Report on Urgent Election Administration Reforms
Ahead of the 2024 Presidential Elections

Election administration in Pennsylvania has transformed dramatically in recent years. Act 77 of 2019 was a historic and bipartisan reform package achieving the greatest set of changes to the state Election Code since 1937. But as this deal was negotiated, no one could have foreseen how a global pandemic would exponentially increase the impact of the new law and the use of a mail-in ballot available to any registered voter.

The consequences of Act 77 are well documented, with numerous reports, studies and calls for reform issued by lawmakers, local and state officials, and advocacy groups. With another presidential election bearing down on the Commonwealth, this is one more urgent call to address unfinished business from that law and to fix outstanding liabilities to our elections.

Given the antiquity of Pennsylvania's election law, there are countless provisions that warrant revision; indeed, state election law runs hundreds of pages, most of which is in need of a modernization overhaul. There has been a multitude of worthy proposals offered by lawmakers from both sides of the aisle, but the scope of reform that can be reasonably passed into law ahead of the 2024 elections is now limited.

The following report highlights five reform areas the Committee of Seventy believes are most urgent and that can be implemented without applying additional burdens on county governments or requiring substantial new investments. As a strictly nonpartisan advocate for better government for nearly 120 years, we also highlight these specific reforms because they meet these three critical priorities:

- **Efficiency in County Operations:** Pennsylvania's 67 counties are responsible for running elections that vary greatly in size. The largest counties employ scores of personnel with multi-million dollar budgets while the smallest execute their elections with a handful of dedicated staff. However, every county has been subject to tremendous stress, most of which stems from restrictions and ambiguities in state law. Reform that leads to increased efficiency and lower strain on county election offices and workers is essential.

- **Safeguarding Election Integrity:** The single greatest defense against systemic threats to America's election integrity is the country's system of local administration in 50 states, each with its own voter registration database, and across nearly 10,000 jurisdictions which utilize a variety of certified voting systems. Despite intense partisanship, widespread mis- and disinformation, attempts at foreign interference, and a torrent of

litigation in recent years, our elections are still secure and results should be trusted. But liabilities do exist due to poorly written laws, and these should be resolved.

- **Mitigating Disenfranchisement:** Thousands of registered Pennsylvania voters continue to be disenfranchised every election, in large part due to problematic provisions of the Election Code. Some of these predate Act 77 of 2019, but the expansion of mail-in voting without appropriate Election Code adjustments has exacerbated risks to some voters' successfully casting a ballot. In some cases, the revision of current law with just a few words will prevent large numbers of registered voters from having legitimate ballots rejected.

We tread no new ground here. County and state election officials have repeatedly communicated the various challenges they've contended with since 2020. Some point to the fact that Pennsylvania has continued to successfully execute elections including both a presidential and midterm cycle, the former amidst a global pandemic. But the massive turnover in county election offices speaks volumes about conditions on the ground. Large and small counties alike have suffered a loss of experience and institutional knowledge that will take many years to replace. Especially when the problems are known and solutions are clear, this situation is untenable.

There still is time for reform ahead of the next presidential election. The Committee of Seventy calls on the Pennsylvania General Assembly and the Shapiro administration to consider the following commonsense changes to state election law.

MAIL-IN BALLOT PRE-PROCESSING

PROBLEM: Pre-canvassing, commonly referred to as ballot pre-processing in other states, consists of: 1) examining envelopes containing returned ballots to determine whether they can be processed; 2) removing and flattening the ballots; and 3) scanning the ballots to record votes. Critically, this process should not include counting or tabulating the votes, a step that can be taken after polls close and when unofficial results are released to the public.

Prior to 2020, absentee ballots were only available to registered voters who were unable to visit their polling place for specific reasons, and consequently, a small percentage of the overall ballots were cast by mail. Pre-processing any of these ballots was not an acute need. This changed with Act 77 of 2019 and the widespread use of mail-in voting.

