

2019 Senate State Government Hearing – Election Reform Package

April 30, 2019

Testimony of Acting Secretary of the Commonwealth, Kathy Boockvar

Pennsylvania Department of State

Good morning. Thank you, Chairman Folmer, Minority Chairman Williams, and members of the Senate State Government Committee for allowing the Department of State to submit written comments and testify at today's hearing.

We are pleased to have this opportunity to speak with you about these proposed changes to Pennsylvania's election laws, and the important issue of election reform. We have been speaking with counties across the Commonwealth about many of these issues for several years and hope we can achieve many of these improvements to election administration and voting in Pennsylvania.

Absentee Ballots

A major focus of the package put forward is the processes and procedures around absentee ballots, and the Department of State agrees that the laws regarding absentee ballots in Pennsylvania are ripe for reform. Several years ago, we began to discuss these issues with many of the counties across the Commonwealth. We collectively developed a package that includes proposed bills on all statutes impacted, and that reflects the collaborative goals articulated by the counties and department. We are happy to provide you with this package.

We believe that Senate Bills 411, 414 and 415, relating to absentee ballots, are all in need of some amendment. Beginning with the question of no-excuse absentee voting, the department conducted a legal analysis of this issue several years ago and concluded that such changes would not require a constitutional amendment. See attached Exhibit A with a summary of this analysis. Nonetheless, if a constitutional amendment is desired, this could be done concurrently with amending the PA statutes, which has been done in similar situations in other states. The department is of the opinion that the Pennsylvania Constitution already allows for the legislature to make any necessary changes that would expand the ability to vote by absentee ballot, and that the legislature can provide for “no-excuse absentee voting” by statute alone. While the current package includes a constitutional amendment that would explicitly provide for some form of “no-excuse absentee voting,” the department would support concurrent legislation, such as the language we developed with counties and have shared with the committee in the past, that would allow for true “no-excuse” absentee voting to begin much sooner. Passage of a concurrent bill would allow for this legislation to be in place before the 2020 presidential election and would allow voters to begin utilizing “no-excuse absentee voting” while the time-consuming and costly constitutional amendment process plays out on a different schedule.

Additionally, as written, the joint resolution does not fully implement no-excuse absentee voting. Rather it only expands absentee voting beyond the current boundaries that are already in place. For example, the bill still requires that voters be absent from their municipality in order to vote absentee. As such, voters who live in one part of a large city like Philadelphia, Pittsburgh, Allentown, Erie, or Scranton and work in another

part of the city would not be able to vote via absentee ballot. In many cases, those are the voters who need no-excuse relief the most.

The department would like to address some gaps and inconsistencies in the draft bill for allowing permanent absentee ballot requests. While Senate Bill 415 clearly creates a list of voters who request a permanent absentee ballot, it lacks any specific directions for how and when counties should send absentee ballots to those on the list. Additionally, the bill may create confusion for military voters and the counties that receive and process military ballots. The Uniformed Military and Overseas Voters Act (UMOVA) already requires county election boards to treat a request for an absentee ballot during a primary election as a request for an absentee ballot in the corresponding November election. The bill's language would seem to indicate that some of these voters could receive multiple ballots if they appear on both the UMOVA and the permanent absentee ballot list.

Similarly, the department has concerns about Senate Bill 414's modifications to the timeline for the return of absentee ballots. As written, the bill does not change the application period or process. It only extends the date for returning the voted absentee ballots. The Department supports the bill's proposal to allow voters to complete absentee ballots and to return those ballots to the county election offices in person, until 8 p.m. on the day before the primary or election. For ballots being returned by mail, the department supports a deadline later than the current one and earlier than that proposed in the bill.

Specifically, the department suggests a deadline of the Friday following the primary or election. By law, the Secretary must order any statewide recount by the

second Thursday after a primary or election. If large numbers of absentee ballots were to continue to arrive up to a week after the election, and they had the potential of determining the need for a recount, the counties might not be able to canvass them all before the deadline for the Secretary's determination or for a losing candidate's decision on whether to waive their right to a recount. Statewide recounts typically cost \$500,000 to be paid by the Commonwealth, and all other recounts are paid for by the party requesting the recount. Given this expense, the department would prefer to avoid the possibility that absentee ballots arriving so close to the deadline would not be counted when they might have either triggered or negated the need for a recount. Especially in years with numerous federal elections where voter turnout is higher, this change could place a burden on the counties that the department would like to avoid.

Polling Place Reforms

The department is supportive of many of the concepts for polling place reform that these bills embrace. Again, however, the department sees the need for changes in the language before the legislature moves to enact them into law.

