

IN THE SUPREME COURT OF PENNSYLVANIA

MELINDA DELISLE, *et al.*,
Petitioners,

v.

KATHY BOOCKVAR, in her capacity
as Secretary of the Commonwealth of
Pennsylvania, *et al.*,

Respondents.

No. 95 MM 2020

**RESPONDENTS’ RESPONSE IN OPPOSITION TO EMERGENCY
APPLICATION FOR SPECIAL RELIEF
IN THE NATURE OF A PRELIMINARY INJUNCTION**

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United States Constitution amend. XIV19

Respondents, Secretary of the Commonwealth Kathy Boockvar and Jessica Mathis, Director of the Bureau of Election Services and Notaries of the Pennsylvania Department of State, submit the following Memorandum of Law in response to Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction.

I. INTRODUCTION

A month ago, a group of petitioners filed suit against Respondents in this Court, seeking relief substantially similar to what Petitioners seek here. The petitioners alleged that the COVID-19 crisis would shortly cause a statewide breakdown of the counties' ability to process applications for mail in and absentee ballots and to distribute those ballots. This breakdown, they alleged, along with a failing postal system and "exponential" increases in applications, would threaten to disenfranchise tens or hundreds of thousands of Pennsylvania voters. The petitioners contended that in order to protect Pennsylvania voters' rights in the June 2, 2020 primary election and the November 3, 2020 general election, the Court should issue an injunction requiring all of Pennsylvania's counties to accept absentee and mail in ballots after the election day deadline for submitting them.

Respondents countered that Petitioners could only speculate that such a crisis was imminent, and that Petitioners had presented no concrete evidence that could justify overturning a statutory deadline. They presented evidence that the

counties appeared to be meeting the challenge posed by the ballot application process, although there was significant variation among counties. Respondents pointed out that the courts could revisit the issue if a crisis in the absentee and mail in balloting process were to develop, and that any such crisis would likely be limited to a small number of counties, and could likely be remedied on a countywide scale. Respondents also filed Preliminary Objections, one of which argued that the petitioners' claims were too speculative to state a claim. This Court granted this Preliminary Objection. *See Disability Rights Pennsylvania v. Boockvar*, No. 83 MM 2020, (Pa. May 15, 2020) and Concurring Statement of Wecht, J. dated May 15, 2020.

In the current lawsuit, Petitioners assert that “[T]hings have changed.” Memorandum in Support of Petitioners’ Application (“Br.”) at 1. But even according to Petitioners, things have not changed very much, and the current situation is in line with Respondents’ predictions a month ago. Petitioners—residents of three Pennsylvania counties—present evidence that four counties, at most, may face delays in processing of mail-in and absentee ballot applications. While Petitioners’ allegations might, in theory and if true, justify an extension of deadlines in those counties, they provide no basis for a Court to find that Pennsylvania’s statutory ballot return deadline is unconstitutional and enjoin its

application statewide. The relief Petitioners seek goes too far, and the Court should deny their Application.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Background of the Statutory Deadline at Issue

1. Act 77 of 2019 Provides for Mail-In Balloting and an Extended Return Deadline

Until late 2019, the Pennsylvania Election Code provided for two methods of voting: in-person voting on election day, or, for electors who were unable to vote in person for various reasons, voting by absentee ballot. The deadline for applying for absentee ballots was 5:00 p.m. on the Tuesday before an election, and the deadline for returning completed absentee ballots was 72 hours later, 5:00 p.m. on the Friday before the election. On October 31, 2019, Governor Thomas Wolf signed into law Act 77 of 2019,¹ which made significant changes to many aspects of the Election Code. *See* Declaration of Jonathan Marks dated May 11, 2020, attached as Exhibit A (“May 11 Marks Decl.”),² ¶ 1. Among other changes, Act 77 provided for mail-in ballots, available to any voter who did not meet the criteria for an absentee ballot. *Id.* ¶ 2. The deadline for applying for absentee ballots remained at 5:00 p.m. on the Tuesday before the election, with mail-in ballot

¹ Act of Oct. 31, 2019 (P.L. 552, No. 77), 2019 Pa. Legis. Serv. Act. 2019-77 (S.B. 421) (West).

² This Declaration was originally submitted in this Court on May 11, 2020, in the matter of *Disability Rights Pennsylvania v. Boockvar*, No. 83 MM 2020.

applications due at the same time. *Id.* ¶ 3. Act 77 extended the deadline for receipt of voted ballots, however, by more than four days, from 5:00 p.m. on the Friday before the election to 8:00 p.m. on the day of the election. *Id.* ¶ 4.

After Act 77 took effect, the Department and Pennsylvania’s county boards of elections (the “counties”) expected that many voters would take advantage of the new mail-in ballot option. Throughout the winter of 2019-20, they accordingly prepared for a large increase in the number of ballots that voters would mail or deliver to the counties. *Id.* ¶ 6. The mail-in and absentee ballot options, however, took on a new importance when the COVID-19 crisis reached Pennsylvania.

2. The General Assembly Amends the Election Code a Second Time to Respond to the COVID-19 Crisis

In March 2020, as Pennsylvania suffered its first COVID-19 deaths and emergency measures took hold, Pennsylvania’s executive and legislative branches considered steps to protect voters in the primary election, then scheduled for April 28, 2020. On March 27, 2020, the Governor signed into law Act 12 of 2020, which amended the Election Code to, among other things, postpone the primary election for five weeks to June 2, 2020. *Id.* ¶¶ 7–9; Act of Mar. 27, 2020 (P.L. 41, No. 12), sec. 16, § 1804-B(a), 2020 Pa. Legis. Serv. Act 2020-12 (S.B. 422) (West). Act 12 also provided that in the 2020 primary election, counties would have greater flexibility than usual in relocating and consolidating polling places and recruiting poll workers. May 11 Marks Decl. ¶ 10. The new statute also

included permanent provisions designed to ease the processing of absentee and mail-in ballots; for example, counties are now permitted to begin pre-canvassing those ballots at 7 a.m. on election day, rather than after the polls close. *Id.* Act 12 did not, however, make any changes to the deadline for returning absentee and mail-in ballots.

B. The Department and the Counties' Efforts to Protect Voters and the Voting Process in the Face of the Crisis

1. The Statewide Efforts to Ease In-Person Voting and Encourage Voting by Mail

The Department, the counties, and many others have worked nonstop to ensure that voting in the primary election will be as safe and as convenient as possible, despite the challenges posed by the health risks involved. The intensity of these efforts varies by region, because COVID-19 has had different effects in different areas of the Commonwealth. On May 8, 2020, as part of a phased reopening plan, Governor Wolf lifted portions of the COVID-19 restrictions that had been imposed on 24 of the Commonwealth's 67 counties, and announced that restrictions would be lifted in 13 additional counties on May 15, 2020. Decl. of M. Hangle, Exs. 1 and 2.³ On May 22, Governor Wolf lifted restrictions on an additional eight counties, and 17 of the counties that had already seen relaxed

³ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>; <https://www.governor.pa.gov/newsroom/gov-wolf-announces-13-counties-will-move-to-yellow-phase-of-reopening-on-may-15/>.

restrictions were transitioned to the final “green” stage of reopening. Decl. of M. Hangle, Ex. 3.⁴ Thus, on primary election day, though full stay-at-home restrictions will be in effect in some regions, significant portions of the Commonwealth will have relaxed their stay-at-home rules.

Counties have for some time been planning ways to adapt in-person election day voting to the constraints caused by the pandemic. They have consolidated polling places to allow for reductions in the numbers of available poll workers and have facilitated social distancing and personal protection for poll workers and voters. The Department has assisted with these measures, and has provided counties with \$13 million in sub-grants of federal funds for necessary staff and equipment. May 11 Marks Decl. ¶¶ 11–15.

The Department, the counties, and third parties have also attempted to ease crowding at polling places by encouraging voters to vote by mail-in or absentee ballot. *Id.* ¶ 16. During the application period, which ended on May 26, 2020, the Commonwealth made a range of options available for voters to request these ballots. Voters with drivers’ licenses or other state-issued identification could apply for these ballots electronically on the Department’s website. Other voters could download and print their own applications or request them by mail, email, or

⁴ <https://www.governor.pa.gov/newsroom/gov-wolf-adds-eight-counties-to-yellow-and-17-to-green-on-may-29-remainder-to-yellow-on-june-5/>.

telephone from their county election office or from the Department. *Id.* ¶ 17. In counties where election offices have reopened to the public, voters could also request ballots in person, fill them out, and submit them in one visit. *Id.* Some counties mailed applications to every registered voter. *Id.* ¶ 22. Third parties, such as nonprofits, public officials, and political campaigns, also made applications available. *Id.* ¶¶ 18–19.

The Commonwealth did not simply make mail-in and absentee ballots available; it engaged in an unprecedented campaign to encourage voters to take advantage of these procedures by applying for and returning their ballots promptly. The Commonwealth educated citizens about the availability of and deadlines for mail-in and absentee ballots with, for example, Governor Wolf’s COVID-19 updates; postcards mailed to all registered primary voters (voters registered as Democrats or Republicans); email notifications to voters; bilingual statewide television, radio, and streaming online broadcasts; communications from various Pennsylvania agencies; and Commonwealth websites. *Id.* ¶¶ 19–22. Individual counties also bombarded their registered voters with information by mail and/or social media. *Id.* ¶ 22. Elected officials, political campaigns, parties, and public interest groups likewise participated in these efforts, educating voters and making applications available to them. *Id.* ¶ 23. The Department assisted with these third party efforts with a Ready to Vote Toolkit, which provides a library of templates

for materials that third parties can use to educate the public about the upcoming election and the availability of mail-in voting. *Id.* ¶ 19.

2. Voters Responded to These Efforts to Solicit Ballot Applications

This push to encourage mail-in and absentee voting was highly successful. As of May 18, nearly 1.5 million people had applied for ballots. *See* Declaration of Jonathan Marks dated May 18, 2020, attached as Exhibit B (“May 18 Marks Decl.”), ¶ 29. By Wednesday, May 21, that number had risen to more than 1.7 million. *See* Declaration of Jonathan Marks dated May 22, 2020, attached as Exhibit C. (“May 22 Marks Decl.”), ¶ 5. As of May 22,⁵ the overwhelming majority of counties had kept pace with ballot applications. *Id.* ¶ 3. The counties had approved 1,528,212, or approximately 90%, of absentee and mail-in ballot applications. *Id.* ¶ 6. Additionally, counties had mailed 1,459,871 million ballots, resolving 96% of the applications approved so far. *Id.* ¶ 7.

Throughout the application period, all of Pennsylvania’s counties worked diligently to keep up with an unprecedented number of applications. Many counties engaged in heroic efforts, particularly as the election approached. In Philadelphia, for example, Mayor Kenney requested that each city department send

⁵ Respondents are in the process of collecting application data through the May 26 close of the application window. Unless the Court instructs otherwise, Respondents will file updated data shortly.

between three and five employees to work over Memorial Day weekend to process recently received ballots. Decl. of M. Hangle, Ex. 4.⁶ As of the day before the deadline for applications, Philadelphia had processed every absentee or mail-in ballot application that it had received. Decl. of M. Hangle, Ex. 5.⁷ In Allegheny County, four times the normal number of Allegheny County elections staff worked across three shifts, 24 hours a day, to process ballots. Decl. of M. Hangle, Ex. 7.⁸ Other counties, such as Montgomery County, have installed drop-boxes at which voters submit absentee and mail-in ballots to ensure delivery before the June 2 submission deadline. Br., Ex. B.

C. Petitioners' Allegations Show, at Most, Isolated Challenges in a Handful of Counties

1. Petitioners Present No Admissible Evidence to Back Up Their Predictions of a Statewide Balloting Catastrophe

Like the petitioners in *Disability Rights*, Petitioners here state that the COVID-19 crisis is overwhelming counties across the state in their efforts to keep up with mail-in and absentee ballot applications. But Petitioners rely exclusively on evidence describing Allegheny, Delaware, Montgomery, and Philadelphia

⁶ <https://www.inquirer.com/politics/election/pa-mail-ballots-deadline-2020-primary-20200526.html>.

⁷ <https://twitter.com/PhillyVotes/status/1265052824028753920>.

⁸ <https://triblive.com/local/valley-news-dispatch/allegheny-county-election-officials-promise-mail-in-ballots-will-arrive-soon/>

counties. They do not offer *any* testimony or other evidence that would allow the Court to conclude that delays are occurring—let alone will occur—elsewhere in the Commonwealth.

First, Petitioners state that “the number of absentee and mail-in ballot applications for the June 2, 2020 primary have surpassed election officials’ expectations by orders of magnitude.” Br. at 10. That so many voters have taken advantage of absentee and mail-in voting, however, simply shows that the Commonwealth and the counties have succeeded in their efforts to publicize the historic changes made by Act 77 and to alleviate potential risks associated with in-person voting and COVID-19. As long as the counties have been able to keep up with their applications, volume, by itself, is not evidence of statewide constitutional violations.

Second, Petitioners allege that “just 11 days before the primary, **241,270** voters had submitted an application for an absentee or mail-in ballot but had not yet been sent a ballot by their county board of elections.” Br. at 2 (emphasis in original) (citing May 22 Marks Decl. ¶ 4). This is correct, but proves nothing; ballots cannot be mailed instantaneously, and for as long as applications are being accepted, there will always be a number of applications that counties have not yet addressed.

Third, Petitioners assert that Pennsylvania’s county boards of elections are losing control of the application process and have developed “extreme backlogs and delays” in approving applications and sending blank ballots to approved voters. Br. at 11. But Petitioners only present evidence of “backlogs” in four counties:

Allegheny County: Petitioners cite the May 22 Marks Declaration for the proposition that, “[a]s of May 21, Allegheny County had approved 222,757 applications but mailed out only 205,656, making for a backlog of over 17,000 ballots that had not yet been sent to voters. The backlog will only increase as Allegheny receives more mail ballot applications between May 22 and the May 26 deadline.” Br. at 13. Rather than supporting Petitioners’ assertion of a “backlog” in Allegheny County, the statistics cited show that, as of last week, the County had processed more than 92% of its applications. Over Memorial Day weekend, the County finished processing its outstanding applications. Decl. of M. Hangle, Ex. 7.⁹

Philadelphia County: Petitioners cite the May 22 Marks Declaration for the proposition that, “[a]s of May 21, Philadelphia County had received 181,655 applications, rejected 2,114 of them, approved 159,772, and mailed out 142,836

⁹ <https://www.post-gazette.com/news/politics-local/2020/05/27/Primary-2020-Allegheny-County-voters-mail-in-ballots/stories/202005270092>

ballots’ . . . making for a total backlog of 36,705 applications[.]” Br. at 12–13. As described above, this data is now out-of-date, and as of May 25, Philadelphia had cleared its then-existing backlog. Decl. of M. Hangle, Ex. 5.¹⁰

Montgomery County: Petitioners cite the May 22 Marks Declaration for the proposition that, ““for reasons not within Montgomery County’s control, many ballots that the county has mailed have been delayed in arriving at voters’ homes,’ and that ‘[t]hese delays may make it more difficult for voters who requested ballots well in advance of the application deadline to return those ballots on time.’” Br. at 14.

Delaware County: Petitioners cite the May 22 Marks Declaration for the proposition that, “as of May 21, ‘Delaware County had received 78,333 applications, rejected 4,290 of them, approved 53,851, and mailed out 42,904 ballots.’ . . . That makes for a total backlog of 31,139 applications, which is an astounding 40% of the total applications received in Delaware County.” Br. at 13.

