FEBRUARY 15, 2022 | PUBLIC HEARING

Pennsylvania Senate State Government Committee

Senator David G. Argall, Chair
and Members of the Committee

Testimony of the Bipartisan Policy Center Elections Project

Thank you for the opportunity to speak today.

My name is Matthew Weil, and I am the Director of the Elections Project at the Bipartisan Policy Center in Washington, DC. I am here today with my colleague, Rachel Orey, who is a Senior Policy Analyst on my team.

I am also joined by Christopher Thomas, a fellow with BPC's Elections Project and former State Director of Elections in Michigan, and Brian Corley, Supervisor of Elections in Pasco County, Florida.

The Bipartisan Policy Center, BPC, was founded more than a decade ago by four former United States Senate Majority leaders – Senators Tom Daschle, Robert Dole, George Mitchell, and Howard Baker.

BPC's Elections Project believes that free and fair elections are critical to the health of democracy, and that voting is the most important expression of a citizen's democratic right.

The election officials testifying with us today are part of the BPC Task Force on Elections, a group of state and local election administrators working across the aisle to identify pragmatic, bipartisan policy improvements to election administration. The task force currently includes more than two dozen state and local election officials from more than a dozen states across the country, including Pennsylvania. Members of the Task Force represent both Republican and Democratic jurisdictions, but most importantly, they know what works in election administration because they live it daily.

Election officials' voices are often left out of policy, and the Task Force was created to give election officials a voice in the conversation. We are honored to be here today.

IDEAS. ACTION. RESULTS.

BACKGROUND

The process of updating the election code in Pennsylvania, as in most states, is arduous and challenging. The Senate Government Committee expressed a willingness to work across the aisle to improve and secure the voting experience for Pennsylvania voters.

There is an urgent need for this reform. To have a successful and trusted election in 2024, Pennsylvania must lay the groundwork for impactful election legislation as soon as possible.

In our analysis of the priorities for election reform in Pennsylvania, we have identified three principles that serve as a starting point for our policy recommendations: access, security, and resilience.

Good election policy advances access to the ballot and the security of the vote as coequal goals—not as competing incentives in a zero-sum game. Making that policy resilient to time and shifting political winds requires evidence-based decision-making and clear rules for how elections are run.

Each of these goals are critical to democracy, but they cannot be meaningfully achieved without bipartisan reform. One party should not overhaul election systems; despite examples of this occurring in states across the U.S., single party reform risks public trust in the democratic process. Accessible, secure, and resilient election policy transcends party affiliation, and we all benefit from a strong and functioning democracy.

This testimony draws on two primary sources. The first is a report of the BPC Task Force on Elections. Released in January of 2020, Logical Election Policy was endorsed unanimously by the task force and issues a series of recommendations covering all aspects of election administration policy from voter registration to casting and counting the vote.

Additionally, we draw on the findings of the Senate Special Committee on Election Integrity and Reform. After months of careful analysis and information gathering with election officials from within and outside of Pennsylvania, the Special Committee issued a report detailing legislative reforms to build a more accessible, secure, and resilient election system. The Committee's recommendations represent the needs of voters and election administrators alike and balance the priorities of both Democratic and Republican leaders.

LEGISLATIVE PRIORITIES TO IMPROVE PENNSYLVANIA ELECTIONS

In consultation with our nationwide network of election officials, including in Pennsylvania, BPC has identified several legislative priorities the Committee should explore, with which BPC offers its assistance, to

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advance secure and accessible elections ahead of 2024. Those priorities include: pre-canvassing of mail ballots, enhancing the clarity and consistency of Pennsylvania election code, and increased election funding.

PRE-CANVASSING OF BALLOTS

All eyes were on Pennsylvania in the days that followed the 2020 presidential election. As election officials across the commonwealth rushed to count the swarm of mail ballots that resulted from unprecedented absentee voter turnout amidst a global pandemic, citizens across the county and from across the political spectrum waited anxiously for the state to be called.

BPC has long warned that the period between the close of polls and the reporting of unofficial results is precarious for public trust. Extended periods are ripe for the spread of mis and disinformation, as we saw in 2020 when former President Trump declared he won the state long before sufficient results were in. This long window was not only predictable, but also avoidable. To securely improve the timeliness of results reporting and reduce strain on election offices in the days after the election, the Committee should consider legislation which allows pre-canvassing of mail ballots.

In its inaugural report Logical Election Policy, the BPC Task Force on Elections unanimously endorsed the recommendation that election administrators be permitted to process mail ballots beginning at least seven days before Election Day, but be prohibited from producing results.

Pre-canvassing improves how the flow of mail ballots is managed. It also allows more time to conduct identity verification of mail voters, including the curing of ballot envelopes on which there are fixable errors. Earlier processing also allows election officials to report unofficial tallies of mail ballots more quickly on Election Day.

