TESTIMONY ON ELECTION REFORMS

Presented to the House State Government Committee

By
Lisa Schaefer, Executive Director

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The County Commissioners Association of Pennsylvania (CCAP) is a non-profit, non-partisan association representing the commonwealth's 67 counties. We appreciate the opportunity to offer remarks on the administration of elections and needed reforms based on our experience with implementing elections broadly and Act 77 more specifically.

We appreciate the attention of the General Assembly on the important issue of elections, particularly in light of the lessons we learned in administering the 2020 primary and general elections. As you are aware, this was the first time counties implemented the changes created by Act 77 of 2019, while facing additional complications created by the very serious and unprecedented circumstances of the global COVID-19 pandemic – and in the middle of a highly contentious and high turnout presidential election.

Being the key administrators of the on-the-ground election, Pennsylvania's 67 counties have a significant responsibility in assuring elections remain fair, secure and accessible at every step of the process. Over the past several years, counties have worked closely with the General Assembly to achieve historic changes to the Pennsylvania Election Code, including the implementation of mail-in ballots under Act 77 of 2019.

It is important to note that the mail-in ballots created in Act 77 are carbon copies of the absentee ballots that have been available to Pennsylvanians for years. Everything from the application, to the way the applications are processed, to the ballots themselves run in parallel to the pre-existing absentee ballot system that has been successfully and securely implemented for decades.

For a large number of voters, however, receiving their ballot at home and voting by mail was an entirely new experience since eligibility no longer required a specific and qualified reason. While we believed that mail-in ballots would be a popular option for voters, we had no idea just how popular they would become due to public health concerns, and in a year with record voter turnout. Counties' experience in handling mail-in ballots highlighted the need to make some changes to the law in response to operational challenges counties faced, as well as provide clarification in areas where the law is silent.

It is important to emphasize that despite the challenges faced in 2020, counties did a tremendous job running a successful, fair and accurate election. That said, we learned a great deal from our experience implementing Act 77 during the 2020 elections and we know there are ways in which changes to the law can improve our ability to administer elections, as well as our ability to provide more efficient results. CCAP's Elections Reform Committee – which comprises county officials and county election directors from across the state – convened shortly after the November election and began reviewing county experiences, ultimately resulting in a preliminary report and recommendations released in January. That report is attached to this testimony and contains our top recommendations for your consideration.

In addition, counties selected election reforms as their top legislative priority for 2021, which includes a renewed call for additional pre-canvassing time, as well as a recommendation to

move back the mail-in ballot application deadline to 15 days prior to an election. Counties believe that making these two changes would resolve a substantial portion of the challenging circumstances we faced in 2020.

Additional Pre-canvassing Time

First, allowing counties as much time as possible to pre-canvass ballots in advance of an election would offer a more meaningful option to complete these procedures, such as verifying the barcode number and voter's information on the outer envelope match the information in the SURE system, opening envelopes and removing and flattening the tri-fold ballot and scanning ballots – all following appropriate security and chain of command protocols for all individuals involved in the process. It is also important to note that counties are not calling for votes to be tabulated (for clarity, tabulation of votes only occurs when the designated and qualified official follows a secure procedure to manually extract the data from the central machine after all ballots have been entered or scanned), and certainly not released, until after the polls close on election day.

Allowing additional time to pre-canvass ballots simply allows us to use our resources most effectively and efficiently to safely and securely prepare for this to happen. Without an extended pre-canvass period, counties will continue to face very real challenges in providing timely results following an election, even those with significantly less voter turnout than we saw in November.

