

To: Lawrence Tabas

From: J. Matthew Wolfe



Re: Vote Count Procedures

Date: June 30, 2020

I spend a few days at the Commissioners' office to see what they were doing regarding the vote count. There is probably not much that you do not already know here, but I wanted to outline some of my observations.

Initially, when mail ballots were returned, a staff member scans the barcode at a terminal and reviews the outside envelope against the SURE file for that voter. They check the following information on the declaration envelope:

- a) that the date is correct (date filled out – common mistake is to put date of birth)
- b) that there is a signature
- c) that the address on the envelope is the same as in the file
- d) that the name is the full name that they are registered as.

The staff member also exercises their personal discretion to determine whether the signature on the outside of the envelope matches the signature on file. The envelopes are then stored in a locked office.

For any that deviate from the requirements, the Commissioners vote whether to count them. Generally if there is no signature or if the signature is printed (and they did not print when they registered) they reject them. Regarding the incorrect date, incorrect address or partial name/nickname, if the identity of the voter is not in question they generally vote to accept them. Supervisors only review the ones that are flagged by staff, particularly any that the staff believes deviates from the signature on file.

I was at the Commissioners on June 4, 2020. CJ Parker from the Trump campaign was there along with a lawyer that I know from the local RNLA chapter. There was not much to see. A number of staff people were seated around a table with letter openers opening the outside envelopes and separating them from the security envelopes. Once they are separated, the vote is cast the same as if it was on the machine. Those watching were far enough away (COVID-19 security) so that there was not an opportunity to see any of the information on the outside envelopes. The Committee of 70 was live streaming the "action" over the internet, although again the information on the outside envelopes could not be seen.

While they had the legal authority to have started opening the envelopes on the day of the election, they did not start until Wednesday due to manpower limitations. The next step would have been for the security envelopes to be opened and the ballots themselves to be fed through the scanning machines for counting. The plan was for them to count all of the mail ballots before they counted the provisional ballots so that they could check to see if any of the received mail ballots also voted by provisional ballot so that the provisional ballots of those voters could be discarded.

I spoke with Al Schmidt to try and understand their procedures. I also relayed to him Denise's experience. Denise and I both applied for and received mail ballots. After filling them out we mailed them back. I received an email stating that it had been received. Denise did not so she went to the polling place to ensure that her vote counted, understanding that she would be permitted to vote by provisional ballot, with only one ballot counting. The polling place was not our normal one, but had been merged with a number of others.

They set it up so that you went to one table where the poll books, gave your name and were given a slip of paper to take to the next table. Denise told them that she had sent back the mail ballot but had not received the expected acknowledgment that it had been received back. She told the person at the table that she expected to vote by absentee ballot. In the poll book it was printed over the space for her to sign "MAIL IN BALLOT RETURNED - VOTE CAST). I am not sure that Denise could read that as the way that the poll book is set up that was facing the people working at the table rather than the voter. Facing the voter is the name and the line with instructions for the voter to sign. In any event, she was instructed to sign the poll book by the personnel at the table and did so.

She then took the slip of paper to the next table and again told the personnel that she expected to vote by provisional ballot. The person at the table, who Denise did not know but said that she appeared to be the Judge of Election, told Denise that she was incorrect and that she was required to vote on the machine, which she did. I relayed this to Al so that he would know the problem because I expected that Denise was not the only one who received these instructions and that they should look for more examples of this.

I believe that it was later that day that they announced that they were going to stop counting of the mail ballots until they could check them against the poll books to ensure that no votes are counted twice.¹ The counting stopped for five days.

¹ <https://www.inquirer.com/politics/election/philadelphia-pa-primary-votes-not-counted-20200605.html>

² <https://www.inquirer.com/politics/election/pa-primary-election-mail-ballots-double-voting-20200616.html> See also <https://www.youtube.com/watch?v=doNl98vOURQ> at about 42:13.

I went back the next week and they were back to opening the mail ballots. They were also running the ballots themselves through the scanning machines. They have four that they own and said that they had two others on loan. They said that when the ballots go through the machines they are not marked in any way as being counted, so in theory they could be run through the scanner again, although it would be reflected in a discrepancy between the number of votes cast and the number of ballots received.

The poll books were stacked in a separate room. The procedure to develop a list of voters who appeared at the polling place is for a staff person to go through the books with a hand scanner on each page and scanned the bar code for each voter where there was a signature in each book. I asked if they received all of the poll books back and they said that normally they did, but this year there were some that had not come back probably due to the COVID-19 difficulty.

After they completed the review of the poll books and crossed them against the mail ballot applications, they restarted the count of the mail ballots. After completing the mail ballots they turned to the provisional ballots, of course eliminating any for whom they had received a mail ballot and eliminating any others that were not properly completed or where the voter was not properly registered.

