONORABLE ANDREW LEWIS
HONORABLE RYAN MACKENZIE (V)
HONORABLE BRETT MILLER (V)
HONORABLE ERIC NELSON
HONORABLE JASON ORTITAY (V)
HONORABLE CLINT OWLETT
HONORABLE FRANK RYAN (V)
HONORABLE PAUL SCHEMEL
HONORABLE LOUIS SCHMITT (V)
HONORABLE CRAIG STAATS (V)
HONORABLE JEFF WHEELAND

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BEFORE (cont.'d) :

- HONORABLE ISABELLA FITZGERALD (V)**
- HONORABLE KRISTINE HOWARD (V)**
- HONORABLE MALCOLM KENYATTA**
- HONORABLE BENJAMIN SANCHEZ (V)**
- HONORABLE JARED SOLOMON (V)**
- HONORABLE JOE WEBSTER (V)**
- HONORABLE REGINA YOUNG (V)**

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STAFF MEMBERS ALSO IN ATTENDANCE:

**MICHAELE TOTINO, REPUBLICAN CAUCUS
MICHEAL HECKMANN, REPUBLICAN CAUCUS
SHERRY EBERLY, REPUBLICAN CAUCUS
NICHOLAS HIMEBAUGH, DEMOCRATIC CAUCUS**

**JEAN M. DAVIS, REPORTER
NOTARY PUBLIC**

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**I N D E X
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JONATHAN MARKS, DEPUTY SECRETARY, ELECTIONS AND COMMISSIONS	17

1 P R O C E E D I N G S

2 * * *

3 MAJORITY CHAIRMAN GROVE: Good afternoon.

4 Welcome to this public hearing of the
5 Pennsylvania House State Government Committee on the
6 Pennsylvania Department of State's Election Guidance.

7 I'm the Committee's Chairman Seth Grove from York
8 County. This is the first hearing of 14 where this
9 Committee will complete a deep dive into the Pennsylvania
10 Election Law for 1937 and how elections are administered in
11 the Commonwealth in order to inform the public and this
12 Committee so we may facilitate election changes which ensure
13 our voting process is designed so the voters select the
14 winners and not the process.

15 While the 2020 General Election has been debated
16 and litigated ad nauseam, the General Assembly still has an
17 important constitutional job to execute. The legislative
18 oversight of laws we pass and agencies which administer
19 these laws, specifically House Rule 45, states, quote, each
20 standing committee or subcommittee of the House shall
21 exercise continuous watchfulness of the execution by the
22 administrative agencies concerned of any laws, the subject
23 matter of which is within the jurisdiction of such committee
24 or subcommittees, and for that purpose, shall study all
25 pertinent reports and data submitted to the House by the

1 agencies and the Executive Branch of the government.

2 It isn't a secret that further election law
3 changes must be made. Our counties' top priorities are
4 election changes. My colleagues, regardless of party
5 registration, have introduced numerous election law
6 legislation, with more forthcoming every day. It is a fact,
7 change in our current election law and processes of
8 bipartisan requests is a necessity.

9 The alternative, doing nothing, is revisiting the
10 same issues every election. And that is unacceptable for
11 our voters, election volunteers, county election employees,
12 and the Department of State. In order for this body to take
13 up election reform, we must have clarity as to what our
14 election law requires and how elections are administered in
15 67 very different counties.

16 The overall goal of these hearings is to walk the
17 Committee and the public down a path of how elections occur
18 and ascertain the need for changes at every step. This will
19 be a daunting task but it is important to build a baseline
20 of understanding and facts.

21 In the last session spanning 2019 and 2020, the
22 General Assembly passed numerous legislative proposals on
23 elections and Governor Wolf signed many of them into law.
24 Late in 2020, there were lawsuits filed prior to the 2020
25 General Election and numerous lawsuits after the 2020

1 General Election. We are not here to relitigate but to
2 review the election law in its entirety and how our
3 elections are administered. With a base law from 1937,
4 newly adopted laws, election policy set by the Pennsylvania
5 Supreme Court, election guidance established by the
6 Department, elections operated by 67 counties, and elections
7 facilitated by thousands of judges of elections and
8 thousands of polling places across Pennsylvania, today's
9 hearing is about the Department of State's Election
10 Guidance, something no one cared or knew of prior to 2020
11 except 67 county directors of elections and their staff.
12 Today our goal is to develop a better understanding of what
13 the Department's Election Guidance is and how it is used in
14 the administration of our elections.

15 Regardless of political affiliation,
16 Pennsylvanians take their elections very seriously and they
17 are very passionate about them. This is a good thing. And
18 we, as elected officials, must do our due diligence, provide
19 our residents with the best election process which conforms
20 to our constitutional requirements, is transparent, has
21 integrity, and is accessible.

22 I look forward to working with my colleagues,
23 stakeholders, and citizens to improve upon our
24 Commonwealth's election laws.

25 Chairwoman Davidson, any opening comments?

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MINORITY CHAIRWOMAN DAVIDSON: Thank you, Mr. Chairman.

I'm happy to be able to be a part of this process which will once again affirm that we had fair and accurate elections here in the Commonwealth of Pennsylvania as declared by numerous lawsuits, both from the Supreme Court of Pennsylvania as well as the Federal Court, by Trump appointees, as well as other judges, all affirmed that the elections were free, fair, and accurate.

And so we will, once again, affirm the facts. There are some things that we can do to improve the counting process by beginning canvassing a little bit earlier. And I think the testimony today will, as I said, once again reaffirm for the 100th time that the elections were free, fair, and accurate, and that we had an unprecedented number of folks participating in those elections because we increased access when the majority party put forward legislation, the Republican party, Act 77, to secure mail-in voting in the Commonwealth of Pennsylvania. It did increase access to the ballot box and allowed more Pennsylvanians to vote in this last presidential election than ever voted before.

And I hope that we will not go backwards and diminish access --

(Cell phone interruption)

1 MAJORITY CHAIRMAN GROVE: To whoever that is, can
2 you please mute your phone.

3 Just a reminder, if you're not muted, we hear
4 everything you say along with everybody else that is
5 watching this hearing.

6 MINORITY CHAIRWOMAN DAVIDSON: Just to conclude
7 what I just said before the interruption, I hope we continue
8 to make sure that all Pennsylvanians have access to the
9 ballot box and can exercise their constitutional right to
10 vote.

11 Thank you, Mr. Chairman.

12 MAJORITY CHAIRMAN GROVE: Thank you, Chairwoman.

13 Some housekeeping. We have members and
14 testifiers in attendance virtually as well as the public
15 viewing via Livestream. Due to Sunshine Law requirements,
16 if either of those platforms experience technical
17 difficulties, we will pause the meeting in order to correct
18 the issues.

19 For the members participating virtually, please
20 mute your microphones. Please know when you speak, again,
21 we all hear you and we all see you, so be cognizant of what
22 you're doing.

23 If you want to be recognized for comments, please
24 use the raise hand function. After being recognized, but
25 prior to speaking, turn on your camera and unmute your

1 microphone. After you have completed your questions, please
2 mute your microphone.

3 My goal is to allow as many members as possible
4 to ask questions this afternoon, so please limit your
5 question to one per person for a maximum of five minutes,
6 which should provide enough for further rounds of
7 questioning later.

8 Also, this hearing is about the Election Guidance
9 the Department has issued. Please keep your inquiries on
10 other topics until all members have asked their questions
11 concerning Election Guidance.

12 We are holding 13 more hearings on specific
13 election topics. If you have a question which falls under
14 one of those topics, you can always hold it for that hearing
15 as well.

16 We'll start with Committee member introductions.
17 For those members who are virtual we will do the members
18 here physically in the room first. Any member virtually, I
19 will call you by name and then just introduce yourself so we
20 don't have a logjam of members speaking at once or no one
21 speaking at all, which sometimes happens on these wonderful
22 virtual meetings we're so accustomed to.

23 With that, again, I'm Chairman Seth Grove, 196th
24 District, York County.

25 Chairwoman.

1 MINORITY CHAIRWOMAN DAVIDSON: Hello. I am
2 Chairwoman Margo Lowmax Davidson, hailing from the 164th
3 Legislative District in Delaware County. I was first
4 elected in 2010. This is my tenth year of dedicated service
5 with proven results.

6 Thank you.

7 REPRESENTATIVE DOWLING: Hello. I am
8 Representative Matthew Dowling from Fayette and Somerset
9 Counties. I thank you for having me here today for this
10 hearing.

11 REPRESENTATIVE SCHEMEL: Paul Schemel
12 representing portions of Franklin County.

13 REPRESENTATIVE LEWIS: Good afternoon. I'm
14 Representative Andrew Lewis representing the 105th District,
15 which includes Lower Paxton, West Hanover, and South Hanover
16 Townships in Dauphin County.

17 REPRESENTATIVE WHEELAND: Representative Jeff
18 Wheeland. I come from the 83rd District in Lycoming County,
19 primary city, Williamsport.

20 REPRESENTATIVE DIAMOND: Representative Russ
21 Diamond, 102nd District, Lebanon County.

22 REPRESENTATIVE OWLETT: Representative Clint
23 Owlett. I have the privilege of serving Tioga and parts of
24 Bradford and Potter Counties.

25 REPRESENTATIVE NELSON: Representative Eric

1 Nelson, Westmoreland County.

2 REPRESENTATIVE KEEFER: Representative Dawn
3 Keefer, York and Cumberland Counties.

4 REPRESENTATIVE KENYATTA: Representative Malcolm
5 Kenyatta, 181st District, Philadelphia County.

6 MAJORITY CHAIRMAN GROVE: Thank you.

7 We're going to go to virtual members. I'm just
8 going to go straight down the list of how you're kind of
9 loaded on my screen.

10 First, Representative Jason Ortitay.

11 REPRESENTATIVE ORTITAY: Thank you, Mr. Chairman.

12 Representative Jason Ortitay, representing the
13 46th District, parts of Allegheny and Washington Counties.

14 MAJORITY CHAIRMAN GROVE: Representative Lou
15 Schmitt.

16 REPRESENTATIVE SCHMITT: Thanks, Mr. Chairman.

17 Representative Lou Schmitt here, representing the
18 79th Legislative District, Altoona and other parts of Blair
19 County.

20 MAJORITY CHAIRMAN GROVE: Representative Ryan
21 Mackenzie.

22 REPRESENTATIVE MACKENZIE: Good afternoon.

23 Thanks, Mr. Chairman.

24 I'm State Representative Ryan Mackenzie from the
25 134th District and portions of Lehigh and Berks Counties.

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Thank you.

MAJORITY CHAIRMAN GROVE: Representative Ben Sanchez.

REPRESENTATIVE SANCHEZ: Thank you, Mr. Chairman. I'm Representative Ben Sanchez from the 153rd District, Montgomery County.

MAJORITY CHAIRMAN GROVE: Representative Jared Solomon.

REPRESENTATIVE SOLOMON: Thank you, Mr. Chairman. Jared Solomon, representing the 202nd Legislative District, northeast Philly.

MAJORITY CHAIRMAN GROVE: Representative Joe Webster.

REPRESENTATIVE WEBSTER: Thank you, Mr. Chairman. I'm Joe Webster, House District 150, Montgomery County.

MAJORITY CHAIRMAN GROVE: Representative Regina Young.

REPRESENTATIVE YOUNG: Thank you, Mr. Chairman. Regina Young, representing District 185, Philadelphia and Delaware Counties.

MAJORITY CHAIRMAN GROVE: I apologize. I missed some up a little higher.

Representative Brett Miller.

REPRESENTATIVE MILLER: Thank you, Mr. Chairman.

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Brett Miller, 41st District, Lancaster County.

MAJORITY CHAIRMAN GROVE: Representative Craig Staats.

REPRESENTATIVE STAATS: Good afternoon, everyone. Craig Staats, representing the 145th Legislative District in the great county of Bucks.

MAJORITY CHAIRMAN GROVE: Representative Isabella Fitzgerald.

REPRESENTATIVE FITZGERALD: Thank you, Mr. Chairman.

Isabella Fitzgerald, representing the 203rd Legislative District.

MAJORITY CHAIRMAN GROVE: Representative Frank Ryan.

REPRESENTATIVE RYAN: Representative Frank Ryan, 101st District in Lebanon County, Pennsylvania.

Thank you, Mr. Chairman.

MAJORITY CHAIRMAN GROVE: Representative Kristine Howard.

REPRESENTATIVE HOWARD: Hi. Kristine Howard from the 167th in Chester County.

MAJORITY CHAIRMAN GROVE: Did I get everybody virtually? All right. Looks like we got everyone.

New to the House Operating Rules is a provision of swearing in testifiers for standing committees. As a

1 former member of the House Appropriations Committee, I know
2 Secretary Boockvar is pretty familiar with this. It may be
3 good practice for upcoming Appropriations hearings. It's
4 been a standard procedure for Chairman Saylor and it will be
5 standard procedure for this Committee moving forward as
6 well.

7 Secretary Boockvar and Deputy Secretary Marks,
8 can you just please raise your right hand to be sworn in?

9
10 (Witnesses sworn en masse.)

11 MAJORITY CHAIRMAN GROVE: Thank you, both, so
12 much.

13 Secretary Boockvar, if you want to submit any
14 written testimony after the hearing, please do. We'll add
15 it to the official record.

16 SECRETARY BOOCKVAR: Thank you.

17 MAJORITY CHAIRMAN GROVE: Thank you.

18 With that, we will go straight to member
19 questions. I just have a very simple kind of opening
20 question. I think I asked you this at an earlier State
21 Government Committee Hearing.

22 If you, Secretary Boockvar, and Deputy Secretary
23 Marks, can you just provide the Committee with a brief work
24 history and academic history as it relates to Election Law
25 and Election Administration? I believe last time it was

1 pretty thorough.

2 SECRETARY BOOCKVAR: I'm sorry. You want us to
3 give our background? Is that your question?

4 MAJORITY CHAIRMAN GROVE: Yes, just brief work
5 and academic history as it relates to Election Law and
6 Election Administration.

7 SECRETARY BOOCKVAR: Sure.

8 My first job on elections was as a poll worker.
9 I did it for a couple of elections back in the 2000s. And
10 it sort of, you know, sparked my deep interest in voting
11 rights and Election Administration.

12 Several years after that, between 2008 and 2010,
13 I was a voting rights lawyer for Advancement Project, a
14 national non-profit organization, and worked both across the
15 state and across the country, working with counties, working
16 with the Department of State.

17 Jonathan Marks and I first met during those years
18 and really learned -- I'm sorry. Is there interference?

19 MAJORITY CHAIRMAN GROVE: You're good.

20 SECRETARY BOOCKVAR: So I really learned a
21 tremendous amount about how dedicated county election
22 officials are and also Department of State staff work and
23 the interrelated processes and laws from the County, State,
24 and Federal levels.

25 And then, you know, I really did a number of

1 other things, including running for office, which touched,
2 of course, elections in a different way. And, you know,
3 here I am. Since 2018 I joined the Administration first as
4 Senior Advisor to the Governor on Election Modernization and
5 then started serving as Secretary, Acting Secretary, and
6 then Secretary beginning about two years ago, January of
7 2019.

8 So that's kind of just very brief. In between
9 those things, I was a practicing lawyer. I graduated from
10 law school back in '93. I worked in the public, private,
11 and non-profit sectors. I also was Executive Director of a
12 non-profit women's health organization.

13 So a lot of different practices between then and
14 now.

15 MAJORITY CHAIRMAN GROVE: Thank you.

16 Deputy Secretary.

17 DEPUTY SECRETARY MARKS: Yes. Thank you, Mr.
18 Chairman.

19 Secretary Boockvar has already dated me a little
20 bit. I did start as a Legal Assistant in the Election -- or
21 assigned to the Election Bureau back at the end of 2002. In
22 2004, I became the Chief of the Division of Elections. In
23 2008, I was promoted again to Chief of the Division of the
24 Statewide Uniform Registry of Electors. And in 2011, I
25 became Commissioner of the Bureau of Commissions Elections

1 and Legislation. And in 2019, I was asked to serve as
2 Deputy Secretary for Elections and Commissions.

3 My experience in elections, spanning now almost
4 two decades, you know, including my service as a legal
5 assistant in a fairly low position at the time but it taught
6 me a lot, I was able to really dig deep into the Election
7 Code and Federal Election Laws. In those two years I served
8 as legal assistant and I gained a pretty good understanding
9 of Election Law both at the State level and at the Federal
10 level.

11 I've been able to use that over my career in
12 election services and also overseeing for the community the
13 division that oversees the Statewide Voter Registration
14 Database. And it was certainly helpful as Commissioner of
15 the Bureau of Commissions, Elections and Legislation. And
16 here I am now, Deputy Secretary for Elections and
17 Commissions. I keep seeing new things in elections. They
18 are ever changing.

19 Hopefully that's an adequate summary of my
20 experience.

21 MAJORITY CHAIRMAN GROVE: Yes, very, very much
22 so. Thank you.

23 DEPUTY SECRETARY MARKS: Sure.

24 MAJORITY CHAIRMAN GROVE: Chairman Davidson, do
25 you have any opening questions?

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MINORITY CHAIRWOMAN DAVIDSON: No.

MAJORITY CHAIRMAN GROVE: Again, any members
virtually, just raise your hand to ask a question.

We'll move on to Representative Ortitay.

REPRESENTATIVE ORTITAY: Thank you, Mr. Chairman.

