

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1161 C.D. 2020

IN RE: ALLEGHENY COUNTY PROVISIONAL BALLOTS
IN THE 2020 GENERAL ELECTION

Appeal of Nicole Zicarelli

Appeal of the November 18, 2020 Memorandum and Order of the Court of
Common Pleas of Allegheny County, GD 20-011793

**BRIEF OF APPELLEE-INTERVENORS THE PENNSYLVANIA DEMOCRATIC
PARTY AND JAMES BREWSTER**

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BRIEF OF PENNSYLVANIA DEMOCRATIC PARTY APPELLEES

The Pennsylvania Democratic Party and James Brewster (collectively, the “Democratic Party Appellees”) submit this brief in opposition to Nicole Zicarelli’s (“Zicarelli”) appeal of the November 18, 2020 Memorandum and Order of the Court of Common Pleas of Allegheny County (the “Appeal”).

I. INTRODUCTION

The Democratic Party Appellees seek a fair and free election, where eligible voters may vote and have the certainty that their votes will count. For that reason, the Democratic Party Appellees opposed Zicarelli’s statutory appeal, which asked the Court of Common Pleas of Allegheny County to reverse the decision of the Allegheny County Board of Elections (the “Board”) to accept and canvass approximately 270 provisional ballots that contained a signed declaration in one of the boxes on the outer envelope, but not on the other (the “270 Ballots”).

It is undisputed that the 270 voters who Zicarelli seeks to disenfranchise were registered qualified voters who did not cast multiple ballots in the election. The only asserted “deficiency” with the 270 Ballots is that the voter signed one of the declarations on the outer envelope, but not the other. As the Board recognized with its November 14, 2020 determination, which the lower court affirmed on November 18, 2020, Zicarelli can offer no compelling reason for rejecting the 270 Ballots at issue. The relief she requests – the disenfranchisement of these 270

voters over a minor technical defect – would contravene the Pennsylvania Election Code and both state and federal law.

Democratic Party Appellees ask this Court to **affirm** the lower court’s decision and to allow the Board to canvass the lawfully voted 270 Ballots.

II. STATEMENT OF THE CASE

A. Description Of Democratic Party Appellees

The Democratic Party Appellees were Intervenor-Respondents in *Zicarelli v. Allegheny County Board of Elections*, No. GD-20-011793 (C.P. Allegheny Cty. 2020), and in that capacity, they have a vested interest in and are directly affected by Zicarelli’s Appeal here. The Democratic Party Appellees include the Pennsylvania Democratic Party, which has associational standing on behalf of its members and candidates to ensure fair and free elections. *See Orloski v. Davis*, 564 F. Supp. 526 (M.D. Pa. 1983) (holding that the Pennsylvania Democratic Party has standing in matters affecting election procedure). The individual Appellee is James Brewster (“Brewster”), who currently represents the 45th District in the Pennsylvania State Senate (“Senate”). He is a registered voter in the Commonwealth and is the Democratic Party’s nominee in the 2020 General Election for the seat he currently holds in the State Senate.

Zicarelli, the Republican candidate for the 45th District in the Senate, currently trails Brewster in the race by a small number of votes. This Court’s

ruling as to whether the 270 Ballots should be counted could impact the result of the election in Pennsylvania’s 45th Senate District.

B. Provisions Of The Election Code At Issue

The Election Code states that “prior to voting the provisional ballot,” the voter must sign an affidavit affirming, inter alia, that the provisional ballot is the only one the cast by the elector in that election. 25 P.S. § 3050(a.4)(2). Section 3050(a.4)(3) states that “after the provisional ballot has been cast,” the voter must place the provisional ballot in a secrecy envelope and “shall place his signature on the front of the provisional ballot envelope.” 25 P.S. § 3050(a.4)(3).

