

Senate Democratic Policy Committee Hearing - Mail in & Absentee Ballot Access

Chair Muth, Senator Cappelletti and Senator Schwank,

Thank you for the opportunity to present my testimony. My name is Philip Hensley-Robin, and I am the Executive Director of Common Cause Pennsylvania. We are a nonpartisan voting rights and democracy reform organization. We have been dedicated to making government more accountable to We the People since 1970, and we have over 35,000 members and supporters across every county in the Commonwealth.

Mail-in voting is a secure and convenient way for voters to cast their ballots. Since the 2020 election, millions of Pennsylvania voters have voted by mail. No-excuse mail-in voting, introduced in 2020 with the passage of Act 77, was not only a literal lifesaver at the height of the COVID-19 pandemic, it has also made voting more accessible for more voters. While the adoption of no-excuse mail-in voting in Pennsylvania was a meaningful step forward, there are many areas for improvement in Pennsylvania's mail-in ballot policies. Today, I would like to address the rules which result in thousands of eligible voters mail-in ballots being disqualified, and discuss some policy solutions.

Under Pennsylvania law, mail-in ballots are disqualified if they have any one of several defects: Ballots are disqualified if the voter's declaration is incomplete, missing a signature or date, or is dated inaccurately. Ballots are also disqualified if a secrecy envelope is missing. Mail ballots are also disqualified if they are received after 8 p.m. on election day. In the 2024 April primary, nearly 16,000 ballots from otherwise-eligible voters were disqualified for one of these reasons.¹ This disenfranchisement is particularly concerning because the impact of these rules is not felt equally; research has shown that Black voters, Latino voters and elderly voters are disproportionately impacted by signature and date rejection rules.² The ballot receipt deadline, by contrast, disproportionately impacts young voters.

Common Cause Pennsylvania believes that no eligible voter should be disqualified for making a simple error. We all make mistakes, we forget our keys, we misplace our phones, we write the wrong date on a check. These mistakes happen all the time. They should not be grounds for disenfranchising tens of thousands of voters. Legislation is desperately needed to clarify that a missing secrecy envelope or improperly dated elector's declaration are not grounds for rejecting a ballot. We also recommend that

¹ Bernard, K. "Nearly 16,000 mail ballots were rejected in Pennsylvania in April. That could be a larger number in November" Philadelphia Inquirer. (May 21, 2024). <https://www.inquirer.com/politics/election/pennsylvania-mail-in-ballots-rejected-20240521.html>

² Walker, C., Benschhoff, L. "Philadelphia's communities of color disproportionately affected when mail ballots are rejected over small errors" Spotlight PA. (June 27, 2023). <https://www.spotlightpa.org/news/2023/06/pa-philadelphia-mail-ballot-rejection-black-latino/>

state law should be changed so that mail ballots received within seven days of an election, but which are postmarked by election day, are not disqualified.

Ballot disqualification is not the only issue the legislature should address. The Senate should take up legislation, already passed in the House, to permit pre-canvassing of mail-in ballots. Pre-canvassing alleviates administrative burdens on our county election officials, and it also can provide voters with earlier notice of a potential mail ballot defect, and therefore an opportunity to cure that defect.

In addition to pre-canvassing, the legislature should enact mail-in voting policies that favor voters and are uniform across the Commonwealth. Currently, counties vary considerably in the availability of secure ballot drop boxes. Some counties offer satellite election offices, where voters may make in-person mail-in ballot requests, while many counties do not. While many counties have notice and cure policies in place, not all do, and not all communicate with voters in the same way. Pennsylvania voters and election administrators desperately need clarity and uniformity on these questions. We believe that the legislature should act, guaranteeing that voters have access to secure ballot drop boxes in every county. And the legislature should require notice and cure programs in every county, so that regardless of where a voter lives in Pennsylvania, they will be notified of any defect with their mail-ballot and will be given an opportunity to cure that defect.

In the absence of legislative action or changes arising from state or federal court decisions, counties can and should implement pro-voter mail-in policies themselves. Most importantly, counties should enact robust notice and cure policies. Allowing voters to cure ballots can significantly reduce a county's mail ballot rejection rate.³ In 2023 the Pennsylvania Supreme Court affirmed counties' ability to adopt notice and cure policies. We know many counties have taken these steps. Common Cause Pennsylvania, alongside our partners in the non-partisan Election Protection coalition, recommend a number of best practices that counties adopt in their notice and cure programs. We recommend that when a voter returns their mail ballot in-person to the county election office, the board of elections should train election workers to review the outer envelope for the presence of the signature and date and determine whether a secrecy envelope is included before accepting the ballot.

In addition, we strongly encourage counties to enter the appropriate codes into the SURE system immediately upon receipt of a ballot, and to immediately notify voters of disqualifying defects. Counties should also include the specific reason for the rejection by associating the correct code in the SURE system that corresponds to the defect, and update information in the SURE system if the voter cures their ballot.

When ballot defects are identified, counties should attempt to reach voters via email, text, phone call, or as a last resort, mail. Counties should publicly release a list of voters whose ballots will not be counted, and provide the list to political parties, candidates, and voter education organizations who request them

³ Chin, D. "A Deep Dive into Absentee Ballot Rejection in the 2020 General Election". Elections Performance Index, MIT Election Data and Science Lab. (Dec 16, 2021).
<https://elections-blog.mit.edu/articles/deep-dive-absentee-ballot-rejection-2020-general-election>

so that those groups can share the burden of notifying voters. Counties should also designate dates and times outside of regular business hours for voters to cure their ballots – including weekend and evening hours – for at least two weeks before Election Day.

If the signature or date is missing or incorrect, the voter should be advised of and given all of the following options:

1. Visit an election office to provide a signature and/or date on the outer envelope.
2. Request that the original ballot be canceled, and a replacement ballot be reissued through the mail or, if the voter has a disability, allow the voter to designate an agent to receive and deliver the replacement ballot.
3. Vote by provisional ballot on Election Day to cure a defect in their previously submitted mail ballots. Counties must count those provisional ballots if the voter's registration and eligibility are verified in accordance with provisional ballot adjudication.

If the secrecy envelope is missing:

1. Ballots should be canceled immediately.
2. Voters should be given the option to request a replacement mail ballot or vote by provisional ballot on Election Day.
3. Counties must count those provisional ballots if the voter's registration and eligibility are verified in accordance with provisional ballot adjudication.

Counties should not force voters to take additional steps to remedy a flawed ballot, such as printing and signing a separate form and mailing it to the county, or printing and scanning the form and emailing it.

In conclusion, Pennsylvania counties and the General Assembly have an obligation to act to ensure that all eligible voters will have their votes counted. When the right to vote is abridged, citizens' voices are silenced, and elections are not truly "free and equal," as guaranteed by the Pennsylvania constitution. The legislature can and must clarify that minor errors are not grounds for disqualification, and enact pre-canvassing and uniform pro-voter policies, including drop boxes and notice and cure opportunities in every county. But if the legislature does not act, we call on county boards of election to enact pro-voter policies in their own counties, in particular, robust notice and cure policies that have a proven track record of preventing mail ballots from being disqualified.