And thank you, Madam Secretary, for being here
today. I want to start off with some basic questions just
to throw them out there.

Can you explain what Election Guidance is and
walk me through the process of developing and then using the
Guidance.

SECRETARY BOOCKVAR: I'm happy to.

I will first start and give a short opening
statement. I will start with that and then, Representative,
happy to get to your question.

REPRESENTATIVE ORTITAY: Absolutely.

SECRETARY BOOCKVAR: Thank you.

REPRESENTATIVE ORTITAY: Sure.

SECRETARY BOOCKVAR: Thank you so much for having
us here this afternoon. We are here to answer questions,
talk about, you know, facts and issues and talk most
importantly about the fact that it's time for unity and it's
time for truth.

The ongoing assault on facts and on our
Democratic process that we've witnessed for months must end.

1 It's anti-American. It's dangerous. And it goes against
2 everything we stand for as a country.

3 On January 6th, that assault breached the walls
4 of our Democracy. The attack on our Capitol was the direct
5 result of disinformation and lies, lies that were
6 intentionally spread to subvert the free and fair election
7 and undermine people's faith in our Democracy.

8 The world watched in horror as that mob attacked
9 the U.S. Capitol, violently interrupting our government
10 officials carrying out their constitutional duty to
11 effectuate the will of the voters, including millions of
12 Pennsylvanian voters, in electing the next President.

13 We are, right now, at a watershed, a critical
14 moment in American history. We can show the world the
15 strength of our great nation, the health and resiliency of
16 our Democracy and electoral process, or we can continue
17 perpetuating these lies, which only serves the goals of our
18 foreign adversaries who want nothing more than to see us
19 devolve into distrust and violence.

20 I'm incredibly proud of the free, fair, and
21 secure election our counties carried out in 2020. It was
22 marked by exceptional transparency, unparalleled voter
23 registration and turnout even in the midst of a global
24 pandemic. Pennsylvania election officials are heroes. They
25 live and work in our communities, they coach our kids and

1 our sports teams, and they work harder than almost anyone
2 else I know. It's because of them and their dedication to
3 their work that all of us can exercise our fundamental right
4 to vote and have faith that our system is safe, secure, and
5 accurate.

6 They did their jobs. And now we must do ours.
7 We, as public officials, must lead. That's what the people
8 of Pennsylvania deserve. They are watching and listening.
9 They are looking to us for leadership. So let's acknowledge
10 the truth, stop repeating lies that have been proven again
11 and again to be false, and start showing the strength of our
12 Democracy. Let's again show what it means to be American.

13 As Senator Toomey said on January 6th, we
14 witnessed the damage that can result when men in power and
15 responsibility refuse to acknowledge the truth. We saw
16 blood shed because a demigod chose to spread falsehood and
17 so distrust of his own fellow Americans. Let us not abet
18 such deception.

19 Thank you.

20 Okay. And now, Representative, to get to your
21 question. So, you know, I think it would help to give a
22 broad overview because I think everything is in context,
23 right? And I think we all can agree -- I'm sure we all
24 agree that, you know, our primary goal is to the voters of
25 Pennsylvania, mine in particular, right. As the chief

1 election official of the Commonwealth of Pennsylvania, my
2 primary duty is to them to make sure that every eligible
3 voter can vote safely and securely and that every eligible
4 vote is counted accurately and securely.

5 And the way this works across the country is
6 through an intricate series of Federal, state, and local
7 processes. So for example, we know that there are Federal
8 laws that impact every voter and that every county and state
9 must follow; for example, Help American Vote Act, which
10 mandates that every polling place needs to provide, you
11 know, options for voters with disabilities, making sure we
12 have accessibility. Of course, there's Federal laws
13 impacting, you know, overseas and military voters to make
14 sure all of them can vote safely and securely. Those are
15 uniform, right.

16 But then after that, the states are given wide
17 discretion to make certain other choices, right? So you
18 might have one state that votes entirely by mail and you
19 might have another state that votes hardly at all by mail.
20 It has very strict absentee rules.

21 You might have one state -- there's one state in
22 the country, North Dakota, that literally has no voter
23 registrations at all. And then all the other states get to
24 make their own decisions about --

25 MAJORITY CHAIRMAN GROVE: Madam Secretary.

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SECRETARY BOOCKVAR: Yes.

MAJORITY CHAIRMAN GROVE: I don't mean to interrupt you. We have a finite amount of time. I think the gentleman asked specifically what is the Pennsylvania Guidance and how it's used in our election process.

We're trying to ascertain those questions. We're not really interested in other states and those operations. We're focused here in Pennsylvania.

So thank you.

SECRETARY BOOCKVAR: Sure, Chairman, but the point is that we have a mix of what's uniform and what's discretionary. And that's the same at the State level. That was my point.

So in Pennsylvania we have certain levels, certain State rules, like deadlines for voter registration, deadlines for, you know, absentee mail-in ballots that are uniform. And then we have other rules that are left to the discretion of the counties.

And a lot of it -- as the Chairman said initially, we have 67 individual elections in Pennsylvania. And the Guidance that's issued is to help carry out the laws, whether it's statutory rules, whether it's court decisions that it issued, whether it's other things that arise, like COVID-19, to help the counties carry out the laws for the best interest of the voters and for the most

1 consistency across the Commonwealth.

2 REPRESENTATIVE ORTITAY: So when you issue
3 Guidance, is that something that you issue every single
4 election, every single primary, every single general
5 election out for the 67 counties?

6 SECRETARY BOOCKVAR: Yes. I mean, some of it
7 carries over. So if there's no changes, then the Guidance
8 doesn't need to change but the Guidance applies. And, of
9 course, there might be some Guidance that is different; for
10 example, the races that you might have, the municipal races
11 that you might have, an odd year versus a Presidential, you
12 know, Federal election in even years. So there are some
13 differences, but generally they carry over unless there's a
14 reason for it not to.

15 REPRESENTATIVE ORTITAY: Okay. And I guess I'll
16 finish up on this: When you issue the Guidance, does the
17 county have to follow your Guidance to the letter of the
18 law?

19 SECRETARY BOOCKVAR: So the Guidance is
20 persuasive. It's usually not directory unless the statute
21 that governs it says that it's directive, which we call
22 directive. So sometimes you'll see the language directive.
23 That's where it's mandated. So, for example, like the
24 voting system certification that we issue directives on.
25 There are other practices that we issue directives on.

1 But when it's called Guidance, it usually means
2 that it's persuasive. The courts, again, have upheld it.
3 But it's not automatically directory.

4 REPRESENTATIVE ORTITAY: Okay. Thank you, Madam
5 Secretary. I appreciate that.

6 SECRETARY BOOCKVAR: Sure.

7 REPRESENTATIVE ORTITAY: Thank you, Mr. Chairman.

8 MAJORITY CHAIRMAN GROVE: Thank you,
9 Representative.

10 Representative Dowling.

11 REPRESENTATIVE DOWLING: Secretary, thank you for
12 joining us today.

13 My question has to do with Guidance versus
14 e-mails. And my question is, when does the Department
15 decide to send Guidance versus just a response to an e-mail?

16 SECRETARY BOOCKVAR: Are you asking an e-mail
17 like in response to a question or do you mean the e-mails
18 that go out to all counties that are regarding Guidance?

19 REPRESENTATIVE DOWLING: My question is, in the
20 last election you offered Guidance on different items. You
21 also sent out e-mails that were answering questions. When
22 does the Department decide when Guidance versus an e-mail is
23 appropriate?

24 SECRETARY BOOCKVAR: So some of it is timing.
25 For example, there were times that a Court decision got

1 issued late that we might first have sent. And by the way,
2 all our Guidance is issued uniformly to all 67 counties,
3 whether it's in e-mail form or whether it's in -- we've
4 tried to -- we started just -- during my time as Secretary,
5 we had started to try to make uniform what the Guidance
6 looks like.

7 You'll see in the more recent Guidance it says,
8 TLP:WHITE. It's in a similar format. That wasn't always
9 the case. And so we're gradually making them uniform. But
10 sometimes if there's a time crunch and we just need to reach
11 the counties really fast, we'll send it by an e-mail. If we
12 have the time to put it formally into a document and, you
13 know, have it meet those standards that I'm talking about
14 that we're converting all the old Guidance to, then we'll do
15 it that way.

16 So it's really not different in terms of what its
17 meaning is to the counties.

18 REPRESENTATIVE DOWLING: And as a followup, does
19 the Department have a process to evaluate Guidance and, if
20 so, what is your process on evaluating the Guidance that you
21 give out to all 67 counties?

22 SECRETARY BOOCKVAR: So are you talking about --
23 I'm not sure I fully understand your question. So
24 evaluating Guidance, meaning like old Guidance and whether
25 it still applies?

1 REPRESENTATIVE DOWLING: I'm saying any Guidance.
2 If you were giving out Guidance that is relevant to the
3 counting of ballots, for example, how is that Guidance
4 developed by your Department? And what is the oversight
5 that is given to developing that Guidance?

6 SECRETARY BOOCKVAR: Okay. So we develop the
7 Guidance in consultation, you know, with Jonathan, the team
8 members that are directly involved, and, of course, in
9 consultation with our attorneys.

10 REPRESENTATIVE DOWLING: Thank you.

11 Thank you, Secretary.

12 Thank you, Chairman.

13 MAJORITY CHAIRMAN GROVE: Representative
14 Kenyatta.

15 REPRESENTATIVE KENYATTA: Thank you so much,
16 Madam Secretary.

17 And I just want to say for the record, thank you
18 and your team, who in incredibly difficult circumstances
19 conducted an absolutely free and fair election in line with
20 our values as a Democracy. I want to thank you for that.

21 SECRETARY BOOCKVAR: Thank you.

22 REPRESENTATIVE KENYATTA: So if I could take you
23 back for a second. On October the 29th of 2019, what was
24 then SB 421, which later became Act 77, was passed by a
25 majority of the House, I believe 138 House Republicans voted

1 for, 61 members of the Democratic Caucus voted for it, and I
2 think there were two other Republicans that voted against
3 it.

4 I had an amendment on that bill, Amendment 3422,
5 which would have delayed the implementation of this bill to
6 give counties more time because this was a massive overhaul
7 of the Election Code. That amendment fell.

8 MAJORITY CHAIRMAN GROVE: Representative
9 Kenyatta, I don't --

10 REPRESENTATIVE KENYATTA: We're talking about Act
11 77, are we not?

12 MAJORITY CHAIRMAN GROVE: We're talking about
13 Election Guidance.

14 REPRESENTATIVE KENYATTA: The Guidance was around
15 the changes in the Election Law; am I correct?

16 MAJORITY CHAIRMAN GROVE: Fair enough. Fair
17 enough. I just want to make sure you're getting there.

18 REPRESENTATIVE KENYATTA: Oh, yeah.

19 MAJORITY CHAIRMAN GROVE: Thank you. Continue.

20 REPRESENTATIVE KENYATTA: I'm happy to be here.

21 So that failed on a vote of 109 to 86. So I have
22 two questions for you. Do you think additional time would
23 have been prudent to allow counties, as well as your office,
24 to thoroughly understand this new massive overhaul of our
25 elections? In terms of your conversations with counties, do

1 you think more time to implement these changes would have
2 been helpful?

3 SECRETARY BOOCKVAR: Yes, I do. It was a lot for
4 the counties to do all at once. And, of course, on the
5 other hand, I will say that now with the retrospect, you
6 know, of the global pandemic, it was critical, absolutely
7 critical, that we had already passed the law allowing all
8 voters to vote by mail.

9 So if we hadn't done an Act 77 -- I would have
10 hoped that we would have done it anyway like many other
11 states did during the pandemic.

12 But as a general rule, Representative, I totally
13 agree with you. We had talked about even just the
14 straight-party ticket change, which ended up being, you
15 know, just one among many, many changes. We thought it
16 would be helpful to have more time so that there could be,
17 you know, more extensive voter education, make sure that
18 that would be carried out in a way with the full ability for
19 the counties and the voters to be able to pass along what
20 those changes meant.

21 So I think what the act is saying, despite the
22 crunch, really brought about the most sensible, widely
23 participatory election that we've seen in the history of the
24 Commonwealth, you know, having 6.9 million Pennsylvanians
25 vote. 800,000 more Pennsylvanians were able to vote

1 successfully than any election in the history of our
2 Commonwealth. And I give the heroes from the counties full
3 credit for doing it in the midst of the incredible
4 challenges.

5 REPRESENTATIVE KENYATTA: And then just one more
6 question, Madam Secretary.

7 I think one of the things that maybe my mom would
8 say is that, you know, a lie will get halfway around the
9 block while the truth is putting its shoes on. And I think
10 that one of the most important ways to combat misinformation
11 and disinformation is to tell the truth. And so I'm sure
12 your office was inundated with outright lies about the
13 election and its execution. Multiple members signed letters
14 saying that the execution of the election was so egregious
15 and riddled with fraud that we should actually throw out the
16 votes of Pennsylvanians and not allow them to count.

17 Can you just use whatever time you think is
18 necessary to talk about some of the most persistent lies
19 that are still out there and combat those with facts from
20 your office?

21 MAJORITY CHAIRMAN GROVE: Representative, again,
22 we're on Guidance. We're not relitigating the election.

23 REPRESENTATIVE KENYATTA: Okay.

24 Can we talk about their questions? We've talked
25 about Guidance a lot. Can you talk about if there are some

1 frequently asked questions about Guidance that was given
2 from your office that you would like to use this time to
3 respond to with the facts of what happened?

4 SECRETARY BOOCKVAR: Well, I think -- you know, I
5 think the disinformation of lies made our job a lot more
6 difficult because not only were we trying to put out the
7 Guidance and put out the public education to make sure that
8 the voters and the counties understood, but the lawsuits
9 that kept being filed propagating those lies and the
10 disinformation, which, by the way, in every one of those
11 cases, the courts upheld our Guidance and found that the
12 lies and the allegations were not founded.

13 So we were very pleased that the Guidance that we
14 issued, again, were stronger than the lies. But the lies
15 made our job much harder and the American people in
16 Pennsylvania deserve better.

17 REPRESENTATIVE KENYATTA: Well, I just want to
18 just say thank you, you know, one more time. You know,
19 because of these lies, we had our Capitol attacked. Six
20 people are dead because of those lies. And I know you and
21 your office have also had to deal with threats and inundated
22 with people saying all manner of things.

23 And so thank you in spite of all of that, being a
24 patriot standing up for the rule of law and doing your job
25 as adequately as you did.

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Thank you, Mr. Chairman.

SECRETARY BOOCKVAR: Thank you, Representative.

MAJORITY CHAIRMAN GROVE: Madam Secretary, just for the information of the members, can you provide us the court cases that specifically addressed your issues with your specific Guidance to the Committee?

SECRETARY BOOCKVAR: Sure.

MAJORITY CHAIRMAN GROVE: That would be great.

SECRETARY BOOCKVAR: Most of them were some version of Trump v. Boockvar and various combinations of counties involved or not involved. There was -- I would say the most extensive one might have been the first Trump v. Boockvar. Judge Ranjan from the Federal Western District of Pennsylvania, who was an appointee of former President Trump, multiple times stated that our Guidance provided woeful comprehensive and reasonable standards consistent with Best Practices.

He specifically stated that in my capacity as chief election official, the Guidance diminished risks tolerated by the Legislature. He, you know, noted multiple times that the Guidance was consistent with the Election Code on the multiple issues that were involved in that litigation.

There were also decisions by Judge --

MAJORITY CHAIRMAN GROVE: Madam Secretary, for

1 the second time, can you just provide them to the Committee
2 just so we have them?

3 SECRETARY BOOCKVAR: Oh, I'm sorry. I thought
4 you were asking me now.

5 MAJORITY CHAIRMAN GROVE: No.

6 SECRETARY BOOCKVAR: You want them?

7 MAJORITY CHAIRMAN GROVE: Yes. You can just note
8 them and just send them over. That's all we're asking for.

9 Representative Lewis.

10 REPRESENTATIVE LEWIS: Thank you, Mr. Chairman.

11 Thank you, Madam Secretary.

12 My question is about the amount of Guidance in
13 2020 versus previous years. There seems to have been a
14 great deal more Guidance issued during the 2020 election
15 than in previous years. And my question is, was that the
16 case? And can you provide details on the number of Guidance
17 documents issued last year and then in prior elections?

18 SECRETARY BOOCKVAR: So as you might imagine, the
19 more changes there are in a particular year, the more
20 Guidance there is. And so, for example, in 2012, there
21 probably was at least as much Guidance as there was this
22 year because, as you may recall, the Legislature had
23 passed -- had changed the law relating to Voter ID.

24 And Jonathan, Deputy Secretary Marks, could tell
25 you more details if you're interested. But I understand

1 there was a record amount of Guidance needed due to those
2 changes. And then the late court filings and court
3 decisions that came out, I think in October of 2012, that
4 then shifted it back.

5 So in years such as that, and a year such as
6 2020, where we had new voting systems, COVID-19, Act 77, and
7 Act 12, you certainly need to have Guidance to make sure
8 that those changes. And as Representative Kenyatta
9 mentioned, not only changes but having to carry them out in
10 a very short time, you will see more Guidance.

11 So, you know, I was looking through the Guidance.
12 And all our Guidance, as you probably know, are posted on
13 our website. You can find it all there. Most of the
14 Guidance that were issued this year were updates to older
15 Guidance. So it might look like new Guidance, but we -- for
16 example, like provisional ballots. We've always provided
17 Guidance to counties on provisional ballots. But there was
18 an updated version of it this year and so forth.

