

Testimony Relating to Open Primaries

Pennsylvania House State Government Subcommittee on Campaign Finance and Elections

Dori Sawyer, Elections Director, Montgomery County

Director Sawyer (she/her) has a decorated background in Communications & Operational Management. She began her career in Election Administration in Montgomery County in a Communications role and was promoted to Director of Elections in 2021. Home to over 600,000 voters, Montgomery County utilizes approximately 2500 – 2800 Poll Workers in each Election and has a full time staff of twenty-one.

Thank you for the opportunity to submit written testimony to the House State Government Committee regarding open primaries. HB 976 (Rep. Marla Brown) and HB 979 (Rep. Jared Solomon) relate to Primaries that are Open to Unaffiliated Voters. A summary of the various Primary types appears below to ensure alignment as my testimony progresses.

Summary of Primary Types

Closed Primaries: This is the current type in Pennsylvania. In order to vote in a primary election, a person must be a registered voter and have affiliated with one of the two major political parties as a part of the voter registration process.

Open Primaries: States with open primaries do not ask a voter to affiliate with a party when they register to vote. All voters are eligible to vote in either the Democratic or Republican Party primary elections.

The Closed and Open Primary types are the cleanest forms of primaries because the rules are especially clear. In between these two are the three more complicated forms of primaries.

Partially Closed Primaries allow each of the two major political parties to decide on an annual or biennial basis who can vote in their primary election. For example, in Utah, the Republicans have historically had a closed primary and Democrats have allowed unaffiliated voters to vote in their primary.

Partially Open Primaries allow voters to cross party lines when they vote in the primary election and their primary election choice becomes their party affiliation going forward.

Primaries Open to Unaffiliated Voters allow affiliated voters to vote only in the primary of their party but provide unaffiliated voters with the opportunity to vote in the primary of their choice.

Defining Unaffiliated Voters

The goal of both HB 976 and HB 979 is to allow voters who are not affiliated with either the Democratic Party or the Republican Party to vote in primary elections. Further definition as to what constitutes an unaffiliated voter is necessary, as other aspects of the PA Election Code differentiate between minor political parties and political bodies.

The voter registration form provides six affiliation options:

1. Two Major Political Parties: Democratic & Republican
2. Two Minor Political Parties: Green & Libertarian
3. No Affiliation
4. Other: _____

When a person selects "Other", they write in the name of their choosing (Independent, Jedi, Surprise) and are now considered a member of a political body.

Provided this aligns with the overall goal of the legislation, it would be beneficial to revise the language to indicate clearly that if a voter is not formally registered as being affiliated with the Democrat or Republican Party that they may choose which ballot they would like to cast in a Primary Election.

Defining Eligibility to Vote on Committee Positions

Committee positions at the State & County level are voted on during Primary Elections. The current version of these bills does not indicate if unaffiliated voters are eligible to vote on these offices.

SB 400, which was referred to the State Government Committee in late April, explicitly states that unaffiliated voters would not be eligible to vote on Party Committee Positions. Counties would need to create four different ballot styles for each of the four different ballot types for Primary Elections when Committee Positions are on the ballot, and the 19 split precincts in the Commonwealth would need to offer either different ballot styles inside the polling location. Please see the "Ordering Ballots" section for more detail on the costs and operating risks associated with offering these additional ballot styles, and how referenda could create a fifth ballot style.

Operational Considerations at the County Level

Moving to Partially Open Primaries will present operational costs, additional quality assurance concerns, and logistical challenges that should be considered before moving forward.

Ordering Ballots

If unaffiliated voters can request on Election Day to vote in either the Democratic Party or Republican Party primary, the election office must be prepared for all unaffiliated voters to vote in one primary or another. In Montgomery County, I have approximately 95,500 unaffiliated voters. For every primary, I would have to order an extra 191,000 ballots (95,000 Democratic ballots and 95,500 Republican ballots) to account for turnout by unaffiliated voters.

Statewide, almost 2.6 million more ballots would have to be purchased to ensure no precinct runs out of ballots.

These numbers would increase to 5.2 million if unaffiliated voters are not eligible to vote for Committee Positions.

Further instruction as to whether counties are required to offer a fifth ballot style when referenda is on the ballot would be a beneficial addition to ensure uniformity across the Commonwealth.