Taken together, these statistics support that, at most, there are or were issues processing absentee and mail-in ballot applications in four counties. In any event, these statistics do not establish a broader trend. Rather, they are likely attributable

¹⁰ <https://twitter.com/PhillyVotes/status/1265052824028753920>.

to the fact that some of the most populous counties in the Commonwealth were also among the counties hardest hit by COVID-19.¹¹

The fourth prong of Petitioners’ argument that voters will be disenfranchised is that delays in USPS service are unduly delaying application and ballot mailings. *See* Br. at 14, 15. According to Petitioners, “the Department of State now admits that such postal delays do exist and will make it ‘more difficult for voters . . . to return [their] ballots on time.’” Br. at 15 (quoting May 22 Marks Decl. ¶ 12). But a review of the untruncated statement from the May 22 Marks Declaration shows that Petitioners have omitted key details: the referenced delays occurred *only in Montgomery County*. May 22 Marks Decl. ¶ 12. Petitioners have not presented evidence of mail delays anywhere else.

2. The Problems That Petitioners Have Identified Appear to Be County-Level Issues With County-Level Solutions

Respondents agree with Petitioners that a breakdown in the absentee and mail-in ballot system anywhere in the Commonwealth is unacceptable; for that reason, Respondents have done as much as they can to prevent such breakdowns. Moreover, Respondents agree that if a breakdown in the system rises to the level of a Constitutional deprivation, there should be a remedy, and an extension of the

¹¹ Petitioners’ brief includes a map depicting COVID-19 cases by county. Br. at 9. The map shows that Allegheny County and the counties around and including Philadelphia had the most COVID-19 diagnoses. *Id.*

ballot receipt deadline might be an appropriate remedy. Here, however, although Petitioners have presented evidence of problems in at most four counties, they insist that county-level relief is not appropriate and only a statewide injunction will do. Br. at 5. Petitioners present no reason to believe that these problems will spread from county to county. Each county is different; each processes its own ballot applications, sends out its own ballots, runs its own polling places, and allocates its own resources. Social distancing rules have been lifted to a greater extent in some parts of the Commonwealth than in others. In places where problems have developed, it is possible and appropriate to handle them on a countywide basis, as occurred in Montgomery County in 2016, and with a shorter extension than that proposed here. *See* Br. Ex. V (order of Montgomery County Court of Common Pleas extending ballot return deadline until 8:00 p.m. on election day).

D. Potential Consequences of a Grant of the Relief Sought

Petitioners contend that “sent-by-election-day rules are manageable and impose no significant administrative burden.” Br. at 34. Under current circumstances, however, a statewide, seven-day extension of the ballot receipt deadline could have negative consequences, even beyond the separation of powers concerns that are always implicated when a court sets aside a piece of legislation. First, to grant such an extension now could have unintended counterproductive

effects. Counties, which have many pressing responsibilities, might let up on their intense efforts to process applications quickly by reversing staff increases or focusing their efforts on other tasks. Voters might decide to delay returning their ballots. May 11 Marks Decl. ¶ 51.

Second, an extension of the ballot receipt deadline will cause cascading complications and delays in the entire election management process. Counties will have to put in place an entirely new set of processes for making determinations about what postmarks mean and, potentially, allowing for challenges regarding envelopes with illegible or absent postmarks. May 11 Marks Decl. ¶ 54–55. They will also have to hold off on adjudicating provisional ballots until the seventh day after the election, because they cannot count a provisional ballot until they have determined whether the voter also returned an absentee or mail-in ballot.

Accordingly, the seven-day extension requested could turn into a delay of results until more than a week after the primary election. May 11 Marks Decl. ¶¶ 58.

This delay, in turn, will threaten the following statutory deadlines: The deadline by which proof of identification for absentee and mail-in ballots must be received and verified under 25 P.S. § 3146.8(h); the deadline for counties to submit unofficial election returns to the Secretary of the Commonwealth under 25 P.S. § 3154(f); the deadline for a defeated candidate to request that a recount and

recanvass not be made under 25 P.S. § 3154(h); and the deadline for the Secretary of the Commonwealth to order a recount or recanvass under 25 P.S. § 3154(g)(2).

III. ARGUMENT

To obtain a preliminary injunction, a party must satisfy every one of several “essential prerequisites”: (1) “that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest” – that is, “that it is likely to prevail on the merits”; (2) “that an injunction is necessary to prevent immediate and irreparable harm”; (3) that “greater injury would result from refusing an injunction than from granting it”; (4) that “a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct”; (5) that “the injunction ... is reasonably suited to abate the offending activity”; and (6) that “a preliminary injunction will not adversely affect the public interest.” *Summit Towne Centre, Inc. v. Shoe Show of Rock Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003).¹² Petitioners here cannot, at this juncture, establish the necessary elements for the specific relief that they seek from this Court: There is no basis to conclude that enforcement of the received-by deadline will result in a statewide unconstitutional deprivation of the right to vote; Petitioners have not alleged an irreparable statewide injury; the statewide injunction is not reasonably

¹² To grant any relief, the Court must also of course have jurisdiction. Respondents agree with Petitioners that the Court has jurisdiction over the Petition for Review pursuant to Act 77. *See* Br. at 11, n. 5.

suiting to abate the offending activity because it would be grossly overbroad; and granting statewide relief would neither restore the status quo nor benefit the public interest.¹³

A. Petitioners Cannot Establish the Requisite Likelihood of Success

1. As a General Matter, Petitioners Fail to Make Out a Claim of Statewide Unconstitutional Deprivation

(a) The Principles Governing Petitioners’ Constitutional Challenge to the Received-by Deadline

The standard governing constitutional challenges to a duly enacted statute is well settled.

It is axiomatic that: “[A]ny party challenging the constitutionality of a statute must meet a heavy burden, for [courts] presume legislation to be constitutional absent a demonstration that the statute ‘clearly, palpably, and plainly’ violates the Constitution.” The presumption that legislative enactments are constitutional is strong. All doubts are to be resolved in favor of finding that the legislative enactment passes constitutional muster.

Working Families Party v. Commonwealth, 209 A.3d 270, 278-79 (Pa. 2019)

(internal citations omitted) (rejecting challenge to statute which prohibited nomination of single candidate by two or more political parties).

There is also a well-developed jurisprudence specifically addressing challenges to statutory election regulations. There is no question “that the right to

¹³ In addition to the arguments made here, Respondents’ Preliminary Objections provide further bases for denying relief.

vote is fundamental and ‘pervasive of other basic civil and political rights.’” *Banfield v. Cortes*, 110 A.3d 155, 176 (Pa. 2015) (quoting *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999)). Nonetheless, as explained by the United States Supreme Court in an opinion often cited by Pennsylvania courts, “[c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; ‘as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.’” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)); accord *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

These regulations “will invariably impose some burden upon individual voters. Each provision of a code, ‘whether it governs the registration and qualification of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.’” *Burdick*, 504 U.S. at 433 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). Recognizing that these incidental burdens are not typically matters of constitutional dimension, this Court has held that “the state may enact substantial regulation containing reasonable, non-discriminatory restrictions to ensure honest and fair elections that

proceed in an orderly and efficient manner.” *Banfield*, 110 A.3d at 176-77 (citing *In re Nader*, 905 A.2d 450, 459 (Pa. 2006)); accord *Burdick*, 504 U.S. at 434 (“[W]hen a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State’s important regulatory interests are generally sufficient to justify the restrictions.” (internal quotation marks omitted)), cited by *Banfield*, 110 A.3d at 177.

Petitioners have not shown the statutory provision challenged here—namely, the requirement that mail-in and absentee ballots be received by county election boards by 8:00 p.m. on election day—to be anything other than such a “reasonable, non-discriminatory” regulation. As courts have repeatedly recognized, electoral deadlines directly promote “the public interest in the maintenance of order in the election process.” *Diaz v. Cobb*, 541 F. Supp. 2d 1319, 1335 (S.D. Fla. 2008) (rejecting challenge to registration deadline); accord, e.g., *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1373–78 (S.D. Fla. 2004) (rejecting challenge to deadline for receipt of absentee ballots by Supervisors of Election); *Mays v. LaRose*, 951 F.3d 775, 791–93 (6th Cir. 2020) (rejecting challenge to deadline for requesting absentee ballot); *Tex. Indep. Party v. Kirk*, 84 F.3d 178, 184–87 (5th Cir. 1996) (rejecting challenges to deadlines for a candidate to declare intent to run for office, for holding nominating conventions, and for filing petitions by minor-party and

independent candidates); *see also Burdick*, 504 U.S. at 437 (rejecting challenge to Hawaii’s prohibition on write-in candidates, given that state provided easy access to ballot until two months before the primary, so that any burden from the write-in prohibition “is borne only by those who fail to identify their candidate of choice until days before the primary”). The received-by deadline here promotes the recognized, important interest in the “‘orderly administration’ of elections,” *see Mays*, 951 F.3d at 787 (quoting *Crawford*, 553 U.S. at 196 (Stevens, J., announcing the judgment of the Court)), and, in particular, ensures that the tabulation of votes and determination of electoral outcomes can proceed immediately upon the conclusion of election day, and will not be delayed by the need to await the arrival of outstanding mail-in and absentee ballots.

Of course, every deadline, by its very nature, operates to deny the ability to vote to those who are unable or unwilling to comply with the timing requirement. But elections must take place at some definite time, and election-administration deadlines are needed to ensure the elections are orderly. Consistent with the principles discussed above, non-discriminatory, generally applicable deadlines with which most voters can easily comply are typically not deemed to impose a significant burden on the right to vote, notwithstanding that they may require some voters to make decisions or take action earlier than they would otherwise be inclined to do. *See id.* at 792 (“Even though this law may eliminate opportunities

to vote for electors who fail to register before the deadline, a state’s generally applicable registration cutoff imposes only a minimal burden on the right to vote.” (citing *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973)); see also *Burdick*, 504 U.S. at 437 (noting that the Court’s precedent “gave little weight to the interest ... in making a late rather than an early decision”);¹⁴ *Rosario v. Rockefeller*, 410 U.S. 752 (1973) (rejecting challenge to statute imposing 11-month restriction on voters who wish to switch parties).

Petitioners here do not dispute that the received-by deadline serves important and legitimate regulatory interests. Indeed, they effectively concede that it is facially valid, asserting only an as-applied challenge based on COVID-19.

Respondents do not dispute that extraordinary events occurring close in time to an election may render a facially valid election deadline unconstitutional as applied, thus warranting judicial intervention. See, e.g., *Bostelmann*, 2020 WL

¹⁴ The restriction at issue in *Burdick* was Hawaii’s prohibition of write-in voting in its primary or general elections. The Supreme Court observed that, notwithstanding this prohibition, Hawaii’s electoral system “provides for easy access to the ballot until the cutoff date for the filing of nominating petitions, two months before the primary,” so that, as a practical matter, “any burden on voters’ freedom of choice and association” imposed by the write-in prohibition “is borne only by those who fail to identify their candidate of choice until days before the primary.” *Id.* at 436–37. Citing its statement in *Storer v. Brown*, 415 U.S. 724, 736 (1974), that “the interest [a] candidate and his supporters may have in making a later rather than an early decision to seek independent ballot status” is entitled to “little weight,” the Court concluded that “the same reasoning applies” to the write-in prohibition in *Burdick*. 504 U.S. at 437.

1638374 (extending deadline for receipt of absentee ballots), *stay granted in part, Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020) (leaving in place injunction that required election officials to count absentee ballots that were postmarked by statutory deadline, even if they were not received until later); *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250 (N.D. Fla. 2016) (extending voter registration deadline based on hurricane that hit Florida five days before deadline). Such circumstances may impose severe burdens on voters' ability to comply with the deadline at issue, if not effectively preclude them from doing so. At the same time, the last-minute nature of the crisis may effectively preclude any legislative response, leaving courts as the only institution realistically able to assess the situation and fashion any appropriate relief.

But in evaluating an as-applied constitutional challenge to an election regulation that, like the one at issue here, is plainly valid on its face, courts must scrupulously observe the distinction between a revision of the regulation that might be desirable as a policy matter and one *required as a matter of constitutional law*. *See Pantuso Motors, Inc. v. Corestates Bank, N.A.*, 798 A.2d 1277, 1283 (Pa. 2002) (“Manifestly, absent constitutional infirmity the courts of this Commonwealth may not refuse to enforce on grounds of public policy that which the Legislature has prescribed.”); *Finucane v. Pa. Milk Mktg. Bd.*, 582 A.2d 1152, 1154 (Pa. Commw. Ct. 1990) (“[T]he power of judicial review must not be used

as a means by which the court might substitute its judgment as to public policy for that of the legislature.’ The role of the judiciary is not to question the wisdom of the action of a legislative body, but only to see that it passes constitutional muster.” (quoting and citing *Parker v. Children’s Hosp. of Phila.*, 394 A.2d 932, 937 (Pa. 1978))).

Based on the facts alleged in the Petition, some counties or voters may be able to establish that, in a handful of counties, judicial intervention is required to avoid the likely deprivation of voters’ constitutional rights. Where, with respect to a particular election, specific counties are experiencing delays or issues that threaten to violate the constitutionally protected voting rights of their citizens, the Courts of Common Pleas are able to fashion appropriate relief. *See In re Gen. Election-1985*, 531 A.2d 836, 839 (Pa. Cmwlth. Ct. 1987) (affirming decision by Court of Common Pleas to suspend election in 11 election districts for two weeks, and rejecting request to hold new countywide election, after 11 election districts suffered flooding, loss of electricity, heat and water because of extreme weather). In appropriate circumstances, this Court could also narrowly tailor relief to address the issues in those counties. But the Petition for Review and requested statewide preliminary injunction are not limited to these specific counties. Given Petitioners’ claims and the relief they seek, Petitioners must establish a likelihood that, in the absence of such an extension, the deadline would result in a statewide burden on

the right to vote that “clearly, palpably, and plainly” violates the Constitution. As shown below, Petitioners have not made this showing.

(b) Petitioners Have Not Shown a Likelihood That Applying the Facially Valid Received-by Deadline Will Effect a Statewide Constitutional Deprivation

Petitioners rely exclusively on statistics taken from a declaration filed by Respondents in response to another, similar lawsuit and suggest that issues in four counties—some of which have since been overcome—are a bellwether for what they suggest is occurring throughout the Commonwealth. *See* Br. at 13–16 (“Given the now-admitted, extreme backlogs in processing absentee and mail-in ballot applications in certain counties, and the now-admitted delays in mail delivery in at least one heavily populated county, enforcing the received-by-election-day deadline for absentee and mail-in ballots in the June 2, 2020 primary will disenfranchise tens or hundreds of thousands of Pennsylvanians whose ballots will arrive after the deadline through no fault of the voter.”). But Petitioners fail to demonstrate any reason why the Court should assume that a showing of problems in four of the 67 counties in Pennsylvania make out a statewide constitutional violation warranting suspension of the statutory received-by deadline across the Commonwealth.