19 So I think brand-new Guidance was probably about
20 maybe seven or so throughout the year. And those were
21 related to COVID-19, segregation of ballots that arrived
22 three days following election day, and Act 77, Act 12
23 (unintelligible) Guidance. Everything else basically was a
24 new form of an older Guidance.

25 REPRESENTATIVE LEWIS: Okay. And although the

1 Guidance documents themselves are public, e-mails are not.
2 And in how many instances was Guidance e-mailed to counties?
3 And will the Department provide all of these e-mails in the
4 interest of transparency?

5 SECRETARY BOOCKVAR: E-mails -- I mean, we
6 provide e-mails. The counties, all 67 counties, get the
7 e-mails, so that's not been -- that's not been protected.
8 Those have been produced in litigation. So, again, the
9 e-mails that are -- I mean, again, these have been produced.
10 So if you have specific Right-To-Know requests, you know,
11 feel free to send them along.

12 MAJORITY CHAIRMAN GROVE: Madam Secretary, can
13 you just produce those e-mails and just send them over to
14 the Committee, please?

15 SECRETARY BOOCKVAR: Not without more Guidance,
16 Chairman. I mean, like, you want, like, the thread or
17 history of all e-mails to everyone in a county? I mean, I
18 think we need to have details about what the request is and
19 then we're happy to.

20 MAJORITY CHAIRMAN GROVE: All right. Fair
21 enough.

22 REPRESENTATIVE LEWIS: All right. Thank you,
23 Madam Secretary.

24 Thank you, Mr. Chairman.

25 MAJORITY CHAIRMAN GROVE: Sure.

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SECRETARY BOOCKVAR: Thank you.

MAJORITY CHAIRMAN GROVE: Representative Sanchez.

REPRESENTATIVE SANCHEZ: Good afternoon, Madam Secretary.

SECRETARY BOOCKVAR: Good afternoon.

REPRESENTATIVE SANCHEZ: Mr. Deputy Secretary, let me also add my sincere thanks to you for running a very fair and secure election under enormous circumstances of change. Very well done. I want to also thank public election officials, especially those at the county, volunteers. I know many of them work, you know, around the clock for at least a week, sometimes more, to get those results and get them certified. So I truly thank you from the bottom of my heart and my constituents.

I'd like to ask you, when we're dealing with Guidance, it seems, in response to other questions so far, (unintelligible) Guidance clearly resulting from, you know, the (unintelligible) changes, Act 77, the greatest change in a number of years to the Election Code.

What from your view in your vast experience, what would streamline the Guidance and specifically what changes to the Election Code could kind of reduce the need for that Guidance? And if it's too broad, that's fine. But, you know, what would be like the wish list of things? Would it be precanvassing? What would be your list of greatest hits?

1 That would, you know, let us know where we could work
2 proactively to meet the real needs of all the fair
3 elections.

4 SECRETARY BOOCKVAR: Thank you, Representative.

5 Well, No. 1, hands-down that we think is most
6 important is a longer period for counties to go to
7 prec canvass their mail-in absentee ballots. And I'm willing
8 to bet that probably every county in the state would agree
9 that that's their No. 1 priority.

10 I think something like 46 states allow weeks, you
11 know, but many, many, many counties, the majority of states
12 allow weeks of prec canvassing of ballots. And that would in
13 turn help the processes that are impacted in various
14 Guidance.

15 So it's not just the results that get done
16 sooner. It also improves the processes in the process. It
17 allows them to take longer, you know, the poll watchers. Of
18 course, the representatives still have all the same rights
19 in that process.

20 So in addition something that would help,
21 something that shows up in multiple Guidance, is giving the
22 counties more ability to find poll workers. So one of the
23 things that happened with the pandemic, as you recall, that
24 required us to produce more Guidance was their difficulty in
25 finding poll restrictions on their ability to use poll

1 workers and particularly the pandemic.

2 So we had to issue -- you know, work around to
3 try to help them get those poll workers that were so
4 desperately needed for us to all be able to exercise our
5 fundamental right to vote. So I'd like to see counties be
6 able to have more flexibility in finding and filling those
7 vacancies, being able to seat people from around the county.

8 Those are probably my top two. There are many
9 other changes that I'd be happy to talk about options for,
10 but those really help.

11 REPRESENTATIVE SANCHEZ: Thank you.

12 Mr. Chairman, with a brief followup.

13 Madam Secretary, do you feel any need for
14 guidance on Guidance -- I don't mean that facetiously -- I
15 mean, you know, would a more formalized crystalizing the
16 Election Code about the manner that you give Guidance? And
17 like, for example, if, you know, a county reaches out
18 seeking Guidance, then do you automatically give that
19 Guidance to all 67 counties or are there, you know,
20 appropriate things there that you, you know, would seek
21 guidance from the Legislature that you can speak about?

22 Thank you.

23 SECRETARY BOOCKVAR: That's a great question.

24 And thank you for the opportunity to also talk about the
25 fact that a lot of our Guidance -- you know, I talked about

1 litigation and circumstances like a global pandemic and
2 other reasons for issuing Guidance.

3 But actually what you just said is often also one
4 of the primary reasons why we issue Guidance. We get
5 constant questions just, you know, deservedly so, a lot of
6 questions from the counties about so many different factors
7 that go into Election Administration.

8 And so that's often a trigger where we see, okay,
9 we're getting this question. We need to issue Guidance
10 because clearly, you know, we want it to be as uniform as
11 possible.

12 So, you know, I think it's also a great question
13 about the balance between county discretion and the ability
14 for the Department of State to direct uniformity. And I
15 think there's advantages of both. And so I think, you know,
16 just so that we're clear, one of the advantages of having
17 the counties have local discretion in addition to the fact
18 that, of course, every county is different, it actually adds
19 security to our election system. Because if you had
20 everything exactly the same, it would be easier to breach.
21 When you have 67 different sets of arrangements, it's much
22 harder to have any kind of breach on the systems.

23 So having said that, we also -- it would be
24 better if we did have some more clarity at least around
25 certain aspects of Election Administration where we could

1 give directives rather than Guidance, that we could know
2 that it would be uniformly followed just like it is in some
3 things. For example, like I was saying earlier, voting
4 system certification and other factors that we would like to
5 see expanded, that we could issue directives in certain
6 areas that would make sure that we have uniformity across
7 the Commonwealth.

8 REPRESENTATIVE SANCHEZ: Thank you very much,
9 Madam Secretary and Mr. Deputy Secretary.

10 Mr. Chairman, thank you.

11 SECRETARY BOOCKVAR: Thank you.

12 MAJORITY CHAIRMAN GROVE: Thank you,
13 Representative Sanchez.

14 Representative Schmitt.

15 REPRESENTATIVE SCHMITT: Thank you, Mr. Chairman.

16 My questions are actually directed to Deputy
17 Secretary Marks.

18 Deputy Secretary, you sent out an e-mail. I'm
19 going to talk about a specific e-mail here that you sent out
20 about 9 p.m. or so on the night before election to the
21 counties. And that e-mail directed them to, quote, provide
22 information to party and candidate representatives during
23 the precavass that identifies voters whose ballots have
24 been rejected, unquote.

25 First of all, do you remember that e-mail,

1 sending that e-mail?

2 DEPUTY SECRETARY MARKS: I do, yes.

3 REPRESENTATIVE SCHMITT: Okay. Good.

4 Can you explain, Deputy Secretary, what the
5 purpose was of you sending that e-mail on the night before
6 the election?

7 DEPUTY SECRETARY MARKS: Well, the purpose was to
8 answer questions we were getting about the precavass and
9 conducting the precavass from county election officials.
10 And really the purpose of the Guidance was to ensure that
11 counties understood that this precavass process, being an
12 open process, being an open meeting with representatives of
13 campaigns and candidates present that that process should be
14 done transparently.

15 So if a county was going to reject a ballot as
16 they're going through the precavass, identifying which
17 ballot was being rejected would lend itself to transparency
18 in the process.

19 REPRESENTATIVE SCHMITT: Deputy Secretary, did
20 you have any expectation as to how counties were actually
21 going to implement that directive?

22 DEPUTY SECRETARY MARKS: I didn't. I think it
23 was really just, you know, for some counties, it may have
24 been, you know, providing a list. For other counties, it
25 may have simply been announcing the name of the elector as

1 they're going through the precavass. That really would
2 depend on exactly the method each county used to conduct the
3 precavass.

4 REPRESENTATIVE SCHMITT: Deputy Secretary, this
5 type of third-party notification, do you know whether that's
6 authorized under Pennsylvania's Election Code?

7 DEPUTY SECRETARY MARKS: I believe it is
8 certainly within the discretion of the County Board of
9 Elections. And again, I think it's the duty of the County
10 Board of Elections in an open meeting to provide information
11 about decisions that it's making on the validity of
12 individual voter ballots. I think that's completely
13 consistent with the law and it's within the discretion of
14 the County Board of Elections.

15 REPRESENTATIVE SCHMITT: Having notification is
16 specifically authorized under Pennsylvania's Election Code?

17 DEPUTY SECRETARY MARKS: The alternative,
18 Representative, would be the county makes a determination
19 about a voter's ballot in an open meeting but conceals the
20 identity of the individual's ballot who's being set aside.
21 I don't think that is what the Election Code anticipated at
22 all.

23 REPRESENTATIVE SCHMITT: So you don't think
24 that's what the Election Code anticipated at all; is that
25 what you're saying?

1 DEPUTY SECRETARY MARKS: What I'm saying is, I
2 don't think the Election Code anticipated that decisions
3 about individual ballots during an open meeting would be
4 kept a secret.

5 REPRESENTATIVE SCHMITT: And can you cite to a
6 specific provision under the Election Code of Pennsylvania
7 that specifically authorizes that sort of third-party
8 notification? Can you do that?

9 DEPUTY SECRETARY MARKS: If you're talking about
10 the County Board of Elections announcing it --

11 REPRESENTATIVE SCHMITT: I'm talking about the
12 Election Code. I'm talking about the Election Code. Can
13 you cite through a specific provision of the Election Code
14 that specifically authorizes that sort of third-party
15 notification that was the subject of your e-mail late in the
16 evening before the election?

17 DEPUTY SECRETARY MARKS: I believe that is within
18 the discretion of the County Board of Elections during the
19 precavass, which is an open meeting.

20 REPRESENTATIVE SCHMITT: So would you agree that
21 you can't cite to a specific provision of the Election Code
22 that authorizes that sort of third-party notification?

23 DEPUTY SECRETARY MARKS: I think the open meeting
24 provision of the Election Code that makes the precavass
25 open and transparent give s the county discretion and

1 actually, in my opinion, gives the county a duty to be open
2 and transparent about the decisions that it's making on
3 individual ballots.

4 REPRESENTATIVE SCHMITT: I don't have any further
5 questions.

6 Thank you, Mr. Chairman.

7 Thank you, Deputy Secretary.

8 DEPUTY SECRETARY MARKS: Yes. Thank you,
9 Representative.

10 MAJORITY CHAIRMAN GROVE: Thank you.

11 Representative Kenyatta.

12 REPRESENTATIVE KENYATTA: Thank you.

13 Deputy Secretary, if we could stay with you. Can
14 you just remind me one more time how long you've been in the
15 Secretary's State Office?

16 DEPUTY SECRETARY MARKS: Hopefully I will not
17 have to choose to date myself too many more times during the
18 hearing, but I have been doing elections now for 18 years
19 approximately.

20 REPRESENTATIVE KENYATTA: Thank you, sir.

21 I have two quick questions. One to just follow
22 up on the last question. Is there anywhere in the Election
23 Code that prohibits the Guidance that you gave prior to the
24 election?

25 DEPUTY SECRETARY MARKS: No, I'm not aware of

1 anything that prohibits it. Again, I think it's within the
2 discretion of the County Board of Elections. And as I said,
3 in an open meeting, I think it is perfectly consistent with
4 the law and really an expectation or duty that the County
5 Board is being transparent in its decisionmaking during that
6 prec canvass and canvass process.

7 REPRESENTATIVE KENYATTA: And my last question,
8 Deputy Secretary, it's my assumption, not being here or
9 being in politics for 18 years, as long as you have been,
10 that you've testified before this Committee in the past
11 prior to today is my assumption?

12 DEPUTY SECRETARY MARKS: I have. And no offense
13 to politicians, Representative, but I haven't been in
14 politics for 18 years. But I have been in Election
15 Administration for 18 years. And I've enjoyed every minute
16 of it. And each election is unique in its own way.

17 REPRESENTATIVE KENYATTA: Fair. Fair.

18 You know, we're going to have 13 more hearings
19 about the previous election. Have you ever seen this
20 Committee conduct so many hearings about a prior election?

21 DEPUTY SECRETARY MARKS: I don't recall a series
22 of 14 hearings in a single session regarding elections, no.

23 REPRESENTATIVE KENYATTA: Thank you.

24 MAJORITY CHAIRMAN GROVE: We like to work here.

25 Madam Secretary, to follow up on e-mails, can you

1 just provide the Committee all the e-mails you already
2 provided under litigation, as they are already open records?

3 SECRETARY BOOCKVAR: We'll pass that along to the
4 Right-To-Know team, yes.

5 MAJORITY CHAIRMAN GROVE: Madam Secretary, this
6 isn't a Right-To-Know request. It's a legislative request
7 from a committee.

8 SECRETARY BOOCKVAR: I'll pass that along as
9 well.

10 MAJORITY CHAIRMAN GROVE: Okay.

11 Representative Mackenzie.

12 REPRESENTATIVE MACKENZIE: All right. Thank you,
13 Mr. Chairman.

14 And thank you, Madam Secretary, for joining us.
15 So the question that I wanted to touch on relating to
16 Guidance is around Guidance provided about naked ballots or
17 ballots that did not include a secrecy envelope. There was
18 Guidance issued to count those votes at the same time. Then
19 we heard from the State Supreme Court that the requirement
20 for a secrecy envelope was neither ambiguous nor
21 unreasonable and that the General Assembly was clear.

22 So I just want to understand. Earlier in the
23 hearing you said that the use of Guidance was to persuade
24 counties to do something. It seems like you were offering
25 Guidance that was in direct contradiction with what the

1 Court ruled. So can you please reconcile that for me?

2 SECRETARY BOOCKVAR: Sure. The Guidance was
3 before the Court issued that decision.

4 And let me be clear. When I was talking about
5 persuasive, I meant that's sort of like the legal language
6 that's used in court cases when they talk about I think the
7 question was relating to the enforceability of Guidance. So
8 that's what I meant by persuasive, just so that you
9 understand.

10 But your question specifically, when we put out
11 before the primary, it was one of those circumstances where
12 we were getting questions from counties about whether they
13 should count those naked ballots. So we put out -- this was
14 long before that case was brought. Our determination was
15 that they should be counted. In fact, in every state where
16 they have secrecy envelopes, even if they arrive without
17 secrecy envelopes, they're counted. So this was consistent
18 with what we saw around the country.

19 The Pennsylvania Supreme Court months later
20 disagreed with us. And so, of course, their decision
21 controls. We immediately withdrew our prior Guidance and
22 told the counties that they must not count the naked
23 ballots.

24 REPRESENTATIVE MACKENZIE: So obviously I
25 appreciate that you looked at other states. But we have our

1 own statutes here in Pennsylvania. And the Court, so you
2 would just say that there was no ambiguity there. So how
3 did you reach a determination that naked ballots should be
4 counted here in Pennsylvania in light of our law in the
5 state? They seem to say there's no wiggle room. There's no
6 ambiguity. The Legislature was very clear. So how did you
7 issue Guidance that was so far afield from what the Court
8 ruled?

9 SECRETARY BOOCKVAR: Well, I would disagree a
10 little bit. It's not like the Court -- there are issues all
11 the time, that one interpretation is different than
12 another's interpretation. We believe there's a clear
13 constitutional preference for enfranchisement of voters.

14 And any time there's any -- there are a lot of
15 reasons why it appeared by all -- by many lawyers and legal
16 analysis that this was not something that was clear at all.
17 In fact, for example, in provisional ballots statutes, it
18 specifically says that ballots without that inner envelope
19 may not be counted.

20 It does not say that under regular absentee and
21 mail-in statutes. And, in fact, this is an area that, you
22 know, we didn't -- I didn't appreciate until early this year
23 before the primary that counties had been treating it
24 differently in cycles past.

25 So this was something that we got specific

1 questions from counties before the primary issue, that
2 Guidance. I think we issued first an e-mail and then later
3 Guidance. Then the court case happened. And literally the
4 same day the court case was decided, we pulled down the
5 Guidance, notified the counties that they must not count
6 them. And now that's the standard.

7 So look, sometimes you're not always right. Some
8 cases you win. Some cases you lose. That case, some of the
9 issues were in our favor but our determination on the naked
10 ballots was reversed. That's fine. I carry out the laws
11 once they're decided.

12 REPRESENTATIVE MACKENZIE: So do you disagree
13 with the decision that was rendered by the State Supreme
14 Court?

15 SECRETARY BOOCKVAR: It doesn't matter whether I
16 disagree with the decision rendered by the Supreme Court
17 because the Supreme Court's rule governs.

