

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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DOUG MCLINKO,	:	NO.
	:	
Petitioner,	:	
v.	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
STATE; and VERONICA	:	
DEGRAFFENREID, in her official	:	
capacity as Acting Secretary of the	:	
Commonwealth of Pennsylvania,	:	
	:	
	:	
Respondents.	:	
	:	
	:	

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**NOTICE TO PLEAD**

TO: COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE AND VERONICA DEGRAFFENREID, ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA

You are hereby notified to file a written response to the enclosed amended petition for review within thirty (30) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

Date: July 26, 2021

By: /s/ Walter S. Zimolong, Esquire

Walter S. Zimolong, Esq.  
ZIMOLONG, LLC  
[wally@zimolonglaw.com](mailto:wally@zimolonglaw.com)  
PO Box 552  
Villanova, PA 19085  
P: (215) 665-0842



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DEGRAFFENREID, in her official	:	
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	:	
	:	
Respondents.	:	
	:	
	:	
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**PETITION FOR REVIEW IN THE NATURE OF AN ACTION FOR A  
DECLARATORY JUDGMENT**

Under Pa. R. A. P. 1501 and 1513, Petitioner Doug McLinko files this petition for review in the nature of a complaint for declaratory judgment against Respondents, the Commonwealth of Pennsylvania Department of State and Acting Secretary Veronica Degraffenreid, in her official capacity.

**A. Statement of Jurisdiction**

1. This Court has original jurisdiction under 42 Pa.C.S.A. § 761(a)(1) because this is a civil action or proceeding against the

Commonwealth government and a Commonwealth officer acting in her official capacity.

**B. The names of the parties seeking relief.**

2. The party seeking relief is Doug McLinko.
3. McLinko is a member of the Bradford County Board of Elections.
4. As a member of the Board of Elections, McLinko must oversee the lawful administration of all aspects of elections, including voter registration, the voting process, and tabulation of votes. He must also certify the results of all primary and general elections in the county to the Secretary of State. 25 Pa. Stat. Ann. § 2642(k); 25 Pa. Stat. Ann. § 3154(a). McLinko believes that administering ballots pursuant to P.L. 552, No. 77 (Act 77) is unconstitutional and places him into an untenable position of acting unlawfully at the risk of disenfranchisement of voters. In order to perform his duties lawfully, McLinko needs and is entitled to a declaratory judgment as to the constitutionality of Act 77.

**C. The names of the government unit whose action is at issue.**

5. Respondents are the Department of State of the Commonwealth of Pennsylvania and Veronica Degraffenreid, Secretary of State, in her official capacity.

**D. Statement of Material Facts.**

6. In October 2019, the Pennsylvania General Assembly passed P.L. 552, No. 77 (Act 77), which made sweeping changes to the Pennsylvania Election Code, 25 Pa.C.S. § 2601, et. seq.

7. Those changes included the addition of a qualified mail-in elector as a class of voter eligible to vote. 25 Pa.C.S. § 2602 (z.6).

8. The Act defines a qualified mail-in elector as any elector in the Commonwealth, i.e., anyone eligible to vote. *Id.*

9. Under the Act, any qualified voter may vote by mail for any reason or no reason whatsoever (no excuse). 25 Pa.C.S. § 3150.11(a).

10. But the Act violates Article VII, § I, of the Pennsylvania Constitution.

11. Article VII, § I, of the Pennsylvania Constitution prescribes four criteria to be a qualified to vote in an election. A person must be:

- a. 18 years of age or older;

- b. A citizen of the United States for at least one month;
- c. A resident of Pennsylvania for at 90 days immediately before the date of the election; and
- d. A resident of the “election district where he or she shall **offer to vote** at least 60 days immediately preceding the election.”

Pa. Const. art. VII, § 1 (emphasis added)

12. The Pennsylvania Supreme Court has long held that the term “offer to vote” means to physically present a ballot at a polling place and that Article I, § 1 requires in-person voting.