Move the Mail-in Ballot Application Deadline

Our second priority is to move the mail-in ballot application deadline back to 15 days prior to an election, instead of the current seven days. Act 77 permitted voters to apply for a mail-in ballot up to seven days before an election, which created timing challenges with the postal service particularly for those who waited until the last days before the deadline. This ultimately led to some voters not receiving their ballots before the deadline to submit them at 8 p.m. on Election Day or receiving them too close to the deadline, making it logistically impossible for ballots to be returned via mail by 8 p.m. on election night. Because of this, many voters faced uncertainty about whether the county would receive their ballot in time. This, in turn, led voters to come to their polling place to spoil their mail-in ballot and vote on the machines, or to vote by provisional ballot, to ensure that their vote has indeed been counted. However, the process caused timing issues that wholly undermined the flexibility and convenience mail-in ballots should provide and resulted in unnecessary lines, crowds, more time spent in the polling location and a longer wait on election results, due to the stringent process counties follow to reconcile mail-in and provisional ballots to ensure accuracy.

If the law is going to set a deadline of seven days prior to an election to apply for a ballot, we are telling voters that the process will work as advertised for an application submitted up to day seven. Unfortunately, the seven-day deadline does not set our voters up for success. Moving the application deadline back to 15 days prior to an election will better meet this goal and increase confidence that a mail-in ballot will arrive on time by allowing more time for the county to process a mail-in ballot application and allow for the ballot to travel through the mail to the voter and back again.

Furthermore, counties would like to note that receiving ballots postmarked by election day and received up to three days after the election, instead of moving back the deadline, will likely contribute to ongoing delays in results and disruption at the polls. Attempting to address the timing challenge in this way does nothing to discourage voters from waiting until the last minute to return ballots, requires additional clarity on what constitutes a postmark as voters seek other delivery methods, and will lead to more provisional voting at the polls. We believe this will result in more uncertainty, rather than achieving the goal of improving confidence in the system from the electorate. As such, we assert that moving the application deadline back is the best opportunity to enfranchise voters and assure the mail-in ballot process works smoothly for them as it was intended to do.

Other election reforms

Counties seek other meaningful reforms that can address other issues that arose during the 2020 elections, in particular to promote clarity and consistency across the commonwealth. Again, we emphasize that counties delivered two successful elections in 2020 under the current parameters of Act 77 and can continue to do so, but there are many areas where we can amend the Election Code to improve election administration to the benefit of counties and voters, particularly to clarify matters that became subjects of interpretation through various lawsuits. These issues are further outlined in our report and recommendations, and need the thoughtful input of counties to craft workable solutions.

And we would be remiss if we did not raise the other underlying administrative and resource support needed to assist counties in their critical election tasks, regardless of any further amendments to the Election Code. The increased workloads and stress of implementing an entirely new law during a highly contentious presidential election and a global pandemic, while also having to constantly correct misinformation, respond to confused, angry and often threatening voters on a daily basis, and defend their work implementing a fair and secure election, no longer make this work environment palatable for many. In addition, as counties implemented Act 77, most counties saw their budgets for elections-related costs increase significantly, as additional supplies were needed and staffing and overtime needs grew to address workload requirements.

These impacts fall squarely on county shoulders, as they are solely responsible for administration of elections at the local level. Appropriate resources and funding support must be provided by the federal and state governments to support counties in their critical task of administering elections. And counties and the state must work together as new laws and policies are developed to assure any increased costs and resource needs, including supplies and staffing, are also considered.

Election Security

On a separate note, we know that election security, particularly cybersecurity, has been a topic of interest throughout these hearings, and so we want to take a moment to share some of the

ways counties and the commonwealth have been collaborating on this issue. This includes regularly scheduled opportunities through our IT Quarterly meetings, which bring together counties, the Department of State and the Office of Information Technology for general cybersecurity discussions as well as more specific matters like the SURE modernization project. It also includes ad hoc information sharing between counties and the Office of Information Technology related to new threats and active incidents, and we are in discussions with the state to improve further coordination of information sharing and formalization of processes. Specific to elections, we conducted 11 election cyber security checkpoints, starting in late September and running through election week, to share cyber security updates and other information; for instance, sharing information related to suspected malicious IP addresses resulted in counties blocking 229 IP addresses to better protect their networks. Collaboration also occurs between the counties and the commonwealth on election day and the days following leveraging a secure web portal.