18 What I would say is -- maybe this is part of your
19 question -- do I think that that's the right approach for
20 voters for making sure that every eligible voter's vote
21 counts? No. I'd love to see the Legislature change that
22 law and say, look, if a voter makes a mistake, that does not
23 have anything to do with their eligibility or qualifications
24 such as a naked ballot, that vote should still count.

25 But that would be something that would be a

1 legislative enactment that would need to occur. And in the
2 meantime, I will carry out the law that naked ballots shall
3 not be counted.

4 REPRESENTATIVE MACKENZIE: So you're carrying out
5 something that you think disenfranchises voters?

6 SECRETARY BOOCKVAR: You know, sure. Yes. I
7 mean, I think that's an error that does not touch on the
8 qualifications of a voter. So I would love to have the law
9 changed to make sure that every qualified voter's vote is
10 counted and that simple nonsignificant errors that are made
11 like that don't end up meaning that somebody's vote is
12 unfairly thrown out.

13 So it's not my first choice. But again, that's
14 not my role. The Supreme Court ruled. They said naked
15 ballots won't be counted, so naked ballots won't be counted.

16 REPRESENTATIVE MACKENZIE: All right.

17 Thank you, Mr. Chairman.

18 Thank you, Madam Secretary.

19 SECRETARY BOOCKVAR: Sure.

20 MAJORITY CHAIRMAN GROVE: Represent Solomon.

21 REPRESENTATIVE SOLOMON: Thank you, Mr. Chairman.

22 Secretary, Deputy Secretary, good to see you.

23 Thank you for all you do.

24 Secretary, you had mentioned what I think is a
25 really important case, which is Donald J. Trump for

1 President, Inc., v. Boockvar. If we could return to that
2 case for a minute because I think that case does a deep dive
3 into exploring the constitutionality of your Guidance that
4 you issued back in September.

5 Specifically, just to start, the case goes into
6 your Guidance around drop boxes, mail-in ballots, and poll
7 watchers. Could you, in just broad strokes, talk about what
8 that Guidance was?

9 SECRETARY BOOCKVAR: Sure. And they were
10 different Guidances, right? So, you know, I think that case
11 touched on a number of different issues, like you just said.
12 And obviously, as we just talked about at length, you know,
13 one of them -- oh, no. I'm sorry. I think the naked
14 ballots part wasn't in that case. But that case, you know,
15 very explicitly said that our Guidance on signature matching
16 was consistent with the Election Code. Again, I think the
17 language was it diminished risks tolerated by the
18 Legislature.

19 He very explicitly -- Judge Ranjan very
20 explicitly said the Guidance provided was lawful,
21 comprehensive, and utilized reasonable standards consistent
22 with Best Practices. I think that piece specifically
23 related to drop boxes and that they were uniform. They were
24 issued to all 67 counties.

25 And back to signature matching, you know, his

1 language was absent in the Election Code was a requirement
2 of signature matching. And he said my Guidance instructed
3 counties to abide by the Election Code and that Guidance was
4 consistent with the Election Code imposing no requirement
5 for signature matching.

6 So those were just some of the comments it
7 specifically made about our Guidance. And on all the issues
8 it said not only that it was, you know, consistent with the
9 Election Code, Best Practices, and all those things, but he
10 also did a whole analysis on equal protection and Federal
11 issues and stated that none of the Guidance violated any
12 Federal standards. He upheld it and rejected their case in
13 its entirety.

14 REPRESENTATIVE SOLOMON: Secretary, thank you for
15 that. And, you know, the sort of broad holding in that case
16 was that the Plaintiffs did not have standing to bring the
17 case. And then the Judge goes into that detailed
18 constitutional analysis but basically concludes that the
19 Plaintiffs had no articulated concrete injury.

20 She does talk about your admitting of the
21 allegations around your Guidance, specifically drop boxes,
22 mail-in ballots, that the President's attorneys, President
23 Trump's attorneys, believe that there would be fraudsters
24 throughout the whole Commonwealth who would be taking
25 advantage of your Guidance to dilute the vote in particular

1 areas of the Commonwealth which would dilute the Republican
2 vote share.

3 In your analysis coming out of the election --
4 and I know not that long has gone by. But when it comes to
5 your Guidance in relation to mail-in ballots, drop boxes,
6 poll watchers, have you identified any fraud in those three
7 categories?

8 SECRETARY BOOCKVAR: No. I mean, you know, we've
9 all seen very isolated news reports, right. You've seen
10 them. You know, there was the gentleman in Luzerne County
11 who tried to cast a ballot for his dead deceased mother.
12 There was a situation in Delaware County that was similar.
13 I think a very isolated handful of that. But, no.

14 And, you know, I appreciate you bringing this up.
15 Because as you know, one of the things that Pennsylvania law
16 does really well is it builds in a tremendous amount of
17 opportunities for parties, candidates, you know, other
18 people of standing, to bring cases challenging individual
19 races or individual counties.

20 We saw very, very few election contests or
21 petitions for recount or anything. Like, all the processes
22 that are built in to our system to enable -- to make sure
23 that -- you if you do have a concern about issues in a
24 particular county relating to drop boxes or what have you,
25 you can bring a challenge. We didn't see that in any

1 widespread, you know, way. There were a couple of
2 challenges and that was about it.

3 But, no, there was none. And I appreciate you
4 also bringing it up because these were the kinds of, you
5 know, completely unfounded conspiracy theories, you know, of
6 what could possibly happen but then the later litigation
7 that was heard by Judge Braun in the Middle District and
8 then upheld by the Third Circuit.

9 Those pieces again, you know, sort of brought
10 these conspiracy theories, you know, theoretical, you know,
11 unfounded allegations. And every single one of them was
12 thrown out. There was no evidence. And, in fact, you know,
13 the Judges who issued those decisions in the Federal Courts
14 happen to all be Republican, you know, Republican appointees
15 or longtime Republicans before they were Judges, literally
16 every single one of these cases and they were unanimously
17 thrown out saying that whether it is the Trump Campaign or
18 others involved had shown absolutely no evidence of any such
19 things happening.

20 REPRESENTATIVE SOLOMON: Thank you, Secretary.

21 Thank you, Mr. Chairman.

22 MAJORITY CHAIRMAN GROVE: Representative Miller.

23 REPRESENTATIVE MILLER: Thank you, Mr. Chairman.

24 And thank you, Secretary and Deputy Secretary,
25 for being here.

1 I want to ask a question with a little bit of
2 background first. Of course, we know that Act 77 came to
3 pass multiple lawsuits. And then the Pennsylvania Supreme
4 Court said that ballots could be counted after November 3rd
5 through November 6th. That was appealed to the U.S. Supreme
6 Court which said, no, that's a question we want to
7 undertake, whether that's constitutional or not, among other
8 issues.

9 And then you issued on October 28th a Guidance or
10 an order that said, all counties should segregate those
11 ballots. Then on November 1st, you abruptly changed your
12 Guidance and told the counties that they should, in fact,
13 process them as soon as possible.

14 There was a lot of confusion for county election
15 officials. And, of course, then Justice Alito issued an
16 order saying that that was not to be, that those ballots
17 were to be, in fact, segregated.

18 So my question to you is, why -- please explain
19 your rationale for why you changed your order from October
20 28th to November 1st.

21 SECRETARY BOOCKVAR: With all due respect,
22 Representative, those are not the facts. So on October
23 28th, Judge Alito -- Justice Alito actually issued a
24 decision saying he understood that we had put out Guidance
25 telling the counties to segregate, which we had. And

1 Justice Alito also confirmed that that's indeed what he
2 wanted, was for us -- for the counties to follow the
3 Secretary of State's Guidance and segregate those ballots.

4 What we issued on November 1st was further
5 details on how to do that, because we had already started
6 getting questions from the counties. Okay. What do you
7 mean by segregate? And it was clear that they weren't sure.
8 Do they just stick them in a box somewhere? Do they enter
9 them but not count them?

10 So we clarified. If you look at the Guidance and
11 you read it in great detail, all it does is it walks them
12 through what it means to segregate the ballots.

13 And I want to be clear, by the way, because
14 there's been a lot of false statements about those ballots.
15 You can go to our website. For the election returns, none
16 of those ballots that arrived after 8 p.m. on November 3rd
17 and before 5 p.m. on November 6th, none of those votes have
18 been counted either for the Presidential race or for the
19 Congressional races. None of them. So those 10,000-some
20 odd ballots are segregated. They were processed because, of
21 course, there needs to be some recordkeeping of them but not
22 counted for those races.

23 So that's what -- really, if you look again at
24 the November 1st Guidance, it just gives more details than
25 the October 28th Guidance had given. And that's because

1 that decision, or at least partial decision, came out in
2 between and confirmed that, yes, the Supreme Court wasn't
3 going to be hearing that case quickly and they should
4 continue to segregate it. And we wanted to make sure that
5 we defined what that meant to answer those questions.

6 REPRESENTATIVE MILLER: Well, the nature of my
7 question was more about the confusion that this caused. I
8 understand that the ballots were segregated ultimately. But
9 then that was ultimately because of the November 6th order
10 by Justice Alito who, in fact, ordered them, I think because
11 of the confusion, it appeared to me, based on at least the
12 conflicting ideas that were out there among county
13 officials. So why would Justice Alito have to issue a
14 November 6th order then?

15 SECRETARY BOOCKVAR: I disagree with that
16 analysis. Justice Alito told us and the counties that, in
17 fact, my Guidance needed to be followed. And when we -- and
18 as we followed up with -- I mean, look, none of us want to
19 have a circumstance where ballots -- where we're not sure
20 what to do with ballots. We don't want that for the
21 counties either. But the Court decision -- the court cases
22 were filed late. The Court decisions were issued late and
23 so you'd have to make do.

24 This is not the only time. Just last -- was it
25 last year or 2019, there was a constitutional amendment

1 where a decision got issued I think on the eve of election
2 day. And we had to tell the counties we know that people
3 are going to be coming in and voting on that.

4 Was it a referendum or a constitutional
5 amendment, Jonathan? Oh, it was Marsy's Law, right? It was
6 Marsy's law. And literally I think the day before election
7 day a Court decision came down and said, don't count the
8 votes for that, for Marsy's Law. But it was too late for
9 the counties to take -- you know, like, they, of course, had
10 already programed the voting systems and put out their
11 ballots.

12 So in effect, it was a similar thing where they
13 have to do something with the ballots. They can't just
14 leave them in trays, right. But we also wanted to make sure
15 that they did not count them for the Federal, the
16 Congressional, or the Presidential race and that they still
17 are not included in our -- in their certified results.

18 REPRESENTATIVE MILLER: I guess the confusion --
19 I'll read from Justice Alito's decision. Until today, this
20 Court was not informed that the Guidance issued on October
21 28th, which had an important bearing on the question whether
22 to order special treatment of the ballots in question, had
23 been modified. The application received -- or he was not
24 even aware that it had been modified.

25 So I guess it just -- again, it seems to me that

1 there was some confusion, and thus necessitating this order,
2 and confusion I think also among county officials.

3 SECRETARY BOOCKVAR: Well, I think that that had
4 nothing to do with the -- you know, I wish that the November
5 1st Guidance had been sent to the court to update them. But
6 that statement didn't go to what the Guidance actually said.

7 And the Justice very reasonably said he wished
8 that he been informed that the Guidance had been updated.
9 But nowhere does he say that they are not consistent. And
10 they were consistent. And we continue to work with the
11 counties as they canvass their ballots, to answer any
12 questions, and make sure that they understood.

13 And ultimately they ended up giving us -- not
14 only did they segregate the ballots, but they gave us
15 segregated results for those ballots so that they can make
16 sure we could be sure that they were segregating and not
17 counting the Presidential and the Congressional votes.

18 That was what was most important, you're right,
19 is to preserve. We didn't want -- even though the Supreme
20 Court didn't ultimately say do not count the ballots. They
21 haven't said yet. We didn't want to get into a place where
22 those votes were counted for President and Congress and then
23 they had to be backed out. So the counties did a great job
24 segregating, gave us the information, but without counting
25 them, those races, and now we are just still waiting for the

1 U.S. Supreme Court to see whether they will make a final
2 decision as to those votes.

3 REPRESENTATIVE MILLER: Okay.

4 Thank you, Mr. Chairman.

5 MAJORITY CHAIRMAN GROVE: Thank you.

6 Followup on that. To be clear, the rationale for
7 not counting the segregated ballots received after November
8 18th at 8 p.m., that was your discretion not to do that for
9 a President, but basically for the Federal elections for
10 President and Congressional, but they were counted for the
11 State election Senate and House members and then the three
12 row officers, correct?

13 SECRETARY BOOCKVAR: Correct.

14 MAJORITY CHAIRMAN GROVE: Okay.

15 And so here's a kind of follow-up question. If
16 the Court comes back and says it's okay to count them, how
17 does that work with certification? Are you recertifying the
18 elections? Not that those ballots matter for generally, I
19 think, any of those elections. But how do you go back and
20 recertify that process?

21 SECRETARY BOOCKVAR: So, you know, I think
22 there's -- there's certainly a precedent for the counties to
23 give new certifications.

24 Although, Jonathan, I think we have -- no. Well,
25 I guess what I'd like to say, Chairman, is let me get back

1 to you about the actual process that would be followed here.
2 I think the main point that I want to make is that none of
3 it can change the results of any race. The number of
4 ballots that were received total were about 10,000
5 statewide. And in none of the Congressional races were the
6 numbers of those what we call grace period ballots --

7 MAJORITY CHAIRMAN GROVE: Correct. Absolutely.

8 SECRETARY BOOCKVAR: -- were not enough to change
9 the outcome.

10 MAJORITY CHAIRMAN GROVE: Right.

11 SECRETARY BOOCKVAR: So I just -- I don't want to
12 speak out of turn about what the process will be. Let's see
13 what the U.S. Supreme Court has to say. And then we'll
14 figure out what the appropriate process would be.

15 MAJORITY CHAIRMAN GROVE: Representative Keefer.

16 REPRESENTATIVE KEEFER: Thank you, Madam
17 Secretary.

18 I'm just trying to understand the Guidance
19 process. I appreciate the daunting task you had. And given
20 all of the changes with Act 77 and the confusion, it was a
21 lot to navigate, especially 67 different counties. And I
22 appreciate that they all have their different processes that
23 their counties utilize just given the demographics of their
24 counties.

25 But the counties I cover, York and Cumberland

1 Counties, they did not interpret the Guidance the same, No.
2 1. And because of -- as I was trying to help them -- and
3 Jonathan was in communication with them very frequently and
4 helping -- trying to work through that process with them as
5 well. But because it was so -- the changes seemed to be
6 coming very frequently, they couldn't really -- and they
7 didn't, quite frankly, educate or train their actual
8 workers. It was hard to get that out to the precincts. I
9 think we ended up with 165 precincts in York County and
10 trying to get them to -- you know, everybody doing the same.

11 So, for instance, the huge chaotic thing -- and
12 we're still trying to navigate through this and seeing what
13 happened, it was the whole surrendering of ballots. And if
14 you surrendered your ballot, right, if you still had both
15 pieces, the outer envelope and the ballot, you could turn
16 that in. You could vote on a normal ballot.

17 However, some precincts didn't quite comprehend
18 that so they would only allow those voters to vote on
19 provisional ballots.

20 SECRETARY BOOCKVAR: You froze for a minute
21 there. I couldn't hear the last part of what you said.
22 Sorry.

23 REPRESENTATIVE KEEFER: All right.

24 SECRETARY BOOCKVAR: I heard you say it was when
25 -- it froze right at the time that you said it was about the

1 surrendering of the ballots.

2 REPRESENTATIVE KEEFER: Okay. So from precinct
3 to precinct, there were differences. So some Judge of
4 Elections understood it that everybody who came in to
5 surrender their ballot could only vote on a provisional
6 ballot. So that took a while to get that communicated
7 through all of it. So the inconsistency that was there.

8 And then also there were many people -- our
9 office got inundated with calls two weeks up to the election
10 who had received a mail-in ballot that they had not
11 requested. And the county said, well, they must have
12 checked that annual box, which was very confusing, the
13 permanent annual box which people didn't understand that
14 completely as well. So a lot of people got ballots that
15 way, which was another added confusion.

16 So just trying to understand. So you said
17 Guidance isn't binding, right? But there has to be some
18 continuity and uniformity across the counties. So how would
19 -- if it's not binding, how do you work that in, you know,
20 that it's consistent and uniform?

21 SECRETARY BOOCKVAR: So, thank you,
22 Representative. And, you know, I think one of the things is
23 getting back to -- you know, when Representative Kenyatta or
24 it might have been somebody else -- I apologize for
25 forgetting who it was -- asked me about changes, that would

1 be helpful to have more of a directed nature, more
2 uniformity. Poll worker training is absolutely one of them.
3 It would be great. It would be helpful to the counties as
4 well as to us as well as to the voters in the circumstances
5 you mentioned, specifically to have more uniform poll worker
6 training and a mandate for poll workers to attend.

7 REPRESENTATIVE KEEFER: Right. But how do you
8 ensure the uniformity of your Guidance? Like, is there
9 followup with your Guidance that everybody is, you know,
10 facilitating that Guidance or understands it in the same
11 way?

12 SECRETARY BOOCKVAR: Yeah. The truth is a lot of
13 these things -- and just so that you know -- I'm sure you
14 know this. The first thing you talked about with the
15 surrendering the ballot, that wasn't Act 77 of 2019. That
16 was Act 12 of 2020. So it was literally being implemented
17 for the first time in the November election, which is never
18 ideal. Right.

