

Lauren Cristella - Committee of Seventy
Written Testimony on Mail-In & Absentee Ballot Access
Democratic Caucus Policy Committee
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Good morning and thank you for this opportunity to testify today before the Democratic Caucus Policy Committee. I am Lauren Cristella, President and CEO of the Committee of Seventy.

For more than one hundred years the Committee of Seventy has sought to make government more transparent and accountable and to help everyday citizens understand and engage with their government. We were founded in Philadelphia to combat corruption and have played an important role in civil service reform, campaign finance reform, and election administration. We are a nonprofit and nonpartisan organization, and we do not endorse candidates or represent any special interests. We want better government that our citizens can trust.

Election administration in Pennsylvania has transformed dramatically in recent years. Act 77 of 2019 was a historic and bipartisan reform package achieving the greatest set of changes to the state Election Code since 1937. But as this deal was negotiated, no one could have foreseen how a global pandemic would exponentially increase the impact of the new law and the use of a mail-in ballot available to any registered voter.

While Act 77 is an important step toward making voting more accessible, numerous reports, studies and calls issued by lawmakers, local and state officials, and advocacy groups highlight that additional reform is needed. With another presidential election in the Commonwealth approaching, this is one more urgent call to address unfinished business from that law and to fix outstanding liabilities to our elections.

Pennsylvania's election laws are outdated, and many parts need to be updated to reflect modern voting needs. While lawmakers from both parties have proposed solid ideas, the only change that can realistically happen before the 2024 elections is allowing pre-canvassing. Other updates would be too disruptive and costly for counties to manage on short notice.

However, several issues illustrate the need for legislative action, regardless of timing, and are worth noting now and addressing in the near future. A perfect example of this is the hand-dated signature requirement on the outside envelopes of mail-in ballots. In establishing the mail-in ballot, Act 77 of 2019 copied much of the pre-existing law for absentee ballots including language regarding the use of privacy envelopes and a requirement that voters handwrite a date on the ballot-return envelope. This language previously created no significant problems given the limited use of absentee ballots and the common practice in many counties to process ballots regardless of a handwritten date because of its inconsequence to ballot integrity.

Prior to 2019, the use of secrecy envelopes made sense as the limited number of ballots being processed could allow for a voter's selections to be made public more easily. Today, however, absentee and mail-in ballots in every county are canvassed in a centralized office. In larger counties, the privacy of a voter's ballot selections is guaranteed by the large volume of ballots being processed, typically with machines that are separating thousands of ballots from envelopes. But even in the smallest counties, basic protocols can ensure the protection of a voter's ballot selections even when processing is conducted by hand.

With regard to handwritten dates on ballot-return envelopes, this was never a critical requirement for ballot integrity or election administration. Every such envelope has the voter's information and a unique barcode, ensuring that election officials know when a ballot was sent out and when it was received. These dates are recorded in the statewide voter registration system, creating an auditable trail. The date a voter returns their ballot provides no further information necessary for determining the ballot's validity. Current law only allows ballots received by 8:00 p.m. on Election Day to be counted. There continues to be no reason for ballots to be rejected because the voter did not write the date — or any particular date — on the return envelope.

Pennsylvanians and election administrators across the Commonwealth have, for years now, been forced to rely on judicial interpretation of this requirement while courts on the state and federal levels have sought to balance the legislative language against voting rights and the language of the United States and Commonwealth Constitution. The back and forth nature of decisions has caused confusion that could easily be solved by legislative action that would ensure Pennsylvanians, particularly older citizens of the Commonwealth who have been proven to be more likely to struggle with this requirement, do not needlessly have their votes canceled.

This is just one example of the need for you and your colleagues to work together across the aisle to ensure that our elections remain safe, secure, and accurate and that individuals are not disenfranchised over technicalities that serve no purpose in ensuring elections are secure.

Pennsylvania's 67 counties are responsible for running elections that vary greatly in size. The largest counties employ scores of personnel with multi-million dollar budgets while the smallest execute their elections with a handful of dedicated staff. However, every county has been subject to tremendous stress, most of which stems from restrictions and ambiguities in state law. Reform that leads to increased efficiency and lower strain on county election offices and workers is essential. In addition to the issues detailed above, legislative action to clarify other processes such as ballot curing and the use of ballot drop boxes would limit the strain on election administrators who have been forced since 2019 to interpret complex legal decisions.