First, based on Petitioners’ allegations, it does not appear that the situation in Allegheny County—where, as of May 21, 92% of ballot applications had been

processed, *see* Br. at 13; May 22 Marks Decl. ¶ 16—rises to the level of a constitutional violation. The Petition does not identify any facts, other than the existence of a small “backlog” of applications, to support that voters in Allegheny County will be disenfranchised. Absent something more, the Court should not assume that Allegheny County will be unable to process outstanding applications—and, in fact, Allegheny County itself has reported that it is mailing out its final ballots today. *See* Decl. of M. Hangle, Ex. 7. Second, as Petitioners recognize, the rest of their evidence of backlogs all comes from southeastern Pennsylvania. *See* Br. at 12, 14. Petitioners provide no evidence suggesting that the situation in three counties in southeastern Pennsylvania is representative of the rest of the state. Petitioners’ own evidence shows the apparent correlation between, on the one hand, high incidences of COVID-19 in southeastern Pennsylvania and, on the other hand, delays in processing absentee and mail-in ballot applications. *Compare* Br. at 9 (map showing that counties with highest number of COVID-19 cases are all concentrated around Philadelphia) *with* Br. at 12–15 (describing issues with processing ballot applications in Philadelphia, Delaware, and Montgomery counties); *see also* Br. at 12 (“Deputy Secretary Marks explained that the ‘backlogs,’ ‘delays,’ and various other ‘difficulties’ are particularly extreme in the counties in southeastern Pennsylvania that have been ravaged by COVID-19.”). This evidence could, Respondents agree, support

applications for relief from or in those particular southeastern Pennsylvania counties that appear to be experiencing inordinate delays in processing applications or sending out ballots. But when comparing Philadelphia, Delaware, and Montgomery counties to other counties that have already reopened and had far fewer COVID-19 cases and show all signs of timely delivering absentee and mail-in ballots, there is no basis—in the Petition for Review or otherwise—to extrapolate that there are similar statewide issues.

And third, it is important to note that Petitioners' claims arise from the fact that the deadline for applying for an absentee or mail-in ballot is only a week before the deadline for receipt of the completed ballot by the county board of elections. The General Assembly's decision, in Act 77, to make the application deadline only a week before election day allows voters who would otherwise have missed the opportunity to vote by mail (because they would have failed to meet an earlier application deadline) to do so. But this benefit, like all election regulations, involves a tradeoff: a voter who applies at the last minute will have little time to complete and return her ballot—if she does not complete her ballot quickly, she will have to deliver it in person rather than by mail, and if she does not return her ballot by election day, it will not count at all.

At most, Petitioners' evidence shows that a small number of geographically concentrated counties are having issues with processing absentee and mail-in ballot

applications. To the extent that those delays seem likely to prevent voters from submitting otherwise timely absentee or mail-in votes, there may well be grounds for counties or voters in those counties—or in other counties for which evidence of problems develop—to seek relief in the Courts of Common Pleas.¹⁵ There could even be grounds for this Court to issue a far narrower injunction in this case than the one sought by Petitioners. But nothing in the Petition for Review or application stands for the much broader proposition that the constitutional rights of voters across the Commonwealth are clearly, palpably, and plainly in danger.

B. Petitioners Cannot, at this Juncture, Establish the Requisite Irreparable Injury

Just as Petitioners cannot currently establish a likelihood of success on the merits, they cannot satisfy the separate requirement of showing that the statewide preliminary injunction they seek is necessary to avoid immediate, irreparable injury. “Actual proof of irreparable harm” is a “threshold evidentiary requirement to be met before a preliminary injunction may issue.” *Reed v. Harrisburg City Council*, 927 A.2d 698, 704 (Pa. Commw. Ct. 2007) (citing *New Castle Orthopedic Assocs. v. Burns*, 393 A.2d 1383 (Pa. 1978)). “In order to meet this burden, a plaintiff must present ‘concrete evidence’ demonstrating ‘actual proof of

¹⁵ Montgomery County has sought such relief, but the Court of Common Pleas dismissed its Petition without explanation. *See* C.A. No. 2020-06413 (C.C.P. Montgomery County).

irreparable harm.’ The plaintiff’s claimed ‘irreparable harm’ cannot be based solely on speculation and hypothesis.” *City of Allentown v. Lehigh Cnty. Auth.*, 222 A.3d 1152, 1160 (Pa. Super. Ct. 2019); *accord Summit Towne Ctr.*, 828 A.2d at 1002 (holding that trial court properly denied preliminary injunction where evidence supporting claim of irreparable harm was “no[t] concrete” and “rested almost entirely on speculation and hypothesis”). Indeed, “[i]t is established that ... ‘speculative considerations ... cannot form the basis for issuing [a preliminary injunction].’” *Novak v. Commonwealth*, 523 A.2d 318, 320 (Pa. 1987) (quoting *Berkowitz v. Wilbar*, 206 A.2d 280, 282 (Pa. 1965)) (second omission and alteration in *Novak*); *accord Reed*, 927 A.2d at 704 (“proof of injury” that is “speculative and conjectural” does not support an injunction (citing *Samerica Corp. of Market Street v. Goss*, 295 A.2d 277 (Pa. 1972))).

As shown above, *see supra* Section II.C, Petitioners’ claim that statewide irreparable constitutional injury will occur unless the received-by deadline is extended is primarily based on evidence from only three counties in southeastern Pennsylvania. Petitioners have not provided “concrete evidence” that the situation in those three counties is representative of the rest of the state, and so Petitioners have not carried their burden of “demonstrating ‘actual proof of irreparable harm’” on anything approaching a statewide basis. *City of Allentown*, 222 A.3d at 1160.

C. Petitioners Cannot Establish That the Injunction They Seek Is Reasonably Suited to Abate the Offending Activity

Because Petitioners’ requested injunction would extend the received-by deadline throughout Pennsylvania, even though there is no evidence of constitutional harm in the overwhelming majority of counties, the requested relief is not reasonably suited to abate the offending activity. For an injunction to be proper, the movant “must show that the injunction it seeks is reasonably suited to abate the offending activity.” *Summit Towne Ctr.*, 828 A.2d at 1001 (citations omitted). In *Albee Homes, Inc. v. Caddie Homes, Inc.*, 207 A.2d 768 (1965), for example, this Court rejected an injunction—in the form of a restrictive covenant—that would have extended beyond a geographic region in which the employee had “a direct and reasonable connection,” because “to allow the covenant to extend its tentacles throughout an area so vast as here envisioned” would be unreasonable. *Id.* at 773.

Here, the Court should likewise refuse the statewide injunction sought by Petitioners. As shown above, Petitioners have demonstrated, at most, that several counties are experiencing delays in processing absentee and mail-in ballot applications because of exceptional circumstances that are not present elsewhere in the Commonwealth. Petitioners have submitted no evidence regarding similarities between those counties and the rest of Pennsylvania, and Petitioners have not identified any instances of mail delays outside of Montgomery County. Simply

put, Petitioners have not identified any evidence supporting the need for their requested relief outside of the counties they identify. Granting statewide relief would be vastly over-inclusive and overbroad, and so Petitioners' requested preliminary injunction is not reasonably suited to abate the offending activity.

D. Granting the Injunction Would Upset the Status Quo and Would Not Serve the Public Interest

Because Petitioners seek a statewide injunction without establishing that there is any need for relief in the vast majority of the Commonwealth, Petitioners' requested injunction would alter—not protect—the status quo and would threaten the public interest. As described above, the Commonwealth has an interest in the uniform administration of elections. *See supra* Section II.D. The Election Code—amended by the General Assembly as recently as the end of March—is a reflection of the legislature's reasoned efforts to protect that interest. Here, granting statewide relief where, at most, local relief is appropriate, would introduce unpredictable variables to a system that is, by-and-large, working. The statewide relief sought by Petitioners could, for example, disincentivize voters from promptly returning absentee and mail-in ballots, including voters in counties that are not having issues with processing ballot applications. Pushing back the received-by deadline would also necessarily stall counties' abilities to tabulate

election results.¹⁶ While these consequences might be justifiable in those few counties that are having issues processing absentee and mail-in ballot applications, there is no reason to subject the entire Commonwealth to them when there is no evidence that a need exists outside of southeastern Pennsylvania. Finally, granting an injunction that is broader than what is necessary to abate a constitutional injury harms the public interest by interfering in the operation of facially valid election regulations duly enacted by the Legislature. In sum, the Court should not grant statewide relief where Petitioners have not established the existence of statewide issues.¹⁷

¹⁶ If the Court grants a preliminary injunction, it should narrow Petitioners' requested relief so as only to restore the status quo, by extending the received-by deadline in counties where Petitioner can show delays in the ballot application process. To restore the status quo, the Court should ensure that voters in those counties are able to vote. But the Court need not go any further. *See Eagleview Corp. Ctr. Ass'n v. Citadel Fed. Credit Union*, 150 A.3d 1024, 1030 n. 6 (Pa. Commw. Ct. 2016) (A court can "issue[] an injunction narrower than the one requested by the Association; indeed, injunctions should be drawn narrowly." (citing *Big Bass Lake Community Association v. Warren*, 23 A.3d 619, 626 (Pa. Cmwlth. Ct. 2011)); *see also Weeks v. Dep't of Human Servs.*, 222 A.3d 722, 740 (Pa. 2019) (Wecht, J., dissenting) ("[A] preliminary injunction *must* be narrowly tailored in order to achieve that objective." (emphasis in original))).

¹⁷ The proposed order submitted by Petitioners appears to contemplate statewide relief for *both* the June 2 primary election *and* the November 2 general election. Because the application for preliminary injunction only requests relief for the June 2 primary election, Respondents believe the inclusion of the general election in the proposed order was likely an error. Nonetheless, for all of the reasons stated above—and the reasons articulated in *Disability Rights*—there is currently no basis—other than sheer speculation—for granting a preliminary

E. If the Court Were to Grant a Preliminary Injunction, the Non-Severability Clause Would Be Inapplicable, or, in the Alternative, Unenforceable

Act 77’s non-severability provision states “Sections 1, 2, 3, 3.2, 4, 5, 5.1, 6, 7, 8, 9 and 12 of this act are nonseverable. If any provision of this act or its application to any person or circumstances is held invalid, the remaining provisions or applications of this act are void.” Act of Oct. 31, 2019 (P.L. 552, No. 77), § 11, 2019 Pa. Legis. Serv. Act 2019-77 (S.B. 421) (West).

If the Court denies the injunction—as it should—then there is no need to reach the issue of severability at all. But if the Court concludes that some degree of injunctive relief is warranted, there are at least two reasons that the Court should not apply the non-severability provision to invalidate Act 77.¹⁸ First, the non-severability provision should not apply in this case because Petitioners’ challenge to Act 77 is a narrow as-applied, rather than facial, challenge. As described in Respondents’ Preliminary Objections, Act 77 resulted from complex negotiations between the executive and legislative branches. It is nearly inconceivable, therefore, that the legislature intended to nullify the entirety of its historic

injunction of the received-by deadline for the November 3 general election, and any such injunction would thus be improper.

¹⁸ Respondents take no position on the effect of paragraph 63 of the Petition for Review, in which Petitioners represent that they “would withdraw their claims without seeking any relief if the non-severability provision were going to apply.” (Pet. ¶ 63.)

compromise in the event of a one-time determination that, only because of an unprecedented and unforeseen global health crisis, a single, discrete administrative provision of Act 77, the received-by deadline, was unconstitutional in the context of a single primary election in which both the Republican and Democratic presidential nomination races are uncontested – and unconstitutional only in the sense that it must be extended by a few days (particularly if the injunction applies only to a small number of specific counties). *See Commonwealth v. Maguigan*, 511 A.2d 1327, 1337 (Pa. 1986) (“We are bound under the rules of our Statutory Construction Act to avoid such absurd results and to promote public policy.”). Indeed, this Court has previously refused to apply a statutory non-severability clause to void a statute, despite determining that a portion of the statute was unconstitutional on an as-applied basis, because the law was “still valid as applied to” others prospectively. *Pa. Fed’n of Teachers v. Sch. Dist. of Phila.*, 484 A.2d 751, 754 (Pa. 1984). The same is true here: although a final determination would render the received-by deadline invalid for purposes of this single primary election, it would still be “valid as applied to” all future, non-pandemic afflicted, elections. *Id.*

Second, should the Court hold that applying the received-by deadline during the COVID-19 pandemic would disenfranchise voters and be unconstitutional, applying the non-severability provision to void *all of Act 77* would similarly be

unconstitutional. Invalidating Act 77 would also undercut the entire purpose of the Petition, which is to *extend* the receipt deadline for mailed votes. Without Act 77, the Court would have to rescind the entire “no-excuse” mail-in voting regime. Doing so would be contrary to constitutional rights sought to be vindicated by Petitioners’ case and would be catastrophic; it would force millions of voters to vote in-person (despite COVID-19) or not at all, and it would call into question the validity of votes already sent in by mail-in voters. In the event the Court rules in favor of Petitioners’ constitutional challenge, applying the non-severability provision would lead to an undeniably absurd result—one that would itself be, by the very logic sustaining Petitioners’ challenge, unconstitutional.

In the event the Court grants an injunction, it should refuse to apply the non-severability provision here.

IV. CONCLUSION

For the foregoing reasons, Petitioners’ Application should be denied or, in the alternative, deferred.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: May 27, 2020

By: /s/ Michele D. Hangley

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: May 27, 2020

/s/ Michele D. Hangle
Michele D. Hangle

EXHIBIT A

IN THE SUPREME COURT OF PENNSYLVANIA

DISABILITY RIGHTS	:	
PENNSYLVANIA, <i>et al.</i> ,	:	
	:	
Petitioners,	:	No. 83 MM 2020
v.	:	
KATHY BOOCKVAR, in her capacity as Secretary of the Commonwealth of Pennsylvania, <i>et al.</i> ,	:	
	:	
Respondents.	:	

**DECLARATION OF JONATHAN MARKS IN SUPPORT OF
RESPONDENTS’ RESPONSE IN OPPOSITION TO APPLICATION FOR
SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY INJUNCTION**

I, Jonathan Marks, declare under the penalty of perjury pursuant to 18 Pa.C.S. § 4902 that:

I am the Deputy Secretary for Elections and Commissions for the Department of State (the “Department”) of the Commonwealth of Pennsylvania. I make this declaration in support of Respondents’ Response in Opposition to Petitioners’ Application for Special Relief in the Nature of a Preliminary Injunction.

Act 77’s Amendments to the Pennsylvania Election Code

1. On October 31, 2019, Governor Wolf signed Act 77 of 2019 into law.

This Act made significant changes to Pennsylvania's Election Code.

2. Among other reforms, Act 77 provided that electors who were not eligible for absentee ballots would be permitted to vote with mail-in ballots.

Before Act 77 was passed, voters who did not qualify for absentee ballots were required to vote in person at their polling places on election day.

3. Act 77 did not change the deadline for applying for non-emergency absentee ballots; this deadline is still 5:00 p.m. on the Tuesday before the election. The same deadline now applies for mail-in ballot applications.

4. Act 77 extended the deadline for receipt of voted ballots, however, from 5:00 p.m. on the Friday before the election to 8:00 p.m. on the day of the election.

5. Act 77 also included provisions to ensure that counties will begin sending absentee and mail-in ballots to eligible voters as soon as the ballot is certified and official ballots are available.

6. As a result of Act 77, the Department and Pennsylvania's county boards of elections (the "counties") anticipated that counties would have to deal with a large increase in the number of ballots they would receive by mail. Even before the current COVID-19 emergency, the Department and the counties were preparing for this increase.

The Ongoing Efforts to Mitigate the Impact of the COVID-19 Emergency on the Primary Election

7. As the Court is undoubtedly aware, the COVID-19 pandemic is causing real and constantly evolving challenges to every aspect of Pennsylvania personal, commercial, and civic life, and presents special challenges to those administering the primary election.