Adding thousands of ballots to our operating procedures has an array of downstream effects. Additional secure containers would need to be purchased to transport the ballots to & from the polling location. Additional poll workers will be needed in precincts or elections with historical high turnout to ensure ballots are issued properly and expeditiously.

Absentee, Mail-In, Military and Overseas ballot applications would need to be updated to include an area where unaffiliated voters can indicate which party's ballot they would like to receive. This will increase processing time, creating a need for additional SURE Terminals, connections and staff members.

This requires additional Quality Assurance measures in application processing, ballot printing and ballot fulfillment for to ensure voters receive the correct ballot.

Primaries historically have a low turnout which means that any un-voted ballots will need to be stored appropriately, meaning that counties will need to acquire more storage space.

Impact on Quality Control

The time needed for Quality Control is considerable as well. Creating ballot proofs is one of the most pressure-laden activities County offices perform. There is no margin for error, and mistakes are not fixed easily.

Once the ballots for each precinct are created, the program files for the voting system are made, and we move into an extensive testing process. If an error is found, it must be fixed and testing is re-started. Once programming is approved, sample ballots become available and the process repeats with our printing partner before we begin mailing ballots to those with approved applications. This occurs three to four and a half weeks ahead of Election Day.

Redistricting & petition challenges are two factors that can greatly reduce the amount of time we have to complete these tasks. Both of these processes are completely out of the control of the County Election Office.

Doubling, or more than doubling the workload and opportunity for error will require more time and more people to ensure it is done correctly.

Conducting Voter Education

Election Board workers, third party advocates, and the Department of State will need to launch a multi-platform communications plan to educate voters on the changes. Not only will unaffiliated voters need to be made aware of their eligibility; but registered Democrat and Republican voters will need to understand that they do not get to choose which ballot they vote.

Voters who are affiliated may complain about their lack of choice, which can become contentious in Election Offices and Polling Locations. These types of discussions, coupled with the questions from 2.6 million newly eligible unaffiliated voters will increase the workload of existing staff members in County Election Offices.

At this time, I believe Montgomery & Bucks County are the only counties with a staff member dedicated to voter education, outreach, and content generation.

In the polling location, these arguments could successfully pressure Election Workers to issue an Election Day ballot incorrectly, or placate the voter with a Provisional Ballot that does not match their affiliation. Canvassing Provisional Ballots is one of the more time consuming post-election activities, and creating more opportunities to issue them will add time to the process.

Indecisive Unaffiliated Voters

The current bills do not address the opportunity for unaffiliated voters to change their mind upon receiving the ballot they selected. While some voters take the opportunity to view sample ballots or engage with candidates prior to the Election, many do not.

This will be exacerbated for unaffiliated voters, as they do not have a party informing them of endorsed candidates.

The current bill does not address the ability for voters to spoil their original ballot and request a ballot of a different type in the polling location or by mail.

In a polling location, this will create confusion and increase the potential for poor reconciliation as the person "checking in" the voter and the person physically handing out the ballot can be two different people at two different stations.

For Absentee, Mail-in, Military and Overseas voters, the considerations are much greater as they have more time to change their mind and more options to do so.

Absentee, Mail-in, Military and Overseas voters can currently request their ballot, change their party after their application has been approved, cancel their request for a ballot by mail entirely, and spoil their ballot. They can also surrender their ballot at the polling location and vote in person or complete a provisional ballot if they believe their ballot wasn't received by the county or was rejected by the county.

Enacting partially open primaries will create another reason for voters – both affiliated and unaffiliated - to change their mind about their registered affiliation or the ballot style they requested in their initial application; increasing the amount of applications a county needs to process and the number of ballots they need to issue by mail.

While their original ballot is canceled in the statewide system, voters routinely vote & return canceled ballots. Counties that have automated mail-sorting equipment have the ability to program the equipment to look for the canceled correspondence barcode; making it much easier to identify a canceled ballot. Counties that do not have such equipment must do this by hand.

County staff & canvassing boards do not know if the ballot inside the envelope is the ballot the voter requested initially or the replacement ballot. Additional research will be needed and County Boards will need to determine their own parameters for doing so.

Reconciliation and Reporting

At present, the Election Result reporting that is made publicly available at the polling location or by the County Board of Elections shows how many ballots of each type were scanned into the results. These numbers can be compared to the voter registration data made available by the Department of State, the County or by the party and it is a simple process to correlate the data.