In addition, the commonwealth funds a cybersecurity online learning management system (LMS) and a phishing exercise tool that is used by counties to educate staff on cyber security best practices. The state is further funding the deployment, maintenance, hardware and service of Center for Internet Security (CIS) Albert Sensors for counties for two years. One of the biggest advantages to this service is the 24x7x365 Security Operation Center (SOC); once the device is deployed a county will receive critical alerts related to potential malicious activities against their network. A number of states have completed similar efforts.

Achieving Successful Reform

Finally, and perhaps most importantly, counties urge the General Assembly to continue to bring counties to the table to discuss and provide feedback on any elections-related legislation so that we may work together to accomplish meaningful reforms before the summer legislative recess. Counties have valuable experience to provide in the development of legislation to assure we can continue to administer elections that are secure and accurate, and that provide accessibility to our voters so that all have an opportunity to engage in the democratic process.

We appreciate that conversations, hearings and even some legislation have been ongoing throughout the early months of 2021, and that this committee has included a broad perspective from our county officials and election directors over the past several months. We also note that the Election Law Advisory Board, although it has taken some time for appointment of members and meetings to begin, is something CCAP supported long before Act 77 as a means of offering a standing group of county representatives and other election stakeholders who can be readily available to provide input and feedback on election-related legislation on an ongoing basis. This Board has the potential to contribute in the collaboration required to achieve meaningful and appropriate election reforms as well.

We urge members of the General Assembly to come together now with counties to propose and discuss legislative solutions. While we did not anticipate that the legislative calendar would be conducive to enacting changes in sufficient time ahead of the upcoming May primary, we are already concerned that the time window is already beginning to narrow to be able to enact and

implement changes for the November general election. Counties will need time to prepare for, and train staff, poll workers and voters, regarding any statutory changes, and we strongly recommend that any changes be enacted prior to the summer recess so there is plenty of time to ensure proper implementation prior to November. And while we certainly want to get these changes right rather than rushing to meet any kind of self-imposed deadline, the typically lower turnout of a municipal election year does make 2021 more conducive to implementation of further amendments.

Thank you again for the opportunity to testify today and your consideration of these comments. We look forward to working with you on legislative changes to improve the administration of elections in Pennsylvania. I would be pleased to answer any questions you may have.

CCAP ELECTION REFORM PRELIMINARY REPORT
January 2021

Counties have a significant responsibility in assuring elections remain fair, secure and accessible at every step of the process. In 2020, this task was complicated greatly by a perfect storm of factors. First, counties had to implement the provisions of Act 77 of 2019, including expansion of absentee ballots to all eligible voters, and like many other significant legislative changes, they discovered a number of areas of the Election Code that would need further clarification. Then, election directors, county commissioners and other county officials confronted the unprecedented responsibility of considering risk to public health in holding an election during a global pandemic, as well as the resulting explosion in demand for mail-in ballots. And finally, ongoing uncertainty regarding court challenges at the state and federal level, as well as the potential for additional state legislation, in the weeks leading up to the November election left numerous questions and anxiety during a highly contested and highly visible presidential election.

While the first two elections using mail-in ballots were successfully completed, counties have been reviewing their experiences and lessons learned from the front lines to call for additional changes to the Election Code that will streamline administrative requirements and provide clarity and consistency across the commonwealth. This report outlines county priorities, with a renewed call to allow counties additional time to pre-canvass, as well as to move the deadline for mail-in ballot applications back to 15 days to coincide with the voter registration deadline. These two items alone could resolve a significant portion of the challenges counties saw during 2020.

Background

Our counties and our election staff deserve our utmost respect and gratitude for administering a smooth, fair and successful election. Regardless of the challenges brought on by the pandemic, disagreements and lawsuits, these dedicated public servants have remained laser focused on their responsibility as stewards of our democracy.