Some legislators have expressed concern that pre-canvassing exposes the election system to security vulnerabilities, or would lead to election results being leaked before Election Day. Thankfully, there are extensive protections that can be put in place to secure voting materials and election results during pre-canvassing.

BPC considers processing of mail ballots to include the following: verifying voter eligibility on the outer envelope, curing eligibility issues, sorting the ballots by precinct, opening the ballots, and preparing the ballots to go through tabulators. Generally speaking, there are two types of pre-canvassing relating to ballot tabulation: one in which ballots may be tabulated but results not be accessible until after voting has concluded, and one in which ballots may be prepared for tabulation but not be tabulated until the close of polls.

In both scenarios, election officials and voters get to reap the benefits of faster results reporting after the close of polls. In states that allow tabulation during pre-canvassing, computer algorithms restrict the sharing of vote counts prior to a certain date and time, thereby ensuring that even election officials conducting tabulation cannot see vote totals preemptively. Should Pennsylvania choose not to allow tabulation during pre-processing, simply allowing election officials to prepare mail ballots for tabulation (the most time- and resource-intensive part of mail ballot processing) would improve the efficiency and speed of final vote tabulation.

The Task Force has recommended that states permit election administrators to pre-canvass ballots for at least seven days before an election. BPC stands by this recommendation, but endorses the recommendation made by the Senate Special Committee on Election Integrity and Reform for the purposes of this testimony. BPC recommends that the Committee consider legislation which allows election officials at least three days of pre-canvassing. This move alone would drastically improve the administration of Pennsylvania elections by improving the flow of mail ballots, shortening the results reporting timeline, reducing strain on election offices, and strengthening the ballot curing process by giving election officials and voters more time to identify and address ballot eligibility issues.

ELECTION LAW CLARITY, CONSISTENCY, AND APPLICABILITY

Dating back to 1937, Pennsylvania's election code is sprawling, complicated, and often outdated. Without clarity from the state, counties are often left to their own interpretations of how crucial policies are to be implemented, such as how to conduct audits and what factors make a mail ballot ineligible to be counted. Not only can discrepancies between counties threaten the integrity of the election, but the lack of clarity in state code also sets the scene for extensive judicial intervention. Far too often, Pennsylvania's election procedures are determined by the courts—not the elected representatives of the state legislature. Bipartisan action from the Senate State Government Committee is needed to build a secure election system that voters trust.

The Committee should conduct a comprehensive analysis of Pennsylvania election code to identify outdated or contradictory requirements. As a starting point for reform, BPC has identified the following areas in need of clarification: if and when ballot curing may occur and how audits are conducted.

IF, WHEN, AND HOW BALLOT CURING MAY OCCUR

A combination of unclear statutes, last-minute guidance, and inconsistent implementation made ballot curing a point of contention in the aftermath of the 2020 election. On the night before the Election Day,

the Department of State issued guidance to county election officials advising them to identify the voters whose ballots have been rejected in the state's ballot tracking system. Ideally, that would mean that when pre-canvassing began on the following morning voters would be able to check if their ballot was rejected and, if rejected, submit a provisional ballot. The result was [far more convoluted](#). Some counties followed the Department's guidance, others had already begun curing ballot envelopes weeks before, and others offered no curing options at all. The resulting patchwork of curing options placed disproportionate and unfair burdens on some voters simply because of the county they resided in—some of whom did not receive the option to submit a valid ballot due to an innocent mistake on their original ballot envelope.

Because of Pennsylvania's balance of power between the state and county governments, election officials often are not required to follow guidance from the Department of State pertaining to elections. As such, the legislature must act to remediate the clear deficiencies in Pennsylvania's ballot curing provisions. The BPC Task Force on Elections [urges](#) all states to allow sufficient time for voters to cure eligibility deficiencies in mail ballots, even if this period extends beyond Election Day. To facilitate smoother ballot curing, the Task Force also recommends that election officials be encouraged to collect additional points of contact from voters throughout the registration and voting process.

HOW AUDITS ARE CONDUCTED

Over the last two years, audits have transformed from a behind-the-scenes integrity measure to a flashpoint in the national debate. Any discrepancies between counties in how their audits are conducted could result in the spread of misinformation about and distrust of Pennsylvania's elections. Current state guidance on the conduct of audits is insufficient to ward off these threats, and additional clarity from the state is needed.

Election officials in the commonwealth have reported to BPC that rules about how audits should be conducted are unclear, specifically regarding whether selected ballots should be rescanned or hand counted. Audits must be consistently implemented to make definitive conclusions about the integrity of elections statewide.

To both bolster election security and shore up the reputation of Pennsylvania's elections, the Committee should explore ways to improve and make consistent the implementation of audits across the commonwealth.

Ballot curing and audits are two examples in a long list of policies and procedures that need clarification; the Senate Special Committee on Election Integrity and Reform detailed some of these additional areas in their [final report](#).

