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Election Transparency Rules for Pennsylvania *Current as of October 22, 2020*

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OVERVIEW

The Pennsylvania Election Code, 25 Pa. Stat. Ann § 3041 *et seq.*, regulates the preparation for, and conduct of, primaries and elections within the Commonwealth of Pennsylvania. Under the Code, journalists’ and media organizations’ access to voting sites and canvassing efforts is limited in certain respects. *See* 25 Pa. Stat. Ann. § 3060. The specific scope of journalists’ access to voting sites, however, is determined on a county-by-county basis. Journalists should contact local county boards of elections to learn what forms of access are permitted for situations not explicitly covered by the Election Code.

1. Constitutional provisions

Under the Pennsylvania Constitution, “elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. Art. I, § 5. The Pennsylvania Constitution further protects “secrecy in voting.” Pa. Const. Art. VII, § 4.

2. Decentralized scheme

Pennsylvania law requires each county have a “county board of elections” responsible for exercising “jurisdiction over the conduct of primaries and elections in such county.” 25 Pa. Stat. § 2641(a). The Code delegates to counties certain election-related powers and duties, among them the power to “make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and [voters].” 25 Pa. Stat. Ann. § 2642. As such, some counties may seek to impose more or less stringent access restrictions on journalists than others, so long as these restrictions are not inconsistent with the Code. *See PG Publ’g Co. v. Aichele*, 902 F. Supp. 2d 724, 757 (W.D. Pa. 2012), *aff’d*. 705 F.3d 91 (3d Cir. 2013).

3. Polling place layout

Each county generally contains several election districts where primaries and elections are conducted. The board of elections for each county has the duty to select and fix the polling place

within each district. In selecting polling places, the board is obligated to make every effort to provide all voters with an environment that is free from intimidation and violence. 25 Pa. Stat. Ann. § 2727(a).

Pennsylvania's Election Code stipulates that each polling place "shall consist of a single room, every part of which is within the unobstructed view of those present therein." 25 Pa. Stat. Ann. § 2730. This shall include an "enclosed space" with a "guard rail or barrier," within which the ballot box and voting compartments or booths are located. § 2730(a). This "guard rail or barrier" must be arranged such that only individuals who are within the inner enclosure "can approach within six feet of the ballot box and voting compartments, or booths, or voting machines" (depending on what apparatuses are used at the polling site). *Id.* Individuals within the polling place room, who are outside of the enclosed space, however, should still be able to have a "full view" of "[t]he ballot box and the voting compartments or booths." *Id.* Additionally, election officers, overseers and watchers must be able to see the ballot labels on the face of the voting machine or machines placed within the enclosed space ("unless its construction shall otherwise require"). *Id.*

The voting booths themselves must be provided with a "curtain, screen or door" so that electors when marking their ballots are screened from the observation of others. 25 Pa. Stat. Ann. § 2730(a); *see also* Pa. Const. art. VII § 4 ("Provid[ing] that secrecy in voting be preserved.")

ELECTION DAY ACCESS TO POLLING LOCATIONS

1. Rules concerning access to polling places generally

General rules

At all primaries and elections the polls shall be opened at 7 A.M., Eastern Standard Time, and shall remain open continuously until 8 P.M., Eastern Standard Time, at which time they shall be closed. 25 Pa Stat. Ann. § 3045.

While the polls are open, the only people able to enter the polling place are poll watchers, voters (a maximum of ten, waiting for their turn to vote), and peace officers “when necessary for the preservation of the peace.” 25 Pa. Stat. Ann. § 3060(a). Otherwise, individuals must “remain at least ten (10) feet distant from the polling place during the progress of voting.” 25 Pa. Stat. Ann. § 3060(d).¹ Police officers generally must remain at least one hundred feet away from the polling place, provided they are not themselves exercising their right to vote, “serving warrants,” or are called upon to “keep the peace,” as defined in Pennsylvania’s Election Code. 25 Pa. Stat. Ann. § 3047.