13. For example, *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, 201 (Pa. 1924), the Pennsylvania Supreme Court held that the term “offer to vote” means “to present oneself, with proper qualifications, at the time and place appointed, and to make manual delivery of the ballot to the officers appointed by law to receive it.” *Id.* (quoting *Chase v. Miller*, 41 Pa. 403 (Pa. 1862)).

14. Article VII, § 14 of the Pennsylvania Constitution contains the only exception to the rule that voters must physically present their ballots on election day.

15. Under that section, voters can vote by absentee ballot (by mail) when they (a) are absent from their residence on the election day because of business, (b) unable to attend in person because of illness or disability, (c) unable to attend because of the observance of a religious holiday or (d) unable to vote because of election day duties.

16. In *In re Contested Election in Fifth Ward of Lancaster City* the Supreme Court declared unconstitutional a Pennsylvania statute, P.L. 309 of 1923, that authorized a form of no-excuse mail in voting similar to Act 77. *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. at 201.

17. P.L. 309 of 1923 authorized any voter who was outside of his election district on election day because of his business or occupation to vote by mail using an absentee ballot. A copy of P.L. 309 of 1923 is attached at Exhibit A.

18. But, in 1923 the Pennsylvania Constitution authorized voting absentee only if a voter was in the military. *See* Article VIII, § 6 (Pa. Const. 1874).

19. In the election at issue, 8 votes separated the Democratic candidate from his Republican opponent.

20. But when the absentee ballots were counted, the Republican nudged ahead by 9 votes.

21. The Democratic candidate challenged the results of the election and asked that the absentee ballots be excluded because P.L. 309 was unconstitutional.

22. The Supreme Court agreed and affirmed the election of the Democrat based on the ballots cast in person on election day.

23. In declaring the legislation unconstitutional, the Supreme Court held that the General Assembly could only confer voting rights consistent with the Pennsylvania Constitution, which at that time limited absentee voting to military servicemembers. *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. at 201.

24. The Court concluded by stating “[h]owever laudable the purpose of the act of 1923, it cannot be sustained. If it is deemed necessary that such legislation be placed upon our statute books, then an amendment to the Constitution must be adopted permitting this to be done. For the reasons stated, the only assignment of error is overruled.” *Id.*

25. That case is in accord with the Pennsylvania Supreme Court’s decision in *Chase v. Miller*, 41 Pa. 403 (Pa. 1862).



26. That case involved a district attorney's race.

27. 165 votes separated E.B. Chase from his opponent Jerome G. Miller.

28. Based on the in-person ballots cast on election day, Chase led Miller 5811 to 5646.

29. But there remained to be counted 420 votes from Pennsylvania soldiers fighting in the Civil War who cast ballots by mail under the Military Absentee Act of 1813.

30. If those military votes were counted, Miller would pull ahead of Chase 6066 to 5869.

31. In *Chase*, the Pennsylvania Supreme Court decided whether the Military Absentee Act was constitutional and, accordingly, if the military votes could be counted.

32. The Court ruled the Military Absentee Act was unconstitutional and invalidated 420 absentee military votes.

33. The Court held that the 1838 Pennsylvania Constitution required in-person voting and no provision of the Constitution permitted votes to be received by mail.

34. Importantly, following *Chase*, the Pennsylvania Constitution was amended to permit military members to vote by mail.

35. So, on two occasions the Pennsylvania Supreme Court has invalidated legislation designed to permit vote by mail in Pennsylvania because the Pennsylvania Constitution did not permit it.

36. Act 77 did what the Pennsylvania Supreme Court twice said could not be done: It granted electors the ability cast a ballot without being physically present without first amending the Pennsylvania Constitution.

37. Like the Military Absentee Act and the Act of May 22, 1923 before it, Act 77 is an impermissible and unconstitutional end run around a formal amendment to the Pennsylvania Constitution.

38. In 2019, SB 411 was introduced, which would have properly commenced the process of amending Article 7, § 14 of the Pennsylvania Constitution to include all eligible voters rather than the four categories of voters currently recognized to vote absentee (by mail).