300 XY Party Ballots were scanned, and there are 600 XY Party Voters registered in that precinct.

Poll Watchers are able to hear the name & affiliation of each voter and keep their own list and can view one of the documents managed by the Poll Workers.

Counties are able to generate lists of voters who requested mail-in ballots and easily show the final disposition of those ballots.

This gives campaigns and parties the opportunity to make projections and potentially follow up with any voters who need to return a ballot or visit the polls.

Reconciliation will become more complicated at the polls since Poll Workers will move from two or three ballot types to four or six; creating a larger opportunity for the incorrect ballot to be issued to a voter.

Reporting from each Election Management System and the Statewide Uniform Registry of Electors (SURE) will need to be updated to reflect these changes.

Voters, Poll Workers, Poll Watchers and Citizen Data Analysts will need to be educated on how to interpret these results.

Counties are also in the process of implementing, or already have implemented, Electronic Poll Books for use inside of polling locations. The programming for these systems would need to be reviewed and updated.

These systems are costly to purchase and maintain; and it takes a considerable amount of effort to train Poll Workers to use them properly.

In return, Electronic Poll Books help reduce the errors made by poll workers during check in as the system constantly reminds them of the proper procedure and requires affirmations or validation throughout the check in process. Electronic Poll Books can also provide robust reporting in significantly less time when implemented appropriately; making the cost and effort extremely worthwhile.

Summary of Additional Costs to Counties

To summarize, enacting Partially Open Primaries will create additional costs to counties in the following areas:

- Additional full time staff members to process Voter Registration, Absentee Ballot Applications, Military Ballot Applications, Overseas Applications, Federal Voter Applications, and Mail-In Ballot Applications
- Additional full time staff members to answer phone calls, emails, letters in a reactive manner
- Additional Poll Workers to assist with issuing ballots
- Recruiting Poll Workers
- Training Poll Workers
- Increased programming costs for additional ballot styles
- Additional staff or possibly additional outside services to assist with proofreading ballots
- Increased printing costs for additional ballot styles
- Additional staff members to assist with Logic & Accuracy Testing to accommodate additional ballot types
- Increased costs from Mail House Vendors due to increased Quality Control Measures needed to ensure voters receive the correct ballot style
- Increased printing costs for additional ballot types OR Increased supply costs for ballot paper
- Increased supply costs for transport & storage containers for the additional ballot types
- Storage facility costs for archived materials

Conflicting Statutes in the Existing Election Code

There are existing statutes in the Election Code that speak to engaging unaffiliated voters in Primary Elections. It would be beneficial to address these in the proposed bills:

25 P.S. § 3154, Computation of Returns by County Board, states:

if it shall appear that the total number of partisan votes returned for any candidate or candidates for the same office or nomination at any primary exceeds the number of electors registered or enrolled in said district as members of that political party, **or exceeds the total number of persons belonging to that party who voted in said district or the total number of ballots of that party cast therein**, in any such case, **such excess shall be deemed a discrepancy and palpable error**, and shall be investigated by the return board, and **no votes shall be recorded from such district until such investigation shall be had...**

25 P.S. § 3534, Elector Voting Ballot of Wrong Party at Primary, states:

Any elector who shall willfully vote at any primary the ballot of a party in which he is not enrolled, in violation of the provisions of this act, shall be guilty of a misdemeanor of the second degree, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five thousand (\$5,000) dollars, or to undergo an imprisonment of not more than two (2) years, or both, in the discretion of the court.

Counties could put in the problematic position of choosing which sections of the code to follow, creating the opportunity for multiple applications of the new statutes or possibly even litigation.

In Section 902.1. of House Bill 976, it says:

...the elections officer upon reply shall record the unenrolled elector's selection upon the unenrolled elector's certificate and for the purpose of that ballot only shall be deemed enrolled in that party.

This is correct under the code but outdated and out of alignment with establish practices. Almost every county in Pennsylvania uses district registers (poll books) for checking in voters, as provided for under 25 Pa.C.S.A. § 1402.

Few if any counties use voter's certificates, provided for under 25 P.S. § 3043. It is important to recognize that the core of the voter check-in process provided for under 25 P.S. § 1402 date back to at least the early 1900s – there are specifications that allow for the use of fountain pens.

Fully following § 1402 would not allow for the use of electronic poll books- which many counties are either already utilizing or piloting.