They reported that their audit showed that there were 40 voters who had applied for mail ballots, returned them and were directed to vote on the machines on election day. There were four whose mail ballots were opened before they stopped opening them on June 4, so those individuals voted twice. There were another 36 who they caught in time so that they could discard the mail ballot since their vote was already tallied on the machine.² In some of these cases, the error was that the election board had the voter sign over a watermark indicating that they should not vote on the machine, but in others the error was that the mail ballot application was not noted in the poll book.

The commissioners also reported that another number, not specifically stated, of voters who returned mail ballots came to vote and voted by provisional ballot. The Commissioners voted to discard the provisional ballots.³

I have no data to call into question the number of only 40 voters whose mail ballots were received and were still permitted to vote on the machine. That being said, by my experience with Philadelphia elections that seems to be a surprisingly low number, particularly with the procedure used this year. The poll books were printed two weeks before the election and therefore one week before the deadline for applying for mail ballots. Voters who applied for mail ballots are noted in the

² <https://www.inquirer.com/politics/election/pa-primary-election-mail-ballots-double-voting-20200616.html> See also

<https://www.youtube.com/watch?v=doN198vOURQ> at about 42:13.

³ *Id.*

poll books. There were, however, 92,000 mail ballot applications received after the poll books were printed. Supplemental poll books were printed up to hopefully pick up some or all of the late applications (as well as any late registrations). The election boards were supposed to look up each voter in both books.⁴

This was a divergence from past practice for use of the supplemental poll books. In the past, they were only needed to review the supplemental poll book if the voter was not in the main poll book which contains late voter registrations. This time they were supposed to review both books with each voter.

At the commissioners' meeting on June 22, 2020 it was disclosed that the empty declaration envelopes were re-scanned to ensure that each voter's vote history was accurate. It was disclosed that some of the voters who voted by mail had been incorrectly entered. This resulted in the discovery that 24 provisional ballots that should have been voided were not and it was impossible to remove them from the totals. This is another 24 double voters.⁵

At the commissioners' meetings there were votes on a number of issues that were voted on:

i) Mail ballots were received where the voter left the declaration envelope affidavit unsigned but signed in another area of the envelope, such as the return address area of the envelope. The commissioners voted 3-0 to count the ballots.⁶

ii) Mail ballots were received where instead of signing their full name on the declaration envelope the voter only signed a partial name, such as their last name. Schmidt voted to not count it but he was outvoted by the Democrats.⁷

iii) Mail ballots were received from other boards of election (Lehigh, Delaware and Chester). The audio of the meeting made the discussion hard to follow, but I am pretty sure that if a time stamp showed that they were received by the other county's board by election day and it was received by Philadelphia before the Governor's deadline they counted. Schmidt voted for some and against some in which he was outvoted by the Democrats.⁸

⁴ <https://www.inquirer.com/politics/election/philadelphia-pa-primary-votes-not-counted-20200605.html>

⁵ The June 22, 2020 meeting can be found at: <https://www.youtube.com/watch?v=azUIwhLLBkY> and the information about the double voting is at about 14:36.

⁶ The June 10, 2020 meeting can be found at <https://www.youtube.com/watch?v=ww888sfhNt8> and this issue is taken up at about 15:06. See also the commissioners meeting of June 5, 2020 at <https://www.youtube.com/watch?v=NokDLdIIPXE> and this issue was discussed at about 15:52.

⁷ *Id.* at about 17:50.

⁸ *Id.* at about 19:12.

iv) Mail ballots were received on June 3, 2020 that either did not contain a postmark or the postmark was illegible. Schmidt voted not to accept them because the Governor's order said that they had to be postmarked. The two Democratic commissioners voted to accept them.⁹

v) Protect Our Vote Philly complained that "duplicate" mail ballots were being filled out without supervision and without watchers being able to see that it was done accurately.¹⁰ My understanding is that this occurred when the ballot in the envelope was damaged when opened.

vi) One voter appeared and stated that she found out that she had failed to sign the envelope of her mail ballot. She was told that if she came back in person she could amend her mail ballot by signing it¹¹ (She did so at the June 17, 2020 meeting¹²).

vii) Mail ballots were received after June 2, 2020 but without a postmark or with an illegible postmark. A conversation with the Philadelphia Postmaster found that where they could the postal service delivered any ballots that were mailed on election day to the commissioners the same day. Schmidt voted that these should not count as they did not comply with the governor's executive order, but he was outvoted by the Democrats.¹³

viii) Mail ballots were received where voters put their names or a symbol both on the declaration envelope (where it belongs) and on the security envelope (where it does not). The audio was hard to hear, but it seemed like the commissioners voted to count them.¹⁴

ix) Mail ballots were received where the voter filled out the right side of the declaration envelope (for disability voters) but not the left side where the voter information goes. The commissioners voted to count the ballots.¹⁵

x) Mail ballots were received where the voters used incorrect dates of signature. In most cases they put their date of birth on it, but others put an impossible date, like a date after the primary election. The commissioners voted to count the ballots.¹⁶

⁹ The June 15, 2020 meeting can be found at <https://www.youtube.com/watch?v=doNl98vOURQ> and the issue is discussed at about 1:01.