Election officials have made resoundingly clear that the one thing they need to do their jobs is clarity. Pennsylvania's election code is notably lacking when it comes to providing election officials the guidance they need to fully carry out their obligations. Reforming the commonwealth's election code should be a top priority of the Senate State Government Committee in the lead up to 2024.

I will now pass it to my colleague Rachel Orey, Senior Policy Analyst for BPC Elections, to discuss the need for strengthened election funding in Pennsylvania.

ELECTION FUNDING

Thank you, Matt. And thank you to the Committee for having us here today. Resource scarcity in election administration is a problem nationwide. Spending per voter varies dramatically by state and by county, and Pennsylvania is no exception.

With the recommendations that Pennsylvania pre-canvass mail ballots and clarify existing election law comes the need to bolster support for the implementation of and adherence to election policies.

As elections become increasingly complex with the expansion of new technologies and adoption of convenience voting methods, counties need additional resources to be able to run safe and secure elections for all Pennsylvanians.

Resources to hire more staff, purchase modern technology like ballot scanners, tabulators, and accessible voting machines, improve training and support for staff, and hire poll-workers are a few examples of how additional funds may be spent. Reliable and consistent funding could also improve voter outreach efforts, accessibility measures, and language access. Increasing demand for early and mail voting options also underscores the need for increased funding. Early and mail voting options require additional staffing, storage, supplies, and space, which many counties in Pennsylvania do not have enough resources to fund.

Pennsylvania's counties have vastly different needs: Philadelphia County, with 1.6 million people, has roughly 320 times more people than Cameron County, with a population under 5,000. Historically, states have vouched for a simple per-voter formula to determine how many resources counties should receive. This approach is insufficient to address the different needs of Pennsylvania's counties and rectify decades of underfunding.

In larger counties, it is untenable to hand-sort every ballot. Instead, modern technology allows for ballot sorting machines to organize and sort ballots. Ballot sorting machines have a high upfront cost but make a world of difference for larger counties. Investments in this kind of technology streamline ballot processing

by reducing the time it takes to process ballots, the number of staff involved, and the propensity for human error when otherwise processing hundreds of thousands of ballots by hand. Additionally, some ballot sorting machines can discern whether or not a ballot has a secrecy envelope before it is even opened; if lacking a secrecy envelope is considered grounds for ballot dismissal, identifying the missing envelope early gives election officials more time to notify the voter of the mistake and ensure the voter is still able to cast their vote.

By contrast, smaller counties with only a few thousand voters may not need to invest in extensive machinery to process ballots. However, they still need sufficient resources to bring on staff to verify and tabulate mail ballots and run in-person voting. Smaller counties might have higher per-voter costs in staff, costs which tend to remain more stable over time. In contrast, larger counties might need to allocate more of their budget towards new technology with high upfront cost that result in savings down the road. As such, the Committee should work with county election officials to explore a more nuanced funding system that looks beyond per-voter costs and towards the full life cycle of election infrastructure investments.

Recently, the Pennsylvania House of Representatives passed House Bill 2044 and referred it to this committee. The bill would ban county election officials from accepting third party election grants from private entities. BPC agrees with the premise of this bill that elections are a wholly governmental function and should be funded accordingly. However, we cannot ignore the vital resource gap filled by private funding in 2020; if Pennsylvania does away with third party support, it must be prepared to step in and fully fund the state's election system.

PREPARING FOR 2024

All Americans must feel confident that the voting process is fair, accessible, and secure. As members of the Senate State Government Committee, you can create true, bipartisan election reform by prioritizing pre-canvassing of ballots, clarifying election law through consistent and applicable standards for mail voting audits, and increasing election funding.

Timeliness is of the utmost importance. For election reform to be impactful, it should be implemented far enough before an election that election officials have time to implement changes to the voting process. The Special Committee noted this in their final report, stating that "the department must issue guidance as far in advance as possible to avoid the confusion of having to implement new practices immediately prior to an election."

The Bipartisan Policy Center's April 2021 report, Improving the Voting Experience, recommends that states should implement policy and administrative changes to elections no later than 90-days before an election, and ideally more than six months before. This recommendation was endorsed unanimously by our bipartisan task force of election officials.

The next nine months provide ample time to prioritize reforms such as pre-canvassing of ballots and election funding, both reforms that would drastically improve the performance of the 2022 midterm elections. The Committee should also start laying the groundwork now for a more comprehensive assessment and reform of Pennsylvania's election code in the 2023 legislative session. The Bipartisan Policy Center stands at the ready to assist the Committee in convening stakeholders from across the aisle to meaningfully improve the voting experience.

Thank you for allowing us to speak to you today. I will now turn it over Christopher Thomas, a fellow of the Elections project at BPC and former State Director of Elections in Michigan. He will be followed by Brian Corley, Supervisor of Elections in Pasco County, Florida.

Sincerely,

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