39. The legislative comments to that bill correctly noted that “Pennsylvania’s current Constitution restricts voters wanting to vote by absentee ballot to situations where ‘their duties, occupation or business

require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of observance of a religious holiday or who cannot vote because of election day duties.” A copy of the comments to SB 411 are attached at Exhibit B.

40. That proposed constitutional amendment was designed to “eliminate these limitations, empowering voters to request and submit absentee ballots for any reason – **allowing them to vote early and by mail.**” *Id.*

#### **E. Petitioner’s Standing.**

41. Petitioner has a substantial, direct and immediate interest in the outcome of the litigation.

42. McLinko believes ballots from qualified mail-in electors, other than from voters qualified as absentee under the Pennsylvania Constitution, are illegal votes and should not be counted.

43. If McLinko certifies the results of the upcoming 2021 general election that include votes from non-absentee qualified mail-in electors, then he would be violating the Pennsylvania Constitution and breaching

his oath to perform his duties consistent with the Pennsylvania Constitution.

44. He would also be in breach of his duties to fulfil his obligations to comply with the Pennsylvania Election Code.

45. McLinko also has standing because (1) Act 77 would otherwise go unchallenged; (2) those directly and immediately affected by the complained-of matter are beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim.

46. Moreover, if Petitioner waits until after the next election to challenge the constitutionality of Act 77, a court is likely to rule that the challenge is untimely and subject to dismissal under the doctrine of laches.

#### **F. Statement of relief sought.**

31. A declaration that Act 77 violates the Pennsylvania Constitution.

32. A declaration that 25 Pa.C.S. Chapter 14, Article XIII-D violates the Pennsylvania Constitution.

33. A declaration that Act 77 and 25 Pa.C.S. Chapter 14, Article XIII-D are void.

WHEREFORE, Petitioner respectfully request that this Court enter a declaratory judgment in their favor and against Respondents:

- (a) that Act 77 violates the Pennsylvania Constitution;
- (b) that 25 Pa.C.S. Chapter 14, Article XIII-D violates the Pennsylvania Constitution;
- (c) that Act 77 and 25 Pa.C.S. Chapter 14, Article XIII-D are void; and
- (a) Any and all other appropriate relief.

Respectfully submitted,

Date: July 26, 2021

/s/ Walter S. Zimolong  
Walter S. Zimolong, Esq.  
ZIMOLONG, LLC  
[wally@zimolonglaw.com](mailto:wally@zimolonglaw.com)  
PO Box 552  
Villanova, PA 19085  
P: (215) 665-0842

/s/ Harmeet K. Dhillon  
Harmeet K. Dhillon, Esq.  
Stuart McCommas, Esq.  
DHILLON LAW GROUP INC.  
177 Post Street, Suite 700  
San Francisco, CA 94108  
(415) 433-1700


*(pro hac vice pending)*

*Counsel for Petitioner*

## VERIFICATION

I hereby verify that the statements made in the foregoing Petition for Review are true and corrected based upon my personal knowledge or information and belief.

I understand that false statements therein are subject to penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Douglas McClain (Jul 27, 2021 11:41 EDT)






# VERIFICATION

Final Audit Report

2021-07-22

Created:	2021-07-21
By:	Walter ZImolong (wally@sigzim.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsMEg7d3V7ArvUy29E0kz4mT4uBGM6i8f

## "VERIFICATION" History

-  Document created by Walter ZImolong (wally@sigzim.com)  
2021-07-21 - 10:07:02 AM GMT- IP address: 108.16.112.92
-  Document emailed to Douglas McLinko (demclinko@gmail.com) for signature  
2021-07-21 - 10:07:20 AM GMT
-  Email viewed by Douglas McLinko (demclinko@gmail.com)  
2021-07-22 - 2:41:40 PM GMT- IP address: 66.102.8.65
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No. 201.