¹⁰ *Id.* at about 1:05:00.

¹¹ *Id.* at about 1:02:00.

¹² The June 17, 2020 meeting can be found at:

<https://www.youtube.com/watch?v=CbVbGmOgzP4> at about 27:00.

¹³ See the June 15, 2020 meeting *supra.* at about 3:50.

¹⁴ The commissioners meeting of June 5, 2020 can be found at

<https://www.youtube.com/watch?v=NokDLdIIPXE> and this issue was discussed at about 12:30.

¹⁵ *Id.* at about 14:14.

¹⁶ *Id.* at about 15:12.

xi) Mail ballots were received that contained no security envelope, i.e. the completed ballot was in the declaration envelope. The commissioners voted to count the ballots.¹⁷

xii) Mail ballots were received with a signature but no date of signature at all. The commissioners voted to count those ballots.¹⁸

xiii) Mail ballots were received where the voter signed it but did not fill in the printed name or address. The commissioners voted to count these ballots.¹⁹

xiv) Mail ballots were placed under the door of the City Hall office of the County Board of Elections after the office was closed. The commissioners voted to count the ballots.²⁰

xv) Mail ballots were returned without declaration envelopes, i.e. security envelopes with the ballot inside were dropped in the drop boxes. The commissioners voted not to count those ballots.²¹

xvi) Mail ballots were returned with no signature on the declaration envelopes. The commissioners voted to not count these ballots.²²

xvii) Mail ballots were returned with the label removed, but otherwise the declaration envelope filled out properly for a voter who applied for a mail ballot. The commissioners voted to count those ballots.

While I have not done hard research on each of these issues, my experience tells me that some of the commissioners votes were clear violations of the direction in and language of the election code.

One final issue that does not quite fit here but is something to look out for in the fall relates to the paper ballots that are used by the machines to print the paper backup for the machines. It was pointed out to me by a representative of Protect Our Vote Philly that there did not seem to be any inventory control and she pointed out to me boxes of them sitting in one of the commissioners' offices.

I reviewed Ron Hicks lawsuit in the Western District that focuses on the drop boxes and touches on some of the issues here. My instinct is that getting the federal court to hear it will be a challenge, although I certainly would rather be there than in state court.

A few thoughts:

A) If we are to have any impact on the integrity of the mail-in and absentee ballots, we need to have a team in place to monitor that process. The applications and envelopes are public records (Section 1309). There is challenge process for

¹⁷ *Id.* at about 16:16.

¹⁸ *Id.* at about 21:00.

¹⁹ *Id.* at about 21:30.

²⁰ *Id.* at about 22:04.

²¹ *Id.* at about 23:04.

²² *Id.* at about 23:45.

both the applications and returned ballots. (Sections 1302.2 (c) and 1302-D (9)(2)) It is only meaningful if someone connected with the party review each application and each mail ballot envelope that is returned in enough time to prepare any appropriate challenges. If there is money, hiring a team to review these on an ongoing basis would be valuable. It would not be surprising if some of the applications and the returned ballot envelopes have signatures and other information at variance with the SURE system data, particularly where DCC operatives are “helping” voters in the mail in ballot process.

B) The counting of ballots is another key point in the process. Philadelphia’s example of double voting demonstrates the weakness of the process. Once the envelopes for the mail ballots are opened the genie can’t get back into the bottle. If the county boards of election are permitted to start counting the ballots on the morning of election day or any time before they can cross check the mail ballots against the list of voters from the polling places, there WILL be double votes. One possible solution is to move to electronic poll books²³ or requiring that that the poll books not be printed until all of the mail ballots have been processed. If there has been a mail ballot applied for, they should not be in any poll book at the polling places. The election board workers have come to understand if someone is not in the book, they vote by provisional ballot. Even having the fact of the application printed there is not enough to prevent double voting. A legislative fix is preferable but I suspect unlikely. The Philadelphia experience gives justification for litigation on the subject, although an independent audit may show additional double voting.

C) Some thought should be given to examining how election boards across the state have dealt with some of the issues that Philadelphia has dealt with. Litigation in Commonwealth Court for declaratory relief could give the boards direction. Certainly the issues should not be dealt with differently in different counties. There is a very real possibility that county boards of election in more Republican areas of the state may take a strict interpretation of the Election Code while Democratic areas enforce a looser interpretation. That being said, there are political differences between the counties that we, as a partisan group, need to be cognizant of.

I hope that this is helpful.

²³ Contracts were originally signed for electronic poll books. <https://www.philadelphiavotes.com/en/home/item/1438-contracts-and-rfp-responses-for-new-voting-system-and-electronic-poll-books> The effort was abandoned. <https://www.govtech.com/news/Philadelphia-Says-New-Electronic-Poll-Books-Dont-Work.html>