8. In March 2020, as the severity of the crisis became clear, the Department, together with the counties and the General Assembly, began taking steps to mitigate these challenges.

9. The General Assembly took a critical step toward mitigation on March 27, 2020, when it passed Act 12 of 2020, which postponed the primary election from April 28 to June 2, 2020.

10. Act 12 also included provisions to give counties flexibility in recruiting poll workers and relocating polling places, for the primary election, and allowed counties to begin pre-canvassing absentee and mail-in ballots at 7:00 a.m. on election day.

11. The Department and the counties are using the five extra weeks Act 12 provided to minimize the effect of the COVID-19 pandemic on mail-in, absentee, and in-person voting.

12. First, the Department has taken steps aimed at smoothing the process of in-person voting on election day.

13. The Department is assisting counties with planning for reductions in numbers of poll workers and available polling places, and advising counties about how they can set up their polling places to facilitate social distancing.

14. The Department has provided counties with \$13 million in sub-grants—which the Commonwealth received from the federal government—for the counties to use towards additional staff, purchasing equipment, and otherwise ensuring the primary is administered as seamlessly as possible.

15. The Department has also procured 6,000 safety kits to provide to counties, which include masks, gloves, and other supplies for safely administering in-person voting.

16. Second, in order to alleviate crowding at polling places, the Department, the counties, and third parties are making efforts to encourage as many Pennsylvania voters as possible to vote by mail-in or absentee ballot.

17. The Department and counties have put many mechanisms in place to allow voters to request absentee or mail-in ballots. Most registered voters may sign up online on the Department's website, and any registered voter may get an application by downloading and printing one; requesting one in person at the voter's county election office; or calling, emailing, or writing to the Department or the voter's county election office. In counties where election offices have reopened to the public, voters can also request ballots in person, fill them out, and

submit them in one visit.

18. Many third parties, including nonprofits, government officials, and political candidates, are also delivering applications to potential voters.

19. The Department has created and posted on its website a toolkit that third parties can use to educate their constituents. The Ready to Vote toolkit includes templates for posters, flyers, palm cards, and other educational materials.

20. The Department and the Governor's office have devoted significant resources to educating members of the public about the availability of absentee and mail-in ballot options. For example,

- Governor Wolf has encouraged voters to apply for ballots during his frequent COVID-19 updates;
- The Department has mailed postcards to all households with registered primary voters (voters registered to either major political party), informing voters about the changed primary date and the availability of absentee and mail-in voting options;
- The Department has provided email updates to registered voters;
- The Department is also conveying this information to voters using bilingual statewide TV, radio, and streaming online broadcasts; and
- Other Pennsylvania departments have emailed updates from the Department to their own email lists.

21. In these communications, the Department has emphasized the need to apply for and return absentee and mail-in ballots promptly and has communicated the deadlines for requesting ballots and returning them.

22. Many county boards of elections have also made significant efforts to educate the public about these options for voting and encourage voters to promptly apply for ballots. For example, as Petitioners note in their Application, Allegheny County sent pre-stamped mail-in ballot applications to all registered voters at the end of April; Luzerne County has also mailed applications to voters. Other counties have communicated with their registered voters through social media and mail.

23. Elected officials, political parties, candidates, and public interest groups, including Common Cause and the League of Women Voters, have joined the effort, alerting their constituents and contacts to the new mail-in voting option and the application process.

The Current Status of the Ballot Application Process

24. It appears that the efforts to encourage the public to apply for mail-in and absentee ballots have, so far, been successful.

25. The Commonwealth has 7,477,057 registered primary voters. Only a certain percentage of these, however, can be expected to vote in any particular primary election.

26. Primary turnout is typically lowest in elections with no contested major party presidential race and no high-profile statewide races.

27. The June 2, 2020 primary will be such an election; neither presidential

primary is contested, and the statewide races have not captured a great deal of the public's attention.

28. Statewide turnout in the last several primary elections in which federal offices were on the ballot was as follows:

- 2018: 1,563,373
- 2016 (contested races for both major party presidential nominations): 3,416,283
- 2014: 1,370,815
- 2012 (contested race for one major party presidential nomination): 1,608,341
- 2010: 1,885,648

29. As of Sunday, May 10, 2020, the counties have received more than one million applications for absentee and mail-in ballots – 1,209,289, to be exact.

30. The counties have approved 1,041,078, or approximately 86%, of the applications.

31. The counties have mailed 894,811 ballots, or approximately 86% of the applications approved so far, to voters.

32. The counties have received 139,901 voted ballots, which accounts for approximately 13% of applications approved so far. Because several counties, including Philadelphia, began mailing out their ballots very recently, I expect this number to increase rapidly.

33. The Department receives real-time updates of ballot application

statistics, and, if the Court would find it useful, can provide updated figures as the primary election approaches.

34. Because this is the first election in which the Commonwealth offers the option of mail-in voting, and because the effect on turnout of the COVID-19 pandemic is uncertain, it is difficult to predict exactly how many voters will seek mail-in or absentee ballots. It is unlikely, however, that this number will exceed 2 million. Therefore, it is reasonable to assume that more than 60% of the mail-in and absentee ballots that will be requested for the primary election have already been requested.

35. Based on the Department's experience to date, I do not currently expect an overwhelming surge of last-minute applications.

36. While managing the application process during the COVID-19 crisis has certainly presented challenges for individual counties, so far, the counties appear to be rising to the challenge.

37. Over recent weeks, the counties have been adding extra personnel to help process applications and other election tasks more quickly. Many counties have also procured additional print and mailing services to streamline preparation and delivery of balloting materials.

38. There is, of course, significant variation among counties. As of May 10, 2020, some counties had mailed ballots in response to more than 99% of their

approved applications.

39. Of the counties identified in Petitioner's Application, as of May 10,

- Allegheny County had received 168,983 applications, rejected 13,203 of them, approved 151,981, and mailed out 132,602 ballots;
- Lawrence County had received 6,740 applications, rejected 412 of them, approved 6,252, and mailed out 6,243 ballots;
- Lehigh County had received 33,534 applications, rejected 2,206 of them, approved 25,191, and mailed out 23,082 ballots;
- Mercer County had received 8,033 applications, rejected 486 of them, approved 5,892, and mailed out 5,194 ballots; and
- Philadelphia County had received 109,602 applications, rejected 1,766 of them, approved 99,662 of them, and mailed out 46,902 ballots.

40. The Department is paying close attention to each county's efforts, and will reach out to any county that appears to be falling behind to offer assistance and advice.

41. Based on the counties' progress, and assuming there are no dramatic surges in infections, weather events, or other unexpected events, I expect that the counties will be able to timely process any current backlogs and handle additional applications that arrive.

The United States Post Office

42. Petitioners speculate that the United States Post Office ("USPS") is experiencing delays in processing of first-class mail that will extend mail times

beyond the typical one to three business days.

43. As part of preparations for the June 2 primary election, the Department has been in close contact with representatives of the USPS for several months.

44. The Department and the counties have worked with the USPS to ensure that the envelopes used for mailing blank and returned ballots are formatted to work with the USPS's automated equipment, thereby ensuring that ballots reach their destinations as quickly as possible.

45. Envelopes containing ballots are clearly marked as such and are segregated from other mail using "green tags," which allows the USPS to prioritize them as official election mail and expedite them to the extent possible.

46. The USPS has not informed the Department that it expects any unusual delays in first class mail delivery times in Pennsylvania before the primary election.

The Relief Petitioners Request

47. From a purely policy perspective, I agree with Petitioners that extending the deadline for receipt of ballots may be good policy under the circumstances, and, as with any extension, would increase the number of votes that are timely returned. This might well increase voters' confidence in the midst of a crisis.

48. I also agree that in the event of significant backlogs in application processing, a breakdown in the postal service, or other developments, an extension of the ballot receipt deadline might be necessary to avoid an undue burden on the right to vote.

49. Based on the information available at this time, the Department does not predict significant impediments to voters' ability to timely return mail-in ballots.

50. Given the unpredictable nature of the pandemic, of course, this situation could change, and the relief Petitioners seek could become more appropriate. If problems develop, however, it is more likely than not that they will not affect the entire Commonwealth, or that they will not require a full seven-day extension.

51. Granting a full seven-day, statewide extension at this point could have the undesired consequence of encouraging counties to turn their attention away from ballot application processing, or encouraging voters to delay requesting or mailing their ballots.

52. If significant problems develop shortly before or on the day of the election, a court could consider an extension of the ballot receipt deadline that is tailored to those problems.

53. Pennsylvania statute requires counties to retain all absentee and mail-

in ballots they receive – even those received after the deadline – for a period of two years. Therefore, late-received ballots will not be discarded before a court has the opportunity to consider whether the deadline should be extended.

54. If the Court extends the deadline for receipt of ballots, it will cause complications and delays in counties' canvassing processes.

55. First, for ballots received after election day, counties will have to put in place a new procedure for examining postmarks and, potentially, allowing for challenges regarding envelopes with illegible or absent postmarks.

56. Second, during the canvassing process, counties examine each provisional ballot envelope to determine whether the elector was eligible to vote. If the county determines that the elector who submitted the provisional ballot was duly registered to cast a primary vote in that district and that the elector did not also submit an absentee or mail-in ballot, the provisional ballot will be counted. If the county determines that the elector submitted an absentee or mail-in ballot, the provisional ballot will not be counted.

57. Thus, a county cannot count a voter's provisional ballot until it has confirmed that the voter did not also return an absentee or mail-in ballot. Therefore, counties will not be able to process provisional ballots until after the last day for receipt of absentee ballots.

58. Accordingly, a seven-day extension of the ballot receipt deadline

could delay counting of all ballots until eight days or more after the election.

59. This delay, in turn, would interfere with the following deadlines, which the Court should consider extending if it extends the ballot return date: The deadline by which proof of identification for absentee and mail-in ballots must be received and verified under 25 P.S. § 3146.8(h); the deadline for counties to submit unofficial election returns to the Secretary of the Commonwealth under 25 P.S. § 3154(f); the deadline for a defeated candidate to request that a recount and recanvass not be made under 25 P.S. § 3154(h); and the deadline for the Secretary of the Commonwealth to order a recount or recanvass under 25 P.S. § 3154(g)(2).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 11, 2020.



Jonathan Marks

EXHIBIT B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL CROSSEY, <i>et al.</i> ,	:	
	:	
Petitioners,	:	
	:	
v.	:	No. 266 MD 2020
	:	
KATHY BOOCKVAR, SECRETARY OF THE COMMONWEALTH, <i>et al.</i> ,	:	
	:	
Respondents.	:	
	:	

DECLARATION OF JONATHAN MARKS

I, Jonathan Marks, declare under the penalty of perjury pursuant to 18 Pa.C.S. § 4902 that:

I am the Deputy Secretary for Elections and Commissions for the Department of State (the “Department”) of the Commonwealth of Pennsylvania. I make this declaration in support of Respondents’ Emergency Application for Special Relief in the Nature of a Preliminary Injunction and for Expedited Review.

Act 77’s Amendments to the Pennsylvania Election Code

1. On October 31, 2019, Governor Wolf signed Act 77 of 2019 into law. This Act made significant changes to Pennsylvania’s Election Code.

2. Among other reforms, Act 77 provided that electors who were not eligible for absentee ballots would be permitted to vote with mail-in ballots.

Before Act 77 was passed, voters who did not qualify for absentee ballots were required to vote in person at their polling places on election day.

3. Act 77 did not change the deadline for applying for non-emergency absentee ballots; this deadline is still 5:00 p.m. on the Tuesday before the election. The same deadline now applies for mail-in ballot applications.

4. Act 77 extended the deadline for receipt of voted ballots, however, from 5:00 p.m. on the Friday before the election to 8:00 p.m. on the day of the election.

5. Act 77 also included provisions to ensure that counties will begin sending absentee and mail-in ballots to eligible voters as soon as the ballot is certified and official ballots are available.

6. As a result of Act 77, the Department and Pennsylvania's county boards of elections (the "counties") anticipated that counties would have to deal with a large increase in the number of ballots they would receive by mail. Even before the current COVID-19 emergency, the Department and the counties were preparing for this increase.

The Ongoing Efforts to Mitigate the Impact of the COVID-19 Emergency on the Primary Election

7. As the Court is undoubtedly aware, the COVID-19 pandemic is causing real and constantly evolving challenges to every aspect of Pennsylvania personal, commercial, and civic life, and presents special challenges to those

administering the primary election.

8. In March 2020, as the severity of the crisis became clear, the Department, together with the counties and the General Assembly, began taking steps to mitigate these challenges.

9. The General Assembly took a critical step toward mitigation on March 27, 2020, when it passed Act 12 of 2020, which postponed the primary election from April 28 to June 2, 2020.

10. Act 12 also included provisions to give counties flexibility in recruiting poll workers and relocating polling places, for the primary election, and allowed counties to begin pre-canvassing absentee and mail-in ballots at 7:00 a.m. on election day.

11. The Department and the counties are using the five extra weeks Act 12 provided to minimize the effect of the COVID-19 pandemic on mail-in, absentee, and in-person voting.

12. First, the Department has taken steps aimed at smoothing the process of in-person voting on election day.

13. The Department is assisting counties with planning for reductions in numbers of poll workers and available polling places, and advising counties about how they can set up their polling places to facilitate social distancing.

14. The Department has provided counties with \$13 million in sub-

grants—which the Commonwealth received from the federal government—for the counties to use towards additional staff, purchasing equipment, and otherwise ensuring the primary is administered as seamlessly as possible.

15. The Department has also procured 6,000 safety kits to provide to counties, which include masks, gloves, hand sanitizer, and other supplies for safely administering in-person voting.

16. Second, in order to alleviate crowding at polling places, the Department, the counties, and third parties are making efforts to encourage as many Pennsylvania voters as possible to vote by mail-in or absentee ballot.

17. The Department and counties have put many mechanisms in place to allow voters to request absentee or mail-in ballots. Most registered voters may sign up online on the Department’s website, and any registered voter may get an application by downloading and printing one; requesting one in person at the voter’s county election office; or calling, emailing, or writing to the Department or the voter’s county election office. In counties where election offices have reopened to the public, voters can also request ballots in person, fill them out, and submit them in one visit.

18. Many third parties, including nonprofits, government officials, and political candidates, are also delivering applications to potential voters.

19. The Department has created and posted on its website a toolkit that third parties can use to educate their constituents. The Ready to Vote toolkit includes templates for posters, flyers, palm cards, and other educational materials.

20. The Department and the Governor's office have devoted significant resources to educating members of the public about the availability of absentee and mail-in ballot options. For example,

- Governor Wolf has encouraged voters to apply for ballots during his frequent COVID-19 updates;
- The Department has mailed postcards to all households with registered primary voters (voters registered to either major political party), informing voters about the changed primary date and the availability of absentee and mail-in voting options;
- The Department has provided email updates to registered voters;
- The Department is also conveying this information to voters using bilingual statewide TV, radio, and streaming online broadcasts; and
- Other Pennsylvania departments have emailed updates from the Department to their own email lists.

21. In these communications, the Department has emphasized the need to apply for and return absentee and mail-in ballots promptly and has communicated the deadlines for requesting ballots and returning them.

22. Many county boards of elections have also made significant efforts to educate the public about these options for voting and encourage voters to promptly apply for ballots. For example, some counties have sent pre-stamped mail-in ballot

applications to registered voters. Other counties have communicated with their registered voters through social media, text and mail.