C. Provisional Ballot Requirements

Generally, if it is determined that a voter is not eligible for a regular ballot, that voter is entitled to vote provisionally at the polling place. *See* Pennsylvania Dep’t of State, *Pennsylvania Provisional Voting Guidance* (Oct. 21, 2020), attached hereto as Exhibit A. A voter may be issued a provisional ballot for a number of reasons including that the voter’s name was not in the poll book or supplemental poll book; or that the voter is required to show identification, but cannot show identification on Election Day. (*Id.*)

For a voter to be issued a provisional ballot, the following must occur:

- (1) The voter must complete the sections on the provisional envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials;

(2) After the voter receives and marks their provisional ballot, the voter must seal the ballot in the secrecy envelope and then place the secrecy envelope in the provisional ballot envelope; and

(3) The voter must fill out the Voter Signature section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector.

(Id.)

The Judge of Elections and the Minority Inspector must then sign and date the envelope after noting the reason for the provisional ballot. *(Id.)*

The provisional ballot outer envelope contains two similar voter declarations. *See* Provisional Ballot Envelope, attached hereto as Exhibit B. The first declaration, contained in Box 1, states: “I do solemnly swear or affirm that my name and date of birth are as I have listed above, and at the time that I registered I resided at the address I have provided above, in the Commonwealth of Pennsylvania and that this is the only ballot that I have cast in this election.” The second declaration, contained in Box 4, states: “The undersigned declares, under penalty of law, that he/she is a properly registered elector in the election district indicated in my affidavit, and that he/she is eligible to vote in this election in this election district.”

D. 270 Provisional Ballots At Issue Here

At issue here are the ballots of 270 voters who presented at their polling location and attempted to follow the steps necessary to vote with a provisional ballot. Poll workers handed them all of the materials and gave them instructions

how to fill out the outer envelope. Many people are unfamiliar with this process and rely on the information given to them at the polling location. Although poll workers generally give provisional voters correct advice, administrative breakdowns do occasionally occur, resulting in incorrect advice being given to the voter.

E. November 14, 2020 Decision Of The Allegheny County Board of Elections To Canvass The 270 Ballots

The 2020 General Election was conducted on November 3, 2020. In Allegheny County, 270 voters each filled out a provisional ballot that included one of the signatures referenced in Section 3050 of the Election Code, but not the other.

On Saturday, November 14, 2020, the Board conducted a hearing for the consideration of submitted provisional ballots for the November 3, 2020 election during which it considered the question of whether the 270 Ballots should be canvassed in accordance with Section 3050 of the Election Code. The Pennsylvania Democratic Party participated in the November 14, 2020 hearing. By a 2-1 vote, the Board determined that the 270 Ballots should be canvassed in accordance with Section 3050. The Board directed the Manager of the Elections Division to proceed with the canvassing of those ballots.

F. The Lower Court’s November 18, 2020 Decision, Affirming The Board’s Decision To Canvass The 270 Ballots

On November 16, 2020, Zicarelli filed a Petition for Review in the Nature of a Statutory Appeal (the “Petition for Review”) and asked the Court of Common Pleas of Allegheny County to reverse the Board’s determination that it is appropriate to accept, canvass, and compute the 270 Ballots. The lower court held oral argument on Zicarelli’s Petition for Review on November 17, 2020.

On November 18, 2020, the lower court issued its Memorandum and Order and held that the Board had not abused its discretion in deciding to count the 270 Ballots. As the lower court recognized, the completion of a date under the declaration on the outer envelope is directive, not mandatory. *Zicarelli v. Allegheny County Board of Elections*, No. GD-20-011793 (C.P. Allegheny Cty. 2020). The court noted that, because Zicarelli had not alleged any fraud in connection with the 270 Ballots, the eligible voters “should not be penalized because they were given and relied on incorrect information by the election administration.” *Id.* Further, the court held, “these provisional ballots submitted by registered and eligible voters must be counted.” *Id.*

III. SUMMARY OF ARGUMENT

Even if the Election Code permitted challenges to mail-in and absentee ballots,¹ the lower court correctly determined that the 270 Ballots should be counted because the 270 qualified voters should not be disenfranchised due to an election worker's mistake.