Thousands of registered Pennsylvania voters continue to encounter unnecessary obstacles every election, in large part due to problematic provisions of the Election Code. Some of these predate

Act 77 of 2019, but the expansion of mail-in voting without appropriate Election Code adjustments has exacerbated risks to some voters' successfully casting a ballot. In some cases, the revision of current law with just a few words will prevent large numbers of registered voters from having legitimate ballots rejected.

It is important to note that despite inaction on these challenges, intense partisanship, widespread mis- and disinformation, attempts at foreign interference, and a torrent of litigation in recent years, our elections are still secure and results should be trusted. But liabilities do exist due to poorly written laws, and these should be resolved as soon as possible. While we are not suggesting legislative action before the presidential election beyond legalizing ballot pre-canvassing, there still is an urgent need for reform and this work to improve these processes should begin now.

In particular, the legislature, working in conjunction with county election administrators, should prioritize the following reforms following November's General Election..

Strengthening faith in elections through pre-canvassing

Pre-canvassing, commonly referred to as ballot pre-processing in other states, consists of: examining envelopes containing returned ballots to determine whether they can be processed; removing and flattening the ballots; and scanning the ballots to record votes. Critically, this process should not include counting or tabulating the votes, a step that can be taken after polls close and when unofficial results are released to the public. Local officials from both parties have been clear about the value in providing additional time *before* Election Day to begin the work of inspecting ballot-return envelopes, extracting the ballots within and scanning those ballots to record the votes. Counties should be allowed to begin the processing of absentee and mail-in ballots up to 7 days before Election Day.¹ This processing can reasonably include the inspection and opening of return envelopes, and the extraction and scanning ballots. A prohibition should stay in place on the tabulation and release of any election results until 8:00 p.m. on Election Day.

Bipartisan observation of the process is important to maintain trust and ensure compliance with the law. As is currently allowed, one authorized representative of each candidate and political party should be present when ballots are being processed, with attorneys authorized by campaigns allowed to observe ballot processing in any county. Training of these observers by local and/or state officials could potentially be provided to aid them in their roles. County Boards of Elections should also be authorized to expel such representatives and watchers who are disruptive or who are interfering with the administration of the election.

¹The requirement in Act 88 of 2022 that counties receiving Election Integrity Grants grants from the Department of Community and Economic Development process ballots *continuously* creates an unnecessary burden and should be repealed.

Allowing counties a week or ballot pre-canvassing will make county operations more efficient and shorten the window between polls closing and results being published. The delay in publishing the result has undermined the public's trust in the integrity of our elections and has been used by some to suggest nefarious actions. This change would eliminate that risk.

Strengthening Post Election Audits

State law currently requires that County Boards of Election conduct “a statistical recount of a random sample of ballots” after each election, which consists of auditing 2% of the votes cast, or 2,000 votes, whichever is less. But the audit sample is the same size regardless of whether a race is decided by one vote or 1,000 votes, meaning that the statistical power of the tool to confirm election results is limited when a race is close. As a rule, the tighter the margin, the larger a recount sample must be in order to corroborate results and confirm the winner. A statewide race determined by a handful of votes, for example, would necessitate a full recount of every cast ballot.

Risk-limiting audits (RLAs) have proven to be the gold-standard statistical tool in other states to verify that ballots have been properly tabulated, providing election officials the flexibility to audit a varying number of ballots depending on how close election results are. The Pennsylvania Department of State has been working with County Boards of Elections since 2019 to pilot RLAs in select races,² but the law still requires 2% sampling.

The current 2% statistical sample should be replaced with statutory language requiring the uniform implementation of risk-limiting audits by all 67 counties in every election. Such post-election audits should be conducted for both county-level and statewide races in every primary and general election, with the additional requirement that the audit be completed before a County Board of Election's certification of election returns. Robust chain of custody protocols must be followed during the audit process, as well public notice and observation.

Thank you for your time and consideration of these important matters. We strongly urge the legislature to address these challenges, strengthen our election administration, and increase Pennsylvanians faith in our robust systems of democracy. I welcome the opportunity to answer any questions you may have.

² Pennsylvania Department of State Voting & Election Information. [“Post-Election Audits.”](#)