In the 2016 November Election, approximately 260,000 absentee ballots were cast statewide out of a total 6.1 million ballots. With the introduction of a mail-in ballot available to any registered voter upon application, the overall number of absentee and mail-in ballots exploded

to 2.7 million in the November 2020 Election, driven in part by voters' concerns about COVID-19. The 2022 midterms saw 1.2 million mail-in ballots cast, assuring that even post-pandemic a sizable portion of the Pennsylvania electorate will continue to vote by mail. Many counties have procured specialized equipment to process this volume of ballots, but even with this investment, preventing local officials from beginning any of the time- and labor-intensive processing work before Election Day creates unnecessary costs and strain.[1]

SOLUTION: Local officials have been clear about the value in providing additional time *before* Election Day to begin the work of inspecting ballot-return envelopes, extracting the ballots within and scanning those ballots to record the votes. **Counties should be allowed to begin the processing of absentee and mail-in ballots up to 7 days before Election Day.[2]** This processing can reasonably include the inspection and opening of return envelopes, and the extraction and scanning ballots. A prohibition should stay in place on the tabulation and release of any election results until 8 p.m. on Election Day.

Bipartisan observation of the process is important to maintain trust and ensure compliance with the law. As is currently allowed, one authorized representative of each candidate and political party should be present when ballots are being processed, with attorneys authorized by campaigns allowed to observe ballot processing in any county. Training of these observers by local and/or state officials could potentially be provided to aid them in their roles. County Boards of Elections should also be authorized to expel such representatives and watchers who are disruptive or who are interfering with the administration of the election.

The County Commissioners Association of Pennsylvania[3], Election Law Advisory Board[4] and the Senate's Special Committee on Election Integrity and Reform[5] have each called for counties to be provided more time to pre-process ballots ahead of Election Day. The Bipartisan Policy

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[1] For the November 2020 Presidential Election, Philadelphia ran consecutive 8-hour shifts of ~150 temporary workers each starting at 7 a.m. on Election Day (Nov. 3) to process more than 340,000 ballots by Friday (Nov. 7). Even for the 2022 midterms, processing most of the nearly 130,000 ballots cast required 300 part-time staff who worked a combined 8,600 hours. Allegheny County processed almost 160,000 ballots on Election Day in the midterms, but this required the deployment of 165 workers. Counties of all sizes have had to make similar, costly investments in full- and part-time personnel, sometimes detailing employees from other departments, to work around the clock on ballot processing.

[2] The requirement in Act 88 of 2022 that counties receiving Election Integrity Grants grants from the Department of Community and Economic Development process ballots *continuously* creates an unnecessary burden and should be repealed.

[3] County Commissioners Association of Pennsylvania. 2023-24 Official Policy Statement. August 2023.

[4] Joint State Government Commission. Report of the Election Law Advisory Board for FY 2020-21. June 2021.

[5] Senate Special Committee on Election Integrity and Reform. June 2021.

Center[6] also recommends that local election officials be allowed at least seven days to pre-process mail-in ballots.

MITIGATE MAIL-IN BALLOT REJECTION

PROBLEM: In creating the mail-in ballot, Act 77 of 2019 copied much of the pre-existing law for absentee ballots including language regarding the use of privacy envelopes and a requirement that voters handwrite a date on the ballot-return envelope. This language previously created no significant problems given the limited use of absentee ballots and the common practice in many counties to process ballots regardless of a handwritten date because of its inconsequence to ballot integrity. Privacy envelopes were, in fact, an important security feature in prior years when absentee ballots were opened and counted at precincts. In a polling place where only several voters cast such a ballot and neighbors were processing them by hand, the privacy envelope was needed to create a firewall between the outer-return envelope with identifiable information and a voter's ballot within.

Today, however, absentee and mail-in ballots in every county are canvassed in a centralized office. In larger counties, the privacy of a voter's ballot selections is guaranteed by the large volume of ballots being processed, typically with machines that are separating thousands of ballots from envelopes. But even in the smallest counties, basic protocols can ensure the protection of a voter's ballot selections even when processing is conducted by hand.

With regard to handwritten dates on ballot-return envelopes, this was never a critical requirement for ballot integrity or election administration. Every such envelope has the voter's information and a unique barcode, ensuring that election officials know when a ballot was sent out and when it was received. These dates are recorded in the statewide voter registration system, creating an auditable trail. The date a voter completes their ballot provides no further information necessary for determining the ballot's validity. Current law only allows ballots received by 8 p.m. on Election Day to be counted. There continues to be no reason for ballots to be rejected because the voter did not write the date — or any particular date — on the return envelope.