But we have also learned a great deal from the 2020 elections, and this report outlines a number of additional matters for review that we hope will inform clear and prompt policy changes. These include additional Election Code amendments, particularly to tighten up those matters that became subjects of interpretation throughout the various lawsuits. However, they also include administrative issues to be addressed with the state, as well as recommendations related to county operations and administration.

CCAP stands ready to engage with the General Assembly and the administration to assess the successes and challenges of the 2020 General Election, so that we can work together to create positive, effective election policy. Counties, as the entities that administer our elections, must be at the table for these conversations to help create any changes brought forth regarding

elections, to help create language that is clear and easily understood, and identify challenges up front regarding how, or even if, certain changes can be practically and successfully implemented. And any changes to the Election Code must be enacted well in advance of an election to allow for enough time to properly implement any changes, particularly if they involve developing new protocols or procedures, retraining poll workers, and so forth.

It is our responsibility to work together in the future to promote a smoother election process in support of our democracy. Running elections should not be a partisan battle but should be about making sure that our systems are secure and accurate and that our voters can have confidence that every properly cast vote will count.

It is time to put political differences aside and resolve to make meaningful improvements to the Pennsylvania Election Code. Elections are a fundamental government function, and every level of government has a stake in assuring they are secure, fair, and accurate. We look forward to working together on this important topic.

Summary of Priority Recommendations

Counties have identified the following issues as top priorities for further election reforms, which could resolve many of the challenges they faced regarding the implementation of Act 77 of 2019.

Please note: Given that absentee ballots and mail-in ballots are, for all intents and purposes when it comes to application, processing and voting, the same, the terms may be used interchangeably throughout this report. However, regardless of the terminology, any reforms counties propose here are intended to be applied to both absentee and mail-in ballots.

Offer counties as much time as possible to begin pre-canvassing ballots to improve the likelihood of timely election results.

Prior to Act 77, absentee ballots were provided to each voter's precinct on Election Day, to be counted and added to that precinct's vote counts once the polls closed at 8 p.m. The small number of absentee ballots made this process reasonable and did not cause any appreciable delay in tabulating results.

However, with the increase expected once mail-in ballots were available to all registered voters, Act 77 moved the processing and counting of these ballots from the precincts to central count at the county board of elections. The Election Code continued to permit the canvassing of absentee and mail-in ballots beginning at 8 p.m. on election night.

Counties began to raise concerns early in 2020 that with the expected volume of absentee and mail-in ballots, they would not be able to complete the canvass in a timely fashion if they could not begin the process until after polls closed. In response, amendments to the Election Code in Act 12 of 2020 permitted counties to begin a pre-canvass period as early as 7 a.m. on Election Day.

While these additional hours were helpful to some counties, for most it meant the prospect of essentially conducting two elections – both an in-person election and a mail-in election – on the same day, with the same resources. As expected, even with the ability to begin at 7 a.m., it took several days in most counties to fully process all of the mail-in ballots.

Immediately following the June election, counties spent the months prior to the General Election advocating for legislation that would allow them to begin pre-canvassing – opening and preparing the mail-in and absentee ballots – prior to Election Day so that results could be available on election night or shortly thereafter. Without an extended pre-canvass period, counties expected that it could take days or weeks *following the election* to see final results, because they also needed to focus their efforts on a successful in-person election on Nov. 3, rather than on the manual labor of opening and preparing substantial numbers of mail-in ballots. While any time provided ahead of Election Day would have been a significant help, counties asked for as much time as possible to avoid the anticipation of very real challenges in providing the timely results they knew would be sought, especially in a highly contested and highly visible presidential election.

But with counties only able to begin pre-canvassing on Election Day, as predicted it took several days for the millions of mail-in ballots to be counted, delaying election results and causing confusion despite counties' best efforts. Therefore, counties renew their call for legislation to allow pre-canvassing to begin prior to Election Day, thus allowing counties to focus on administering an in-person election on Election Day, improving workload management and allowing results to be available much more efficiently.