19 You want to give the counties time, the poll
20 workers time, to learn those new processes. And so that
21 would have been a good example. It might have been
22 Representative Solomon or Representative Kenyatta who was
23 asking about would it have been better to have a longer
24 period of implementation time.

25 The example you give, both examples, are really

1 perfect examples of where it would have been much better to
2 have a longer build-out of training time.

3 And so when we issue the Guidance -- like, we
4 could issue all the Guidance in the world. But it not only
5 needs to get to the counties, but it needs to get to the
6 poll workers who are carrying it out for at least that first
7 process you mentioned.

8 REPRESENTATIVE KEEFER: Right. Excuse me. Let
9 me interrupt you for a minute. So at that point, right, you
10 issue the Guidance. There were certain parts of Guidance
11 that counties would receive and I would hear this repeated
12 back to me, no, no, no. This you absolutely have to do or
13 the ballot will be rejected or you have to do this.

14 And then it would be that, you know, it would go
15 through the different precincts. But it was something that
16 the counties really received that, okay, this is not -- this
17 is non-negotiable, right?

18 SECRETARY BOOCKVAR: Right.

19 REPRESENTATIVE KEEFER: That part of it did not
20 seem like a non-negotiable. And I say that to relay this.
21 So as some -- you know, while there's perception out there
22 that it's misinformation and lies of why people are not
23 accepting the results of the election, a lot of it is
24 because they went and there wasn't a consistent process or
25 procedure or they received a ballot they hadn't requested.

1 And then it just starts. The wheels are turning.

2 So if we can't demonstrate to them -- which I
3 have tried to do and say, here's the guidelines. Here's the
4 rule. Here's what they were supposed to do. Did you get
5 this? Because of all the confusion that was out there, if
6 they don't trust the process, they are not going to trust
7 the results. So it's trying to understand, you know, how
8 the process is implemented and how it's consistently, you
9 know, facilitated.

10 SECRETARY BOOCKVAR: Right. And, Representative
11 Keefer, you know, I think again, a lot of this goes to this
12 was a brand-new law. So when I say that the Guidance is not
13 directory, like in the same way it's directed, that doesn't
14 mean that the processes, that the Guidance it's related to
15 are not mandatory.

16 So, for example, the example you gave of the
17 surrendering of the ballot and being able to vote on the
18 regular voting system, that's a statute that you passed
19 under Act 12. That's absolutely mandatory. So the Guidance
20 is just, again, to help counties implement the law, so you
21 have the law. It was mandatory for the counties to follow
22 it.

23 But there wasn't enough time for all the poll
24 workers to fully digest it. I mean, we have 50,000-some odd
25 poll workers across the Commonwealth. And in a brand-new

1 law in a, you know, record turnout election, it's very hard
2 to have it work perfectly the first time.

3 And that example you gave of the surrendering of
4 the ballot, it's -- I don't think that there's any county
5 that actually like intentionally didn't carry out that law.

6 REPRESENTATIVE KEEFER: Right.

7 SECRETARY BOOCKVAR: It's just the training to
8 the poll workers is where the problems were had. And it's
9 why I'd really like to see, you know, more intensive poll
10 worker training and make sure that we do mandate that the
11 poll workers go through it. But we have to also understand
12 that the poll workers, you know, are all ready, you know --

13 REPRESENTATIVE KEEFER: Volunteers. Right. I
14 get that.

15 SECRETARY BOOCKVAR: -- so that we could --

16 REPRESENTATIVE KEEFER: Here's an example where
17 though it came into -- really came into play, right? So if
18 it's a -- some of it seems like it's a prerogative of one
19 county to follow it and not -- and again, one would be the
20 Zicarelli case in that, you know, one county said, well,
21 we're counting those ballots, and the other county said,
22 we're not. And it was based off of the issued Guidance. So
23 in that case it matters, right?

24 So that is trying to understand like, is it --
25 are the Guidance directives? Are they -- you know, are they

1 mandatory to follow? And if not, here is where, you know,
2 the rubber hits the road. And it really had an impact,
3 right?

4 So you have -- you know, you straddle two
5 counties, as I do. And so let's just say Cumberland
6 decides, you know what, I'm going to count these ballots.
7 I'm going to count all of the, you know, late ballots.
8 They're going to be included in my tally. And the other
9 county says, no, we're going to discard, you know, this type
10 of ballot. If that's not, you know, enforced, the lack of
11 uniformity changes the results.

12 And again, it's just one more level of why, you
13 know, you've got to get buy-in from all the voters to accept
14 the process. They can walk away and say, you know what, I
15 don't like the results, but, hey, everything was consistent
16 and uniform and, you know, I understand the process and I
17 believe it was valid.

18 SECRETARY BOOCKVAR: And, you know, it's -- you
19 know, the Legislature can make -- you know, can change what
20 we issue as Guidance to being, you know, a level of a
21 directive for any area to change that, to shift that to be
22 mandatory.

23 But keep in mind again, back to the original
24 question or one of the original questions about sort of that
25 balance between the counties and the state that there were

1 advantages. As we have the entire election system set up in
2 Pennsylvania and across the country, we do give the local
3 jurisdictions authority to make localized determinations.

4 And so like if you -- so once you start chipping
5 away, you just have to think about how it impacts everything
6 else. So it's really -- but that is what our system is
7 based on in Pennsylvania. The counties have local authority
8 to make those determinations.

9 REPRESENTATIVE KEEFER: Right. And so I'm aware
10 of where my voters came in at. They didn't have an
11 opportunity to fix or correct their ballots. They weren't
12 contacted. They didn't have like 20 -- you know, if you
13 live in the northern end of the county where I live, it was
14 a true burden for some individuals because we had one
15 municipality that didn't -- they had a snafu and they did
16 not mail out the absentee ballots in time or the mail-in
17 ballots. They were not timely. There's no way those voters
18 could get it in the mail back to the county in time.

19 So to drive to the county was -- it's a huge feat
20 for some. And, you know, that is a deterrent. And I feel
21 like that is not free and fair access to the ballot that
22 counties that had 150 ballot collection boxes had. So when
23 we're looking at, you know, that type of thing, our voters
24 say, well, wait. I kept tracking my ballot because he said
25 it was provisional and I never saw that it counted. That's

1 not fair. Nobody called me to say, you know, you were
2 missing a date or you were missing a signature or an outer
3 envelope, because they didn't do that process in York County
4 or in Cumberland County, quite frankly.

5 So that disparity, you know, again just sows the
6 seeds of discontent. So there's areas where I think they're
7 non-negotiables. Are there areas where, you know, hey,
8 we're going to process the line like this or we're going to
9 split the book in two. Right. Those are at the discretion
10 of the county.

11 But when we're talking about what we're going to
12 -- you know, how we're going to provide access to the ballot
13 and what we're going to count and what we're not going to
14 count, I don't think there can be flexibility.

15 Thank you.

16 MAJORITY CHAIRMAN GROVE: Madam Secretary, just
17 to follow up. Justice Wecht did an order for undated
18 ballots. Were you going to be turning that Guidance into a
19 directive for future election?

20 SECRETARY BOOCKVAR: I don't think we have
21 directive authority over that particularly. But that -- I'm
22 sorry. Which Justice? Which decision are you referring to?

23 MAJORITY CHAIRMAN GROVE: Undated ballots. So
24 for elections moving forward, they're not counted. So is
25 that Guidance going to become a directive?

1 SECRETARY BOOCKVAR: We can only issue directives
2 on things that we're statutorily, you know, given the
3 authority to make it a directive. But our Guidance was
4 consistent with that. So our Guidance still says, if you
5 look at the September 28th Guidance -- I don't remember
6 exactly what it's called -- but something to do with
7 processing absentee ballots and mail-in ballots, it says
8 ballots must be signed, dated, and something else, I think.

9 Jonathan, I don't know if you have handy the
10 exact language. I could pull it up. So our Guidance are
11 already consistent with that. But unless, you know, we have
12 specific statutory directive authority, we really can't put
13 out what's called the directive.

14 MAJORITY CHAIRMAN GROVE: Gotcha. And just to
15 follow up. So there's Guidance dating back to like 2016 on
16 stuff. Is there a reason we don't use (unintelligible)
17 process for Guidance as in regulatory versus -- like a
18 regulation versus a Guidance?

19 SECRETARY BOOCKVAR: Yeah. I mean, we don't have
20 regulatory authority in most of the election realm.

21 Jonathan, is that correct?

22 DEPUTY SECRETARY MARKS: True. Voter
23 registration, there's some specific authority there. And
24 then there's the directive authority, your authority to
25 issue directives on voting systems. I don't think there's

1 broad authority to issue regulations on all things
2 elections.

3 SECRETARY BOOCKVAR: And that, of course, you
4 know, Chairman, could be changed. But keep in mind, you
5 know, the one advantage is that we obviously work with
6 regulations on our other side of the House dealing with
7 professional licensure and other issues. And, you know, it
8 can be a two-year process.

9 So for things that need to be dealt with quickly,
10 it's not the most effective process. But I do think that it
11 would be good for the Department to have regulatory
12 processes related to some of these areas that don't require
13 a quick turnaround.

14 MAJORITY CHAIRMAN GROVE: Can you just remind me
15 what section of law gives you the power for directives? Do
16 you have that off the top of your head?

17 SECRETARY BOOCKVAR: I don't. There's a number.
18 I mean, there's --

19 Jonathan, do you remember the statute?

20 DEPUTY SECRETARY MARKS: The article -- and I
21 don't have it. The article on electronic voting systems,
22 there's very explicit authority to the Secretary to issue
23 directives. That's the one that pops into my head
24 immediately. The Secretary does have authority under the
25 section that deals with the Secretary of the Commonwealth's

1 scope of duties, has the authority to demand certain
2 additional reports from counties as necessary.

3 And then as I said, there's regulatory authority
4 specifically related to Act 3 of 2002 and the
5 Administration.

6 SECRETARY BOOCKVAR: And, Chairman, just to
7 follow up. You know, we use the words directive and
8 Guidance. But just so we're clear, there are other areas
9 which gave me authority to act in a sort of directory way,
10 you know, as Chief Election Official.

11 For example, you know, to carry out rules
12 relating to overseas and military voters and Help America
13 Vote Act and Voting Rights Act and others, they may not use
14 the term directive.

15 And so, you know, part of this conversation or,
16 you know, maybe more appropriately like a follow-up
17 conversation, you know, to just sort of flesh out what they
18 each mean and whether there would be, you know, a use is
19 being different than what it already is because the words
20 used are different in different places, if that makes sense.

21 MAJORITY CHAIRMAN GROVE: Yes. Thank you.

22 Representative Diamond.

23 REPRESENTATIVE DIAMOND: Thank you, Mr. Chairman.

24 Thank you, Madam Secretary, Deputy Secretary, for
25 joining us today.

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SECRETARY BOOCKVAR: Sure.

REPRESENTATIVE DIAMOND: At one point last year, the Department of State issued Guidance stating -- and I quote -- the Election Code does not permit county election officials to reject applications or voted ballots based solely on signature analysis, unquote.

Madam Secretary, you then asked the Supreme Court of Pennsylvania to consider and rule on that issue absent any underlying case before the courts in the state using its King's Bench jurisdiction presumably out of concern that some counties would not follow this Guidance without a stronger basis in law.

I would like to ask you how and why did the Department decide to take that extra step on the signature analysis issue and why did that approach differ than from the approach used on other expected inconsistencies among the counties, including updated ballots or ballot curing?

SECRETARY BOOCKVAR: You know, that was one that the counties asked us, counties who did not know what they should be doing with signatures. You know, honestly, this is not something new. Right. This is statutes that have existed, you know, for decades relating to absentee ballots.

And, you know, again, the Trump v. Boockvar, you know, Judge Ranjan, the Federal District Court Judge, again, stated that there was nothing in the statutes for signature

1 matching to happen.

2 What I really didn't want to see in that
3 circumstance was for this to be figured out on election
4 night or election day when the prec canvassing was happening,
5 for there to be 67 counties who were trying to figure out
6 what to do with it on election day.

7 So there was clearly an issue that was concerning
8 to counties as something that was going to impact every
9 single county in the Commonwealth. And it was something
10 that if we didn't get, in effect, a clear statement from the
11 courts that there was going -- that it was going to take
12 even longer to canvass the ballots because the counties were
13 not allowed to start sooner.

14 So that confluence of events, because the
15 Legislature didn't allow the counties to start canvassing
16 before election day, meant that if a court didn't rule on it
17 in advance, we were going to have possibly 67 different
18 county courts figuring it out, appeals, all kinds of things
19 going on.

20 So, you know, I started out by saying that my
21 first duty is to the voters of the Commonwealth, and I
22 wanted clarity before going into election day.

23 REPRESENTATIVE DIAMOND: Thank you, Madam
24 Secretary. And I just want to back up a little bit.

25 SECRETARY BOOCKVAR: Okay.

1 REPRESENTATIVE DIAMOND: I mean, you are a
2 trained attorney. You're trained in elections. You have a
3 lot of experience in elections. I'm sure you have access to
4 a general counsel in the Department or outside the
5 Administration. Why would you go to the Supreme Court of
6 Pennsylvania for essentially legal advice? I mean, you know
7 how to read court cases and you know how to -- and you've
8 already issued this Guidance. Why go to the Supreme Court
9 and use that as, like, almost personal counsel to do this?

10 SECRETARY BOOCKVAR: Well, as we were talking
11 about with other Representatives asking questions, it never
12 helps to leave things until really close to election day.
13 So I wanted to do this as quickly as possible to get a
14 decision from the highest court in the state.

15 And then again, it actually ended up being added
16 by the Trump litigants to that Federal Court case in front
17 of former President Trump's appointee, Judge Ranjan. And he
18 actually, I think, decided it before the Supreme Court did,
19 finding that there was no basis in the statute for that
20 signature matching.

21 And by the way, you know, the Pennsylvania
22 Supreme Court was unanimous, Republicans, Democrats alike,
23 all agreed that there was no basis of the statute. So it
24 made it absolutely clear going into election day so there
25 was no ambiguity.

1 REPRESENTATIVE DIAMOND: And just one more
2 followup, Madam Secretary. You wanted to make sure there
3 was no ambiguity. There was absolute ambiguity in the
4 matter of ballot curing in Pennsylvania of whether that's
5 legal or not. Why would you not seek the same advice from
6 the Supreme Court at the same level on ballot curing, which
7 eventually ended up treating voters in different counties
8 differently?

9 Why would you not seek something that's that same
10 kind of legal advice and legal basis for something which
11 potentially would treat voters in different counties
12 differently?

13 SECRETARY BOOCKVAR: So there actually was
14 litigation already that raised ballot curing. There was a
15 case. I think it was maybe a Pennsylvania Democrat. You
16 know, there was so much litigation that was brought this
17 year that I don't recall which exact case it was. But it
18 specifically brought that claim. I didn't need to. It had
19 already been brought.

20 I was a Defendant in most of the litigation that
21 was addressing these issues, not the bringer of lawsuits.
22 So that was one that other people brought. It was heard by
23 the courts. They made decision s that were made. And it
24 didn't take action by me.

25 REPRESENTATIVE DIAMOND: So to sum up, you were

1 able to determine what the courts meant on ballot curing but
2 you were not able to determine what the courts meant by
3 signature matching? Do I understand you correctly?

4 SECRETARY BOOCKVAR: No court had ever issued a
5 decision on the signature matching. It had not been issued.
6 The curing issue had been raised and heard by the courts.
7 Look, there's an endless number of issues that could be
8 raised that aren't brought or are brought one year and never
9 brought again. That was one. The signature matching was
10 not one that had been heard before and I wanted to address
11 it so that the voters and the counties had clarity going
12 into election day.

13 The other issue that you brought up was brought
14 by somebody else. So I didn't need to bring it. It was
15 brought, I think, over the summer. So it was well before
16 election day. And we make choices.

17 Look, we, again, want the best for the voters of
18 the Commonwealth of Pennsylvania and for the counties to
19 make sure that every voter that's eligible gets to vote and
20 that every vote is counted accurately and securely.

21 REPRESENTATIVE DIAMOND: Thank you, Madam
22 Secretary.

23 Thank you, Mr. Chairman.

24 MAJORITY CHAIRMAN GROVE: Representative Staats.

25 REPRESENTATIVE STAATS: Thank you, Mr. Chairman.

1 And thank you, too, Secretary Boockvar and Deputy
2 Secretary Marks, for your time today. We all appreciate it.

3 So in proper State Guidance issued October 21st,
4 2020, it states that if a voter returned an absentee or
5 mail-in ballot but the ballot was rejected by county
6 officials and the voter believes they're eligible to vote in
7 person, the voter may cast a provisional ballot on --

8 SECRETARY BOOCKVAR: I'm sorry. You froze for a
9 bit.

10 MAJORITY CHAIRMAN GROVE: Craig, you froze
11 towards the end of that first sentence.

12 REPRESENTATIVE STAATS: Where did I leave off?

13 MAJORITY CHAIRMAN GROVE: Right towards the end
14 of your first sentence.

15 REPRESENTATIVE STAATS: Let me go back and just
16 repeat myself. The Department State Guidance issued October
17 21st, 2020, states that if a voter returned an absentee or
18 mail-in ballot that their ballot was rejected by county
19 election officials and the voter believes they are eligible
20 to vote in person, the voter may cast a provisional ballot
21 on election day. Is that correct?