The harm to voters is significant. The Department of State reported that in the 2022 General Election, approximately 8,250 ballots were rejected due to a missing privacy envelope. Nearly 8,000 more were rejected due to a missing signature, a missing date or a "wrong" date.[7]

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[6] Bipartisan Policy Center. Ballot pre-processing policies explained. August 2022.
[7] A total 17,094 mail ballots were listed as canceled in the SURE system for the 2023 Primary Election: 3,477 for lack of a date (20.3% of rejections); 2,544 for lack of a privacy envelope (14.9% of rejections); 1,442 ballots for having a

SOLUTIONS: Eliminate the use of a privacy envelope as a requirement for a ballot to be counted. These envelopes create additional materials cost and extend the time and effort needed to extract ballots. Counties can have the option to use privacy envelopes or sleeves. Or, conversely, privacy envelopes can still be sent with ballot materials but a ballot returned without the inner privacy envelope should still be counted.

Eliminate the listing of a handwritten date with the affidavit on the ballot-return envelope as a requirement for a ballot to be counted. Only a voter's signature is necessary for the legal purposes of the affidavit on the return envelope.

The Election Law Advisory Board's January 2023 report on mail-in ballots clarified that a voter should still be required to use a privacy envelope and to hand write the date of their signature on the return envelope, but that failure to perform either of these acts would not result in a ballot being uncounted.[8]

PROBLEM: If undated (and "wrongly" dated) ballots and mail-in ballots returned without privacy envelopes become countable under state law, the other significant category of mail-in ballot at risk of rejection are those returned without a signature. But unlike handwritten dates or use of a privacy envelope, a missing signature to the voter's affidavit on the ballot-return envelope *is a material* issue — such a ballot cannot be counted.

At present, if a voter has neglected to sign the ballot-return envelope, their only certain recourse is to request a replacement ballot from their County Board of Elections.[9] Upon requesting a replacement, the original ballot and return envelope (with the voter's information and a unique barcode) is canceled and a new ballot and return envelope can be used by the voter. This process, however, is unnecessarily cumbersome and may not be easily followed, especially in the final 48-72 hours before all ballots are due at 8 p.m. on Election Day.

SOLUTION: The institution of a simple 'notice and cure' process would streamline the steps for a voter to remedy the omission of their signature on the ballot-return envelope. Such a process could include the following steps:

"wrong" date (8.4% of rejections); and 797 ballots for lack of a signature (4.7% of rejections). Another 7,996 ballots were canceled because they were received too late, accounting for 46.8% of all mail ballot rejections.

[8] Joint State Government Commission. An Interim Report of the Election Law Advisory Board on Mail-in Ballots. June 2021.

[9] Whether or not a voter whose mail-in ballot has been rejected can cast a provisional ballot at their polling place is currently being litigated. Conflicting case law has led to some counties allowing for provisional ballots in these circumstances; others do not.

1) **Notification** communicated to a voter of a potentially fatal issue with their returned ballot.[10] Upon receiving such a ballot, county officials would send a written notice to the voter's registered address explaining the issue and a cure affidavit for the voter to complete and return. The Department of State should also be authorized to notify voters via email or text message if the voter's contact information is on file.

2) **Affidavit curing:** A voter should have the option to cure the issue (i.e., the missing signature) by completing and returning a hardcopy affidavit to their county election office. The PA Department of State also should be authorized to create an electronic means of completing a cure affidavit. A voter failing to return the hardcopy or electronic cure affidavit by the post-election deadline would cause the ballot to be rejected. In signing and returning such an affidavit, a voter would attest that the returned ballot is, in fact, theirs and that they understand they are ineligible to use the voting system at their polling place on Election Day. A reasonable **deadline for curing** a missing signature would be **six (6) days after Election Day** (the current deadline for absentee and mail-in voters to provide identification if they have no social security or driver's license number).[11]

SHIFT THE MAIL-IN BALLOT APPLICATION DEADLINE

PROBLEM: The seven-day window between the deadline to apply for an absentee or mail-in ballot and the deadline to return that ballot increases the risk of disenfranchisement. Prior to Act 77 of 2019 and widespread use of mail-in voting, this risk was substantially reduced when county election offices had only a relatively small number of absentee ballot applications to process and ballots to send out to voters. But even then, a voter who requested a ballot at or close to the deadline may not have sufficient time to receive that ballot and return it to the county by Election Day at 8 p.m. This risk has grown with slower, and sometimes unpredictable, US Postal Service delivery times.