The department agrees with the need to aid the counties by reducing the number of excess ballots they must have available on Election Day. In its present form, Senate Bill 418 seems to require that counties use the last three primaries or general elections as the basis for determining the number of ballots that need to be printed for an upcoming primary or general election. As a result, this legislation suggests that counties must look at three consecutive – and non-presidential primaries and elections -- when determining the number of ballots that need to be printed for an upcoming presidential

primary and general election. This will likely result in an inaccurate estimate of ballots needed. Instead, the department recommends that the bill direct counties to look at the last three elections *of a similar type*. In other words, to determine the number of ballots for a presidential general election, the county would look at the turnout of the last three presidential general elections. This alternative would save the counties money in printing costs and ensure that there is no risk of running out of ballots on Election Day. We are happy to provide suggested language to meet these needs.

The department also believes that curbside voting, as proposed in Senate Bill 416, raises concerns about the potential impact on voters with disabilities. It may be helpful to have curbside voting as an option at certain polling places, but we are concerned that curbside voting would be viewed as an acceptable alternative to fully accessible polling places, which is not accurate. Department of Justice guidance on requirements of the Americans with Disabilities Act (ADA) makes clear that polling places must be accessible to voters with disabilities, whether or not curbside voting is available.

The department is also open to the ideas of both vote centers and the consolidation of polling places, as proposed in Senate Bills 416 and 419. The department believes both could be viable options for counties, but only with significant review and oversight of the process used by counties. Such oversight is essential to ensure that no additional barriers to voting unintentionally occur and to preserve uniformity in voting for all commonwealth voters. Additionally, the department believes that in determining location for vote centers or consolidated precincts, the list of factors necessary to consider should be more comprehensive than what is included in the

proposed legislation. Specifically, the department believes this list should include the location's accessibility, parking, access to transportation and public transit, population centers, geographic obstacles, staffing of the location, the location's equipment, how the equipment is set up, and other similar considerations.

Conclusion

The department believes that a thoughtful, comprehensive conversation on election reform is long overdue, and we thank the committee for its interest in these discussions today. We would also appreciate collaborative discussions on other reforms that would also improve voting and elections in Pennsylvania, such as early voting, same-day registration, automatic registration, no-excuse absentee balloting, and campaign finance reform. Proposals such as these would provide more options to eligible voters, help us maintain accurate voting rolls, reduce the role of money in politics, and increase transparency.

The department supports the great majority of the goals of the bills introduced, and wants to be sure that the provisions of the bills are drawn to best meet those goals while not creating any unintended consequences. The department is committed to continuing to work with this committee, as well as the entire legislature, to amend the bills so that they can best accomplish the sought after and needed reform. We look forward to continuing to foster a collaborative working relationship with all interested parties to ensure that election reforms are enacted in the most effective way.

Chairman Folmer, Minority Chairman Williams, and members of the Committee, thank you again for your time today and for the opportunity to appear before you. I would be happy to take your questions.

Summary of No-Excuse Absentee Voting Via Legislation

1. Article VII, § 14 of the Pennsylvania Constitution requires the General Assembly to provide for absentee voting for certain enumerated categories of voters.
2. Earlier versions of the amendment (and its implementing provisions in the Election Code) applied only to military veterans.
 - a. This was then expanded in 1967 to those who are sick or disabled, and those who are absent from their home county because of their “duties, occupation, or business.”
 - b. Amendments also changed the language from “The General Assembly may [establish absentee voting]” to “The General Assembly shall [establish absentee voting].”
 - c. Further amendments addressed those observing religious holidays, and those county employees with election day duties.
 - d. Finally, voters were permitted to vote by absentee ballot if they were away from their home municipality (rather than the whole county).
3. The Election Code’s definitions section, describing and authorizing different categories of absentee voters, has numerous categories which do not appear in the constitutional section.
4. In contrast to the federal government (which is one of “enumerated powers”), the state governments possess all powers “not expressly withheld from [them].”
5. The courts presume that the legislature’s enactments are constitutional, and resolve any question of constitutionality in favor of finding the law constitutional.
6. Article VII, § 14, sets forth certain categories for which the General Assembly must provide absentee voting. It is silent as to other categories.
7. Because the background assumption is that the General Assembly has full authority to legislate, that silence does not deprive the legislature of the power to extend absentee voting beyond those enumerated classes of voters.
8. Principles of statutory and constitutional interpretation, including *expressio unius est exclusio alterius*,¹ suggest that if the legislature is required to offer absentee voting to certain enumerated classes of voters, silence as to other classes of voters means only that the legislature is not required to offer absentee voting in the same way—not that the legislature is limited to only the enumerated categories.
9. Though Article VII, § 14, forces its hand and requires it to offer absentee voting for certain voters, the General Assembly could rely on its general power to legislate and—on a discretionary basis—expand absentee voting beyond those existing, mandatory categories.

¹ “[T]he expression of one thing is the exclusion of another.”

Article VII, § 14. Absentee voting

(a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

(b) For purposes of this section, "municipality" means a city, borough, incorporated town, township or any similar general purpose unit of government which may be created by the General Assembly.