AN ACT

Providing a system whereby persons absent from their regular polling places may cast their votes; imposing certain powers and duties upon the county commissioners, prothonotaries, return boards of the various counties, and the board of registration commissioners in cities of the first and second class, in relation thereto; and providing penalties.

Section 1. Be it enacted, &c., That any duly qualified voter of this Commonwealth, who by reason of his duties, business, or occupation is unavoidably absent from his lawfully designated election district and outside of the county in which he is an elector, but within the confines of the United States, on the day of holding any general, municipal, or primary election, may vote by appearing before an officer, either within or without the Commonwealth, authorized to administer oaths, and marking his ballot under the scrutiny of such official as herein prescribed. Such voter may vote only for such officers and upon such questions as he would be entitled to vote for or on had he presented himself in the district in which he has his legal residence, and in the manner hereinafter provided.

Section 2. Any voter, expecting to be absent from the county in which his lawfully designated election district is situated on the day of any general, municipal, or primary election, and who desires to cast his ballot at such election, may make application, not more than thirty days and not less than three days next preceding such election, to the county commissioners of such county for a certificate of qualification and an official absent voter's ballot.

Section 3. The certificate of qualification shall be issued by the county commissioners, and shall set forth the name of such voter, the name of the ward or district of the city, borough, town, or township in which he resides. If the voter is a resident of a borough, town, or township, the certificate of qualification shall set forth that such voter's name has been duly entered on the registry list by the assessor thereof, as appears from such list. If the voter is a resident of a city, the certificate of qualification shall set forth that the voter, personally, registered according to law. The certificate of qualification shall be in the following form:

Certificate of Qualifications.

We hereby certify that.....is a resident of the.....(district or precinct) of the.....ward of.....(city, borough, town, or township) of.....County

Elections.  
Absent voters.  
Qualified voter unavoidably absent from district on election day.

Manner of voting.

Right of voter.

Application to county commissioners.

Time of making.

Certificate of qualification.

Contents.

Form.



LAWS OF PENNSYLVANIA,

and Commonwealth of Pennsylvania (as appears by the personal registration books or the registry list of said district), and is a duly qualified elector of such district.

.....  
.....  
.....

County commissioners.

County of .....

Dated .....

Duty of registra-  
tion commis-  
sioners.

Section 4. The board of registration commissioners in cities of the first and second class shall certify to the county commissioners, upon request, any information that may be necessary for such county commissioners to properly fill out such certificate of qualification.

Absent voter's  
ballots.

Section 5. The county commissioners of the several counties shall prepare and have printed, in addition to the regular and official ballots, additional official ballots to be known as absent voter's ballots. The number of such absent voter's ballots printed for each district shall be equal to five per centum of the number of registered voters in such district. Such ballots shall be prepared and printed in the same form as the official ballots, and shall in all respects be similar thereto, except that on the back thereof shall be printed, in addition to the form now required by law, the words "Absent Voter's Ballot." There shall also be prepared three envelopes of such size and shape that will permit the placing of one within the other. On the first shall be printed only the words "Absent Voter's Ballot." On the second shall be printed the certificate of qualification and the affidavit of the voter, together with the jurat of the official in whose presence the ballot is marked and before whom the affidavit is made, the forms to be substantially as herein provided. On the third shall be printed the name, official title, and post office address of the prothonotary or the county commissioners of the county in which such voter resides and to whom the returns shall be made as hereinafter provided.

Number.

Form.

Envelopes.

Application for  
certificate of  
qualification.

Section 6. Application for a certificate of qualification and for an absent voter's ballot shall be made on a blank to be furnished by the county commissioners, and shall be in the following form:

Form.

I ....., a duly qualified voter of the ..... (district or precinct) of the ..... ward of ..... (city, borough, town, or township) of ..... County and Commonwealth

of Pennsylvania, and entitled to vote in such district at the next election (in case of a primary election give party enrollment), expecting to be unavoidably absent from said county on the day for such election by reasons of duties, business, or occupation, hereby make application for a certificate of qualification and an official absent voter's ballot.

Witnesses:

.....  
Signature of voter.