IV. ARGUMENT

A. The Board's Decision Properly Construes The Election Code Against The Disenfranchisement Of Voters

The lower court correctly held that the Board's determinations were neither an abuse of discretion nor an error of law. *See Appeal of McCracken*, 370 Pa. 562, 565, 88 A.2d 787, 788 (1952) (observing that county election boards have "plenary powers in the administration of the election code"); *see also Appeal of Petrucci*, 38 Pa. D & C.2d 675, 677 (C.P. Luzerne Cty. 1965) ("The court, in reviewing the rulings of the board, may reverse the board of elections only for a mistake of law or for a clear abuse of discretion, including a capricious disregard of the testimony.").

It is the "longstanding and overriding policy in this Commonwealth to protect the elective franchise," *Shambach v. Bickhart*, 577 Pa. 384, 392, 845 A.2d

¹ The Pennsylvania Supreme Court recently confirmed that the current Election Code "provides no mechanism for time-of-canvassing challenges by candidate or party representatives." *In re Nov. 3, 2020 Gen. Election*, --- Pa. ---, --- A.3d ---, 2020 WL 6252803, at *14 (2020).

793, 798 (2004) (citations omitted). Thus, “[t]he Election Code must be liberally construed so as not to deprive ... the voters of their right to elect a candidate of their choice,” *Petition of Ross*, 411 Pa. 45, 48, 190 A.2d 719, 720 (1963).

At issue here are the provisions of the Election Code that require “prior to voting the provisional ballot,” the voter must sign an affidavit affirming, *inter alia*, that the provisional ballot is the only one the cast by the elector in that election. 25 P.S. § 3050(a.4)(2). The Election Code also provides that “after the provisional ballot has been cast,” the voter must place the provisional ballot in a secrecy envelope and “shall place his signature on the front of the provisional ballot envelope.” 25 P.S. § 3050(a.4)(3).

A qualified elector, who did not vote twice in the election, cast each of the 270 Ballots at issue here. The Board thus properly held that the 270 Ballots were properly voted. It recognized that the absence of a second voter signature on the outer envelope should not result in the disenfranchisement of any of the affected voters. The lower court properly affirmed that determination, noting the “longstanding and overriding policy” of this Commonwealth “to protect the elective franchise.”

Although the declaration in Box 4 of the provisional ballot envelope contains an affirmation that the voter “is eligible to vote in this election in this election district,” Section 3050 of the Election Code permits a voter who appears

in the wrong election district to cast a provisional ballot and the Board must “count that portion of the ballot that the individual would have been eligible to vote in his proper election district and at the election district where the vote,” provided that the voter did not cast any other ballot and that the voter is a resident of the county in which the provisional ballot was cast.² Thus, the provisional ballot requirements themselves do not disqualify a voter for signing the affidavit as to the municipality in which the voter is registered. The statute allows the voter’s vote to count in those districts in which the voter is actually registered, indicating that the opportunity to vote is valued more than mere technical compliance.

Zicarelli did not and cannot challenge the facts that these 270 voters were qualified to vote and had not voted twice in the election. The only “deficiency” that Zicarelli identified is that the electors had not signed both of the boxes containing declarations on the outer envelope, which can only be described as the epitome of a technicality. There is no reason – much less a compelling one – to disenfranchise 270 voters for a minor technicality that most likely resulted from an election worker providing incorrect advice.

² See 25 P.S. § 3050(a.4)(7)(i) (“[I]f it is determined that the individual voting the provisional ballot was eligible to vote in the county in which the ballot was cast but not at the election district where the ballot was cast, the county board of elections shall open the envelope and only count that portion of the ballot that the individual would have been eligible to vote in his proper election district and at the election district where the vote was cast if: (A) the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election; and (B) the individual casting the provisional ballot is a resident of the county in which the provisional ballot was cast.”).

