

Office of the Speaker



House of Representatives

November 6, 2020

Tom Wolf
Governor
225 Main Capitol Building
Harrisburg, Pennsylvania 17120

*** HAND DELIVERED ***

Dear Governor:

As you are aware, the General Election currently being conducted in the Commonwealth has generated a significant amount of interest among our citizens, who have been anxiously awaiting results since the election concluded at the lawfully enacted deadline of November 3, 2020 at 8:00 PM.

For months, I, along with many members of the House of Representatives and Senate, have raised serious concerns relating to the administration of the election, specifically because this was the first full year Pennsylvanians would be able to use no-excuse absentee mail-in ballots.

Unfortunately, some of the concerns that were previously raised have manifested into issues which cannot be overlooked.

First, the Pennsylvania Supreme Court unconstitutionally extended the deadline to receive late ballots and openly ignored the findings of fact and law that were issued by the Commonwealth Court¹. That issue is now being litigated at the United States Supreme Court. However, this judicial intervention created unnecessary chaos and uncertainty as to what constitutes a timely and lawfully cast vote.

¹ See Pennsylvania Democratic Party v. Boockvar, No. 133 MM 2020, 2020 WL 5554644 (Pa. Sept. 17, 2020) and Crossey v. Boockvar, No. 108 MM 2020, 2020 WL 5554582 (Pa. Sept. 17, 2020).

Second, your Secretary of State initiated another legal action in the Pennsylvania Supreme Court to “clarify” whether signatures on returned absentee and mail-in ballots could be reviewed for authenticity by counties during the pre-canvassing of ballots².

Without permitting the House or Senate to intervene and defend the existing law, the Court unilaterally directed the county boards of elections to not reject absentee or mail-in ballots for counting, computing and tallying based on signature comparisons conducted by county election officials or employees, or as the result of third party challenges based on such comparisons.

This, of course, is a significant departure from Pennsylvania law and practice, and it eliminated one of the most important security and anti-fraud features used with absentee and mail-in ballots. It also treats voters who vote on Election Day in person different from those that used the absentee ballot or mail-in program.

Additionally, notwithstanding assuring the United States Supreme Court that late arriving ballots would be fully segregated, the Secretary of State issued conflicting “guidance” to counties regarding how to manage late arriving ballots. Full segregation, as initially contemplated, was replaced with guidance that encouraged the counties to process ballots but keep totals separated.

Also, prior to election day, and in contravention of state law and a Pennsylvania Supreme Court ruling, some counties began pre-canvassing ballots by reviewing the declarations to find “defects” which they then sought to have voters “cure.”

The Secretary of State permitted these actions, which are now subject to several court cases in both federal and state courts³. Not surprisingly, very serious equal protection rights issues now exist due to the disparate treatment of voters from different counties.

Further, poll watchers, which are the hallmark of our Election Day process to promote transparency and fairness, were unlawfully denied the opportunity to meaningfully observe the proceedings of all pre-canvass and canvassing activities.

Finally, it is my understanding that among all our counties, an unprecedented 105,000 provisional ballots have been issued.

Under our statutes, provisional ballots may only be issued if there is an issue with a voter (e.g. a voter’s name does not appear in the poll or supplemental poll book, a voter was issued but did not successfully vote an absentee or mail-in ballot).

Clearly, the significant number provisional ballots are indicative of voter issues across the Commonwealth.

Governor, all these issues could have been avoided had your Secretary of State and the Pennsylvania Supreme Court simply followed the law as written.

² See In re Nov. 3, 2020 Gen. Election, No. 149 MM 2020, 2020 WL 6252803 (Pa. Oct. 23, 2020).

³ See Hamm v. Boockvar, 600 MD 2020 and Barnette v. Lawrence, 2:20-cv-05477-PBT, E.D.Pa.

The uncertainty surrounding these interventions has cast an unnecessary cloud on a process – the election – that invites our people to question the results, regardless of which candidate or party may prevail.

As such, and due directly to these issues (and any others that may arise), I am requesting that a full audit be conducted of the 2020 General Election prior to the certification of any results.

The House of Representatives and Senate previously required a report of the 2020 Primary Election (Act 35 of 2020), which provided meaningful, actionable information regarding the administration of the absentee and mail-in ballot program.

In response, the House passed House Bill 2626 which would have provided remedies to nearly all the known issues. However, that legislation was not considered in the Senate because of your opposition to the bill and veto threat.

Now, we must take every possible step to ensure that all Pennsylvanians, and all Americans, know that our Commonwealth has conducted the General Election with integrity. That can best be accomplished through an audit and a verification that our election law and processes were appropriately administered and followed.

Like you, I call on all Pennsylvanians to remain calm as we work through these issues.

If we work cooperatively to end the election in an open and transparent manner, then I am confident that regardless of winner, our people can accept the result.

Sincerely,



BRYAN D. CUTLER
The Speaker
Pennsylvania House of Representatives

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