23. Elected officials, political parties, candidates, and public interest groups, including Common Cause and the League of Women Voters, have joined the effort, alerting their constituents and contacts to the new mail-in voting option and the application process.

The Current Status of the Ballot Application Process

24. It appears that the efforts to encourage the public to apply for mail-in and absentee ballots have, so far, been successful.

25. The Commonwealth has 7,477,057 registered primary voters. Only a certain percentage of these, however, can be expected to vote in any particular primary election.

26. Primary turnout is typically lowest in elections with no contested major party presidential race and no high-profile statewide races.

27. The June 2, 2020 primary will be such an election; neither presidential primary is contested, and the statewide races have not captured a great deal of the public's attention.

28. Statewide turnout in the last several primary elections in which federal offices were on the ballot was as follows:

- 2018: 1,563,373

- 2016 (contested races for both major party presidential nominations): 3,416,283
- 2014: 1,370,815
- 2012 (contested race for one major party presidential nomination): 1,608,341
- 2010: 1,885,648

29. Preliminary data indicates that, as of Sunday, May 17, 2020, the counties have received nearly 1.5 million applications for absentee and mail-in ballots – 1,487,047, to be exact.

30. The counties have approved 1,310,516, or approximately 88%, of the applications.

31. Preliminary data indicates that the counties have mailed 1.2 million ballots, or approximately 90% of the applications approved so far, to voters.

32. The counties have received 280,105 voted ballots, which accounts for approximately 21% of applications approved so far. Because several counties, including Philadelphia, began mailing out their ballots very recently, I expect this number to increase rapidly.

33. The Department receives real-time updates of ballot application statistics, and, if the Court would find it useful, can provide updated figures as the primary election approaches.

34. Because this is the first election in which the Commonwealth offers the option of mail-in voting, and because the effect on turnout of the COVID-19

pandemic is uncertain, it is difficult to predict exactly how many voters will seek mail-in or absentee ballots. It is unlikely, however, that this number will exceed 2 million. Therefore, it is reasonable to assume that more than 60% of the mail-in and absentee ballots that will be requested for the primary election have already been requested.

35. Over recent weeks, the counties have been adding extra personnel to help process applications and other election tasks more quickly. Many counties have also procured additional print and mailing services to streamline preparation and delivery of balloting materials.

36. While managing the application process during the COVID-19 crisis has certainly presented challenges for individual counties, so far, most counties have been able to process applications as they are made and avoid backlogs.

37. There is, of course, significant variation among counties. As of May 17, 2020, many counties had mailed ballots in response to more than 99% of their approved applications.

38. For the counties identified on pages 11-12 of Petitioner's Application and the corresponding exhibits, as of May 17, preliminary data shows the following approximate figures:

- Allegheny County had received 205,454 applications, rejected 16,809 of them, approved 183,345, and mailed out 171,343 ballots;

- Delaware County had received 68,418 applications, rejected 3,365 of them, approved 46,332, and mailed out 18,756 ballots;
- Lawrence County had received 8,340 applications, rejected 523 of them, approved 7,712 , and mailed out 7,701 ballots;
- Lehigh County had received 41,596 applications, rejected 3,240 of them, approved 35,714, and mailed out 34,480 ballots;
- Mercer County had received 9,411 applications, rejected 666 of them, approved 7,649, and mailed out 6,677 ballots;
- Montgomery County had received 140,150 applications, rejected 6,234 of them, approved 125,043 and mailed out 113,512 ballots; and
- Philadelphia County had received 150,366 applications, rejected 1,887 of them, approved 131,962 of them, and mailed out 98,435 ballots.

39. Based on the counties' progress, and assuming there are no dramatic surges in infections, weather events, or other unexpected events, I expect that the great majority of the Commonwealth's 67 counties will be able to timely process any current backlogs and handle additional applications that arrive.

40. Primarily due to the impact of COVID-19, a handful of counties have recently processed ballot applications and ballot mailings at a slower pace than others. The Department does not yet have enough information to determine whether these counties will be in a position to catch up with their pending applications and process new applications as they are received.

41. The Election Code requires counties to mail absentee and mail-in primary election ballots for all approved applications by Tuesday, May 19, 2020.

See 25 P.S. §§ 3146.5(b), 3150.15.

42. After this date, the Department will in a better position to determine which counties, if any, are likely to experience significant delays in processing and responding to timely submitted ballot requests.

43. By Friday, May 22, 2020, unless the Court directs otherwise, I will supplement this Declaration with additional information about the counties' progress.

The United States Post Office

44. Petitioners speculate that the United States Post Office (“USPS”) is experiencing delays in processing of first-class mail that will extend mail times beyond the typical one to three business days.

45. As part of preparations for the June 2 primary election, the Department has been in close contact with representatives of the USPS for several months, including conversations with staff from certain of the five regional processing plants that serve Pennsylvania,

46. The Department and the counties have worked with the USPS to ensure that the envelopes used for mailing blank and returned ballots are formatted to work with the USPS's automated equipment, thereby ensuring that ballots reach their destinations as quickly as possible.

47. Envelopes containing ballots are clearly marked as such and are

segregated from other mail using “green tags,” which allows the USPS to prioritize them as official election mail and expedite them to the extent possible.

The Relief Petitioners Request

48. From a purely policy perspective, I agree with Petitioners that extending the deadline for receipt of ballots may be good policy under the circumstances, and, as with any extension, would increase the number of votes that are timely returned. This might well increase voters’ confidence in the midst of a crisis.

49. I also agree that in the event of significant backlogs in application processing due to COVID-19, a breakdown in the postal service, or other developments, an extension of the ballot receipt deadline (targeted, if necessary, to counties that are experiencing delays) might be necessary to avoid an undue burden on the right to vote.

50. The other form of relief that Petitioners request – allowing third parties to deliver voters’ mail in or absentee ballots to county election offices – would likely have negative consequences. Procedures would need to be put in place to require written authorizations for such deliveries, as are required for emergency absentee ballots. Confirming these written authorizations would likely increase the administrative burden on county election officials. Doing so would also impose a burden on individual voters to identify and authorize designated

representatives to deliver ballots on their behalf. Allowing third-party delivery of ballots might also reduce the level of assurance that an individual voter has regarding the security of her ballot.

51. Based on the information available at this time, the Department does not predict significant impediments to the ability of voters in most of the Commonwealth's counties to timely return mail-in ballots.

52. At this point, the Department cannot rule out the possibility that one or more individual counties will develop significant delays in processing applications, but do not predict that such delays will occur across the Commonwealth.

53. Given the unpredictable nature of the pandemic, the deadline extension Petitioners seek could become appropriate. If problems develop, however, it is more likely than not that they will not affect the entire Commonwealth, or that they will not require a full seven-day extension.

54. Granting a full seven-day, statewide extension at this point could have the undesired consequence of encouraging counties to turn their attention away from ballot application processing, or encouraging voters to delay requesting or mailing their ballots.

55. If significant problems develop shortly before or on the day of the election, a court could consider an extension of the ballot receipt deadline that is

tailored to those problems.

56. Pennsylvania statutes require counties to retain all absentee and mail-in ballots they receive – even those received after the deadline – for a period of two years. Therefore, late-received ballots will not be discarded before a court has the opportunity to consider whether the deadline should be extended.

57. If the Court grants the relief Petitioners seek to extend the deadline for receipt of ballots, it will cause complications and delays in counties’ canvassing processes.

58. First, for ballots received after election day, counties will have to put in place a new procedure for examining postmarks; determining whether “a preponderance of the evidence” indicates whether a ballot was mailed after election day; and, potentially, allowing for challenges regarding envelopes with illegible or absent postmarks.

59. Second, during the canvassing process, counties examine each provisional ballot envelope to determine whether the elector was eligible to vote. If the county determines that the elector who submitted the provisional ballot was duly registered to cast a primary vote in that district and that the elector did not also submit an absentee or mail-in ballot, the provisional ballot will be counted. If the county determines that the elector submitted an absentee or mail-in ballot, the provisional ballot will not be counted.

60. Thus, a county cannot count a voter's provisional ballot until it has confirmed that the voter did not also return an absentee or mail-in ballot. Therefore, counties will not be able to process provisional ballots until after the last day for receipt of absentee ballots.

61. Accordingly, a seven-day extension of the ballot receipt deadline could delay counting of all ballots until eight days or more after the election.

62. This delay, in turn, would interfere with the following deadlines, which the Court should consider extending if it extends the ballot return date: The deadline by which proof of identification for absentee and mail-in ballots must be received and verified under 25 P.S. § 3146.8(h); the deadline for counties to submit unofficial election returns to the Secretary of the Commonwealth under 25 P.S. § 3154(f); the deadline for a defeated candidate to request that a recount and recanvass not be made under 25 P.S. § 3154(h); and the deadline for the Secretary of the Commonwealth to order a recount or recanvass under 25 P.S. § 3154(g)(2).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 18, 2020.



Jonathan Marks

EXHIBIT C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<hr/>		:	
MICHAEL CROSSEY, <i>et al.</i> ,		:	
		:	
Petitioners,		:	
		:	
v.		:	No. 266 MD 2020
		:	
KATHY BOOCKVAR, SECRETARY		:	
OF THE COMMONWEALTH, <i>et al.</i> ,		:	
		:	
Respondents.		:	
<hr/>		:	

SUPPLEMENTAL DECLARATION OF JONATHAN MARKS

I, Jonathan Marks, declare under the penalty of perjury pursuant to 18 Pa.C.S. § 4902 that:

I am the Deputy Secretary for Elections and Commissions for the Department of State (the “Department”) of the Commonwealth of Pennsylvania.

This Declaration supplements the Declaration I submitted to the Court on May 18, 2020.

1. In my May 18, 2020 Declaration, I gave statistics on the Pennsylvania counties’ progress in processing applications for mail in and absentee ballots and mailing out ballots.

2. I stated that the Election Code requires counties to mail absentee and mail-in primary election ballots for all approved applications by Tuesday, May 19,

2020, and that I would update the Court after that date. *See* May 18 Declaration ¶¶ 14-43.

3. Statewide, a large majority of counties are keeping up with mail-in and absentee voting applications, with ballots being mailed out as applications are processed.

4. Some counties, however, are facing obstacles, especially those in areas where the prevalence of COVID-19 is highest. If these obstacles persist into next week, there is a possibility that they could result in significant delays in voters' receipt of ballots.

5. As of Thursday, May 21, 2020, the counties had reported receipt of approximately 1,701,141 applications for absentee and mail-in ballots.

6. The counties had approved 1,528,212, or approximately 90%, of the applications.

7. Preliminary data indicates that the counties have mailed 1,459,871 million ballots, or approximately 96% of the applications approved so far, to voters.

8. The counties have received 441,012 voted ballots, which accounts for approximately 29% of applications approved so far.

9. Counties have continued to take steps to deal with the high volume of applications by, for example, reassigning staff to assist with ballot processing and,

in some cases, adding extra shifts at their election offices.

10. The vast majority of counties do not appear to be having difficulty managing the application process. As of May 21, 2020, more than half of the counties in the Commonwealth had mailed ballots in response to more than 90% of their approved applications.

11. Certain counties, however, are experiencing delays or backlogs.

12. For example, preliminary data shows that Montgomery County has mailed out 131,932 ballots out of the 138,363 applications it has approved. However, for reasons not within Montgomery County's control, many ballots that the county has mailed have been delayed in arriving at voters' homes. These delays may make it more difficult for voters who requested ballots well in advance of the application deadline to return those ballots on time.

13. Philadelphia County recently began receiving a surge of paper ballot applications. Because these applications take longer to process than online applications, and because of COVID-19 related staffing shortages and social distancing rules, Philadelphia's staff will face difficulties in promptly processing all of the outstanding applications.

14. A recent outage in Philadelphia's Verizon connection, which covered the network connection with the election database, further impeded Philadelphia's progress.

15. Preliminary data shows that as of May 21, Philadelphia County had received 181,655 applications, rejected 2,114 of them, approved 159,772, and mailed out 142,836 ballots.

16. Of the counties identified in my May 18 declaration, other than Philadelphia and Montgomery, preliminary data reported by the counties shows that:

- Allegheny County had received 242,349 applications, rejected 20,120 of them, approved 222,757, and mailed out 205,646 ballots;
- Delaware County had received 78,333 applications, rejected 4,290 of them, approved 53,851, and mailed out 42,904 ballots;
- Lawrence County had received 9,400 applications, rejected 623 of them, approved 8,813, and mailed out 8,654 ballots;
- Lehigh County had received 47,057 applications, rejected 3,991 of them, approved 43,220, and mailed out 43,011 ballots; and
- Mercer County had received 11,067 applications, rejected 807 of them, approved 9,746, and mailed out 9,569 ballots.

17. The last day for applying for a mail in or absentee ballot is Tuesday, May 26.

18. I understand that because of COVID-19 related staffing shortages or technical difficulties, a small number of other counties may face challenges in keeping up with their outstanding applications as the application deadline approaches.

19. After May 26, unless the Court instructs otherwise, I will give the

Court further information about the counties' application numbers and the existence of any backlogs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 22, 2020.

A handwritten signature in black ink, appearing to read "Jonathan Marks", written in a cursive style.

Jonathan Marks

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Crossey, Dwayne Thomas, : 266 MD 2020
Irvin Weinreich, Brenda Weinreich, :
and the Pennsylvania Alliance :
for Retired Americans, :
Petitioners

v.