A Philadelphia Inquirer analysis of the June 2020 primary was one of the first to highlight the scope of the problem, finding a sharp decline in the likelihood that a voter who requests a mail-in ballot within three weeks of the election will ultimately vote, whether by mail or in-person.[12] Academic research has corroborated this pattern, finding that the risk to voters who

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[10] Returned absentee and mail-in envelopes should be inspected for the presence of a signature on a rolling basis as received during ballot pre-processing. If a ballot return envelope is missing a signature on the voter's affidavit, the voter's record in SURE should be updated with the appropriate code. But inspection need not be immediately followed by ballot extraction, flattening and scanning; these steps can be undertaken on a schedule at the discretion of the county.

[11] An affirmation form should include similar identification requirements to the initial absentee or mail-in ballot application: last 4 digits of SSN, DL# or a copy of an approved photo ID.

[12] Jonathan Lai, "Pennsylvania's Mail Ballot Problems Kept Tens of Thousands from Voting in a Pandemic Primary," *The Philadelphia Inquirer*, July 30, 2020.

request mail-in ballots in the final several days before the current deadline also increases significantly when the ballot materials must travel across county and state lines.

A registered voter who meets the mail-in application deadline should not be put at substantial risk of having their ballot rejected because there is not sufficient time for them to receive their ballot materials from the county election office and return that ballot to the county by Election Day at 8 p.m. Given the volume of mail-in ballot materials that counties now manage, local officials would also benefit from an earlier request deadline to better contend with the surge of applications that will always arrive just before the deadline.

SOLUTION: The deadline to request an absentee or mail-in ballot should move to 11 days before Election Day (second Friday before Election Day). This would allow more time for counties to process applications and send out requested ballots and for voters to return them by the deadline on Election Day at 8 PM.

Such a change would shift Pennsylvania towards the middle of states with ballot request deadlines. According to the National Conference of State Legislatures, 15 states have deadlines 10 days or later before Election Day with another six outlier states with ballot application deadlines that are 15 or more days before Election Day: RI (21), OK (22), NY (15), MO (13), KY (14), IA (15).[13] Twenty-four states have a deadline of seven days or less before Election Day, which would be preferable if Pennsylvania were to also institute a postmark deadline on Election Day with ballots accepted for a multi-day window after polls close.

Nine states also have different deadlines for requesting mail-in ballots in-person or remotely. If Pennsylvania's deadline to request a mail-in ballot were moved farther away from Election Day, a reasonable compromise would be to shift forward the deadline to request a mail-in ballot in-person or "over the counter" to the Friday at 5 p.m before the election. Voters would continue to have up to 15 days before the election to register to vote and for those registrations to be processed so voters can apply to vote by mail if they choose.

The County Commissioners Association of Pennsylvania[14] and the Election Law Advisory Board[15] both support moving the mail-in application deadline, the former recommending 14-15 days, the latter recommending 12 days. The Advisory Board also suggests allowing in-person applications at an elections office to be accepted until 7 days before the election.

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[13] National Conference of State Legislatures. "Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options."

[14] County Commissioners Association of Pennsylvania. 2023-24 Official Policy Statement. August 2023.

[15] Joint State Government Commission. An Interim Report of the Election Law Advisory Board on Mail-in Ballots. June 2021.

MODERNIZE ENHANCED POST-ELECTION AUDITS

PROBLEM: State law currently requires that County Boards of Election conduct "a statistical recount of a random sample of ballots" after each election, which consists of auditing 2% of the votes cast, or 2,000 votes, whichever is less. But the audit sample is the same size regardless of whether a race is decided by one vote or 1,000 votes, meaning that the statistical power of the tool to confirm election results is limited when a race is close. As a rule, the tighter the margin, the larger a recount sample must be in order to corroborate results and confirm the winner. A statewide race determined by a handful of votes, for example, would necessitate a full recount of every cast ballot.

Risk-limiting audits (RLAs) have proven the gold-standard statistical tool in other states to verify that ballots have been properly tabulated, providing election officials the flexibility to audit a varying number of ballots depending on how close election results are. The Pennsylvania Department of State has been working with County Boards of Elections since 2019 to pilot RLAs in select races,[16] but the law still requires 2% sampling.