Move back the deadline to apply for mail-in ballots to 15 days before an election.
Act 77 of 2019 permitted voters to apply for a mail-in ballot up to seven days before an election, which created timing challenges with the postal service. This ultimately led to some voters not receiving their ballots before the deadline to submit them at 8 p.m. on Election Day or receiving them too close to the deadline to make it logistically possible for ballots to be returned via mail by 8 p.m. on election night, so that many voters faced uncertainty about whether the county would receive their ballot in time. This in turn led voters to come to their polling place to spoil their mail-in ballot and vote on the machines, or to vote by provisional ballot, just "to be on the safe side." This wholly undermines the flexibility and convenience mail-in ballots should provide and causing unnecessary lines, crowds, more time spent in the polling location and a longer wait on election results as counties must then reconcile mail-in and provisional ballots for accuracy.

With postal delays and public health concerns, shifting this deadline to 15 days before an election (to coincide with the voter registration deadline) will benefit voters by providing more time for the ballot to be able to get from the county to the voter and back again through the mail, creating less uncertainty over whether ballots were received by 8 p.m. election night. Voters will be able to receive their confirmation email and feel confident that their ballot was received, so that they do not need to come to the polling place or find other means of returning their ballot. At the same time, counties will have more time to assure poll books are as current

as possible with those voters who have applied for, and submitted, mail-in ballots, all adding up to more efficient polling place operations as well as preventing unnecessary crowds as counties continue to implement COVID-19 risk management strategies. The emergency absentee period could also be extended accordingly to accommodate this longer deadline period.

Counties also note that changing the receipt deadline to allow ballots postmarked by election day and received up to three days after the election, instead of moving back the deadline, *will likely cause a delay in results and disruption at the polls*. This "solution" will do nothing to discourage voters from waiting until the last minute to return ballots, requires additional clarity on what constitutes a postmark as voters seek other delivery methods, and will lead to more provisional voting at the polls as, again, voters who do not yet have confirmation that their mail-in ballot was received will still show up in person to be on the safe side. Moving the application deadline back is the best opportunity to enfranchise our mail-in voters.

Topic Review and Discussion

In addition to the two priority issues noted above, counties seek meaningful reforms that can address other issues that arose during the 2020 elections, in particular to promote clarity and consistency across the commonwealth. As discussions evolve, counties must continue to be at the table to provide input and perspective on how amendments can be implemented on the ground.

Topic: Election Code Amendments

Drop boxes:

Background

- Questions were raised as to whether Act 77 permitted the use of drop boxes for mail-in ballots, and whether drop boxes constituted polling places.
- In *Pennsylvania Democratic Party v Boockvar*, the Pennsylvania Supreme Court determined in its Sept. 17, 2020, ruling that the Election Code permits counties to use drop boxes.
- On Oct. 10, 2020, a federal district court dismissed claims that certain election practices were unconstitutional under the federal or state constitutions, including the claim that the use of drop boxes for mail-in ballots is unconstitutional.

Policy Considerations

- Counties also seek further clarity in the law on their authority to use drop boxes for mail-in ballots.
- If drop boxes or return locations other than county government locations are permitted, language must be developed in conjunction with counties regarding any criteria on their location.
- Attention must also be paid to the staffing and other resource considerations that would be needed for implementation.

Ballot signatures

Background

- The law is unclear, or in some cases silent, on how counties should address certain situations, such as what to do with naked ballots and whether voters should be contacted to be permitted to cure defects with their mail-in ballot.
- This lack of clarity was the basis for many of the lawsuits that were filed at the state and federal level after the 2020 Primary Election
- Changing court decisions, in addition to the statutory language or lack thereof, led to a situation where counties struggled to implement the law on a consistent basis.
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Policy Considerations

- The fatal flaws under which a mail-in ballot is not to be counted must be clearly identified.
    - Should a mail-in ballot be counted if a signature or date is missing from the voter's declaration?
    - Should naked ballots be counted?
    - What should a county do with mail-in ballots that contain writing on the privacy envelope?
- Counties need a clear rule in the law on when or if curing of flaws may happen, and whether or not a county is required to contact a voter to cure their ballot.