22 SECRETARY BOOCKVAR: I don't have it right in
23 front of me, but it sounds right.

24 REPRESENTATIVE STAATS: So without prec canvassing,
25 how can a voter know that their ballot was rejected in time

1 to vote provisionally on election day?

2 SECRETARY BOOCKVAR: So that gets to the counties
3 announcing -- well, it depends on what the issue is. Right.
4 So there's certain things that -- and I apologize. Maybe I
5 should pull out the Guidance. But, you know, there's a
6 couple of different ways that a voter could find out that
7 they had one of these, you know, not a mistake that doesn't
8 go to qualifications, right.

9 So if they fail to sign an envelope, that would
10 be an obvious one that a county would see as soon as they
11 get the ballot. Right. It doesn't take canvassing to see
12 that it's not signed. And this goes back, you know, again,
13 decades. This is not new.

14 Some counties have had different processes for,
15 you know, calling the voter, e-mailing the voter to let them
16 know that they didn't sign, that kind of thing. Again, this
17 goes back decades.

18 For things like naked ballots, you don't know
19 until you canvass the ballots that that exists. So we
20 wanted to make sure. And this goes to the question that was
21 being asked earlier. We started to get asked by counties,
22 you know, what happens? Like, what happens if people want
23 to know whose ballots are being -- you know, are naked and
24 not being counted?

25 And that's what Jonathan was saying earlier that,

1 you know, all the issues with canvassing and prec canvassing,
2 they're all public meetings so they can announce the names.
3 And then there are automatic e-mails that go out from the
4 SURE System. If the county -- you know, as a county
5 processes the ballots, there are certain automatic e-mails
6 that go out to the voters if the voters have an e-mail
7 notification. So it's very fact specific ultimately.

8 But the idea about announcing to all the parties
9 and all the candidates present who the voters were who might
10 have one of these technical errors that don't go to their
11 qualifications that they could notify just like -- I mean,
12 you're an elected official. You know, I'm sure you know
13 that there are always poll watchers sitting at polling
14 places who are tracking whether their voters, you know, have
15 come in or do they go and make phone calls at 2 in the
16 afternoon? So there was an opportunity for, you know, party
17 representatives to make those decisions about whether they
18 want to contact voters.

19 You know, I doubt that very many were going to be
20 able to get to them on election day because of how our
21 process -- our prec canvassing and canvassing works. But the
22 Provisional Ballot Law was really established to catch those
23 kinds of circumstances where somebody either is in the wrong
24 place or might have done something, you know, slightly wrong
25 but they're a qualified voter and their vote should still be

1 counted.

2 REPRESENTATIVE STAATS: I thank you for that.
3 And that's exactly what I'm getting at. The way counties
4 dealt with mail-in ballots differed substantially. So if
5 only some voters in the county are notified prior to
6 election day or only some counties in Pennsylvania provide
7 this notice, doesn't that create a 14th Amendment concern as
8 well as uniformity concern under Article 7, Section 6, of
9 the Pennsylvania Constitution?

10 SECRETARY BOOCKVAR: You know, the Federal and
11 State Courts have both ruled that it doesn't. And I think,
12 again, this goes to the local authority at the counties to
13 make these judgment calls. And it's specifically in these
14 cases that they address, they looked at those exact
15 questions and said, no, it doesn't violate equal protection.

16 REPRESENTATIVE STAATS: Okay.

17 Thank you, Madam Secretary.

18 Thank you, Mr. Chairman.

19 SECRETARY BOOCKVAR: Thank you.

20 MAJORITY CHAIRMAN GROVE: Thank you,
21 Representative Staats.

22 Representative Owlett.

23 REPRESENTATIVE OWLETT: Thank you, Mr. Chairman.

24 And thank you, Secretary and Deputy Secretary,
25 for joining us.

1 I want to first off thank all of our election
2 officials, especially in the 68th District. They're just
3 phenomenal. The poll workers, they did a great job,
4 especially with so many different Guidances.

5 I feel like 2020 we lived in this like frequently
6 asked question and now I'm learning of these unofficial
7 e-mail worlds. Like, that's where we go to look for
8 information now, which is odd to me, but, I mean, we got the
9 Constitution in our laws, too, which is great.

10 I want to talk a little bit more about the curing
11 and fixing of ballots. We've kind of hit that pretty hard,
12 which is really great because it's important. We want to
13 make sure that, you know, we do have uniform elections.

14 I think, you know, we hear free, fair, and
15 accurate. But the one word that we don't often use is
16 uniform when we're talking about this past election. I
17 think it's important. I mean, it's in our Constitution and
18 our laws, right? So it is important.

19 I think one of your quotes that I heard today,
20 local discretion adds to security. I'm going to ponder on
21 that for a while. But I'm curious, you know, moving
22 forward, are you saying that -- you know, as far as curing
23 and fixing ballots, we saw different counties doing it
24 differently. Are you saying that you're just going to leave
25 it up to them from here on out or do you specifically have

1 Guidances living in the Guidance e-mail world? Are you
2 going to put anything out for our counties on Election
3 Guidance so that we can have a uniform process when it comes
4 to curing and fixing ballots?

5 SECRETARY BOOCKVAR: So I think that's a great
6 question. I would love to have the authority to tell the
7 counties that they all should give voters an opportunity for
8 notice and cure of minor errors. That was specifically
9 addressed in at least one, maybe multiple, court decisions.

10 And it was held that we can't mandate it based on
11 the current statutes. I urge the Legislature to amend the
12 laws and provide for a notice of cure process. A lot of
13 other states do it. We think it's a great way to make sure
14 that every voter -- that no voter is disenfranchised as a
15 result of something that doesn't go to their qualification
16 but goes to a simple error.

17 As I mentioned earlier, you know, I would
18 include, you know, any ability to count naked ballots.
19 Again, these are qualified voters who just made a mistake.
20 You know, I would include the opportunity for somebody that
21 doesn't sign or doesn't date, or whatever, their envelope,
22 if they are a qualified voter, their vote should count.

23 So I would urge the Legislature to go ahead and
24 create such laws. And we would be happy at the Department
25 of State to work with you and the counties on how to best

1 implement them.

2 REPRESENTATIVE OWLETT: Thank you.

3 And I appreciate the Chairman putting these
4 hearings together so that we can gather this information so
5 that we can continue to work on issues like this because it
6 is a problem. It's become a problem. And we've talked
7 about a lot of issues. You've raised a lot of them and I
8 appreciate you recognizing them in this past election.

9 So we'll continue to look at this and see if we
10 can come up with a way here in the Legislature to make sure
11 that it is uniform across the state.

12 I appreciate you joining us today.

13 SECRETARY BOOCKVAR: Thank you, Representative.

14 And, you know, I might just add that, you know,
15 under Act 12, we created this Election Law Advisory Board.
16 You created this Election Law Advisory Board that includes
17 not only members of the Legislature but members of the
18 Department of State.

19 Jonathan, I think you have your first meeting in
20 about a week.

21 DEPUTY SECRETARY MARKS: Yes.

22 SECRETARY BOOCKVAR: Jonathan is representing the
23 Department of State on the Advisory Board. And it also
24 includes Representatives from across the county, across the
25 state. It includes County Commissioners. It includes

1 Election Directors and other folks who have a direct
2 interest in shaping both an assessment of what exists and
3 election reforms that will be useful going forward.

4 I would suggest that that Advisory Board, which
5 is bipartisan and already exists and has its first meeting,
6 is actually a better place to have those discussions than 14
7 hearings.

8 MAJORITY CHAIRMAN GROVE: I appreciate that,
9 Madam Secretary. And as the body that actually establishes
10 Election Law and is a bipartisan committee that was
11 established well before the Advisory Board, I looked for
12 their advisory opinion. But it is our job to actually set
13 the law and provide oversight on everything within our
14 jurisdiction. And we will continue to proceed with that.

15 Quick question. Precanvassing, not allowed by
16 law, correct?

17 SECRETARY BOOCKVAR: I'm sorry?

18 MAJORITY CHAIRMAN GROVE: Precanvassing is not
19 allowed by law, correct?

20 SECRETARY BOOCKVAR: Pre-Campbellson?

21 MAJORITY CHAIRMAN GROVE: Precanvassing of
22 ballots is not allowed by law?

23 SECRETARY BOOCKVAR: Oh. No, it is allowed by
24 Act 12, Act 12 of 2020, specifically defined in the law.

25 MAJORITY CHAIRMAN GROVE: Not prior to election

1 day, correct? They can start canvassing --

2 SECRETARY BOOCKVAR: Starting at 7 a.m.

3 MAJORITY CHAIRMAN GROVE: That is the current
4 law, correct?

5 SECRETARY BOOCKVAR: That prec canvassing starts at
6 7 a.m. on election day?

7 MAJORITY CHAIRMAN GROVE: Correct.

8 SECRETARY BOOCKVAR: Correct.

9 MAJORITY CHAIRMAN GROVE: Thank you.

10 Representative Schemel.

11 REPRESENTATIVE SCHEMEL: Thank you, Mr. Chairman.

12 My question also follows along the general theme
13 of uniformity. So the Pennsylvania Constitution requires
14 elections and voter registration to be uniform across
15 Pennsylvania. At the end of October you issued Guidance to
16 the counties encouraging them to provide satellite election
17 offices to be open evenings and weekends.

18 Your office provided no additional funding to
19 implement this Guidance. However, private advocacy groups
20 -- I should stop here. I don't want to be a purveyor of any
21 misinformation, so if there's anything in the context of my
22 question that you believe to be incorrect or have
23 information, I would appreciate you letting us all know.

24 So regardless, private advocacy groups, the
25 partisan connections, did provide grants to targeted

1 counties to operate these offices. My understanding is \$10
2 million in total. The grants appear to be offered only to
3 those counties having high concentrations of registered
4 Democratic voters. Specifically Allegheny, which is
5 Pittsburgh, had four satellite offices, Bucks had two,
6 Chester had 2, Delaware had 2, Montgomery had 4, and the
7 city of Philadelphia had 15 offices.

8 I understand that these are the only offices
9 throughout the Commonwealth. The other counties did not
10 have offices open. Is your office exploring the impact that
11 these privately funded election offices had on a geographic
12 disparity in regard to voter access?

13 SECRETARY BOOCKVAR: So, Representative, I
14 appreciate you encouraging me to inform you if you stated
15 something inaccurate and so I'll start with correcting
16 those. Thank you for inviting me to do so because I don't
17 want anybody thinking that things are true when they're not.

18 So first of all, we got two Federal grant awards
19 in 2020, one in January and one in March, I believe, March
20 or April. And both -- so one was the HAVA Election Security
21 Grant. And it was -- we were (unintelligible) but it's
22 really a broader grant to improve Election Administration.
23 And the other was the CARES Act, which specifically related
24 to COVID.

25 And both of those dollars that we ended up

1 giving, we, the Department of State, ended up subgranting
2 funds to the counties. And both grants, to a certain
3 degree, did cover expenses related to Act 77 or Act 12
4 provision of services so they could use those funds. And we
5 ended up subgranting about \$13 million between the two pods
6 of dollars to the counties that they could use for that
7 purpose.

8 And you can go on our website, by the way, to
9 look and see how much. The allocations were based on voter
10 registration although it was a minimum grant so that the
11 smallest counties at least could get some amount. So first
12 of all, that.

13 Second of all, your statement about the private
14 philanthropy dollars is not accurate. Every single county
15 and election jurisdiction in the country was eligible to
16 apply for those Federal dollars. The non-profit
17 organization was called the Center for Tech and Civic Life,
18 I believe, CTCL. And they literally gave money to any
19 county that applied.

20 And I can't remember the total number that
21 applied in Pennsylvania, but it was somewhere in the range
22 of 20 counties.

23 Jonathan, do you remember how many counties
24 applied for it?

25 And by the way, Representative, every single

1 county in Pennsylvania that applied did receive money from
2 that non-profit organization.

3 Jonathan, I don't know if you remember how many
4 counties. Was it about 20?

5 DEPUTY SECRETARY MARKS: I believe you are
6 correct. It's about 20, about one-third of the counties and
7 2,500 counties nationwide.

8 SECRETARY BOOCKVAR: Okay.

9 So, Representative, that was just so you
10 understood that every county, not any specifics. It wasn't
11 exclusive at all. So I think that answers the second part
12 of your question, too. Because the point being, any county
13 that needed assistance to help carry out access for eligible
14 voters was able to get private and Federal dollars that they
15 haven't had before.

16 Having said that, I think we should be providing
17 more funding to the counties for carrying out these
18 important tasks so that we make sure every eligible voter
19 has access to a safe and secure, you know, election and the
20 ability to vote in an accessible way.

21 REPRESENTATIVE SCHEMEL: Okay.

22 Thank you, Madam Secretary.

23 Now, with regard to the satellite offices, how
24 many counties have satellite offices?

25 SECRETARY BOOCKVAR: And I should just clarify

1 there are different purposes used by the, you know, what we
2 call satellite offices. So some counties -- so my
3 recollection is that -- and I'm just looking at my notes
4 from earlier -- seven counties had what I think of as being
5 fully operational satellite offices. But 23 counties had
6 either drop boxes or drop-off locations which would carry
7 out perhaps some of those features that you might be
8 referring to as a satellite office. So 23 counties.

9 You know, you mentioned Allegheny, but, you know,
10 Allegheny, Berks, Bucks, Chester, Dauphin, Elk, Franklin,
11 Lackawanna, Lancaster, Lehigh, Mifflin, Monroe, Montgomery,
12 Tioga, Venango, York, Cameron, Centre, Clinton, Erie,
13 Northampton, Philadelphia, and Delaware. So you can see
14 quite a range from, you know, small rural counties like
15 Cameron or Tioga, to large counties like Philadelphia or,
16 you know, Allegheny.

17 REPRESENTATIVE SCHEMEL: Okay. Is your office
18 doing a review then of those counties that have satellite
19 offices to ascertain what was being offered where to see if
20 there are disparities between the counties?

21 SECRETARY BOOCKVAR: We are having conversations
22 with the counties to figure out what worked best for them.
23 Every county had, you know -- again, we gave our Guidance,
24 our recommendations, our support, to every single county in
25 the Commonwealth. So everyone had the opportunity to do

1 this. Not all of them thought that it was necessary or some
2 thought it was necessary in different ways than others or
3 different numbers than others based on, you know, perhaps
4 the number of voters they have or the geographical setup of
5 their county. So, yes, we also do it with every election.

6 And, you know, Jonathan, anything you want to
7 jump in on?

8 But with every election we do assessments with
9 the counties on, you know, what went well, where they could
10 have been -- you know, what needs they had going forward.

11 Jonathan, I don't know. Anything you want to
12 add?

13 DEPUTY SECRETARY MARKS: Yeah. I wanted to point
14 out, too, that the Department actually collected that
15 information prior to the election, compiled it, and then
16 published that information on our website. It had details
17 so that voters could go to one location and find details
18 about what their specific county was doing regarding
19 drop-off locations, satellite offices, whatever.

20 So, you know, we actually collected a lot of that
21 information prior to the election so that we could help the
22 counties that were doing those things to disseminate that
23 information.

24 SECRETARY BOOCKVAR: And we'll add, by the way,
25 because, again, we are very much in favor of the more

1 accessible to voters, the better, we provide, you know,
2 equipment for SURE access, SURE being the voter register
3 system. We provide that free of charge to the counties. We
4 support the counties in any technological needs that are
5 necessary.

6 So we would urge all counties to, you know,
7 consider this. And we did encourage. And we continue to
8 encourage all counties to consider that because certainly
9 the closer you have options, whether they're drop boxes or
10 drop-off locations, or county election offices in the
11 communities where people live, the easier it's going to be
12 for them to engage in their Democracy.

13 REPRESENTATIVE SCHEMEL: Okay.

14 Thank you, Madam Secretary.

15 And just as sort of as a closing comment, you
16 know, I hope that as we go through these hearings that you
17 appreciate the fact that the Committee is attempting the
18 task of ascertaining what is true.

19 I was disappointed, I have to say, to read your
20 editorial in the Inquirer which indicated that the
21 Committee's actions or work was just to pursue various
22 claims. I think the very fact that we have you here to
23 testify in person to tell us your own opinions or the facts
24 as you see them and to give you that opportunity, you know,
25 follows that line and gives legitimacy to these hearings.

1 They're intended to be a top-to-bottom review.

2 And I think that our constituents and our
3 Commonwealth and the making of good policy, as we are
4 policymakers, you know, commands that. And hopefully others
5 have greater comfort with the work of the Committee. And
6 hopefully that gives all Pennsylvanians comfort that the
7 election system that we have in place and any changes we may
8 make give us a good system which everyone can feel
9 confident.

10 So I thank you for your testimony. And I hope
11 that you have a better reflection of the Committee as it
12 pursues its work than you reflected in your words in the
13 Inquirer opinion base.

14 MAJORITY CHAIRMAN GROVE: Thank you,
15 Representative. Well spoken.

16 Representative Wheeland.

17 REPRESENTATIVE WHEELAND: Thank you, Mr.
18 Chairman.

19 Thank you, Madam Secretary and Deputy Secretary.

20 Before I get into my questions, I just wanted to
21 share with you that for seven years I was a county
22 commissioner before I took this job. And I sat on five
23 separate Board of Elections. So I have a little bit of
24 experience with what you deal with day in and day out. And
25 I also share your admiration of county commissioners and

1 those election directors that you indeed work with.