.....  
Dated .....  
P. O. address.

Section 7. Such application blank shall, upon request therefor, be sent by the county commissioners to any absent voter by mail, if the necessary postage is prepaid by the voter, or shall be delivered to any voter upon application made personally at the office of the county commissioners.

Application blank.

Section 8. Upon receipt of such application properly filled out and duly signed, or as soon thereafter as the official absent voter's ballots for the election district in which the applicant resides have been printed, the county commissioners shall send to such absent voter by mail or shall deliver one official absent voter's ballot, or, if there is more than one such absent voter's ballot to be voted by a voter of such election district, one of each kind. Such ballot or ballots shall be enclosed in the envelopes as provided for in section five of this act and in the order in which they are mentioned therein. The envelopes shall be kept unsealed. Before sending or delivering such ballot, the county commissioners shall satisfy themselves that the applicant is a qualified elector, and, if so satisfied, they shall fill out and sign the certificate of qualification, and shall enter or cause to be entered on the registration book or registry list, opposite the name of the applicant, the words "Received absent voter's ballot."

County commissioners to mail or deliver ballots.

Ballots to be enclosed in envelopes.

Commissioners, if satisfied as to qualifications, to fill out and sign certificate.

Notation.

Section 9. At any time after receiving such absent voter's ballot, but within a sufficient time to permit the return of the marked ballot to the prothonotary or county commissioners of the county in which the voter's election district is situated on or before the day of such election, the voter may appear before any officer, either within or without the Commonwealth, authorized to administer oaths, and mark such ballot under the scrutiny of such official in the following manner. The voter shall first display the ballot to such official as evidence that the same is unmarked, and shall then proceed to mark the ballot in the presence of such official, but in such manner that such official is unable to see how the same is marked, and

Time of marking ballot.

Manner of marking ballot.

Enclosing ballot  
in envelopes.

then fold the ballot and enclose and securely seal the same in the envelope on which is printed the words "Absent Voter's Ballot." This envelope shall then be placed in the one on which is printed the certificate of qualification and the affidavit of the voter and the jurat of the official before whom the voter appears and such envelope sealed in like manner by the voter.

Affidavit.

Section 10. The voter shall then make out, subscribe, and swear to the affidavit printed on the face of such envelope, which, together with the jurat of such official, shall be in the following form:

Form of Affidavit and Jurat.

Commonwealth of Pennsylvania

ss.

County of .....

.....do solemnly swear (or affirm) that I have resided in the Commonwealth of Pennsylvania one year (or having previously been a qualified elector or native-born citizen of the Commonwealth, that I removed therefrom and returned, then six months) immediately preceding the date of this election, and in the ..... district or precinct of the ..... ward of ....., (city, borough, town, or township) in the county of ....., at least two months immediately preceding said date, and (if twenty-two years of age and upward) have paid within two years a State or county tax, and am in all respects a duly qualified voter of said election district; that I am a ....., and that, because of my duties, business, or occupation, I will be required to be absent from my lawfully designated election district on said election day and will have no opportunity to vote therein; that I am not qualified to vote elsewhere at this election; and that I am the person named in the certificate of qualification.

Witness:

.....

Signature of voter.

Residence address .....

Jurat.

Subscribed and sworn to before me, a..... in and for .....County, State of ....., this .....day of....., 19....., and I hereby certify that the affiant ....., who is personally known to me to be the person he represents himself to be,

or

has been proven to be the person whom he represents

himself to be by....., whose address is....., and who is a creditable person known to me, presented himself before me on the day above named in the city, borough, town, or township of....., county of....., State of....., that he exhibited to me the enclosed ballot (or ballots) and that the same was unmarked; that he, before me at the same time and place, marked his ballot (or ballots) but in such manner that I did not see his vote; that he then folded and enclosed said ballot (or ballots) so marked in the proper envelopes; and that he then and there made out, subscribed, and swore to the affidavit according to law.