SOLUTION: The current 2% statistical sample should be replaced with statutory language requiring the uniform implementation of risk-limiting audits by all 67 counties in every election. Such post-election audits should be conducted for both county-level and statewide races in every primary and general election, with the additional requirement that the audit be completed before a County Board of Election's certification of election returns. Robust chain of custody protocols must be followed during the audit process, as well public notice and viewing access.

Post-election audits have been endorsed by the Bipartisan Policy Center[17] and the National Association of Secretaries of State.[18] The PA Department of State's Post-Election Audit Workgroup has drafted protocols for counties on the RLAs used to date and recommends allowing latitude for an "audit method that conforms to a pre-specified standard of statistical confidence that the election outcome is correct." This could include RLAs but potentially other methods as best practices evolve.[19]

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[16] Pennsylvania Department of State Voting & Election Information. "Post-Election Audits."
[17] Bipartisan Policy Center Elections Task Force. Bipartisan Principles for Election Audits. November 2021.
[18] NASS Task Force on Vote Verification: Post-election Audit Recommendations. August 2021.
[19] PA Department of State Post-Election Audit Workgroup. Report on Risk Limiting Audits. September 2022.

STRENGTHEN RULES FOR RECOUNT PETITIONS

PROBLEM: Petitions to recanvass — or recount — votes were filed in 172 precincts and across at least 27 counties following the November 2022 election, causing the certification of statewide results to be delayed until just two weeks before newly elected officials were to take office in January 2023. Of these petitions, only 19 were authorized by a Common Pleas Court Judge to order a recount; and of the recounts conducted, vote tallies in each precinct were either the same as originally determined or barely different.

This recount mechanism has been in law since 1927[20] and initially had far greater utility when concerns and evidence of election fraud were substantial. The Committee of Seventy, established to combat public corruption and machine politics in 1904, advocated for and supported the use of these petitions especially in Philadelphia. But threats to election integrity have changed over the past century, as have the safeguards and oversight measures to ensure elections are safe and secure.

Although the most recent surge of such precinct-level petitions occurred in the 2022 midterms, a similar spate of petitions followed the 2016 Democratic presidential primary. Given the relative ease in which they can be filed, scores or hundreds more could be sought in future elections without good cause and disrupting county and state officials' ability to certify election results in a timely manner.

SOLUTION: The required use of voter-verifiable paper ballots in Pennsylvania and proper use of post-election audits, in particular, ensure that county officials, partisan stakeholders and the general public can be confident that vote tallies are accurate and election results are legitimate. Given these measures, precinct-level recounts initiated via petition are arguably no longer a necessary tool; however if they are to remain available, at least two changes should made: First, **the $50 filing fee (unadjusted since 1927) should be increased to $1,000 to deter frivolous or baseless charges**. Second, to aid county judges in reviewing such petitions, **specific allegations and evidence of fraud or error should be required and documented. County Boards of Election should also be afforded the ability to respond in court to filed petitions.** Another option would be to require that petitions be filed in every precinct for a given contest in order for the court to consider ordering a recount.

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[20] Carter Walker, "Century-old law let voters file baseless recount petitions and delay Pa.'s election certification," *Spotlight PA*, December 29, 2022.

TIME IS SHORT FOR REFORM

The vast majority of the Pennsylvania Election Code is generations old. Some provisions, though antiquated, contradictory or vague, haven't created any real consequences. Today's voting machines, for example, come with small lights attached for voters to view the ballot instead of the lanterns referenced in law. But other sections of the law — arguably the entirety of Pennsylvania election law — are in need of a complete overhaul. Even if election and voting policies were to remain the same, redrafting the law with greater clarity would substantially help both election officials and candidates. This would also cut down on the number of matters that candidates, political parties and other entities seek to litigate and resolve through the courts, which creates both added costs and needless uncertainty.

This isn't the moment for full scale modernization of election administration in the Commonwealth. The General Assembly has a limited number of session days before the end of the year, but the most consequential time pressure is on the county election personnel who, while preparing to administer the November 2023 General Election, have already been making plans for the 2024 election cycle.

Additional funding through the Election Integrity Grant program, approved by the Legislature in 2022, has been immensely valuable, especially as counties have made needed investments in both their mail-in and in-person voting infrastructure and personnel. The next critical step is to pass a focused package of reforms to further help county officials do their jobs while bolstering election integrity and mitigating the number of voters harmed by the status quo.