2 You have consistently described the
3 administration of the 2020 election as a success. And I
4 think that success has come alongside, quite honestly, a
5 remarkable challenge in the fact that it's been reported
6 that one-third of Pennsylvania Counties' Election Directors
7 have retired or resigned prior to the Federal election that
8 we just experienced.

9 I believe it's being reported and basically what
10 I'm hearing from other county commissioners that it was just
11 because of the difficulty of administering last year's
12 election at the county level.

13 And I think we all recognize that statutory
14 changes are going to be necessary as we move forward as
15 we've heard here today to give, you know, clarity for those
16 that are tasked with running county elections.

17 And I believe that this hearing is the process
18 that is going to result in those positive changes and giving
19 county governments and, most importantly, the voters surety
20 when they do cast their vote.

21 At the same time, some of these departing
22 officials have also said that the Department of State's
23 actions added to the strain, in particular the directive
24 authorizing drop boxes and in-person mail-in balloting, the
25 Department's efforts to advertise those services, as well as

1 other directives relating to the process of the mail-in
2 ballots.

3 Can you provide us information including exactly
4 how many of these county directors have left and which
5 counties they are? You know, again, it's reported that
6 one-third of the counties have lost their executive
7 director. And that's a tremendous amount of experience, as
8 I can attest to.

9 And Question 2, does the Department have a plan
10 for helping counties manage the loss of so much of that
11 experience and expertise?

12 And the third question is, do you believe that
13 the Department Guidance in some cases exacerbated the
14 difficulty experienced by those counties implementing Act
15 77?

16 If you need me to repeat any of those questions,
17 I will.

18 SECRETARY BOOCKVAR: Thank you, Representative.

19 And thank you for your service, you know, both as
20 a county commissioner before and now on the legislative
21 side. I think it's very helpful for you to have both those
22 perspectives.

23 You know, even before we got to the General
24 Election, I mean, look, we've had more changes to how voters
25 do it and how our elections are run in Pennsylvania in the

1 last two years than we've had, you know, in this century,
2 from new voting systems to, you know, Act 77, to Act 12, to
3 a global pandemic, not to mention civil unrest that we had
4 before the Primary. I mean, this is unprecedented. And the
5 counties, you know, truly did a phenomenal job, but, you
6 know, I don't think that our Guidance was critical to carry
7 out the circumstances that I just mentioned.

8 So, you know, I wish that I could have eliminated
9 all the litigation that caused most Guidances to have to be
10 issued. I wish that I could have eliminated, of course, the
11 COVID-19 Pandemic, which would have eliminated the need for
12 a lot of accommodations that had to be had as a result.
13 Look, in 2012 we had, you know, a hurricane that happened
14 right before the election.

15 There are unavoidable life circumstances that,
16 you know, both environmental or other, like the COVID-19
17 Pandemic, that are completely out of our control like we've
18 never seen anything like it in modern times.

19 REPRESENTATIVE WHEELAND: Excuse me, ma'am.

20 If I could, I'll go back to my first question
21 because I think it's very important.

22 Do you know how many directors the state has
23 lost?

24 SECRETARY BOOCKVAR: No.

25 REPRESENTATIVE WHEELAND: Out of the 67 counties,

1 do you know an accurate number on how many directors have
2 left?

3 SECRETARY BOOCKVAR: In the last year you're
4 asking or in the last -- what period of time are you talking
5 about?

6 REPRESENTATIVE WHEELAND: I think a year would be
7 fair or, you know, the year prior to, between the two
8 different elections. I'm hearing different numbers. I hear
9 20, 23, 24. But regardless of what -- I guess regardless of
10 what that number is, I'd still like to have that number.
11 But it's basically one-third of the counties that have lost
12 their directors.

13 SECRETARY BOOCKVAR: Yeah.

14 Do you have the number?

15 DEPUTY SECRETARY MARKS: I'd have to check. We
16 can provide a list. I'd have to check the exact number.
17 But I believe we are up to over two dozen, I think 25 with
18 retirements that occurred immediately after this November's
19 election. Actually, one is occurring this month in January.
20 And they started prior to even the Primary. So if you're
21 talking about the entire --

22 REPRESENTATIVE WHEELAND: It's a big number.

23 DEPUTY SECRETARY MARKS: Beginning January 1st of
24 2020 through now, I believe we just went above two dozen .
25 And that includes election directors, chief clerks, some

1 assistant directors. So it's not necessarily one particular
2 position of folks that did have experience in elections.

3 REPRESENTATIVE WHEELAND: But we could agree it's
4 a big number?

5 SECRETARY BOOCKVAR: Absolutely.

6 REPRESENTATIVE WHEELAND: Okay.

7 SECRETARY BOOCKVAR: And, Representative, your
8 background, I mean, you know, from having been on the other
9 side, that part of this is due, we know, from, you know,
10 direct information from some of those folks that are
11 meeting, part of this is that the counties don't get funded
12 by the State, you know, by the State for its elections.
13 We're sort of unique in that way.

14 And something that, you know, I think we should
15 consider going forward is the counties have to come up with
16 the funding. And so those positions --

17 REPRESENTATIVE WHEELAND: The counties, that's a
18 topic for another day. But the counties also do have the
19 ability to raise their own taxes for the responsibilities
20 that they are given. But that's a topic for another day.

21 Do you have any plans at all to help counties
22 manage the loss of these individuals?

23 SECRETARY BOOCKVAR: Absolutely. We help them
24 all the time. I mean, this is an ongoing thing that we've
25 been doing, you know, long before this.

1 Jonathan, do you want to talk about some of the
2 additional support that we've given throughout the year?

3 DEPUTY SECRETARY MARKS: Sure.

4 REPRESENTATIVE WHEELAND: I'm not talking about
5 the support as much as I'm talking about helping them
6 replace these individuals. Because quite honestly, these
7 individuals, directors of elections, it's not someone that
8 you can just go out and pull off the street. It's going to
9 require some significant training.

10 And I was, you know, kind of going down that
11 road, if the Department of State has any plans at all to
12 help the counties replace one-third of their senior
13 workforce.

14 SECRETARY BOOCKVAR: Yes. Well, replace, I don't
15 -- we don't have -- as you know as a commissioner, I have no
16 hiring or firing authority over your staff. So that's one
17 thing.

18 But we do. We absolutely provide training and
19 other resources that Jonathan could go into to make sure
20 that those transitions happen as soon as possible.

21 DEPUTY SECRETARY MARKS: I wanted to point out as
22 we speak, you know, our counties are working, a number of
23 counties are still finalizing their risk limiting audit,
24 postelection risk limiting audit. And we're sending our
25 staff out to counties. We know that there are counties due

1 to COVID-19 that are, you know, aside from the experience
2 they lost, they actually have short-term issues with staff
3 due to COVID-19 outbreaks in the counties.

4 So, you know, we're even willing to get, you
5 know, sort of boots-on-the-ground help when necessary. But
6 certainly we train the counties. I spoke to one county
7 whose election director is leaving this month and offered
8 myself personally to work with the incoming election
9 director to go over the roles and responsibilities and then
10 to connect them to the folks here at the Department who
11 could provide the additional training and background
12 necessary to make sure they could hit the ground running or
13 at least have a fighting chance as they walk into a busy
14 municipal election.

15 REPRESENTATIVE WHEELAND: Okay.

16 You mentioned something. You said you're sending
17 staff in for the RLA audit or is that a contracted service?

18 SECRETARY BOOCKVAR: Yes. Yes. Just as counties
19 -- so this is for the pilot. Just as counties have
20 requested additional support, we have at times -- it's been
21 infrequent. Most counties have done it through, you know,
22 Zoom and phone support. We have also had our partners or
23 some of our staff at times visiting to help provide whatever
24 assistance. You know, this is a new process, as you know.

25 And this is one of the areas that, you know, I'd

1 love to talk to the Legislature about. Obviously we have a
2 meeting next week with the counties for our risk -- for our
3 postelection audit work group. We'll get feedback from the
4 counties on how the pilots went. And then, you know, I
5 would love to speak with the Legislature about implementing
6 this into law.

7 But for now, the counties, you know, I think it's
8 just an example Jonathan was giving, somewhere where we
9 really try to provide as much support, training, assistance
10 as possible.

11 REPRESENTATIVE WHEELAND: And in summation, just
12 to sum everything up, I just think -- I'm very, very
13 concerned when statements are made that this is -- you know,
14 this was such a wonderful election and, you know, the best
15 ever in Pennsylvania. I've heard that from various people.

16 But I have a letter right here signed by 39
17 county commissioners representing almost half this state.
18 And they are pleading for help. Pleading for help. So to
19 say that this was a smooth election, it was a great
20 election, it was -- you know, everything was hunky-dory,
21 you've got half the counties that disagree with statements
22 like that.

23 And I look forward to the work of this Committee
24 to get to the bottom of all this angst and concern and
25 misdirection and confusion. We really need everyone rowing

1 the boat in the same direction. I look forward to working
2 with you, Secretary. And I look forward to working with the
3 County Commissioners Association, the Election Reform
4 Committee, so that we can give surety to a lot of people in
5 Pennsylvania as we move forward.

6 So thank you very much for your time.

7 MAJORITY CHAIRMAN GROVE: Representative Nelson.

8 REPRESENTATIVE NELSON: Thank you, Mr. Chairman.

9 And thank you, Madam Secretary, for participating
10 so long. I know I'm at the end of a very long list of
11 questions.

12 I am a Westmoreland County Representative. And a
13 number of our citizens and voters are very frustrated. We
14 feel that our votes have been diluted by the larger
15 Allegheny County and, you know, the reality that voters were
16 treated differently between those. And earlier testimony
17 kind of brought that out. I appreciate you sharing, you
18 know, some of the differences between Guidance and
19 directives.

20 A quick follow-up question and then into my main
21 question coming from Representative Schemel's, the satellite
22 stations in your Guidance and directives. As I understand
23 it, those satellite stations did not allow bipartisan poll
24 watchers; is that correct?

25 SECRETARY BOOCKVAR: First off, I'm not sure what

1 you mean by satellite stations. If you're talking about
2 satellite offices or drop-box locations where people would
3 go to fill out -- Act 77 provides that every county had to
4 allow people who qualified --

5 REPRESENTATIVE NELSON: The 4 in Allegheny, the 2
6 in Bucks, the 2 in Chester, the 2 in Delaware, the 4 in
7 Montgomery, and the 15 in Philadelphia, the evening and
8 weekends. I've heard from constituents that specifically
9 even attempts to conduct monitoring of those polls were
10 denied.

11 SECRETARY BOOCKVAR: Those are not polls. Those
12 are county election offices, which have existed in some
13 form. And some counties have had more than one in some form
14 in prior years. This is not new. It was expanded thanks to
15 Act 77's provision that every voter can now vote by mail,
16 including go early in person to their county election office
17 and vote on a mail ballot before election day.

18 REPRESENTATIVE NELSON: Okay.

19 SECRETARY BOOCKVAR: And so those --

20 REPRESENTATIVE NELSON: I'm just asking if those
21 remote stations, did they have --

22 SECRETARY BOOCKVAR: Yeah.

23 REPRESENTATIVE NELSON: Did they have bipartisan
24 poll watchers allowed to be able to view and witness what
25 was happening at those locations on the weekends and on the

1 evenings?

2 SECRETARY BOOCKVAR: So the courts, multiple
3 courts throughout the Commonwealth, held that those -- just
4 like when I -- like, for an absentee ballot and I fill it
5 out at my kitchen table, a poll watcher can't come in and
6 sit down and watch me vote. They also can't go into a
7 county election office and watch people vote.

8 So the courts made that determination that that's
9 not allowable under Pennsylvania law. What they can do, of
10 course, is watch at polling places. That's clear under
11 Pennsylvania law. And representatives of all parties, of
12 all candidates, can be present for the canvassing and
13 prec canvassing of those ballots, of course, in all counties.

14 But in terms of watching you fill out an absentee
15 or mail-in ballot, no, there's no poll watchers permitted.
16 And that again was upheld by multiple courts throughout the
17 last year.

18 REPRESENTATIVE NELSON: And my crossover here is
19 with the larger concern of the private money. You know, I
20 very much appreciate your acknowledgement of the Center for
21 Technology and Civic Life. I think Mr. Zuckerberg has a
22 considerable funding donation to that organization.

23 And the concern that we have in Westmoreland
24 County is that these grants, to quote yourself, there was
25 quite a large difference in how these grants were issued

1 from county to county. And in particular in the dollars on
2 your December 17th response to Representative Grove or
3 Chairman Grove, you outlined the breakdown of monies and the
4 approximately \$13 million I think that went out, 17 total
5 with State match, between all of the counties that were
6 equally distributed.

7 The Center for Technology and Civic Life, they
8 alone gave out \$13 million to specific counties, in
9 particular, \$10 million to Philadelphia, \$2 million to
10 Delaware, \$800,000 to Centre County. I think about \$2
11 million to Allegheny.

12 So if the State is giving \$1.8 million in funds
13 to the city of Philadelphia, but a private entity is giving
14 \$10 million to Philadelphia, it's a very concerning
15 precedent to me and I think other members of this Committee
16 because I think we both know that those monies came with
17 strings attached.

18 There were contracts and certain requirements
19 that the Center for Technology and Civic Life held those
20 entities to. So we are creating a volume or a situation
21 where a private entity can enter and approach an individual
22 grant with private conditions and, you know, overfund or
23 overfund/hyperfund, if you will, the government's more
24 equitable distribution of dollars.

25 Did your Department issue any Guidance or

1 directives to counties about how they would handle these
2 conditions that came with the money?

3 SECRETARY BOOCKVAR: We had nothing to do with
4 the CTCL Grants. And again, every single county had the
5 ability to ask for those funds. But how that worked was
6 between them and CTCL.

7 REPRESENTATIVE NELSON: It's interesting that --

8 SECRETARY BOOCKVAR: And I can't believe how many
9 counties didn't seek funding when it was available, because
10 it would have helped every one of them provide more access
11 and more, you know, options for their eligible voters.

12 REPRESENTATIVE NELSON: My concern with that
13 though is the precedent that private entities can lure
14 counties with large money and individual conditions.

15 Just for the city of Philadelphia, conditions
16 that they would increase from 190 polls during the Primary
17 to over 800 in person polling places during the election or
18 else they would withdraw \$10 million.

19 I mean, that's --

20 SECRETARY BOOCKVAR: Well, just to be fair,
21 Philadelphia usually has the larger number. The only reason
22 why they had 190 in a Primary is because of COVID-19 and
23 their inability to staff their usual 8-something. So the
24 8-something is --

25 REPRESENTATIVE NELSON: I totally agree with you,

1 Madam Secretary, because we were in the middle of a
2 pandemic. And the city of Philadelphia made the decision to
3 go to 190 stations. A private entity funded by Zuckerberg
4 said, no, you're going to do it this way. And the city
5 complied.

6 So if we approach a primary election in, let's
7 say, a much more conservative Westmoreland County and a
8 Second Amendment group comes in with \$1 million -- the State
9 gave Westmoreland County \$362,000. If a Second Amendment
10 group lures the string of a million dollars for an election
11 with given conditions that are not even reviewed by your
12 office, that is of significant concern to what could happen
13 to elections down the road.

14 To me, we should address this issue. And I would
15 really like to, you know, both work with the Department and
16 understand, are you okay with those private contracts and
17 private conditions that are not transparent and the
18 Department of State is not involved with at all?

19 I mean, it's very troubling to me. And some of
20 these things we feel, as voters and individuals, contribute
21 to some of those very large questions about this election.

22 SECRETARY BOOCKVAR: I think this is far afield
23 of Guidance. So I'm not really sure what to say. You said
24 the statutes about how elections are funded and they are not
25 funded by the State. And so I think they are underfunded.

1 I think the counties need more assistance to carry out their
2 elections. That's the fundamental line here is we need to
3 be supporting the counties more.

4 REPRESENTATIVE NELSON: And I don't disagree with
5 you there. And I have a lot of respect for the Department
6 of State and the office. And I realize that commissioners
7 are -- their backs are against the wall. So, you know,
8 we're highlighting in the effort for today an opportunity
9 for private money to directly dictate the conditions of how
10 counties could -- and I just feel the Department of State
11 for this body should better address that precedent moving
12 forward.

13 SECRETARY BOOCKVAR: I disagree with that
14 characterization. I don't think any county agreed to
15 anything that they didn't want to do otherwise.

16 But again, we're far afield of privates. These
17 were private arrangements between the counties and the
18 non-profit organizations. But there was nothing that we're
19 aware of that violated any law, that was anything other than
20 providing increased access to eligible voters. And I think
21 we all support the ability for every eligible voter across
22 the Commonwealth to have access to their vote.

23 So to the extent that that funding supported that
24 and didn't violate any other provisions, that's a positive
25 step forward. If we can find that funding through State and

1 Federal dollars -- and I've long been an advocate for the
2 Federal Government rather than coming up with these, you
3 know, unpredictable HAVA Grants every couple of years. We
4 should have Federal, sustained, continuing funding. That's
5 at the State level, the Federal level. It should go to the
6 counties so that it can predict a couple years ahead. So if
7 they know they are going to need to replace their equipment
8 or hire more staff, they know what funding is coming in the
9 door.

10 Right now the way we do it, it's too many open
11 questions about where their next dollars are going to come
12 from. And we know that it's not enough. We want to provide
13 the best state-of-the-art elections with the most secure,
14 most accessibility for the voters of Pennsylvania.

