



# Public Hearing Concerning Election Process

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**Presented to Pennsylvania  
House Committee on State Government**

April 15, 2021

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Chairman Grove and members of the committee, thank you for the opportunity to testify today. My name is Jonathan Bechtle, and I represent the Opportunity Solutions Project, a nonprofit public policy organization that has worked with lawmakers in 20 other states on reforms to increase voter confidence in elections. I'm an attorney and have worked in the past on election law in Washington State after the historically-close 2004 governor's race and the state's move to vote-by-mail the following year.

Today I'd like to share reforms other states have used to improve their election system in two ways: first, to increase legislative oversight of the process, even in the hectic last weeks of an election; and second, to improve speed and accuracy in counting absentee ballots.

Along with these solutions, I'll share relevant polling we've done nationally and in the Commonwealth about elections and these specific ideas.

The big takeaway from the polling is that the vast majority of voters do not want to prosecute past elections. But they absolutely do want to protect future elections. 7 in 10 Americans want you to seize this moment and take action to close loopholes to give them confidence in the next election. These poll results are regardless of party lines, the simple truth is that Americans want to believe that elections are run in an open and transparent manner.

I live just a couple of states over in Indiana. On Election morning I stood in line with about 100 other people. It was 6 am, it was cold, and we were in a long snaking line through a lobby, staying six feet apart, with our masks on. Was it comfortable? No. But people want to make the system work and are willing to deal with a little hassle to participate. But what they don't want to worry about is whether the results were fair or accurate.

One other nuance we learned from the polling: Voters worry about whether the system is fair for their neighbors. 3 out of 4 voters, again from all parties, are most interested in fixes that protect low-income voters against being taken advantage of. Republican and independent voters are particularly worried about their rural neighbors having their votes cancelled out by big-city gamesmanship.

And they are looking to you to give them that confidence.

## **Legislative Oversight**

In any major election year, but especially in a year like 2020, campaigns and outside parties use extraordinary circumstances to ask courts for changes to the election process, and Pennsylvania was no exception.

Changes including things such as the court decision to allow ballots received after Election Day to still be counted. Or it included new guidance on whether to allow voters to cure mismatched signatures. Or it included the decision that signatures didn't need to be matched for a ballot to be verified.

The result was a lot like the National Football League sending out a ruling just an hour before kick-off on a Sunday afternoon in November that teams should have 5 tries to make a first down instead of 4. The Eagles might still beat the Cowboys, but can you imagine the confusion that would follow?

Parties, candidates, and election officials usually get to be in those court rooms when those last-minute decisions are made. But who's there to speak for your rural communities, or your inner-city working moms? You could, but only if you have a seat at the table.

Other states have adopted two reforms, which I urge you to consider.

The first is to provide explicit authority for legislative bodies to have standing to intervene in election-related cases.

The second is to require legislative approval for any consent decrees or settlement agreements in election law cases.

Last fall, Senate and House leadership caucuses were granted permission to intervene in some of the lawsuits, but not all. In one case only the Senate Caucus was able to intervene, in a second case both were allowed to intervene, but in a third case neither was able to get a seat at the table.

Wisconsin's legislature passed a law in 2018 to provide automatic standing in any court case about a state law or rule.

It paid off last year when the federal 7<sup>th</sup> Circuit cited the law in allowing the legislature to intervene in a lawsuit seeking to waive the Election Day deadline for absentee ballots. Ultimately, the U.S. Supreme Court sided with the Legislature and kept the deadline in place.

Third parties have also used consent decrees and settlement agreements to change established state laws. This occurred in Georgia last summer, when a consent decree made substantive changes to their election processes without any legislative oversight.

The solution is to require legislative approval for all settlements and consent decrees about election laws. Wisconsin, Arizona, Connecticut, Nebraska, and Oklahoma all have this type of law on the books. This is not a Republican or a Democrat solution, it is a good solution—as demonstrated by the states who have adopted it.