B. The 270 Voters Should Not be Disenfranchised Due to Poll Worker Error

Absent any allegations of fraud or misconduct, qualified electors should not be disenfranchised due to poll worker error. *See, e.g., Shambach*, 845 A.2d at 798 (citing the “longstanding and overriding policy in this Commonwealth to protect the elective franchise” and noting that “although election laws must be strictly construed to prevent fraud, they ‘ordinarily will be construed liberally in favor of the right to vote.’” (citations omitted)); *see also Luzerne Cty. Return Bd.*, 290 A.2d at 109 (“Our goal must be to enfranchise and not to disenfranchise [the electorate].”). Moreover, “the power to throw out a ballot for minor irregularities should be sparingly used, and it should be done only for very compelling reason.” *In re Duquesne Appeals from Cty. Bd. of Elections*, 39 Pa. D. & C.2d 545,557 (Pa. Com. Pl. 1965).

It is well settled Pennsylvania law that, although imperatives in the Election Code that are designed to prevent fraud are to be construed strictly, other requirements are to be “construed liberally in favor of the right to vote.” *Rinaldi v. Ferrett*, 941 A.2d 73, 80 (Pa. Commw. Ct. 2007) (citing *Shambach*, 845 A.2d at 798 (2004)).

The directive to sign both declarations on the provisional ballot envelope at issue here serves the purpose of ensuring that only qualified voters vote and that they vote only once. Where that purpose has been met without strict compliance,

the votes should be counted. *Luzerne*, 290 A.2d at 109. (“The proper interpretation of this portion of the statute considering the occasion for its enactment, the mischief to be remedied, and the policy to liberally construe voting laws in the absence of fraud, is that the ballot is valid unless there is a clear showing that the ink used was for the purpose of making the ballot identifiable.”).

As the Board and the lower court recognized, voters here presented at their polling location and voted with a provisional ballot. Poll workers handed them all of the materials and gave them instructions how to fill out the outer envelope. Many people are unfamiliar with this process and rely on the information given to them at the polling location. *See Union Electric Corp. v. Board of Property Assessment*, 560 Pa. 481, 487, 746 A.2d 581, 584 (2000) (holding that there is a breakdown in the administrative process when the facts demonstrate that “an administrative board or body is negligent, acts improperly or unintentionally misleads a party”). No evidence was offered here that the 270 voters deliberately set about to flout the Election Code requirements or to ignore the poll workers’ directions. Where voters, who were entitled to vote, did not complete the information on the outer envelope of their provisional ballot in exact compliance with the Election Code’s provisions – through no fault of their own – they should not be punished with the invalidation of their ballots.

C. The 270 Ballots Present No Issues Of Fraud

Fraud is not an issue here. Zicarelli offers no suggestion that the failure to include a date here was an effort to commit voter fraud – which would be impossible on the facts here. Disenfranchising voters based on a minor technicality,³ when the voter’s signature appeared in one of the boxes on the envelope and whether information related to whether the voter was qualified and did not vote twice was readily identifiable to the Board, would be directly contrary to the “longstanding and overriding policy in this Commonwealth to protect the elective franchise.” *Shambach*, 845 A.2d at 798.

As the Pennsylvania Supreme Court has very recently held, reconfirming well-settled Pennsylvania law, election laws should be construed liberally in favor of voters, and that “[t]echnicalities should not be used to make the right of the voter insecure.” *Pennsylvania Democratic Party v. Boockvar*, --- Pa. ----, 238 A.3d 345, 373 (citing *Appeal of James*, 377 Pa. 405, 408, 105 A.2d 64, 66 (1954)). “Ballots containing mere minor irregularities should only be stricken for compelling reasons.” *Shambach*, 845 A.2d at 798.

³ Zicarelli’s requested interpretation of state law may well lead to a violation of federal law by asking the state to deny the right to vote for immaterial reasons. Nobody acting under color of state law may deny anyone the right to vote “in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” 52 U.S.C. § 10101(a)(2)(B).