Kathy Boockvar, Secretary of the
Commonwealth, and Jessica Mathis,
Director of the Bureau of Election Services
and Notaries,
Respondents

PROOF OF SERVICE

I hereby certify that this 22nd day of May, 2020, I have served the attached document(s) to the persons on the date(s)

and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Adam Craig Bonin
Service Method: eService
Email: adam@boninlaw.com
Service Date: 5/22/2020
Address: 121 S Broad St, Suite 400
Phila, PA 19107
Phone: 267-242-5014
Representing: Petitioner Brenda Weinreich
Petitioner Dwayne Thomas
Petitioner Irvin Weinreich
Petitioner Michael Crossey
Petitioner Pennsylvania Alliance for Retired Americans

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served: Devin Arlie Winklosky
Service Method: eService
Email: dwinklosky@porterwright.com
Service Date: 5/22/2020
Address: 2783 Blackstone Drive
Gibsonia, PA 15044
Phone: 434-989-9645
Representing: Possible Intervenor National Republican Congressional Committee
Possible Intervenor Republican National Committee
Possible Intervenor Republican Party of Pennsylvania

Served: James Edmond DelBello Jr.
Service Method: eService
Email: jdelbello@reedsmith.com
Service Date: 5/22/2020
Address: Holland & Knight LLP
Cira Centre, 2929 Arch Street, Suite 800
Philadelphia, PA 10104
Phone: (21-5) -252-9524
Representing: Possible Intervenor Bryan Cutler
Possible Intervenor Mike Turzai

Served: Kathleen A. Gallagher
Service Method: eService
Email: KGallagher@porterwright.com
Service Date: 5/22/2020
Address: 6 PPG Place
Third Floor
Pittsburgh, PA 15222
Phone: 412-235-1466
Representing: Possible Intervenor National Republican Congressional Committee
Possible Intervenor Republican National Committee
Possible Intervenor Republican Party of Pennsylvania

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Lawrence J. Tabas
Service Method: eService
Email: lawrence.tabas@obermayer.com
Service Date: 5/22/2020
Address: 1617 John F. Kennedy Blvd
One Penn Center
Philadelphia, PA 19103
Phone: 215--66-5-3158
Representing: Possible Intervenor Jake Corman
Possible Intervenor Joseph B. Scarnati, III

Served: Mathieu Jode Shapiro
Service Method: eService
Email: mathieu.shapiro@obermayer.com
Service Date: 5/22/2020
Address: 1617 John F. Kennedy Blvd.
19th Floor
Philadelphia, PA 19103
Phone: 215--66-5-3014
Representing: Possible Intervenor Jake Corman
Possible Intervenor Joseph B. Scarnati, III

Served: Richard P. Limburg
Service Method: eService
Email: richard.limburg@obermayer.com
Service Date: 5/22/2020
Address: Obermayer Rebmann Maxwell & Hippel LLP
1500 Market Street, Suite 3400
Philadelphia, PA 19102
Phone: 215--66-5-3000
Representing: Possible Intervenor Jake Corman
Possible Intervenor Joseph B. Scarnati, III

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Russell David Giancola
Service Method: eService
Email: rgiancola@porterwright.com
Service Date: 5/22/2020
Address: Porter Wright Morris & Arthur LLP
6 PPG Place, Third Floor
Pittsburgh, PA 15222
Phone: 412--23-5-4500
Representing: Possible Intervenor National Republican Congressional Committee
Possible Intervenor Republican National Committee
Possible Intervenor Republican Party of Pennsylvania

Served: Zachary Michael Wallen
Service Method: eService
Email: zwallen@cpblawgroup.com
Service Date: 5/22/2020
Address: 301 South Hills Village Drive
Suite LL200-420
Pittsburgh, PA 15241
Phone: 412-200-0842
Representing: Possible Intervenor Bryan Cutler
Possible Intervenor Mike Turzai

/s/ Michele D. Hangley

(Signature of Person Serving)

Person Serving: Hangley, Michele D.
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Representing: Respondent Boockvar, Kathy
Respondent Mathis, Jessica

IN THE SUPREME COURT OF PENNSYLVANIA

MELINDA DELISLE, *et al.*,
Petitioners,

v.

KATHY BOOCKVAR, in her capacity
as Secretary of the Commonwealth of
Pennsylvania, *et al.*,

Respondents.

No. 95 MM 2020

**DECLARATION OF MICHELE D. HANGLEY IN SUPPORT OF
RESPONDENTS’ RESPONSE IN OPPOSITION TO EMERGENCY
APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A
PRELIMINARY INJUNCTION**

I, Michele D. Hanglely, declare under the penalty of perjury pursuant to 18
Pa.C.S. § 4902 that:

1. I am a shareholder of the law firm of Hanglely Aronchick Segal Pudlin
& Schiller, counsel for Respondent, Secretary of the Commonwealth Kathy
Boockvar and Respondent, Jessica Mathis, Director of the Bureau of Election
Services and Notaries of the Pennsylvania Department of State. I make this
declaration in support of Respondents’ Response in Opposition to Petitioners’
Emergency Application for Special Relief in the Nature of a Preliminary
Injunction.

2. Attached as Exhibit 1 is a true and correct copy of the Pennsylvania
Department of Health’s webpage regarding COVID-19, including “The Latest

Guidance,” which includes an overview of and a link to Governor Wolf’s phased reopening plan. *See*

<https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>.

(last visited on May 27, 2020).

3. Attached as Exhibit 2 is a true and correct copy of a Press Release, “Gov. Wolf Announces 13 Counties will Move to Yellow Phase of Reopening on May 15,” <https://www.governor.pa.gov/newsroom/gov-wolf-announces-13-counties-will-move-to-yellow-phase-of-reopening-on-may-15> (last visited on May 27, 2020).

4. Attached as Exhibit 3 is a true and correct copy of Governor Wolf’s Press Release entitled “Gov. Wolf Adds Eight Counties to Yellow and 17 Green on May 29, Remainder to Yellow on June 5,” <https://www.governor.pa.gov/newsroom/gov-wolf-adds-eight-counties-to-yellow-and-17-to-green-on-may-29-remainder-to-yellow-on-june-5/> (last visited on May 27, 2020).

5. Attached as Exhibit 4 is a true and correct copy of the Philadelphia Inquirer’s Article entitled “Thousands of Pennsylvania voters might not get their mail ballots in time to actually vote,” <https://www.inquirer.com/politics/election/pa-mail-ballots-deadline-2020-primary-20200526.html>. (last visited on May 27, 2020).

6. Attached as Exhibit 5 is a true and correct copy of the The Trib Live’s

article entitled “Allegheny County election officials promise mail-in ballots will arrive soon” dated May 24, 2020, <https://triblive.com/local/valley-news-dispatch/allegheny-county-election-officials-promise-mail-in-ballots-will-arrive-soon/> (last visited on May 27, 2020).

7. Attached as Exhibit 6 is a true and correct copy of the Philadelphia City Commissioner’s Twitter post dated May 27, 2020, <https://twitter.com/PhillyVotes/status/1265052824028753920> (last visited on May 27, 2020).

8. Attached as Exhibit 7 is a true and correct copy of the Post Gazzett’s article entitled “Primary 2020 Update: Allegheny County voters can expect mail-in ballots by Friday” dated May 27, 2020, <https://www.post-gazette.com/news/politics-local/2020/05/27/Primary-2020-Allegheny-County-voters-mail-in-ballots/stories/202005270092> (last visited on May 27, 2020).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 27, 2020.



Michele D. Hangley

EXHIBIT 1

Coronavirus(COVID-19)

Page last updated May 27, 2020 - 12:00 p.m.

69,417 total COVID-19 cases in Pennsylvania

county and zip code maps of cases

View the [county and zip code maps of cases](#) or view

county data in table form

[\(/topics/disease/coronavirus/Pages/Cases.aspx\)](#)

Pre-register for COVID-19 testing

[\(/topics/disease/coronavirus/Pages/Public%20Testing.aspx\)](#)

at Mohegan Sun

Pocono Arena at Casey Plaza.

Symptoms & Testing

<https://www.health.pa.gov/topics/diseases/coronavirus>

Stop the Spread

<https://www.health.pa.gov/topics/diseases/coronavirus>

FAQs & Resources

<https://www.health.pa.gov/topics/diseases/coronavirus>

Pennsylvania Data

<https://www.health.pa.gov/topics/diseases/coronavirus>

Hospital Data

<https://www.health.pa.gov/topics/diseases/coronavirus>

Press Releases

<https://www.health.pa.gov/topics/diseases/coronavirus>

Translated Materials

<https://www.health.pa.gov/topics/diseases/coronavirus>

American Sign Language

<https://www.health.pa.gov/topics/diseases/coronavirus>

The Latest Guidance

Pennsylvania counties in the red phase are under a

<https://www.pa.gov/guides/responding-to-covid-19/#StayatHomeOrder>

Stay at Home Order

in the red phase are

through June 4. Counties

expected to move to yellow by June 5 at 12:01 a.m

(<https://www.governor.pa.gov/newsroom/gov-wolf-adds-eight-counties-to-yellow-and-17-to-green-on-may-29-remainder-to-yellow-on-june-5/>)

The following counties will move to the **yellow** phase on May 29: Dauphin, Franklin, Huntingdon, Lebanon, Luzerne, Monroe, Pike, and Schuylkill. 17 counties will move to **green** on May 29: Bradford, Cameron, Clarion, Clearfield, Crawford, Elk, Forest, Jefferson, Lawrence, McKean, Montour, Potter, Snyder, Sullivan, Tioga, Venango and Warren.

Counties currently in yellow include: Adams, Allegheny, Armstrong, Beaver Bedford, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Elk, Erie, Fayette, Forest, Fulton, Greene, Indiana, Jefferson, Juniata, Lawrence, Lycoming, McKean, Mercer, Mifflin, Montour, Northumberland, Perry, Potter, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Westmoreland, Wyoming, Wayne, and York.

Pennsylvania is utilizing a three-phase matrix to determine when counties and/or regions are ready to begin easing some restrictions on work, congregate settings, and social interactions. View

(<https://www.pa.gov/guides/responding-to-covid-19/#PhasedReopening>)

Governor's Wolf's phased reopening plan for

(</topics/disease/coronavirus/Pages/Testing-Strategy.aspx>)

Pennsylvania. View the testing and

(</topics/disease/coronavirus/Pages/Contact-Tracing.aspx>)

contact tracing plans.

Stay home as much as possible. Try to get groceries once per week instead of daily. Freedom of travel remains, but please refrain from non-essential travel. Essential travel includes things like commuting to an essential job, picking up supplies like groceries and medicine, and checking on family and pets in other households. Do not host or attend gatherings.

Schools are closed until further notice.

Life-sustaining businesses

(<https://www.scribd.com/document/452553026/UPDATED-2-30pm-March-24-2020-Industry-Operation-Guidance>)

 and services

may continue to maintain in-person operations. View

frequently asked questions about Governor Wolf's order for businesses 

(<https://www.scribd.com/document/452553495/UPDATED-2-00pm-March-24-2020-Life-Sustaining-Business-FAQs>)

It is important that as many people as possible wear a nonmedical or homemade mask when leaving their homes. View

instructions for how to make a homemade mask

(</topics/disease/coronavirus/Pages/Stop-the-Spread.aspx>)

Get Help

[Pennsylvania COVID-19 guide](#)

The [\(https://www.pa.gov/guides/responding-to-covid-19/\)](https://www.pa.gov/guides/responding-to-covid-19/)

was created as a place for

Pennsylvanians to quickly find the resources they need during the COVID-19 pandemic.

County and Zip Code Maps

Use the maps below to see the number of COVID-19 cases in each county and by zip code. These numbers are updated daily at noon after being verified by the Department of Health. **To view the zip code-level data, please click the Zip Code Data tab below the map.** Having difficulty viewing the map below on mobile?

[View as a clickable county or zip code level map on mobile](#) 

[\(https://experience.arcgis.com/experience/bc92e33cfd5d417795f7a7a1a5cb3b1d/\)](https://experience.arcgis.com/experience/bc92e33cfd5d417795f7a7a1a5cb3b1d/)

[number of cases by county](#)

You also can view the [\(/topics/disease/coronavirus/Pages/Cases.aspx\)](/topics/disease/coronavirus/Pages/Cases.aspx)

in table format.

Zip codes with case counts smaller than 5 have been redacted for patient privacy.

[View the COVID-19 daily report](#)orts/20200526nCoVSituationReportExt.pdf)

Why flatten the curve?



The more people who get sick at the same time, the more resources we will need quickly. Our health care system can only handle so many cases at a time. If medical professionals become overwhelmed, lives that otherwise could have been saved will be lost.

[Learn about what you can do to save lives.](#)

(/topics/disease/coronavirus/Pages/Stop-the-Spread.aspx)

[Help spread the word on social media.](#)


(/topics/disease/coronavirus/Pages/Social-Media.aspx)

Questions About COVID-19?

[list of frequently asked questions](#)

First, check out our [FAQs](#) (/topics/disease/coronavirus/Pages/FAQs.aspx)

. If you still

[1-877-724-3258](tel:1-877-724-3258) 

have a question that needs answered, call us at 1-877-PA-HEALTH ((tel:1-877-724-3258)

).


LIVE daily briefings from the PA Department of Health:

pacast.com/live/doh 

www.governor.pa.gov/live/

(<https://pacast.com/live/doh>)

OR (<https://www.governor.pa.gov/live/>)

or [watch on Facebook](https://www.facebook.com/pennsylvaniadepartmentofhealth/)  (<https://www.facebook.com/pennsylvaniadepartmentofhealth/>)

or Español:

pacast.com/live/es 

(<https://pacast.com/live/es>)

[View the PA Dept. of Health coronavirus archives](#)

(/topics/disease/coronavirus/Pages/Archives.aspx)

It Takes All of Us to Fight COVID-19

We're sure you've been hearing health care experts say that we need to "flatten the curve." What does that mean? It means we all need to act now and take precautions to keep the number of COVID-19 cases at a manageable level.

EXHIBIT 2

Gov. Wolf Announces 13 Counties will Move to Yellow Phase of Reopening on May 15

May 08, 2020

Press Release, Public Health

Today Governor Tom Wolf announced 13 Pennsylvania counties will move to the yellow phase of reopening at 12:01 a.m. on Friday, May 15. Those counties include Allegheny, Armstrong, Bedford, Blair, Butler, Cambria, Fayette, Fulton, Greene, Indiana, Somerset, Washington and Westmoreland.

On May 1, the governor announced the 24 counties moving into the yellow phase of reopening beginning today. And, last evening, he and Secretary of Health Dr. Rachel Levine signed new orders – one for yellow phase reopening and one to extend the red phase counties' stay-at-home order, which was set to expire last night, to June 4. The red phase stay-at-home order extension does not mean that other counties won't move to the yellow phase in advance of June 4.

"The reopening plan prioritizes the health and welfare of Pennsylvanians by using a combination of factors to gauge how much movement a location can tolerate before the 2019 novel coronavirus becomes a threat," Gov. Wolf said. "I'd like to emphasize that this plan is not a one-way route. We are closely monitoring the 24 counties in the yellow phase and will re-impose restrictions if danger arises."

Gov. Wolf reminded residents and business owners that yellow means caution and that everyone needs to continue to be mindful of their actions and how they affect not only themselves, but their families, friends and community.

"Every contact between two people is a new link in the chain of potential transmission," Wolf said. "And if the new case count begins to climb in one area, restrictions will need to be imposed to prevent local medical facilities from becoming overwhelmed. So, Pennsylvanians should continue to make good choices."

Law enforcement remains focused on achieving voluntary compliance through education, but citations are possible for violators depending on the specific circumstances of an investigation.

In addition to the possible criminal penalties levied by law enforcement, there may be additional licensing consequences for violators, in part, through complaints filed by employees on the Department of Health portal that allows any employee who feels their employer is not providing a safe work environment to fill out an online form.

The Department of Health vets the complaints and investigates internally or sends the complaint to the appropriate state agency for investigation. For example, restaurant complaints are handled by the Department of Agriculture, which inspects those facilities; complaints about nursing homes are handled by the Department of Health, which inspects and licenses those facilities. Other involved agencies are the departments of State and Labor & Industry.

Concerns about a business reopening that may be in violation of stay-at-home or yellow phase orders should be made to local law enforcement non-emergency numbers or a local elected official.

Read Gov. Wolf's Plan for PA [here](#).

Read business guidance [here](#).

Read CDC guidance for child care centers [here](#).

Read FAQs [here](#).

View the Carnegie Mellon University Risk-Based Decision Support Tool [here](#).

View this information in Spanish.

EXHIBIT 3

Gov. Wolf Adds Eight Counties to Yellow and 17 to Green on May 29, Remainder to Yellow on June 5

May 22, 2020

Press Release, Public Health

Furthering his plan for reopening Pennsylvania, Governor Tom Wolf today announced eight additional counties will move to yellow and 17 to green, effective at 12:01 a.m., May 29. All remaining counties in red are expected to move to yellow by June 5 at 12:01 a.m.

The counties moving to yellow on May 29 include Dauphin, Franklin, Huntingdon, Lebanon, Luzerne, Monroe, Pike, and Schuylkill.

The 17 counties moving to green, also on May 29, include Bradford, Cameron, Clarion, Clearfield, Crawford, Elk, Forest, Jefferson, Lawrence, McKean, Montour, Potter, Snyder, Sullivan, Tioga, Venango and Warren.