Multiple electors generally may not occupy the same voting compartment within the polling place. Once an elector leaves the enclosed space within the polling place where the voting compartment or booth is located, they generally cannot re-enter the enclosed space (provided that they are not “an election officer, clerk, machine inspector, or overseer”). 25 Pa. Stat. Ann. § 3060(a)-(b). “Any person who willfully disobeys any lawful instruction or order of any county board of elections . . . shall be guilty of a misdemeanor.” 25 Pa. Stat. Ann. § 3501.

Poll watchers

Certain individuals associated with particular candidates or political parties may serve as poll watchers under Pennsylvania’s Election Code. 25 Pa. Stat. Ann. § 2687(a).

- Each candidate “shall be entitled to appoint two watchers for each election district,” where they are competing. *Id.*
- Each political party “shall be entitled to appoint three watchers” for any election district where their candidates are competing. *Id.*²

Appointed poll watches must be “qualified registered elector[s]” for the counties that contain the election district where they’re serving as a watcher. 25 Pa. Stat. Ann. § 2687(b). They can serve either in the election district for which they’ve been appointed or in any other election district within that county. *Id.* That is, watchers do not need to be residents of the election district where they are appointed. *Id.*

Poll watchers’ rights

- Poll watchers have the right to be present in the polling place while voting is occurring provided that they remain outside the enclosed space. 25 Pa. Stat. Ann. § 2687 (b).

¹ This rule does not apply to “election officers, clerks, machine inspectors, overseers, watchers, persons in the course of voting, persons lawfully giving assistance to voters, and peace and police officers.” 25 Pa. Stat. Ann. § 3060(d).

² The same is true for “each political body which has nominated candidates” in accordance with Pennsylvania’s Election Code. 25 Pa. Stat. Ann. § 2687.

- “After the close of the polls and while the ballots are being counted or voting machine[s] canvassed, all the watchers shall be permitted to be in the polling place outside the enclosed space.” 25 Pa. Stat. Ann. § 2687 (b).
- They may “keep a list of voters” and “challenge any person making application [*sic*] to vote” and “require proof of [their] qualifications.” 25 Pa. Stat. Ann. § 2687
- When “voters are not present in the polling place” a poll watcher may further “inspect the voting check list and either of the two numbered lists of voters maintained by the county board” under the direct or indirect supervision of the judge of elections.”

Certain restrictions govern authorized poll watchers’ activities

- “[O]nly one watcher for each candidate . . . shall be present in the polling place at any one time” from when polls open until the completion of the vote count. 25 Pa. Stat. Ann. § 2687(b).
- All poll watchers must remain outside “the enclosed space.” *Id.*
- Watchers are furnished with “a certificate from the county board of elections, stating [their] name and the name of the candidate, party or political body [they] represent[.]” If asked, watchers must present these certificates. 25 Pa. Stat. Ann. § 2687.

2. Rules concerning exit polling or newsgathering at polling places

The act of exit polling constitutes protected expressive speech, under the First Amendment. See *PG Publ’g Co. v. Aichele*, 705 F.3d 91, 100 (3d Cir. 2013) (citing *Daily Herald Co. v. Munro*, 838 F.2d 380, 382 (9th Cir. 1988)). While the Election Code does not explicitly permit journalists to conduct exit polling outside the 10-foot perimeter, a Pennsylvania federal district court has indicated that exit-polling is protected speech. See *Pennsylvania Democratic Party v. Republican Party of Pennsylvania*, No. CV 16-5664, 2016 WL 6582659, 2016 U.S. Dist. LEXIS 153944, at *19 (E.D. Pa. Nov. 7, 2016) (noting in dicta that “the act of exit polling . . . constitute[s] protected expressive speech” and that “exit polling is permissible even if it is not ‘scientific’ and those conducting it are not professional pollsters.”) (citing *Daily Herald Co. v. Munro*, 838 F.2d 380, 384 (9th Cir. 1988)); *PG Publ. Co.*, 705 F.3d at 100.