The Democratic Party Appellees ask this Court to interpret and enforce the Election Code by affirming that provisional ballots missing a signature in one box on the outer envelope but containing a signature in the other box may be counted as the Board and the court below so held, and by further affirming that the decision to do so lies within the sound discretion of the Board pursuant to established precedent. *See Appeal of McCracken*, 88 A.2d at 788 (observing that county election boards have “plenary powers in the administration of the election code”); *see also Appeal of Petrucci*, 38 Pa. D & C.2d at 677 (“The court, in reviewing the rulings of the board, may reverse the board of elections only for a mistake of law or for a clear abuse of discretion, including a capricious disregard of the testimony.”).

Because the 270 voters signed one of the boxes on the outer envelope, the Board could review that voter’s signature as contemplated in Section 3050 of the Election Code.⁴ Further, because the Board knows that the 270 voters were qualified electors and did not vote twice in the election, a second signature is not necessary. The 270 Ballots were properly cast and should be counted. *Pa.*

⁴ *See* 25 P.S. §3050 (a.4)(5)(i) (“Except as provided in subclause (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector's registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.”).

Democratic Party, 238 A.3d at 356 (“[T]he Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice.”). The skirmishing over these issues must end so that Allegheny County’s election results can be certified. Pennsylvania’s default position to encourage enfranchisement, not disenfranchisement, makes clear that the Board properly determined that the 270 Ballots must be counted and the lower court properly affirmed the Board’s decision.

D. The Board Properly Allowed For Provisional Ballots Where The Board Had Not “Timely Received” Mail-In Ballots That Were Rejected For Lack Of An Inner Secrecy Envelope

In her Petition for Review, Zicarelli asserts that a mail-in ballot that the Board rejected for lack of an inner secrecy envelope is “timely received” by the Board pursuant to Section 3050 of the Election Code, thus prohibiting the voter from being eligible to cast a provisional ballot. Although Zicarelli raised this issue in her Petition for Review, she failed to raise it at the November 17, 2020 hearing before the lower court. By failing to raise this issue at that hearing, Zicarelli waived it. In the alternative, this issue should be remanded to the lower court for argument on the merits.

To the extent that this Court chooses to address this issue, Section 3050(a.4)(5)(ii)(F) states that provisional ballots shall not be counted if the voter’s “absentee ballot or mail-in ballot is timely received by a county board of

elections.” The concern with Section 3050(a.4)(5)(ii)(F) is to prevent double voting. No risk of double voting can result when the county board rejects an absentee or mail-in ballot. Thus, the provisional ballot, made because the board has rejected the absentee or mail-in ballot, must be counted. *Pa. Dem Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *24 (Pa. Sept. 17, 2020) (look to legislative purpose and whether it is served).

Interpreting Section 3050(a.4)(5)(ii)(F) to prohibit the counting of these ballots would render Sections 3146.6(b)(2) and 3150.16(b)(2) meaningless. It would give voters an illusory right to cast a provisional ballot that could never be counted. Zicarelli’s position with respect to received-but-rejected ballots would similarly violate the requirement under the federal Help America Vote Act of 2002 that voters must be given the opportunity to cast a meaningful provisional ballot in a federal election. 52 U.S.C. § 21082(a). Accordingly, this Court should rule that mail-in ballots rejected by the Board for lack of an inner secrecy envelope are not “timely received” by the Board for purposes of determining eligibility to vote provisionally under Section 3050 of the Election Code.

V. CONCLUSION

For the foregoing reasons, the Democratic Party Appellees ask this Court to affirm the decision of the Court of Common Pleas of Allegheny County and to

allow the Allegheny County Board of Elections to canvass the 270 lawfully voted provisional ballots.

Respectfully submitted,

By /s/ Clifford B. Levine

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Dated: November 19, 2020
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1161 C.D. 2020

**IN RE: ALLEGHENY COUNTY PROVISIONAL BALLOTS
IN THE 2020 GENERAL ELECTION**

Appeal of Nicole Zicarelli

PROPOSED ORDER

AND NOW this ___ day of November, 2020, upon consideration of the Petition of Nicole Zicarelli and the responses thereto, this Court hereby GRANTS the Petition and declares as follows:

The November 18, 2020 Order of the Court of Common Pleas of Allegheny County dismissing the Petition of Nicole Zicarelli and affirming the decision of the Allegheny County Board of Elections is AFFIRMED.