Counties that remain in red on May 29 and are expected to move to yellow by June 5 include Berks, Bucks, Chester, Delaware, Lackawanna, Lancaster, Lehigh, Northampton, Montgomery, and Philadelphia.

"We know not only that we succeeded in slowing case growth, but that our actions, our collective decisions to stay at home and avoid social contact – we know that saved lives," Gov. Wolf said. "My stay-at-home order did exactly what it was intended to do: It saved lives and it bought us valuable time."

Gov. Wolf referred to a study by Drexel University that indicates that in Philadelphia alone, 60 days of staying at home resulted in more than 7,000 lives saved and prevented more than 68,000 people from needing hospitalization.

Yellow Metrics

In deciding which counties to move to yellow, the state used risk-based metrics from Carnegie Mellon University combined with contact tracing and testing capability and a sustained reduction in COVID-19 hospitalizations. While the 50 new cases per 100,000 population was considered, it did not weigh any more heavily than other factors.

Over the past two weeks:

- The state has seen sustained reductions in hospitalizations. From May 8 when the first counties moved to yellow to yesterday, the number of COVID-19 patients hospitalized dropped by nearly one thousand – from 2,618 to 1,667.
- The number of COVID patients on ventilators shrank by about a third, from 505 to 347.
- New cases continue to decline: From May 8 to May 15, the state added 6,384 cases and from May 15 to 21, added 4,770.
- The current COVID-19 incidence rate in the state is 83.4 cases per 100,000 people. Two weeks ago, it was 113.6 per 100,000. Most other states are seeing their new case rate continue to increase or remain flat. Pennsylvania is one of just 19 states with new case-rate declines.

Green Metrics

Counties that have been in the yellow phase for the requisite 14 days have been closely monitored for the risk associated with transitioning to the green phase.

In the green phase, we will continue to take precautions, including reducing building capacity, encouraging teleworking, limiting visitation in certain high-risk environments, and preventing large entertainment gatherings.

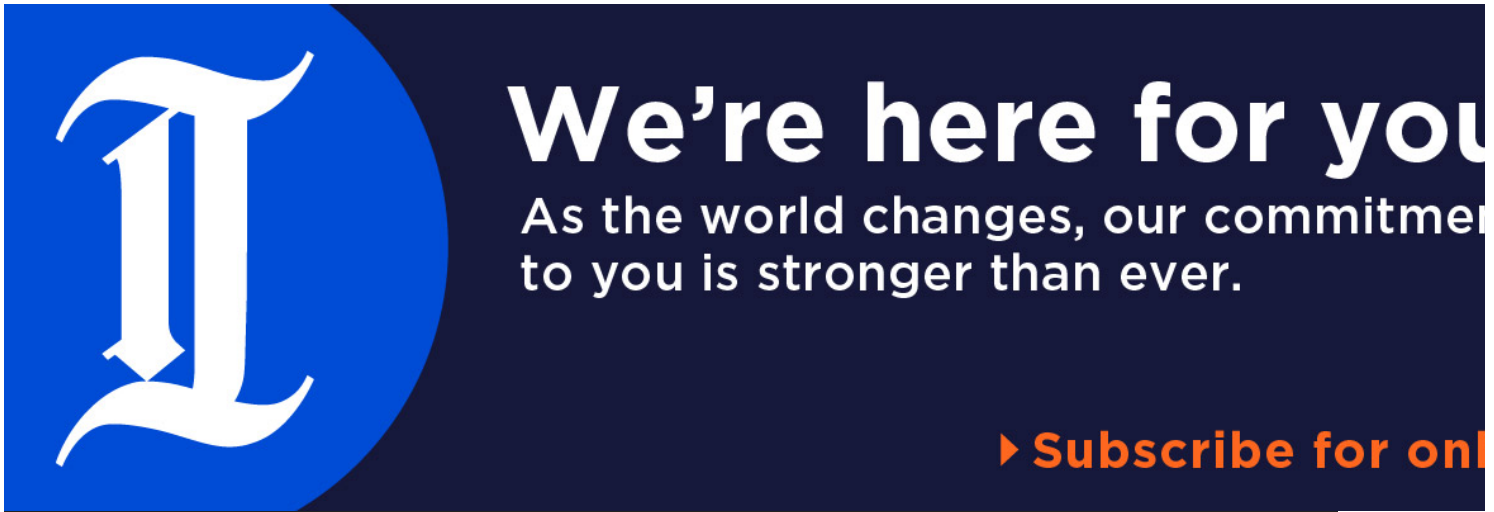
The guidelines for moving to green are available [here](#), and include specifics for employers, large events, and social gatherings.

Moving Forward

"We continue to increase testing every day and are continuing to build our contact tracing capacity, as well," Gov. Wolf said. "We are able to do these things, to be successful, to reopen in this manner because of the Pennsylvanians who have made tremendous sacrifices since the virus emerged in our state," Gov Wolf said. "Thank you."

"I want to remember and honor all of those who we lost and give solace to their family and loved ones. The last two months have been trying and they have tested each of us, and I want to thank and acknowledge all the people of our commonwealth who have been called upon to upend their lives to keep their neighbors, friends and family safe."

EXHIBIT 4



The Inquirer

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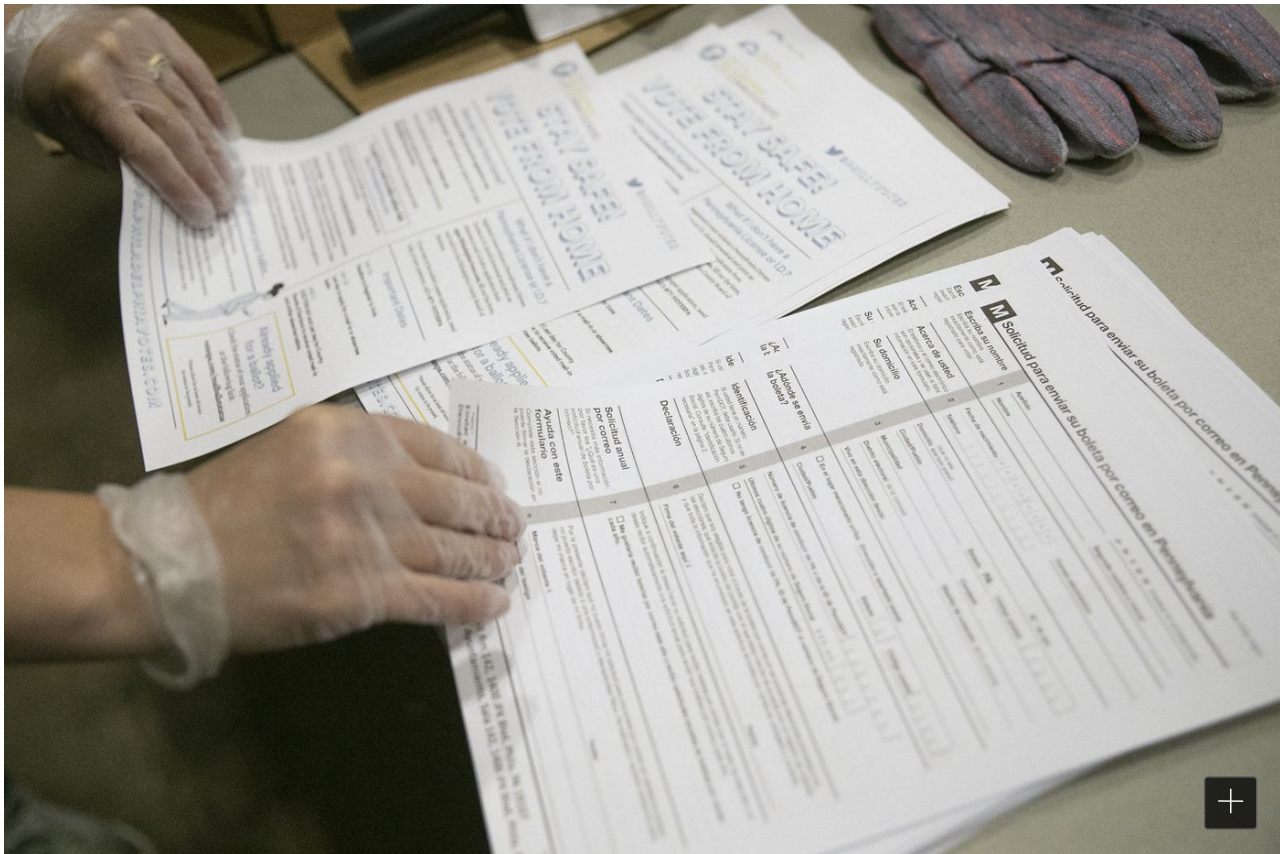
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Thousands of Pennsylvania voters might not get their mail ballots in time to actually vote

by Jonathan Lai, Updated: May 26, 2020- 3:42 PM



HEATHER KHALIFA / STAFF PHOTOGRAPHER



Tens of thousands of Pennsylvania voters have been applying for mail ballots every day leading up to Tuesday's deadline.

It's unclear how many will receive them in time to actually vote in next week's primary.

"There are going to be many people who are still going to be receiving their ballots very close to election day or on election day," Delaware County Councilwoman Christine Reuther said. "I'm very worried that people are going to be disenfranchised."

Reuther and other county elections officials across the state are warning that an unexpected [surge of mail ballots](#) this year, combined with uncertain mail delivery times and [coronavirus-related staffing changes](#), could lead thousands or even tens of thousands of voters to receive their ballots without enough time to mail them back. Some will likely not even receive them until after the election. Others will put their ballots in the mail and expect them to be counted, never knowing their votes arrived after the June 2 election day deadline.

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The [coronavirus pandemic](#) is making every step of the vote-by-mail process take longer than usual. After a voter requests a ballot, it can take a few days to process that application, a day or two to print and prepare the ballot, and a few days for it to be delivered. All told, it can take a week or more for ballots to arrive in a voter's mailbox.

"It becomes a series of falling dominoes, with things backing up," said Randall O. Wenger, chief clerk of Lancaster County's board of elections.

PENNSYLVANIA 2020 NEWSLETTER

Interested in how Pennsylvania is shaping the 2020 election? Sign up to receive our newsletter every Wednesday.

Sign Up

And Pennsylvania law sets a strict deadline: Absentee ballots must be received by county elections officials by 8 p.m. on election day to be counted, regardless of when they were mailed. Postmarks don't count. That deadline actually [gives voters more time than they used to have](#), after lawmakers expanded what was [one of the country's tightest absentee-ballot deadline windows](#).

But a one-week turnaround that might work under normal circumstances doesn't work in a pandemic, county officials said. And they worry the problem will be even worse in November, when turnout is higher.

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» **[READ MORE: Pennsylvania's 2020 election results were already going to be delayed. Coronavirus will make it even worse.](#)**

Some officials, including in Philadelphia and its suburbs, are calling on state lawmakers to pass legislation to allow ballots to be counted if they're postmarked by election day. Others hope courts will step in to intervene and are [closely watching a case pending in state court](#).

Montgomery County filed an emergency petition in Common Pleas Court on Tuesday seeking to [extend the deadline by one week](#). That would allow ballots to still be counted if they arrive within a week of the election. Voters could be disenfranchised without the change, the county said.

“Without a doubt, the deadlines for applying for an absentee ballot and also the date by which it can be returned, [lawmakers] should deal with that today,” said Lee Soltysiak, Montgomery County’s chief operating officer and clerk of its elections board. “But if they don’t, that should really be the first order of business for November. And I think we’ll have the proof ... after this primary that thousands of voters will very likely not have their votes counted.”

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A new election law allows any Pennsylvania voter to vote by mail. The pandemic-driven surge in requests for mail ballots has come at a faster and faster clip in the days leading up to the deadline.

“It’s hard because they come in so fast ... it’s unrelenting,” said Gail Humphrey, chief clerk for Bucks County. Her elections staff now processes ballots for 16 hours a day to try to keep up. She’s had to seek help from other departments.

“They arrived like the cavalry,” Humphrey said.

Similarly, Philadelphia elections staff have been supplemented in recent weeks by city employees from other departments, with dozens helping stuff envelopes and get ballots out in time.

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“As you might imagine, the City Commissioners Office has received a significant influx of mail-in ballot applications and completed ballots,” James R. Engler, chief of staff to Mayor Jim Kenney, wrote in an email Friday calling for city departments to send three to five people each to work over the weekend or Tuesday. “Unfortunately, due to the current backlog, the City is in jeopardy of not getting ballots out to voters in time for the June 2nd primary and we need your support.”

The call to arms appears to have worked, with the city [clearing out the backlog Monday afternoon](#) before the last-day crush of applications.

Delivery of election mail isn’t taking any longer than normal, a spokesperson for the United States Postal Service said, though voters and officials have complained of longer delivery times than they’re used to.

To account for any possible delays, elections officials should “allow one week for delivery” of a ballot to voters, said Ray V. Daiutolo Sr., the regional USPS spokesperson. Similarly, voters returning ballots should “mail their completed ballots at least one week before the due date.”

That's a two-week round-trip, meaning a voter who requested a ballot Tuesday, and has it put in the mail Friday or Saturday, might not even receive it until after election day.

"I think that's the scariest part for every county right now," Humphrey said. "People have until May 26 [to apply], but we have no control over the U.S. mail."

Elections officials also worry that voters who do receive their ballots by election day will either recognize they can't get them back in time and give up — or mail them back without realizing they won't be received in time. Would-be voters aren't notified if their ballots arrive after election day, leaving them with no idea their votes never counted.

Voters should turn in their mail ballots as soon as possible, Pennsylvania Secretary of State Kathy Boockvar said in a conference call with reporters last week.

"Do not wait to send in your ballot. ... As soon as you get it, please send it in," she said, urging voters to "mail it super fast" or drop it off at their county board of elections.

For voters who don't have time to mail their ballots back, counties are rushing to set up drop boxes. Ballots put in them by 8 p.m. on election day will count.

Voters who request mail ballots and then show up at the polls are not allowed to cast a normal vote, but must instead use a provisional ballot, which is only counted after county officials confirm they did not also vote by mail.

County drop boxes

County elections officials in Philadelphia and the suburbs are setting up drop boxes for voters who receive their ballots without enough time to return them by mail. [Contact county elections officials for more information.](#)

Bucks County

The county has installed a metal box outside the administration building at 55 East Court Street in Doylestown.

Chester County

The county has placed a drop box in the lobby of the Government Services Center at 601 Westtown Road in West Chester.

Delaware County

The county is planning to place drop boxes inside each polling place, under the supervision of poll workers. Voters will be able to enter a polling place without waiting in the in-person voting line and submit their mail ballots.

Montgomery County

The county has installed drop boxes [at the following five locations:](#)

- One Montgomery Plaza at 425 Swede Street in Norristown
- Green Lane Park at 2144 Snyder Road in Green Lane
- Montgomery County Community Connections Office at 421 West Main Street in Lansdale
- South Hall of Montgomery County Community College at 101 College Drive in Pottstown
- Eastern Court House Annex at 102 North York Road in Willow Grove

Philadelphia

The city [has installed a drop box](#) by the south portal of City Hall. Elections officials are also working with City Council [to set up election day drop-off sites](#) in each of the city's 10 Council districts.

Mail ballot applications are due by 5 p.m. Tuesday and can be submitted online. To check on the status of a ballot, [use the state's online tool](#) or [contact your county elections office](#). Completed ballots must be received by county elections officials by 8 p.m. on election day, June 2.