Journalists, however, must conduct exit polling outside the 10 foot perimeter of the polling place – journalists cannot enter the polling place solely for newsgathering purposes and instead must remain at least ten feet away from the polling place while votes are being cast. 25 Pa. Stat. Ann. § 3060(a)-(d); see also *PG Publ’g Co.*, 705 F.3d at 99 (rejecting a challenge to the rule that persons remain at least 10 feet away from the polling place and “declin[ing] to hold . . . that the press is entitled to any greater protection under [the First Amendment right of access for newsgathering purposes] than is the general public.”).³

³ The Third Circuit’s analysis in *PG Publ’g Co.* may foreshadow how a court would assess future access-related challenges to the Pennsylvania Election Code. The court applied the *Richmond Newspapers* history and logic test to Pennsylvania’s ten-foot perimeter around polling places and found that the rule complied with both prongs of the test. First, the Third Circuit concluded that “[w]hile the act of voting—and the process by which voting was carried out—began its life as a public affair, our Nation’s history demonstrates a decided and long-standing trend away from openness, toward a closed electoral process.” 705 F.3d at 110. Second, the court expressed concern about the supposedly “boundless” nature of “the press,” arguing that “the confusion and chaos that would result from a potentially limitless number of reporters in a polling place would . . . potentially creat[e] confusion, frustration, and delay.” *Id.* at 112 & 112, n. 24. Third, the court contended there was “a very real possibility that the presence of reporters during the sign-in period, when individuals are

3. Rules concerning the taking of photographs and videos at or near polling places

As discussed above, journalists may not enter polling places unless they are casting their own ballots and must remain at least 10 feet away from the polling place if engaged in reporting. The Election Code, however, does not prohibit journalists from taking photographs and videos at or near the polling place. Further, nothing in § 3060(d) explicitly prohibits a photographer from taking pictures of polling activities while standing outside of the ten-foot buffer zone. *See PG Pub. Co.*, 902 F. Supp. 2d at 739-40.

Ballot “Selfies”

The prohibition against taking photographs within a polling place may not, however, extend to electors taking photos of themselves or their ballots – commonly referred to as “ballot selfies.” The Pennsylvania Election Code does prohibit a voter from allowing one’s ballot “to be seen by any person with the apparent intention of letting it be known how [he/she] is about to vote.” 25 Pa. Stat. Ann. § 3530. In 2018, however, the Pennsylvania Secretary of State stated on its website that ballot selfies were allowed under Pennsylvania law. The Secretary cautioned however that specific counties may have prohibitions against bringing cell phones into the polling place, and recommended that, even if permissible, voters wait until leaving the polling place to post a ballot selfie on social media. The Secretary further cautioned that individuals posting images of their ballots must always refrain from disclosing information regarding other voters.

Pennsylvania courts have not addressed the issue of “ballot selfies.” During the last presidential election cycle, however, the First Circuit Court of Appeals ruled that an analogous New Hampshire Law, when applied against individuals posting “ballot selfies,” violated the First Amendment. *See Rideout v. Gardner*, 838 F.3d 65, 68 (1st Cir. 2016); *see also Ind. Civil Liberties Union Found. Inc. v. Ind. Sec’y of State*, 229 F. Supp. 3d 817, 828 (S.D. Ind. 2017). Other courts, however, have rejected the First Circuit’s analysis and held that regulations prohibiting “ballot selfies” do not violate the First or Fourteenth Amendments. *Silberberg v. Bd. of Elections of N.Y.*, 272 F. Supp. 3d 454, 471 (S.D.N.Y. 2017).

In any event, even if permissible, Pennsylvania voters intending to take photos of their ballots may face time constraints: the Code prohibits voters from remaining in the voting compartment or voting machine booth “an unreasonable length of time [and] in no event for more than three minutes,” if other electors are waiting to vote. *See* 25 Pa. Stat. Ann. § 3057.

4. Rules concerning privacy/ identification of voters and voting officials at polling places

The Election Code does not expressly prohibit journalists from identifying voters and voting officials at polling places or, more generally, implicating voters’ privacy.

5. Content restrictions on speech at or near polling places

necessarily exchanging personal information in preparation for casting a private vote, could concern, intimidate or even turn away potential voters.” *Id.* at 112.