Section 11. Such ballot or ballots and envelopes shall then be securely sealed in the third envelope, which the voter shall send by registered mail to the prothonotary or county commissioners in sufficient time to reach its destination on or before the day such election is held. In case the ballot was voted at a general or municipal election, it shall be sent to the prothonotary, if voted at a primary election, it shall be sent to the county commissioners, of the county in which such voter is a resident. The postage and cost necessary to transmit and register such envelopes shall be paid by the voter.

Section 12. The prothonotary or county commissioners, upon receipt of such registered letter, shall safely keep and preserve the same, unopened, in their office until the return board canvasses the vote according to law, at which time the said return board shall open such registered letter, and after examination the certificate of qualification and the affidavit and jurat, shall compare the signature of said absent voter, as written on the affidavit, with the signature of such voter on the application blank given to the county commissioners. If the return board is satisfied that the signatures correspond and that the affidavit and jurat are sufficient, they shall announce the name of the voter of such absent voter's ballot, and shall give any person present an opportunity to challenge the same in like manner and for the same causes as such voter could have been challenged had he presented himself in his own district to cast his ballot. If there are no challenges, they shall open the second envelope in such manner as not to destroy the certificate of qualification and the affidavit and jurat as printed thereon, which envelope shall be kept in the prothonotary's or commissioners' office for a period of one year thereafter. All envelopes on which are printed the words "Absent Voter's Ballot," and containing the ballots, shall be put into one depository at one time, and said depository well shaken and the envelopes

Return of marked ballot.

Time.

Postage.

Duties of return board.

Challenge.

Certificate of affidavit, etc., to be kept for one year.

Mixing of ballots.

Opening and counting.	containing the ballots mixed before any ballot is taken therefrom. The return board shall then break the seals of such envelopes and record the said ballots in the same manner as the election officers record votes; and in so canvassing said votes, the return board
Votes to be added to total.	shall count the votes of all absent voters taken as herein provided and add the same to the total result of the election in the county, district, precinct, or ward, accordingly, as designated on each ballot.
Ballots to be kept for one year.	Section 13. The ballots after being opened and duly counted by the return board shall be safely kept in the custody of the prothonotary or the county commissioners, as the case may be, for the period of one year, and in case of a contested election the same may be opened and counted as in other cases.
Contested election.	
Voter returning to district on election day.	Section 14. Any voter who has received an absent voter's ballot, and who shall return to his properly designated election district on or before the day for holding the election for which such ballot was issued, shall be permitted to vote, upon presenting himself at his regular polling place, in the same manner as he could have voted had he not received such absent voter's ballot: Provided, however, That in any such case such voter shall surrender to the judge of election of such district his absent voter's ballot or ballots, unmarked, and the envelopes in which they were contained, before being permitted to vote. Such fact shall be noted by the judge of election on the back thereof, and the ballot or ballots and envelopes shall be returned to the county commissioners.
Proviso.	
Surrender of absent voter's ballot to judge of elections.	
Notation and return by judge.	
Violations by voter.	Section 15. If any person voting an absent voter's ballot shall wilfully swear falsely to the affidavit herein provided for, or shall vote any ballot other than one properly issued to him, or vote, or attempt to more than once at any such election, or who shall violate any other provisions of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars, or be imprisoned for a term not exceeding two years, or both, at the discretion of the court.
Misdemeanor.	
Penalty.	
Violations by officials.	If any official authorized to administer oaths within this Commonwealth, prothonotary, county commissioners, or member of a return board, shall neglect or refuse to perform any of the duties prescribed by this act, or shall reveal or divulge any of the details of any ballot cast in accordance with the provisions of this act, he shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or be imprisoned for a term of one year, or both, at the discretion of the court.
Misdemeanor.	
Penalty.	

Section 16. All acts or parts of acts inconsistent <sup>Repeal.</sup>  
herewith are hereby repealed.

APPROVED—The 22d day of May, A. D. 1923.

GIFFORD PINCHOT.

—  
No. 202.

AN ACT

Requiring supervisors and commissioners of townships to apply for county aid in the construction and maintenance of roads upon application therefor by property owners.