Staff writer Jonathan Tamari contributed to this article.



Posted: May 26, 2020 - 12:48 PM

[Jonathan Lai](#) | [@Elaijuh](#) | jlai@inquirer.com

EXHIBIT 5



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VALLEY NEWS DISPATCH

<https://triblive.com/local/valley-news-dispatch/allegheny-county-election-officials-promise-mail-in-ballots-will-arrive-soon/?printerfriendly=true>

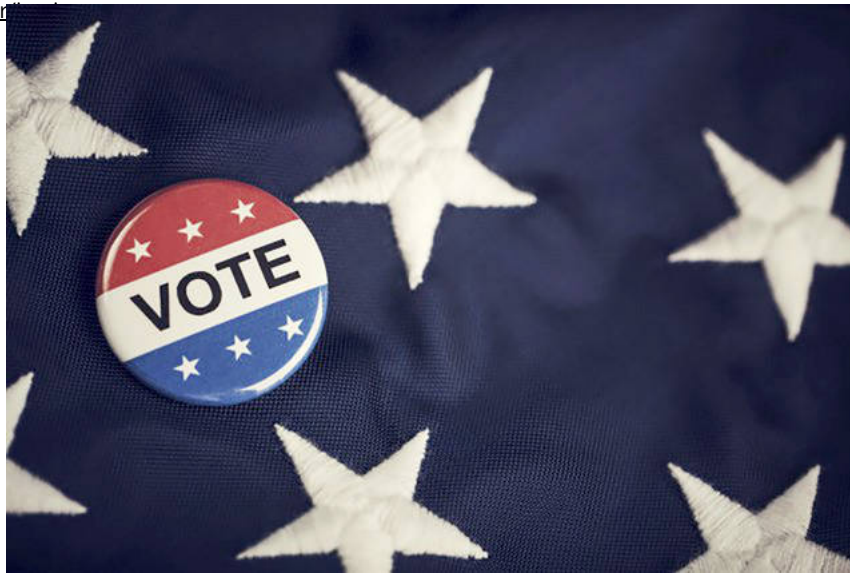
Allegheny County election officials promise mail-in ballots will arrive soon



JAMIE MARTINES (<https://triblive.com/author/jamie-martines/>) [✉ \(mailto:jmartines@triblive.com\)](mailto:jmartines@triblive.com) [🐦 \(https://twitter.com/Jamie_Martines\)](https://twitter.com/Jamie_Martines)

Sun., May 24, 2020 12:01 a.m.

<https://triblive.com/author/jamie-martines/>



TRIBUNE-REVIEW FILE

Allegheny County election officials are stressing to voters that mail-in ballots are on the way as the elections division works around the clock to process applications.

"We're getting caught up this week," elections division manager David Voye said Wednesday. "If you haven't received your ballot yet, I understand your concern. But please be patient. We are trying to get them out."

Anyone who has not received a ballot shouldn't panic, even if their online tracking status says their ballot has been mailed, Voye said.

That status represents when a mailing label was printed for their ballot, but other steps in the process need to be carried out.

Four times the normal number of Allegheny County elections staff are working across three shifts, 24 hours a day to process applications for mail-in ballots, as well as completed mail-in and absentee ballots, ahead of the primary.

Staffers had processed more than 215,000 applications for mail-in ballots by Friday afternoon. That equates to about 25% voter turnout, compared with the 22% turnout expected for this election.

Applications for mail-in or absentee ballots must be returned to the elections division office by 5 p.m. Tuesday, May 26.

Completed ballots must be returned to the elections division office by 8 p.m. the day of the primary, June 2.

If voters are worried their ballot will not arrive in time by mail, they can be dropped off in person at the elections division office in Downtown Pittsburgh at 542 Forbes Ave.

Anyone who does not receive a mail-in ballot in time or who has concerns about its status can vote at their polling place on Election Day using a provisional ballot.



A provisional ballot will not be counted until it is verified that a mail-in or absentee ballot was not received.

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Voters who choose to vote in person on Election Day are encouraged to wear a mask and bring a pen — blue or black ink — to polling places. Masks will be available at polling places for those who show up without one.

[Accept Cookies](#)

Those who refuse to wear a mask won't be turned away, Voye said.

"We can't take away their right to vote because they won't wear a mask," Voye said. "But we think everyone will be respectful and wear a mask."

There will also be an ample supply of pens for anyone who doesn't bring their own.

"We are asking voters to bring their own. That way they can take it with them or throw it away," Voye said. "It's just for safety."

Ballot-marking devices for anyone unable to hand-mark a paper ballot will be available at all polling places. Those devices can be operated by touch screen, stylus or Braille adapter.

There will also be large containers of wipes to clean surfaces and marks on the floor to remind voters to stay at least six feet apart.

The Allegheny County Board of Elections voted in April (<https://triblive.com/local/pittsburgh-allegheny/allegheny-county-votes-to-consolidate-primary-polling-locations/>) to consolidate polling places in order to cut down on the number of poll workers needed on Election Day.

That consolidation was approved by the Pennsylvania Department of State this week and reduces the number of voting districts from 1,323 to 416.

Voters will receive a postcard prior to Election Day advising them of their polling place location.

Polling places will open at 7 a.m., and voters will be directed to the right area when they arrive by the first letter of their last name.

Jamie Martines is a Tribune-Review staff writer. You can contact Jamie at 724-850-2867, jmartines@triblive.com (<mailto:jmartines@triblive.com>) or via Twitter https://twitter.com/Jamie_Martines.

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EXHIBIT 6



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Philadelphia City Commissioners ✓
@PhillyVotes

UPDATE: Every absentee or mail-in application that we received before 5pm tonight has been processed. Every application that was approved up to last night is stuffed and in the mail room to be delivered to the @USPS tomorrow. Applications that were processed today are printing.



6:51 PM · May 25, 2020 · Twitter Web App

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Brett J. Hopkins @TheBrettzo · May 26
Replying to @PhillyVotes and @USPS
Is it possible to drop off an application to at the office in person?



Philadelphia City Commissioners ✓ @PhillyVotes · May 26
Yes. Come to the Market East side and call 215-686-3460 and we can grab the application(s).



Michael D. Dwyer @michaeldwyer · May 26

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Three member bipartisan board of elected officials in charge of elections and voter registration for @PhiladelphiaGov. Next election: 6/2/2020.



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EXHIBIT 7

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Primary 2020 update: Allegheny County voters can expect mail-in ballots by Friday



JULIAN ROUTH ✓

Pittsburgh Post-Gazette

jrouth@post-gazette.com

MAY 27, 2020

10:50 AM

Voters who applied for a mail-in ballot in Allegheny County right before Tuesday's deadline should expect to receive theirs by Friday, Elections Division Manager David Voye said Wednesday.

The county is mailing the last batch of ballots today, and kept the mail room open late on Tuesday to handle most of the 5,000 or so applications they received in the hours before the application deadline.

about 86,000 voted ballots.

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For voters who want to ensure their voted ballot makes it to the office before the time polls close on Election Day, the county is opening the lobby of its office building -- 542 Forbes Ave. in Downtown Pittsburgh -- as a ballot drop-off spot after normal business hours from 10 a.m. to 5 p.m. on Saturday and Sunday, 5 p.m. to 8 p.m. on Monday and 7 a.m. to 8 p.m. on Election Day.



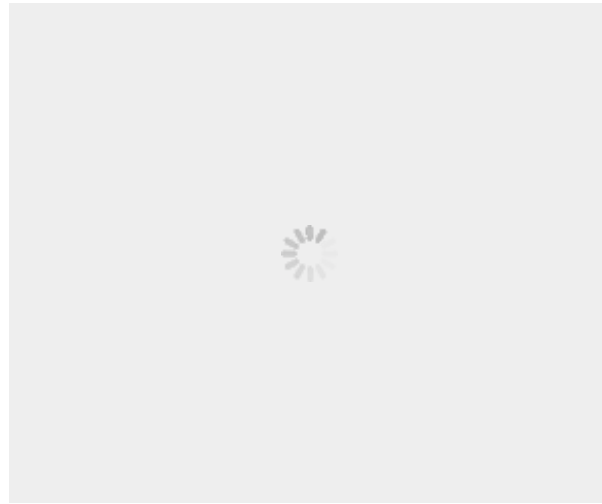
Julian Routh

Suburban Pittsburgh counties say they are ready for June 2 primary

Voters can also drop their ballots off daily in the elections office between 8:30 a.m. and 4:30 p.m. this week, as well as 8 a.m. to 5 p.m. on Monday and 7 a.m. to 8 p.m. on Election Day.

Mr. Voye said turnout from mail-in and absentee ballots alone could be more than 36 percent or 38 percent, which would near the total turnout for contested presidential primaries in 2016 and 2008. The uncontested presidential primary in 2012 garnered about 22 percent turnout, Mr. Voye said.

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First Published May 27, 2020, 10:50am

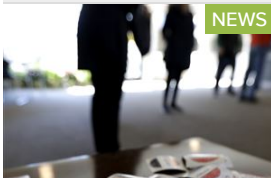
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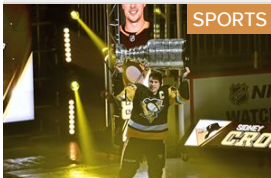
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Suburban Pittsburgh counties say they are ready for June 2 primary



JULIAN ROUTH ✓

Pittsburgh Post-Gazette

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MAY 26, 2020

6:58 PM

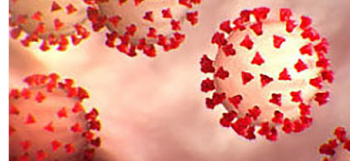
Officials in the counties on Pittsburgh's outskirts say they've recruited enough poll workers, gathered enough sanitary equipment and mostly conquered the bins and bins of mail-in and absentee ballot applications that had streamed into their offices ahead of the June 2 primary election.

Now, only six days remain until the elections offices in Beaver, Butler, Washington, Westmoreland and Fayette counties can see the results of their monthslong effort to disease-proof the contests in the face of COVID-19.

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The offices were still busy Tuesday as staffers worked to finish the final batches of applications that came in before the state's deadline, eager to put an end to processing an influx of requests that Pennsylvania's top election official deemed "off the charts" last week.

It was so hectic Tuesday that election officials in Beaver and Westmoreland, both reached by phone, could only spare five minutes — and not a minute more — to talk about the state of their election preparations. Trays of mail and conference calls awaited them, they said.

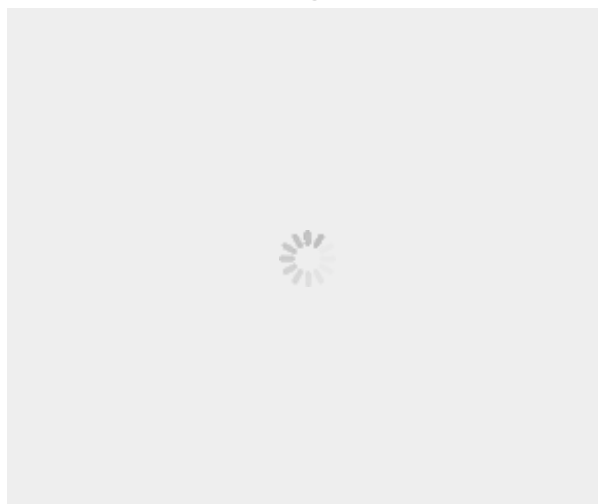
What they did describe — like others — was confidence in their efforts. They've recruited the workers, corralled the hand sanitizer and processed most of the paperwork — facets of mid-pandemic election administration that have levied a greater burden on more populous counties with bigger voter registration rolls.

Continuing coverage
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Though the applications kept streaming into her office on Tuesday, Dorene Mandity, director of Beaver County's elections bureau, said they had processed more than 20,000 so far, a task that has required 12-hour days, five days a week, with an additional Saturday shift and help from two part-time workers.

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Washington County, too, had to hire eight temporary employees and recruit help from other county departments to process and mail ballots, while in Butler, the office employed nine seasonal workers and used a lot of overtime.

“It’s difficult because of the sheer volume of applications coming in, but we’re trying to stick to a 48-hour turnaround for each one,” said Larry Blosser, Fayette’s elections director.

Meanwhile, officials have had to ensure that voters who do want to cast their ballots in-person on Election Day are safe to do so, and know exactly where to go and how to prepare.

Like others, Westmoreland County is going to maintain social distancing at its polling locations, and poll workers will be instructed to allow no more than 25 people in one precinct at one time — including themselves, said Scott Sistek, a county elections

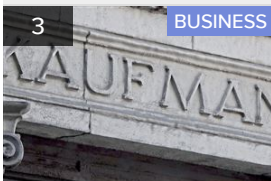
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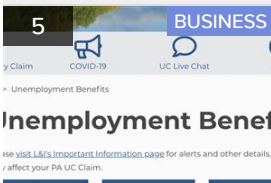
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Four Quick Questions

Do you consider nail polish to be makeup?

- Yes
- Somewhat
- No
- Other / No opinion

NEXT



Mr. Sistek added.

Mr. Sistek said voters will also be given Q-tips to use on screens so they don't have to touch the machines, a precaution officials were pointed to during the special election they held March 17.

In Fayette County, equipment will be sanitized between uses, and signs will be placed indoors and outdoors with instructions. Though the state issued them 50 poll kits with protective supplies, county officials purchased 40 more.

Community members, too, donated extra masks, and the county's emergency management agency supplied extra hand sanitizer and face shields.

"We can't force people to wear a mask, which is what a lot of our election judges are having issues with," Mr. Blosser said. "It's not a state requirement."

Information provided by the county said if anyone is showing signs of illness or coughing heavily at the polls, they may be asked to put on a mask as a precaution, though it won't be required.

The five counties mostly will be able to field a full slate of poll workers, officials said. Butler has a sufficient number. Fayette is at 95 percent capacity. Washington is "making every attempt" to do so, elections director Melanie Ostrander said late last week.

In Westmoreland, the situation has improved. The county put out a call on social media last week saying it had a "critical" need for poll workers, urging residents to apply online. That call was "very, very well received," Mr. Sistek said Tuesday, and now, it's a matter of contacting all of the people who volunteered.

Some polling places in Beaver may have four staffers instead of five.

"Right now I'm okay, but every day, you wait for the phone to ring and somebody can't work or [changes their] mind," Ms. Mandity said.

Commonwealth warned could be tough on the night of the election given the volume of mail-in ballots. For this election, they can begin counting the mail-in and absentee ballots at 8 a.m. instead of having to wait until polls close at 8 p.m.

“We’ll hopefully have our results right on schedule, as usual, but it’s definitely going to be a late night,” Mr. Blosser said.

Mr. Sistek, in Westmoreland, said he thinks he has enough staff to handle it, and that since absentee ballots won’t be opened at the polls, workers will be able to deliver the results to the county headquarters more quickly. Then, it will just be a matter of accumulating the data.

Beaver County will not be counting absentee or mail-in ballots until the Wednesday after the election, Ms. Mandity said. The room the county uses is where officials receive returns, unused ballots and voted ballots, she said, which will be “chaotic all night long.”

“I also can’t be in that room opening ballots and trying to count them,” Ms. Mandity said. “It wouldn’t be secure. It’s the best thing for us to wait until the next day when deliveries are all done and the only thing in that room is me and the ballots.”

Julian Routh: jrouth@post-gazette.com, 412-263-1952, Twitter @julianrouth.



First Published May 26, 2020, 6:58pm

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