No electioneering or vote solicitation efforts may occur within the polling place. 25 Pa. Stat. Ann. § 3060(c). Further, a candidate is not permitted to be present in a polling place during the time the polls are open, except for the purpose of casting his or her own individual ballot. *Finnegan Appeal*, 366 Pa. 6, 7, 75 A.2d 812, 813 (1950).

Additionally, police may not “directly or indirectly attempt to influence the election or electors while within one hundred (100) feet of a polling place.” 25 Pa. Stat. Ann. § 3047.

6. Who controls physical access to a polling place?

Each election district has a “judge of election,” an elected official who serves on the district election board. *See* 25 Pa. Stat. Ann. § 2671 (describing the different district election board positions and how officers are elected). This official is responsible for enforcing polling place regulations, “keep[ing] order in the voting room,” and ensuring that “no more persons are admitted within the enclosed space than are permitted . . .” 25 Pa. Stat. Ann. § 3060(f). In exercising this duty, they may “call upon any constable, deputy constable, police officer or other peace officer” to do so on their behalf. 25 Pa. Stat. Ann. § 3060(f).

7. What state official is responsible for correcting improper denials of access or applications of laws at polling places?

At the district level, the judge of the election is responsible for ensuring that laws at polling places are applied correctly and for keeping order at the polling place. *See* 25 Pa. Stat. Ann. § 2671, *et seq.* The county board of elections is responsible for “instruct[ing] election officers in their duties,” as well as investigating violations of the Election Code and “report[ing] all suspicious circumstances to the district attorney.” 25 Pa. Stat. Ann. § 2642.

On the days of primaries and elections, the court of common pleas for each county of the Commonwealth shall be in continuous session from 7 AM until 10 PM. During such period that court shall act as a committing magistrate for any violation of the election laws; shall settle summarily controversies that may arise with respect to the conduct of the election; shall issue process, if necessary, to enforce and secure compliance with the election laws; and shall decide such other matters pertaining to the election as may be necessary to carry out the intent of this act. 25 Pa. Stat. Ann. § 3046.

COVID-19

Given the ongoing Covid-19 pandemic, the Pennsylvania Department of State has provided certain virus-related guidance for county election officials. Election Operations During COVID-19, version 1.2, dated October 14, 2020 (*available at* https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Election%20Operations%20During%20COVID_General.pdf.) Among other things, this guidance recommends work areas within polling places be set up with 6-foot social distancing, that poll workers and electors wear masks, and that electors minimize the time spent in the polling place.

ACCESS TO VOTE COUNT AND TABULATION PROCESS

1. Rules concerning access/transparency at locations where votes are counted or vote counts aggregated

Ballots are not public records under Pennsylvania’s Right to Know Law. *See* 25 Pa. Stat. Ann. § 2648. Further, Pennsylvania has not recognized a general public right of access to the initial vote count or recount process. *See* Reporters Committee for Freedom of the Press, Election Legal Guide. No code provisions exist authorizing the press or the public to view the initial ballot count or any recount. However, candidates, their attorneys or representatives may be present to observe a recount. 25 Pa. Stat. Ann. § 2650.

The county board shall give at least one week’s notice by newspaper publication of the time and place when and where the board will commence and hold its sessions for the computation and canvassing of the returns, and keep copies of such advertisement posted in its office during said period. 25 Pa. Stat. Ann. § 3153.

No earlier than 7am on Election Day, county boards of elections may meet for a “pre-canvass meeting” to begin opening absentee and mail-in ballot envelopes and tallying the votes shown on the ballots. During this “pre-canvass,” “[o]ne authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room.” 25 Pa. Stat. Ann. § 3146.8. Persons “observing, attending, or participating in a pre-canvass meeting” may not “disclose the results of any portion of the pre-canvass meeting prior to the close of the polls.” *Id.*

After polls close, additional “canvass” meetings may occur to tally up absentee ballots and mail-in ballots not counted during the pre-canvass meeting. At these meetings, “[o]ne authorized representative of each candidate . . . and one representative from each political party shall be permitted to remain in the room . . .” 25 Pa. Stat. Ann. § 3146.8.