Section 1. Be it enacted, &c., That whenever the owners of the majority of the assessed valuation of real property within any township desire any principal road for highway within the township to be improved and maintained at the joint expense of the county and township, they may petition the supervisors or commissioners of the township for said improvement, and require them to make application to the county commissioners for such improvement and maintenance in accordance with the provisions of existing law.

Section 2. In all cases where the township supervisors or commissioners refuse to act upon, or unduly delay action on, any petition for the improvement and maintenance of any road or highway, as provided in section one of this act, any citizen taxpayer of the township or county may, by petition, present the facts of the matter to the court of quarter sessions, requesting the court to order such action thereon as the case may require. If after due hearing had before said court it shall appear that the truth of the matters alleged in the petition are sustained, the court shall make an order directing the township supervisors or commissioners to forthwith act upon said application or applications, and that the said application or petition for the improvement be forthwith forwarded to the county commissioners.

Section 3. All acts or parts of acts inconsistent with this act are repealed. <sup>Repeal.</sup>

APPROVED—The 22d day of May, A. D. 1923.

GIFFORD PINCHOT.

Townships.  
County aid for township roads.

Petition for improvement.

Refusal of supervisors or commissioners to act.

Court may be petitioned.

Order of court.

[Home](#) / Senate Co-Sponsorship Memoranda

## Senate Co-Sponsorship Memoranda


### Senate of Pennsylvania Session of 2019 - 2020 Regular Session

#### MEMORANDUM

**Posted:** January 29, 2019 10:46 AM  
**From:** [Senator Mike Folmer](#) and [Sen. Judith L. Schwank](#), [Sen. Thomas H. Killion](#), [Sen. Patrick J. Stefano](#)  
**To:** All Senate members  
**Subject:** Election Reforms

Last Session, the Senate State Government Committee spent considerable time assessing Pennsylvania's Election Code. This session, the Committee intends to address a number of issues identified by our analyses. As a convenience for everyone, we are presenting the following proposals by various Senators on these issues in a single, joint co-sponsorship:

#### Document #1

 Introduced as [SB411](#)


**Description: Constitutional Amendment – Absentee Ballots (Folmer/Schwank):**

Pennsylvania's current Constitution restricts voters wanting to vote by absentee ballot to situations where “. . . their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.”

We propose to amend the Constitution to eliminate these limitations, empowering voters to request and submit absentee ballots for any reason – allowing them to vote early and by mail.

Twenty seven other states and the District of Columbia offer “no-excuse” absentee voting: Alaska, Arizona, California, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Vermont, Wisconsin, and Wyoming.

#### Document #2

 Introduced as [SB412](#)

PLAINTIFF'S  
EXHIBIT

**B**




**Description: Constitutional Amendment – Poll Workers (Stefano/Folmer):**

Pennsylvania's Constitution excludes federal, state, county, and municipal employees from serving as poll workers. Given the challenges elections officials have in finding volunteers, this provision is an additional – and unnecessary – headache.

We propose to address these problems by repealing this provision of the Pennsylvania Constitution: Article VII, Section 12.

## Document #3

 Introduced as [SB413](#)

**Description: Constitutional Amendment – Separate Ballot Judicial Retention Elections (Martin/Folmer):**

Pennsylvania's existing Constitution has an anomaly that causes some confusion among voters and needless costs for elections: requiring a separate ballot or a separate column on voting machines for the retention of justices, judges, and justices of the peace.

We propose to address these problems by introducing a simple amendment to the Pennsylvania Constitution to eliminate this requirement.

## Document #4


 Introduced as [SB414](#)

**Description: Absentee Ballots (Schwank/Folmer):**

In tandem with efforts to amend the Pennsylvania Constitution to ease citizens' ability to vote by absentee ballot, we are also proposing to:

- Reduce the requirements when applying for absentee ballots;
- Mail absentee ballots earlier;
- Give voters more time to return absentee ballots;
- Eliminate the public posting of absentee voters, and;
- Clarify other requirements related to absentee ballots.