BY THE COURT:

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2020, I caused the foregoing to be electronically filed and to be served on counsel of record for Plaintiffs and Defendants listed on the docket via the Court's ECF system.

/s/ Clifford B. Levine

EXHIBIT A



Pennsylvania Provisional Voting Guidance

Date: October 21, 2020

Version: 1.1

Scope

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1 BACKGROUND

This revised guidance addresses the issuance, voting and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA).¹ Provisional ballot amendments included in Act 77 of 2019 went into effect for the 2020 Primary election. Provisional ballot amendments included in Act 12 of 2020 go into effect for the first time on November 3, 2020.

Generally, if a voter is not eligible to be issued a regular ballot, that voter shall be entitled to vote provisionally at the polling place. Provisional ballots may be issued at the polling place until the close of polls on election day absent a court order extending voting hours.

1.1 PROVISIONAL VOTING REASONS

A voter may be issued a provisional ballot for the reasons below:

- Voter’s name was not in the poll book or supplemental poll book
 - For example, the voter reported to the wrong precinct; or
 - The voter did not report a recent change in residence to the county election office
- Voter is required to show ID, but cannot show ID
- Voter eligibility was challenged by an election official
- Voter was issued but did not successfully vote an absentee or mail-in ballot and ballot was not surrendered at the polling place to be spoiled
- Voter returned a completed absentee or mail-in ballot that was rejected by the county board of elections and the voter believes they are eligible to vote
- Special court order with respect to the voter’s status
- Special court order related to extending the hours of voting
- Voter claims they are registered in a political party with which they are not affiliated (for primary elections only)

¹ 52 U.S.C. § 21082.

1.2 ABSENTEE AND MAIL-IN VOTING

If the pollbook shows the voter has timely returned and voted their absentee or mail-in ballot, they are not eligible to vote by regular ballot at the polling place. These voters are not eligible to vote on the voting equipment but may vote provisionally if they believe they have not already voted and are eligible to vote. Voters who have requested an absentee ballot or mail-in ballot and are not shown on the district register as having voted the ballot and who appear on Election Day to vote can only vote provisionally at the polling place, unless they surrender their ballot and outer return envelope to be spoiled and sign the required declaration before the judge of elections.

2 PROCESS FOR THE VOTER

- Voters are entitled to a provisional ballot when their eligibility to vote is uncertain.
 - A voter's eligibility is uncertain if his/her voter record cannot be located in the poll book or supplemental poll book.
 - A voter's eligibility to vote is uncertain if he/she has been issued a mail-in or absentee ballot and are not shown as having voted the ballot or do not remit the ballot and outer return envelope to be spoiled at the polling place.
- If a voter requested an absentee or mail-in ballot for the upcoming election and appears to vote at the polling place, they may only vote by provisional ballot at the polling place, unless they surrender the ballot and outer return envelope to be spoiled and sign a declaration before the judge of elections.
- If a voter has returned and successfully voted their absentee or mail-in ballot by the ballot return deadline, their vote is considered final for that election. This means they should not go to a polling place to vote. *Refer to Section 3 for guidance on processing voters whose record indicates that they have returned their ballot.*
- If a voter returned an absentee or mail-in ballot but the ballot was rejected by county election officials, and the voter believes they are eligible to vote in person, the voter may cast a provisional ballot on Election Day.
- For a voter to be issued a provisional ballot, the following must occur:
 - Before a voter can receive the ballot, they must complete the sections on the provisional envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials.
 - After a voter receives and marks their provisional ballot, they must seal their ballot in the secrecy envelope and then place the secrecy envelope in the provisional ballot envelope.
 - Finally, the voter must fill out the Voter Signature section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector. The Judge of Elections and the Minority Inspector will then sign and date the envelope after noting the reason for the provisional ballot.
- County election officials must review provisional ballots within 7 days of the election and decide if they should be fully counted, partially counted, or not counted.
 - Fully counted – all contests on the ballot are counted.
 - Partially counted – some contests, but not all contests on the ballot are counted.
 - Not counted – No contests on the ballot are counted.
- Voters can check the status of their provisional ballot after the election by calling the county board of elections, checking the PA Voter Services website, or calling the PA Department of

State. *Note: The online provisional ballot search will only return results for the active election and cannot be used to search provisional ballots from previous elections.* Voters will need to provide their provisional ballot number or their full name and date of birth to check the status of their provisional ballots.