When the county board of elections tests the “central automated tabulating equipment” and conducts the actual counting of “ballot or district totals cards,” “[e]ach political party or political body represented on the ballot may have one technically qualified person, authorized by the county chairman and deputized by the county board of elections, present . . .” 25 Pa. Stat. Ann. § 3031.14(b)(2). Such persons may “make independent tests of the equipment prior to, during, and following the vote count . . .” *Id.*

Parties and political bodies represented on the ballot may “have observers at the central tabulation center, in a number, as determined by the county board of elections, sufficient to permit accurate observation of the receipt, handling, duplication, and processing of all ballots and district totals cards.” *Id.* Candidates, their attorneys, and poll watchers have limited access rights during vote counts, recounts and recanvasses of voting machines. *See* 25 Pa. Stat. Ann. § 2650. These individuals may examine ballots and voting machines and “raise any objections about them,” which the county board of elections will then review. *Id.* The Election Code explicitly notes that they may “keep or check their own computation of the votes cast” as election districts’ returns are read. 25 Pa. Stat. Ann. § 3153. The county boards may limit each political party to a maximum of three poll watchers. 25 Pa. Stat. Ann. § 2650. By law, it must ensure “adequate accommodations” for watchers and attorneys present at the county board’s computation of returns. 25 Pa. Stat. Ann. § 3153.

Pennsylvania law requires that “[t]he general returns from the various districts” be “returned unsealed” and “open to public inspection at the office of the country board as soon as they are received from the judges of the election.” 25 Pa. Stat. Ann. § 3152(a). Returns cannot be “opened by any person, except by the order of the return board, or the court of common pleas.” *Id.*; *see also* 25 Pa. Stat. Ann. § 3154 (discussing how the county board shall “publicly commence the computation” and make certain public announcements about relevant statistics).

2. Rules concerning observation of the vote count for news reporting purposes

The Pennsylvania Election Code does not explicitly discuss whether journalists may attend the vote count; the Code only specifies that candidates, their attorneys, and poll watchers may do so (as discussed above). It is unclear whether journalists may attend the vote count by serving as poll watchers.⁴

3. Rules concerning the taking of photographs and videos of the vote counting process

No code provisions discuss the taking of photographs or videos of the vote counting process.

4. Rules concerning access to ballots during or after the vote count

The contents of ballot boxes and voting machines are not open to public inspection. 25 Pa. Stat. Ann. § 2648.

⁴ Even though the Election Code’s text seems to indicate clearly that media would not fall within the authorized “poll watchers” category, the Pennsylvania Newsmedia Association has said that media representatives may be able to serve as watchers. *See* Pennsylvania Newsmedia Association, “Legal Hotline: Press Access to Polling Places,” <https://panewsmedia.org/legal-hotline-press-access-to-polling-places/> (“Some media representatives in Pennsylvania have acted as ‘watchers,’ which enables access to polling places in accordance with the statute. Others are granted access by election officials for the purpose of gathering news . . . [I]his is not intended to be, nor should it be construed as, legal advice.”). *But see* Akela Lacy, “Philadelphia Bungled Its Vote Count and Republicans Took Note,” *The Intercept*, June 16, 2020 (discussing how Philadelphia’s June 2020 primary vote count process was “open to one official observer from each campaign”).

ELECTION TRANSPARENCY INFORMATION

1. Voting day basics

When do the polls open, when do they close?

Polls open at 7am EST and close at 8pm EST, and must remain continuously open during that time. 25 Pa. Stat. Ann. § 3045.

Must voters on line when polls close be allowed to vote?

Yes. 25 Pa. Stat. Ann. § 3060(e).

Who do you call when something goes wrong at a polling location?

1. Contact the local elections office.
2. Reach out to the Pennsylvania Department of State - Elections Phone Number: (717) 787-5280

What kind of voting machines are being used?

Pennsylvania's Votes PA government website provides a portal to access country-specific information about voting systems.

What documents and training/procedure manuals will poll workers have access to?