15 REPRESENTATIVE NELSON: We all do, for sure.

16 Are you aware of any other private entities that
17 gave monies or grants to offices related to this election?

18 SECRETARY BOOCKVAR: Aside from the CTCL and the
19 CEIR Funds that were also in the letter to Chairman Grove,
20 those are the only ones that I'm aware of .

21 Jonathan, I don't know if you are.

22 DEPUTY SECRETARY MARKS: I'm not aware of any
23 others, no.

24 REPRESENTATIVE NELSON: And when you had
25 mentioned that those monies it was determined they did not

1 violate any laws, did your office have any communication
2 with the Office of the Attorney General about these monies
3 or the lawfulness of these monies? Because I know there was
4 some lawsuits that were not involving yourself but involving
5 some of the individual counties.

6 Did your office have discussions about private
7 money with the Attorney General's office?

8 MINORITY CHAIRWOMAN DAVIDSON: Point of order,
9 Mr. Chairman.

10 MAJORITY CHAIRMAN GROVE: I appreciate it. But
11 we are actually through all the Guidance questions we had.
12 So I did say if there was any other questions towards the
13 end, members could ask.

14 MINORITY CHAIRWOMAN DAVIDSON: We're also at 12
15 minutes.

16 MAJORITY CHAIRMAN GROVE: I guess we have one
17 more questioner after this.

18 MINORITY CHAIRWOMAN DAVIDSON: We're averaging --
19 I just want to make a point that we agreed the rules were 5
20 minutes. We're averaging 10 to 15 minutes per member at
21 this point.

22 MAJORITY CHAIRMAN GROVE: I will ask him to wrap
23 it up.

24 Thank you, Chairwoman.

25 REPRESENTATIVE NELSON: Okay. We can pursue that

1 question at another time.

2 And I thank you very much for having the
3 discussion about those private dollars.

4 Thank you.

5 MAJORITY CHAIRMAN GROVE: Representative Ryan.

6 REPRESENTATIVE RYAN: Madam Secretary and
7 Secretary Marks, thank you both very, very much. I know we
8 truly do appreciate it. I know I personally appreciate you
9 coming in and you're willing to ask questions on some topics
10 that are so very sensitive.

11 One of the things that I think has been of
12 interest is that in the counties with the ability to
13 specifically interpret Guidance in one way versus another
14 that the possibility exists that many of the counties could
15 take that same Guidance differently so that the same vote
16 could be handled differently in one county versus another
17 county.

18 Do you think the citizens of the Commonwealth
19 understand the vagrancies of that particular type of issue?

20 SECRETARY BOOCKVAR: I want to be clear. As I
21 started out at the beginning saying mostly the laws are set
22 at either the Federal level or the State level. Right. But
23 in terms of the unique details, for example, where polling
24 places are located or, you know, whether they have county
25 election offices or drop boxes or those kinds of things,

1 those are individually within the authority of the counties
2 specifically set by law.

3 What voters, individual voters, know about who
4 sets those rules, I really can't speak to, except for maybe
5 voters who move from one county to another and realize that
6 there's slight variations among them.

7 But fundamentally all voters in the Commonwealth,
8 you know, have to vote on machines or voting systems that
9 are certified by the Pennsylvania Secretary of State and EAC
10 at the Federal level. Yeah. I mean, most of it is very
11 much similar from county to county.

12 REPRESENTATIVE RYAN: I do appreciate that. And
13 again, I really appreciate the concern.

14 My question is really from the perspective of
15 that sometimes in the Legislature or the Executive Branch
16 where it might appear to be fairly direct issues because
17 we're involved with it in whatever way, shape, or form, on a
18 day-to-day basis, the average voter doesn't enlist social
19 media constructs, as you mentioned from county to county.

20 We found -- and I've heard this from county
21 elections committees across the board that they might have
22 handled things one way and another county was handling it
23 differently. So those types of different approaches to
24 handling the same problem helps solve some of that
25 confusion.

1 So my concern is that -- and I do want to be very
2 clear, again, because the need for characterization.
3 There's a concept that we use in economics called. And what
4 it basically means -- because I absolutely think that the
5 overall counties did a tremendous job. The poll workers did
6 a tremendous job. And I appreciate your comments on that as
7 well.

8 And I find that many cases and hearing from a
9 United States Senator from the state of Washington, he said
10 it took Washington State -- I believe it was Washington
11 State -- almost 12 years to work out the kinks in their
12 mail-in ballot voting system.

13 My particular type of concern relates to some
14 process-control-related issues that I saw. And it relates
15 somewhat to the Department of the Auditor General's Report
16 that came out December of 2019, which somewhat leads into a
17 question.

18 So I'll just make the comment specifically that
19 the Auditor General came out with a report, Democrat Auditor
20 General, that the SURE System is secure -- they were unable
21 to provide reasonable assurance that the SURE System was
22 secure and that Pennsylvania voter registration records are
23 complete, accurate, and in compliance with applicable laws
24 and regulations.

25 And then he went on to say that they were not

1 able to provide and properly conclude and satisfy the audit
2 objectives in accordance with generally accepted Government
3 Auditing Standards without obtaining sufficient appropriate
4 evidence which was not provided to them.

5 So the question I would ask you is that when we
6 have these types of things -- and I know there was a
7 disagreement with the Department of State on those issues
8 with the Auditor General's staff -- how do we provide that
9 confidence to the public and to the system in general that
10 there are so many disparate systems that might not all tie
11 in, that you almost need to have a Ph.D. in voting and
12 election systems for people to fully see the entire gamut of
13 it?

14 How do you provide that assurance to people that
15 the SURE System is accurate and it doesn't create the
16 appearance of incongruity between the SURE System and what
17 the counties are certifying with the Department of State?

18 SECRETARY BOOCKVAR: So you asked a number of
19 different questions there. I'll try to get to them all.

20 Obviously, we very much dispute the Auditor
21 General's Report. And you can read the I forget whatever 40
22 pages of rebuttal at least that we wrote. You know, I think
23 Pennsylvania has really been a standard pillar and a leader
24 on election security across the country.

25 And one of the things that we've done to really

1 make sure that our votes are secure and that every voter has
2 access to a safe and secure election is create the
3 interagency Election Security and Preparedness Work Group.
4 And we work closely with Homeland Security, State and
5 Federal law offices, with PEMA, with the Office of
6 Information Technology, which includes the information
7 security officers, with, you know, Pennsylvania State
8 Police, the National Guard, DMVA, the Department of Military
9 and Veterans Affairs, and the Inspector General, to make
10 sure that we are collaborating with essential experts in
11 these fields all making sure that we're working both
12 horizontally and vertically with the counties and the
13 Federal Government to make sure that we are having the
14 highest standards of security across the Commonwealth. And
15 we've been talking about the strength of that and the
16 essential component pieces of that for a long time.

17 Same for integrity, for voting integrity
18 processes. None of the processes the counties followed this
19 year are new. They've been working, for example, on mail-in
20 ballots. The same processes that have been applying to
21 absentee ballots have been in effect for decades.

22 The counties, you know, in Pennsylvania, contrary
23 to Washington State where they mail ballots to every voter,
24 we don't do that in Pennsylvania. And it's one of the
25 things that provides essential levels of security and

1 integrity to the process. We have every voter have to
2 apply. They have to be checked against the Driver's License
3 Database or the Social Security Database and against their
4 voter record to make sure that they are who they say they
5 are and that they are a qualified voter before they even get
6 a ballot.

7 Now it is mailed to the address that they put
8 down. And then after that person fills out the ballot and
9 sends it back in, they're again checked to make sure that
10 they were on that list of approved voters. So those
11 processes the counties take very seriously. And we've been
12 talking about them for a long time.

13 What I'd ask is for you and others to do the
14 same. So let's make sure that we're disseminating accurate
15 information and that all of that goes into our election
16 system and makes them safe and secure and accurate. There's
17 so many examples of that.

18 And I'd be happy to provide your office and
19 others with examples of the strength of those processes.

20 REPRESENTATIVE RYAN: Absolutely. And I would
21 very much enjoy that. And at the same time, I would
22 encourage the same thing about the degree of accuracy and
23 candor.

24 I would ask you as part of this if you could
25 provide a list to us -- and I will ask the Chairman if this

1 is acceptable -- of the complaints that would have been
2 received say a few weeks before the election and a few --
3 say 30 days after the election that the Department of State
4 hotline and the web of submission of complaints and concerns
5 citizens had relative to the election.

6 Again, the perception versus the reality that
7 people have, as Representative Schemel might have just
8 mentioned to you, might be a little bit different.

9 And then concurrent to that is the facts that you
10 provided, was that provided to the third party, those groups
11 that had third-party access to the SURE System, such as the
12 individual from I believe it was either Delaware County or
13 Montgomery County who had access to the SURE System
14 according to the right-to-know request we received from the
15 Department of State.

16 So the question I would ask is, do they also get
17 your updated Guidance? Is that the process?

18 SECRETARY BOOCKVAR: I'm sorry. All our Guidance
19 is available on our website. So anybody can have it.

20 REPRESENTATIVE RYAN: Okay. Thank you.

21 And then as part of that relative to the -- kind
22 of the last question. We've noticed as we were comparing
23 some of the counties' numbers that they certified
24 independent of the SURE System and the numbers that were
25 certified by the Department of State, in some cases the

1 counties' numbers that they posted online were different
2 than the Department of State used. At some point, not now,
3 but at some point in time provide us a reconciliation, if
4 perhaps the counties might have posted, you know, older
5 information so there was a difference? So differences might
6 be one vote and in other cases that was none.

7 But if I can ask, if you wouldn't mind, we have
8 eight counties in particular we saw the official numbers
9 that they said that they certified versus what the
10 Department of State had on the website were different. So
11 I'm curious as to which was accurate. Was it the number
12 that was posted, which may or may not have been up to date
13 but it indicated it was the official total?

14 This gives us some opportunity to be able to
15 provide that to create assurance. Because people in this
16 type of an environment where they see a number of duplicate
17 ballots that went out because people contend that they
18 didn't get it, they were getting information from both
19 parties about filling out mail-in ballots, which people were
20 confused about whether or not that was a ballot itself.

21 And I can tell you in our district office we were
22 getting literally thousands of comments saying we're not
23 sure about what's going on. And even in our own case of
24 Lebanon County, which we think our County Election Director
25 Michael Anderson did a phenomenal job, even he said that

1 other counties handled them different ways. And even in
2 prior elections he cured ballots, but this time he didn't.

3 So I think part of what we're trying to get at is
4 that people with reasonably good faith, both sides, are
5 really trying to get to the bottom of it.

6 We really thank you for the time.

7 And, Mr. Chairman, I want to thank you for your
8 time.

9 And Madam Secretary and Deputy Secretary Marks,
10 thank you very much for your time today as well.

11 I know it's been a long, grueling day for both of
12 you.

13 MAJORITY CHAIRMAN GROVE: Thank you,
14 Representative.

15 Any closing remarks, Chairwoman?

16 MINORITY CHAIRWOMAN DAVIDSON: Absolutely.

17 First of all, Madam Secretary, I just want to
18 thank you, you and your staff, for the tremendous job that
19 you have done both in providing Guidance to 67 counties in
20 this election process, because Act 77 did provide a lot of
21 changes, an unprecedented amount of changes to our Election
22 Code, which contributed to a lot of confusion and a lot of
23 questions from the counties which you tried to guide them
24 through as best as possible.

25 In addition to that, you had an unprecedented

1 amount of lawsuits filed against you for which you were
2 victorious and exonerated in almost all of those cases. And
3 so I thank you for once again having to go through this very
4 onerous and sometimes repetitive process where you are asked
5 the same questions that were litigated in these court cases
6 and also that you answered on your website which you
7 referred to multiple times for these questions.

8 So thank you, thank you, thank you, for your
9 patience, which is beyond the patience that probably many of
10 us would have during this process.

11 I also want to say -- I do have one quick
12 personal story about disenfranchisement, because I think one
13 of the Guidance that you put forward where you said you
14 erred on the side of enfranchisement had to do with naked
15 ballots.

16 I had a 91-year-old constituent that called me on
17 Sunday who had not yet received her mail-in ballot. She had
18 never missed an election since she was 18 years old. And
19 she wanted to know if I would drive her to the polling
20 place. She found my cell phone number from somewhere. And
21 she wanted to know if I would drive her. I said,
22 absolutely.

23 Upon arriving, she had received her mail-in
24 ballot, which she had filled out which she was going to
25 place in the drop box, but she threw away the outside

1 envelope which meant that it was a naked ballot. And I told
2 her, I said, I don't know that they will accept it at the
3 ballot box. And so when she went there, the election
4 officials did tell her that it needed to have the outside
5 envelope.

6 She voted provisionally. But this is a voter who
7 had not missed an election, 91 years old, since she was 18.
8 So I understand your erring on the side of enfranchisement
9 and trying to make sure that eligible voters that have voted
10 for their lifetime would be able to have their vote counted.

11 And this was in the Primary and this was a very
12 short time from the time we passed Act 77 to the time this
13 had to be implemented and all of those mail-in ballots had
14 to go out. So I appreciate you erring on the side of
15 enfranchisement as opposed to disenfranchisement. And when
16 the courts ruled, you immediately issued the new Guidance.
17 So thank you for that.

18 Also I just want to say that once again after two
19 and a half hours -- and I hope that in the next 13 hearings
20 that we'll stick to the guidelines and the rules that we've
21 established in this Committee of providing for five minutes.
22 Because if every member speaks for 10 to 15 minutes, this is
23 going to be a long 13 additional weeks.

24 To further clarify that we had a free, fair,
25 accurate, and even uniform election process as evidenced by

1 the Supreme Court case that dealt with uniformity in which
2 the Trump Appointee Judge, Mr. Ranjan, Judge Ranjan said all
3 the issues alleged for Plaintiff's equal protection rights
4 were, in fact, protected. So we can go through this process
5 for 13 weeks. And we can relitigate. And we can ask the
6 same questions over and over again. There will be some
7 voters that will never be satisfied with the results of this
8 election. And 13 hearings is not going to change that. If
9 we sat here for the next three months, 24 hours a day, there
10 will be a host of voters and a bunch of counties that will
11 be dissatisfied with the results of this election. Whatever
12 we do here is not going to change that.

13 So I would just hope that for the sake of the
14 Secretary, who has done the best that she possibly can in an
15 election season that we had an unprecedented number of
16 voters, we had an unprecedented amount of change to the
17 election process, and an unprecedentedly short period of
18 time in which to implement it, that we don't further burden
19 the Secretary with 15-minute questions and 30-minute
20 processes, three hours over 13 weeks to get to the same
21 conclusion that we had a free, fair, accurate, and uniform
22 election in 2020 that some voters will never be satisfied
23 with.

24 Thank you, Mr. Chairman.

25 MAJORITY CHAIRMAN GROVE: Thank you, Chairwoman.

1 I want to thank Secretary Boockvar and Deputy
2 Secretary Marks for your time this afternoon.

3 Pennsylvania residents are not election experts.
4 They walk in to vote. They go home. They have no idea what
5 goes on behind the scenes generally.

6 The next 13 weeks of hearings, just like today,
7 is an opportunity for us to educate them on the process of
8 Election Administration, how it works, provide them detailed
9 answers and responses on how it all comes together to ensure
10 we have the excellence in elections they expect moving
11 forward.

12 Further, you didn't hear a lot today from my
13 colleagues on the Republican side about wanting to
14 relitigate the past election, we've all moved on. If we
15 truly want unity or trying to dive into what exactly
16 happened -- or actually not exactly what happened, but
17 exactly how our elections were actually run and operated,
18 everybody that I've talked to, even yourself, Madam
19 Secretary, has suggested and recommended changes to be made.
20 I think we all agree there are changes that need to be made.

21 We can do that. We're willing to do that. We
22 want to do that. In order for us to get there, we're going
23 to go through an in-depth review of the election process,
24 everything from voter registration to certification, how
25 they're going.

1 And I really appreciate you being here. I
2 appreciate your commitment from your staff to help provide
3 that level of expertise we need.

4 We, as the Legislature, do not administer
5 elections on a day-to-day basis. Obviously, in the House,
6 we're up for election every two years. So we're probably a
7 little more aware of the operation. But we're not, you
8 know, county directors. We have some county commissioners
9 here who have some expertise in that. We appreciate that.

10 But in order to move on and get to elections, we
11 need to go through a process which we've established to
12 review the entire Election Law. It's not about 2020. It's
13 not about 2019 or 2018. This is about moving forward to
14 make sure we're all on the same page and we have the best
15 product available to our constituents moving forward.

16 With that said, again, thank you, Madam
17 Secretary. I appreciate your time. I appreciate your
18 candor and all your answers.

19 Jonathan, same here. I look forward to working
20 with you. I look forward to working with our county
21 commissioners, the multitude of stakeholders who also have
22 ideas, and, more importantly, the citizens of the
23 Commonwealth. No matter how you voted, whether you did vote
24 or didn't vote, they are the people we hold most dearly
25 because they are our bosses. And we want to make sure that

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they are happy with the election process moving forward.
So with that, I thank you.
And this Committee is adjourned.
(Whereupon, the hearing concluded.)

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I hereby certify that the proceedings and
evidence are contained fully and accurately in the notes
taken by me on the within proceedings and that this is a
correct transcript of the same.

Jean M. Davis
Notary Public