- Voters can find the phone number for their county election office online at www.votespa.com/county.
- The website for PA Voter Services is www.votespa.com/provisional.
- The phone number for the PA Department of State is 1-877-VOTESPA (1-877-868-3772), option 6.

3 PROCESS FOR POLL WORKERS

- County election officials must ensure that poll workers are familiar with provisional voting rules.
- A county election official or poll worker must inform voters that they have a right to use a provisional ballot when they are entitled to receive one.
- Before a provisional ballot is issued, the Voter Information, Voter Affidavit for Provisional Ballot, and Current Address sections on the provisional ballot envelope must be completed by the voter.
- If a voter requested an absentee or mail-in ballot and did **not** successfully return and cast the ballot, his/her name will be found in section 1 of the poll book, and the signature line will say either **Remit Absentee Ballot or Vote Provisionally** or **Remit Mail-in Ballot or Vote Provisionally**. This advises the poll worker that there are two circumstances that may apply if one of these voters appear on Election Day.
 - If the voter has their ballot and outer envelope with them, the poll worker shall permit the voter to surrender their ballot and envelope and sign the Elector's Declaration to Surrender their Mail Ballot form. After the voter does this, the poll worker shall allow the voter to vote by regular ballot same as any voter.
 - If the voter is designated in the pollbook as having been issued an absentee or mail-in ballot but does not have the ballot and outer envelope with them, the voter may only vote by provisional ballot, and the poll worker shall offer him/her this option.
- If a voter was issued an absentee or mail-in ballot and returned and successfully voted their ballot, their name will be found in section 2 of the poll book, and the signature line will say either **Absentee – Ballot Cast/Not Eligible** or **Mail-in – Ballot Cast/Not Eligible**. Their vote is considered final at this point.
 - If the voter believes that he/she has not returned or cast the ballot successfully or otherwise contests his/her ballot status, the poll worker shall provide the voter a provisional ballot.
- If polling place hours are extended beyond 8:00 p.m. by court order on election day, all ballots shall be cast via provisional ballot only after 8 pm.

4 PROCESS FOR COUNTY ELECTIONS OFFICIALS

- It is recommended counties notify parties and the public a week in advance of the date that election officials will meet to examine and reconcile provisional ballots during the post-election

official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act, 65 Pa.C.S. 701, et seq., for public meetings.

- When determining whether to count a provisional ballot, the county board of elections must reconcile provisional ballots with ballots cast in person on election day and with returned absentee and mail-in ballots. If a voter cast an election day ballot or voted an absentee or mail-in ballot, the provisional ballot shall not be counted.
- A county board of elections can only approve a provisional ballot for counting if the voter is qualified and eligible to vote for the election.
- When researching provisional ballots during the canvassing period, the county election staff should enter the voter’s provisional voting information from the provisional envelope into the SURE system to maintain an accounting of the number of provisional ballots issued for the election.
- The county board of elections must review and make a determination on the disposition of each provisional ballot within 7 days of the election.
- If a provisional ballot is challenged during the canvass, the county board must schedule a hearing within 7 days of the challenge to consider the challenge and determine the disposition of the ballot. Additionally, notice shall be given where possible to the challenged provisional voter and to the attorney, watcher or candidate who made the challenge.
- During the official canvass, the County Board of Elections must determine, for each provisional ballot, whether:
 - The provisional ballot is invalid because the voter successfully cast another ballot;
 - The provisional ballot should be counted in full;
 - The provisional ballot should be rejected and the reason(s) for the rejection; or
 - The provisional ballot should be partially counted and the reason(s) for the partial counting.
- If a voter’s mail-in or absentee ballot was rejected for a reason unrelated to the voter’s qualifications and the voter casts a provisional ballot and meets other provisional ballot requirements, the provisional ballot shall be counted if the county determines that the voter is eligible to vote.
- Counties are prohibited from counting a provisional ballot from another county.