Pennsylvania voters overwhelmingly agree that the legislature should keep watch over the election process. Nearly 9 out of 10 Pennsylvania voters want election officials held accountable to follow the rules, with strong penalties for misconduct. They are looking to you to have a seat at the table, to speak on their behalf.

## **Absentee Ballots**

Mid-morning on the day after Election Day last November, Ohio had counted the majority of its 6 million ballots, which included 3.5 million absentee ballots. It was a similar story in Florida, with its 4.8 million absentee ballots. Here in Pennsylvania, that morning the Secretary reported that half of the state's 2.6 million absentee ballots had yet to be counted.

Let me suggest four reforms tested in other states that can help speed up Pennsylvania's ballot count without reducing security.

**Number One:** Reduce errors on the front end of the process by banning the practice of pre-filled ballot applications.

Third-party groups mail out pre-filled ballot applications that are full of errors, leading to mismatches and problems during the processing of those absentee ballots. North Carolina and two other states have banned the practice, although groups can still send out blank applications. Nine other states have pending legislation to follow North Carolina's lead.

**Number Two,** double the amount of time election boards have to confirm the information on these absentee ballot applications, taking it from seven to fifteen days. Seven days is far too little to handle a flood of requests for a hot race and all the procedures required of election boards. Fifteen days would give them much needed breathing room.

**Number Three** is to clarify the Legislature's intent on whether mismatched signatures on a ballot envelope are grounds for disqualifying the ballot. There are good arguments on both sides, but the worst outcome is to have an inconsistent standard where ballots are treated differently among counties.

If you chose to require the signatures to match, then I would strongly recommend that you create a uniform signature curing process. Otherwise, you open yourself up to more last-minute lawsuits on the issue, and courtrooms are not laboratories of democracy representing the voice of the people.

A curing process can easily become a partisan ballot harvesting game, however, if not constructed well, with party activists in a race to knock on more doors and cure more signatures before the election is certified. Talk about killing voter faith in elections—that will do it.

Instead, a good cure process has the following three elements: early warning, early deadline, and no harvesting. "Early warning" means that signature matching needs to start 5-7 days before Election Day, so notices can be sent to voters by email or text if they have a signature issue that could disqualify their ballot. "Early deadline" means that voters should have a very timely cut-off after Election Day to cure their signature, so it doesn't delay the count. Florida sets it at two days. If voters get early notice that still gives them plenty of time to cure their signature. Finally, "no harvesting:" It means third parties should not be allowed to go out

knocking on doors to cure signatures. If you get number one and two right, it won't be necessary anyway.

**The Fourth recommendation** is to require a witness signature on ballot envelopes. It's a low-cost security measure that won't slow down the count, and it works. Just three years ago, it made the difference in uncovering a major absentee ballot fraud scheme used to swing a legislative election in North Carolina's 9<sup>th</sup> District. A witness requirement made it much harder for one person to sign multiple ballots and made it easier for investigators to spot patterns of fraud.

Adding a witness signature to the current personal identification requirement would ensure adequate security.

The **Fifth and Final reform** is to require all Election Boards to begin processing ballot envelopes in advance of Election Day with bipartisan observers present. This made an enormous difference in Florida's ability to get an accurate count on Election Night, as compared to the count that dragged on in neighboring Georgia.

This change is far preferable to extending the deadline for receipt of absentee ballots. Election Day should remain the deadline for any ballots except those from overseas and military voters, and the overwhelming majority of Pennsylvania voters agree. And nearly as many—65%—agree that processing of absentee ballots should be allowed with the right security protocols.

Are there security risks with this change? Yes. But the alternative is to have a lengthy counting process after Election Day, which increases the public perception and the scope of the rumors that something is wrong. It should be restricted to only processing and organizing the ballot envelopes, no counting should be allowed before Election Day. And it should only happen in properly secured government facilities with party observers on hand.

In closing, I commend Chairman Groves and the members of this committee for the balanced and comprehensive approach you've taken to understanding the issues and possible solutions, and I consider it a privilege to share these ideas about good ballot count processes and tools for legislative oversight. We stand ready to assist you in any way we can as you take the next steps in this process.

Thank you very much.