Pennsylvania's Votes PA website provides limited training materials for poll workers. (As of October 2020, many of its training sections stated “[c]heck back in September for updates.”) County boards of election may have their own guides for poll workers. *See, e.g.* Election Day Guide (Lancaster County), September 2020, <https://www.co.lancaster.pa.us/DocumentCenter/View/10782/Poll-Worker-Manual?bidId=>.

What happens with challenged ballots?

Challenged ballot envelopes are “marked ‘challenged’ together with the reason for the challenge,” and “set aside pending final determination of the challenge . . .” 25 Pa. Stat. Ann. § 3050. They are placed “in a secure, safe and sealed container in the custody of the county board of elections” prior to formal hearing challenges. *Id.*

2. Vote counting rules and procedures

What are the rules and procedures for the vote count? Where are they located?

County boards of elections are responsible for receiving election returns from district election officers, canvassing the returns, and computing the final vote count. 25 Pa. Stat. Ann. § 2642(k).

County boards of elections may begin processing absentee and mail-in ballots at 7am EST on Election Day, but they cannot “record or publish any votes reflected on the ballots prior to the close

of the polls.” 25 Pa. Stat. Ann. § 3146.8.

The county board of elections must remain open during primaries and elections until “all the ballot boxes and returns have been received.” 25 Pa. Stat. Ann. § 3151(a).

Who controls the vote count process?

The county board of elections controls the vote count. *See* 25 Pa. Stat. Ann. § 2642(k).

3. Vote counting timing

What rules govern when information about the vote count can and should be made public?

“During the course of central tabulation of ballots or district totals cards, the county board of elections may unofficially report the progress of the count for each candidate and on any question.” 25 Pa. Stat. Ann. § 3031.14(e).

According to the Reporters’ Committee for Freedom of the Press, “[t]results of elections in federal and state elections in Pennsylvania are available on the Department of State website starting on election night.” *See* Reporters Committee for Freedom of the Press, *2020 Election Legal Guide* (citing *Election Results*, Pennsylvania Department of State).

What deadlines exist for the vote count?

District judges of election must transmit returns to county boards of elections by 2am on the day after election day. *See* Pennsylvania Department of State, 2020 Election Calendar, at 26 (*available at* https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Documents/58680_2020%20Election%20Calendar_for%20web_FINAL.pdf)

On November 10, “[n]o later than 5:00 P.M. . . , the county boards of elections must submit to the Secretary of the Commonwealth unofficial returns for all Statewide offices and ballot questions that appeared on the ballot in every election district throughout the Commonwealth.” *Id.* at 27.

By statute, county boards of elections must complete the vote count and certify the results “no later than the third Monday following [the election].” 25 Pa. Stat. Ann. § 2642(k).

According to the 2020 Election Calendar, December 3 is the deadline “for each county board of elections to submit to the Bureau of Elections and Notaries a report stating the total number of votes cast in each voting district for each candidate for any Statewide Office, United States Representative, State Senator and State Representative.” 2020 Election Calendar at 30.

4. Mail-in ballots and absentee ballots

How are mail-in ballots cast?

The county board of elections is responsible for delivering or mailing mail-in ballots to qualified electors. *See* 25 Pa. Stat. Ann. § 3150.15. Mail-in ballots must be prepared and sealed, and then

either sent or delivered in person to the county board of election by 8pm on the day of the primary or the election. *Id.* § 3150.16.

On October 19, 2020, the U.S. Supreme Court let stand a Pennsylvania Supreme Court ruling allowing election officials to count ballots received up to three days after Election Day. *See* Order in Pending Case, *Republican Party of PA v. Boockvar*, No. 20A54, 592 U.S. ___, (October 19, 2020).

Where are mail-in and absentee ballots stored?

County boards of election must keep absentee and mail-in ballots “in sealed or locked containers until they are to be canvassed by the county board of elections.” 25 Pa. Stat. Ann. § 3146.8(a).

When are they counted?

Beginning on Election Day (see above discussion about pre-canvass and canvass meetings). *See also* 25 Pa. Stat. Ann. § 3146.8.

Where are they counted?