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Version History:

Version	Date	Description
1.0	3.5.2020	Initial document release
1.1	10.21.2020	Updated per Act 12 of 2020

Elector's Declaration to Surrender Their Mail Ballot

For the Voter:

I hereby declare that I am a qualified registered elector who was issued an absentee or mail-in ballot for this election, but that I have not mailed or cast an absentee or mail-in ballot in this election. Instead, I am hereby remitting my absentee or mail-in ballot and its declaration envelope to the judge of elections at my polling place to be spoiled. I request that my absentee or mail-in ballot be voided, and that I be permitted to sign the poll book and vote a regular ballot.

I verify that the statements made in this declaration are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the criminal penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(Today's Date)

(Printed Name of Elector)

(Signature of Elector)

(Address of Elector)

For Election Officials Only:

I hereby declare I have received the voter's ballot and envelope containing the voter's declaration from the voter and I am spoiling it and permitting the voter to sign the poll book and vote a regular ballot.

(Printed Name of Judge of Elections)

(Judge of Elections Signature)

(Precinct)

Instructions after completion: This form should be attached to the voter's surrendered balloting material and returned in the [container] [bag] designated for spoiled ballots. Do not forget to check the "**BALLOT REMITTED?**" option next to the voter's name in the poll book.

EXHIBIT B

PROVISIONAL BALLOT ENVELOPE

WPP 1

PROVISIONAL VOTER AFFIDAVIT #1 - FOR THE VOTER:

COMPLETE AND SIGN IN FRONT OF ELECTION OFFICIALS BEFORE VOTING BALLOT

Print Full Name _____ Date of Birth _____

Print Address where Registered to Vote _____ City _____ Zip _____

Municipality _____

County _____ Daytime Phone # (Optional) _____

I do solemnly swear or affirm that my name and date of birth are as I have listed above, and at the time that I registered I resided at the address I have provided above, in the Commonwealth of Pennsylvania and that this is the only ballot that I have cast in this election.

X _____

VOTER SIGNS HERE BEFORE VOTING BALLOT

Current Address where you Live _____ City _____ Zip _____

OFFICIAL ELECTION BALLOTING MATERIAL #2 - FOR THE ELECTION OFFICIAL

COMPLETE AND SIGN

DISTRICT _____ PRECINCT _____

WARD _____ DIVISION _____

CHECK ALL BOXES THAT APPLY:

- Voter's name not on list.
- Voter identification not supplied
- Court order (voter)
- Court order (voting hours)
- Voter's eligibility is challenged by an election official.
- Party (Primary Only) _____
(PARTY ON BALLOT ENCLOSED?)

Signature of the Judge of Election _____ Date _____

Signature of the Minority Inspector _____ Date _____

#3 - FOR THE VOTER:

1. VOTE THE BALLOT
2. SEAL IT IN THE SECRECY ENVELOPE AND
3. SEAL THE SECRECY ENVELOPE IN THIS ENVELOPE

#4 - FOR THE VOTER:

SIGN AND DATE IN FRONT OF OFFICIALS WHEN RETURNING BALLOT

The undersigned declares, under penalty of law, that he/she is a properly registered elector in the election district indicated in affidavit, and that he/she is eligible to vote in this election in this election district.

X _____

VOTER SIGNS HERE WHEN RETURNING BALLOT

DATE _____

THIS SPACE IS RESERVED FOR VOTER REGISTRATION
VERIFICATION BY COUNTY BOARD OF ELECTIONS

AFFIX BALLOT ID NUMBER
HERE