## Document #5

 Introduced as [SB415](#)

**Description: Permanent Early Voting List (Folmer):**

Eight other states (Arizona, California, District of Columbia, Hawaii, Minnesota, Montana, New Jersey, and Utah) allow voters to join a permanent absentee voting list. Once a voter opts in, he or she automatically receives an absentee ballot for all future elections.

We propose to bring this reform to Pennsylvania – with procedures for removing inactive voters.

## Document #6



Introduced as [SB416](#)

**Description: Vote Centers/Curbside Voting (Killion/Folmer):**

Using other state laws as models, we propose to give counties the *option* to establish “Vote Centers” and to better provide for voters with disabilities.

“Vote Centers” are alternatives to traditional, neighborhood-based precincts. By giving counties the option of using Vote Centers, voters are able to cast their ballots at any Vote Center in the county – regardless of their home address.

Thirteen states currently allow jurisdictions to use Vote Centers on Election Day: Arizona, Arkansas, California, Colorado, Indiana, Iowa, New Mexico, North Dakota, South Dakota, Tennessee, Texas, Utah, and Wyoming.

As Vote Centers provide voters with greater convenience, they may increase voter turnout. Additionally, there are possible cost savings for counties opting to establish Vote Centers.

We are also proposing to better assist voters with disabilities by allowing for “curbside voting”. If a voter is physically unable to enter a poll, he or she may ask an election officer to bring a ballot to the entrance of the polling place or to a car parked at the curb. Those assisting must read voters the entire ballot – unless the voter asks to have only parts of the ballot read to them.

It would be illegal for anyone assisting a voter to:

- Try to influence the voter’s vote;
- Mark the voter’s ballot in a way other than the way they have asked; or
- Tell anyone how the voter voted.

## Document #7



Introduced as [SB417](#)

**Description: Number of Votes to Qualify as a Write-In Winner (Martin/Folmer):**

Write-in candidates are largely an American phenomenon: a person whose name does not appear on the ballot but is nonetheless elected by voters who write in his or her name.

However, there are sometimes unintended consequences with write-in candidates. For example, someone decides to write-in another person’s name regardless of interest or qualifications and the other person is elected due to that single write-in vote.

Our proposed legislation would require successful write-in candidates receive the same number of write-in votes as would be required if they had filed signed nomination petitions. For example, if ten petition signatures are required for a given office, a write-in candidate would need to receive a minimum of ten identical write-in votes to be elected to that office.

## Document #8



Introduced as [SB418](#)

**Description: Number of Ballots to Be Printed (Stefano/Martin):**

Current law requires counties to have “one book of fifty official ballots of each party for every forty-five registered and enrolled electors”. This requirement to have 110% of the number of registered voters at polls results in needless costs to counties.

We propose to give counties the discretion to print 10% more than the highest number of ballots cast in the previous three Primaries or General Elections in an election district.

This change was recommended by the Joint State Government Committee in its December 2017 report “Voting Technology in Pennsylvania.”

## Document #9



Introduced as [SB419](#)

**Description: Consolidation of Smaller Precincts (Folmer):**

County elections officials have a myriad of responsibilities leading up to and continuing through Election Day – including: securing polling places, ensuring ADA compliance, getting voting machines delivered on time and ready for use, finding volunteers to work the polls, answering voters’ questions, and working to reduce waiting times.

These issues are compounded when election districts are smaller than 250 registered voters.

For this reason, we propose to give counties the *option* of either mailing ballots to voters in precincts with fewer than 250 registered voters or allowing counties to consolidate election districts under 250 registered voters.

Counties using the mail ballot option for small precincts would be required to give voters advance notice they will receive mail ballots and there will be no polling place for them on Election Day. These voters would mail their ballots back to the county like an absentee ballot.

Counties using the consolidation option would be allowed to combine small precincts into neighboring election districts – as long as they give voters in the to-be-combined district at least 90 days advance notice prior to a Primary Election.