At the office of the county board of elections or otherwise “some other convenient public place at the county seat with adequate accommodations for the watchers and attorneys authorized by this act to be present.” 25 Pa. Stat. Ann. § 3153. The county board of elections must provide public notice via newspaper about the time and location of the board’s vote counting session. *Id.*

Who releases mail-in results?

The county board of elections publicly announces the results of the election. 25 Pa. Stat. Ann. § 2642.

When are the mail-in results released?

After the polls close, the county board of elections “shall record and publish the results reflected on the [absentee and mail-in] ballots.” 25 Pa. Stat. Ann. § 3146.8.

Who confirms the authenticity of the mail-in ballots and how?

To confirm the authenticity of the ballots, the county board will “examine the declaration on the envelope” and “shall compare the information thereon with that contained in the ‘Registered Absentee and Mail-in Voters File,’ the absentee voters’ list and/or the ‘Military Veterans and Emergency Civilians Absentee Voters File,’ whichever is applicable.” 25 Pa. Stat. Ann. § 3146.8.

For declarations deemed to be “sufficient,” “the county board shall provide a list of the names of electors whose absentee ballots or mail-in ballots are to be pre-canvassed or canvassed.”

What data is generated on mail-in ballots and by whom?

During the vote count, there shall be public announcements of “all extra official ballots printed” and “the number of unused and spoiled and cancelled ballots returned.” 25 Pa. Stat. Ann. § 3154.

“All official absentee ballots, files, applications for such ballots and envelopes on which the executed declarations appear, and all information and lists are . . . public records and shall be safely kept for a period of two years.” 25 Pa. Stat. Ann. § 3146.9. However, “no proof of identification shall be made public.” *Id.*

Records kept concerning mail-in ballot applications must include electors’ names and voter registration addresses, as well as the dates when the applications were received, when they were approved or rejected by the county board, when the elector’s mail-in ballot was mailed or delivered to the elector, and when the elector’s mail-in ballot was received by the county board. *Id.* § 3150.17(b)

PUBLIC ACCESS TO INFORMATION

1. How can reporters access information about who voted?

Official voter registration applications are open to public inspection. 25 Pa. Stat. Ann. § 1207.

“Records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody” are “open to public inspection.” 25 Pa. Stat. Ann. § 2648.

“Any qualified elector of the county” may “inspect[] and cop[y] the records “during ordinary business hours, at any time when they are not necessarily being used by the board, or its employees having duties to perform thereto.” *Id.*

The county boards of elections must hold onto “all documents, papers, and records” for a minimum of eleven months. 25 Pa. Stat. Ann. § 2649. Additionally, they must retain official ballots and the contents of ballot boxes for at least four months. *Id.*

Records of the Secretary of the Commonwealth generally must be preserved for two years. 25 Pa. Stat. Ann. § 2623. The public has the right to inspect “records of the Secretary of the Commonwealth and all returns, nomination petitions, certificates and papers, other petitions, accounts, contracts, reports and other documents and records in his custody” 25 Pa. Stat. Ann. § 2622

2. Are individual ballots accessible through FOIA or court order?

No, they are not public records. See 25 Pa. Stat. Ann. § 2648.

ACTIVE/RECENT LITIGATION

Pa. Democratic Party v. Boockvar, No. 133 MM 2020, 2020 Pa. LEXIS 4872 (Pa. Sep. 17, 2020)

The Pennsylvania Supreme Court issued an opinion and declaratory judgment addressing certain components of the Act 77 of 2019 (the “Act”) which, among other things, provides Pennsylvania Voters the ability to vote by mail, without demonstrating absence from the voting district on Election Day. The court held that: (1) the Act “permits county boards of election to collect hand-delivered mail-in ballots at locations other than their office addresses, including drop-boxes”; (2) “otherwise valid” mailed ballots “postmarked by 8:00 p.m. on Election Day” must be counted if received by 5:00 p.m. on November 6, and ballots with missing or illegible postmarks shall be treated as having been timely mailed if received by November 6, “unless a preponderance of the evidence demonstrates that [they were] mailed after Election Day”; (3) the “poll watcher residency requirement” is constitutional; (4) denying the request to establish a notice and cure process for mail ballot defects; and (5) ruling that mail ballots lacking an inner secrecy envelope are invalid under the state election code.