Permanent status

Background

- Act 77 allows a voter to request to be placed on a permanent mail-in voter list. These individuals will have a ballot application mailed to them by the first Monday of February each year which, if completed and returned, entitles them to receive ballots in the mail for all elections taking place during the remainder of that calendar year.
- However, this process has created frustrations for both the voter and the county.
- Experience shows that voters often did not remember checking the box for the permanent list and thought they were getting ballots they did not request.
- The number of renewal letters that must be sent out annually further add to the burdens on county workloads.

Policy Considerations

- Additional discussion is needed on the number of renewal letters/applications that must be mailed out each year
- Discussion is also needed regarding whether the responsibility for sending the renewal letters/applications should be at the county or state level.
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Topic: Administrative issues with the state

Beyond the law itself, counties experienced a number of challenges working with the commonwealth and the Department of State that should be addressed to improve administration of elections going forward.

SURE system and ballot tracking website

Background

- Counties routinely experience technical difficulties with the SURE system, including slow speeds or even full system crashes that make it impossible to process voter registrations and ballot applications in a timely fashion, unnecessarily increasing county workloads.
- The ballot tracking website was often confusing to voters as they attempted to understand where their mail-in ballot was in the process.

Policy considerations

- Upgrades/replacement of the SURE system are under consideration, and counties must be part of these conversations as changes are made to assure they are easily understood and user friendly.
- As the ballot tracking website is updated going forward, counties must also be part of these conversations to help identify areas of concern, either now or in the future.
- The state should consider the possibility of a state phone bank that could facilitate voter questions.

DOS guidance to counties

Background

- In addition to the changing statutory and litigation landscape, counties also experienced confusion because of ever-changing guidance from the Department of State related to the administration of mail-in ballots.
- It was often unclear what statutory basis the DOS guidance had, and how much was truly guidance/best practices.

Policy considerations

- While understanding that ongoing litigation was the underlying basis for some of the last-minute guidance changes in 2020, the Department of State must issue guidance as far in advance as possible to avoid the confusion of having to implement new practices immediately prior to an election and to offer greater opportunity for questions and input.
- The Department must more consistently reference the sections of the Election Code on which its guidance is based, and more clearly indicate when the guidance is merely a best practice rather than based on a statutory requirement.

Topic: County operations and administration

Election staff retention and development

Background

- Since the implementation of Act 77 in 2019, more than 20 counties have experienced the loss of their election director and other top elections staff.
- The increased workloads and stress of implementing an entirely new law during a highly contentious presidential election and a global pandemic, while also having to constantly

correct misinformation, respond to confused, angry and often threatening voters on a daily basis, and defend their work implementing a fair and secure election, no longer make this work environment palatable for many.
- The resulting loss of institutional knowledge is immeasurable.

Policy considerations
- Counties and the state must work together as new laws and policies are developed to assure workload needs are also considered.
- New laws and policies must be enacted with sufficient time for their implementation.
- Education and training must be available to help develop needed skill sets among election staff.
- To improve staff retention, all levels of government must work together to promote accurate information at each election, which can help reduce the level of confusion and anxiety among voters, and thus the level of anger county elections staff must address.

County resource needs

Background
- As counties implemented Act 77 in 2020, most counties saw their budgets for elections-related costs increase significantly, as additional supplies were needed and staffing and overtime needs grew to address workload requirements.
- These impacts fell squarely on county shoulders, as they are solely responsible for administration of elections at the local level.

Policy considerations
- Counties and the state must work together as new laws and policies are developed to assure any increased costs and resource needs, including supplies and staffing, are also considered.
- Appropriate resources and funding support must be provided by the federal and state governments to support counties in their critical task of administering elections.