The Republican Party of Pennsylvania filed an emergency petition with the United States Supreme Court on September 28, 2020, requesting that this decision be stayed pending disposition of a writ of certiorari. *See* Emergency Petition for Stay Pending Disposition of Petition for a Writ of Certiorari, *Pennsylvania Democratic Party v. Boockvar, et al.*, No. 20A54 (September 28, 2020). On October 19, 2020, the United Supreme Court denied the emergency application for a stay in a 4-4 decision, thereby letting the Pennsylvania Supreme Court decision stand. (Five votes are required to grant a stay.)

Donald J. Trump for President, Inc. v. Boockvar, No. 2:20-cv-966, 2020 U.S. Dist. LEXIS 188390 (W.D. Pa. Oct. 10, 2020)

The Trump campaign here challenged Pennsylvania’s “vote-by-mail” system and specifically demanded that drop boxes for returning ballots be guarded, and that signature experts be retained to compare mail in ballots with voter rolls. The court issued an opinion on October 10, 2020, granting summary judgment in favor of the government on all of the Trump campaign’s challenges to the vote-by-mail system. The court held that the Trump campaign lacked Article III standing, in that they failed to identify a concrete injury. Further, the court held that the claims failed on the merits, in that the district court did not have the power to, in essence, second guess the Pennsylvania legislature.

Crossey v. Boockvar, No. 108MM 2020, 2020 Pa. LEXIS 4868, at *4 (Sep. 17, 2020)

The court dismissed as moot a challenge to a requirement that voters provide their own postage on mail-in votes following the announcement by Pennsylvania Secretary of State that the Commonwealth would reimburse county election boards for pre-paid postage.

Drenth v. Boockvar, No. 1:20-CV-00829, 2020 U.S. Dist. LEXIS 148436 (M.D. Pa. Aug. 18, 2020)

This case was brought under the Americans with Disabilities Act. The plaintiffs alleged that the Commonwealth’s mail-in-voting process violates the rights of the blind by not providing adequate

ballots which allow blind individuals to vote independently in their homes. The court granted summary judgment in favor of defendants, holding that the plaintiffs' claims were mooted when the government finalized a process for a remote ballot marking system, which will be in place for the November 2020 general election.

National Election Defense Coalition v. Boockvar, No. 674 MD 2019 (Commonwealth Ct. Pa.)

This lawsuit challenged the certification of a new "ExpressVote XL" machine in light of concerns about its security, reliability, and accessibility for persons with disabilities. Oral argument on the Secretary's preliminary objections was conducted on October 15, 2020. Currently awaiting the court's decision.

ADDITIONAL RESOURCES

- A poll worker guide produced by the Brennan Center, the Lawyers' Committee for Civil Rights Under Law, and the Association of Pro Bono Counsel:
<https://www.brennancenter.org/sites/default/files/2020-08/pennsylvania-poll-worker-guide-2020.06.16.pdf>
- Pennsylvania Department of State, *Guidance on Rules in Effect At The Polling Place on Election Day*, October 2016,
<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20GUIDANCE%20ON%20RULES%20IN%20EFFECT%20AT%20THE%20POLLING%20PLACE%20ON%20ELECTION%20DAY%2010-16.pdf>
- Reporters' Committee 2020 Election Guide: <https://www.rcfp.org/resources/election-legal-guide/#pennsylvania>
- Pennsylvania Department of State, 2020 Election Calendar:
https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Documents/58680_2020%20Election%20Calendar_for%20web_FINAL.pdf.

COVID-19 RELATED INFORMATION

- Pennsylvania Department of State, "Election Operations During COVID-19," October 14, 2020:
https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Election%20Operations%20During%20COVID_General.pdf.
- The Brennan Center, "Protecting Election 2020 from Covid-19: A Toolkit for Pennsylvania Activists," last updated September 17, 2020 <https://www.brennancenter.org/our-work/research-reports/protecting-election-2020-covid-19-toolkit-pennsylvania-activists> .