

# Pennsylvania: 2020 Election Policies & Practices

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## Table of Contents

<b>Table of Contents</b>	<b>1</b>
<b>Contemporary Controversies in Pennsylvania</b>	<b>2</b>
Litigation on Absentee Ballot Deadlines	2
Counting the Ballots and Party Discrepancy by Voter Method	3
Absentee Rejection Rates, Secrecy Sleeves, and Provisional Ballots	4
Voter Intimidation on Election Day	4
<b>Key Dates and Deadlines</b>	<b>5</b>
<b>Voter Registration in Pennsylvania</b>	<b>5</b>
<b>Absentee Voting</b>	<b>6</b>
Ballot Drop Off Options	6
Signature Verification	7
Pennsylvania’s Secrecy Sleeve Requirement	9
Mail Ballot Rejections in the 2020 Primary	11
Ballot Tracking and Opportunity to Cure	12
2020 Absentee Ballot Outlook	13
<b>Early Voting</b>	<b>13</b>
<b>Election Day in Pennsylvania</b>	<b>14</b>
Rules on Election Day Intimidation Efforts or Violence	14
Poll Workers on Election Day	16
Poll Watchers and Challenge Rules	17
Mask Compliance on Election Day	19
<b>After the Election</b>	<b>19</b>
Processing Mail-In Ballots	20
Tabulating the Vote	22
Reporting the Vote	24
Certifying the Vote	24

Recount Procedures	25
Electoral College and Safe Harbor Scenario	26
<b>Appendix</b>	<b>26</b>
Election Night Reporting by County	26
Relevant Litigation	27
League of Women Voters of Pennsylvania v. Boockvar	27
Crossey v. Boockvar	27
Pennsylvania Democratic Party v. Boockvar	28
Donald J. Trump for Pres., Inc. v. Boockvar	28
Libertarian Party v. Wolf	29
Disability Rights Penn. v. Boockvar	29
Drenth v. Boockvar	30
Delisle v. Boockvar	30
In re: Extension of Time for Absentee and Mail-in Ballots	31
NAACP Penn. State Conference v. Boockvar	31
Commonwealth of Pennsylvania et al. v. Louis DeJoy and the United States Postal Service	32
Pennsylvania’s 2020 Primary	32
Overall Turnout	33
Vote-By-Mail Performance in June	33
In-Person Voting in June	35
Voter Survey	36

## I. Contemporary Controversies in Pennsylvania

### A. Litigation on Absentee Ballot Deadlines

On September 17, 2020, the Pennsylvania Supreme Court [ruled](#) that absentee ballots in Pennsylvania should be counted if received up to three days after Election Day as long as they are postmarked by the time polls close on November 3. The [decision](#) incorporated various recommendations from Pennsylvania’s Secretary of State, including a ruling that ballots lacking a clear postmark (or with an ineligible postmark) could be counted unless there was evidence that they were

mailed after the polls closed. After the decision, Pennsylvania Republicans [asked](#) the U.S. Supreme Court to stay the holding, but on October 19 the U.S. Supreme Court [denied the request](#), with [4 justices dissenting](#). Nevertheless, four days later, Republicans again returned to the U.S. Supreme court, [asking the Court](#) to rule on the merits of the case before Election Day. On October 28, Pennsylvania's Department of State confirmed that election officials would be segregating all ballots arriving between 8 p.m. on Election Day and 5 p.m. on November 6 in anticipation of the Supreme Court ruling. Later that day, however, the U.S. Supreme Court [denied the GOP request](#) to decide the merits of the case before Election Day, but it left open the possibility that it could rule on the merits after November 3. The outcome of this decision will have a [significant impact](#) on Pennsylvania's rules for counting late-arriving ballots and possibly [reverberating effects](#) for other states and future election litigation.

## B. Counting the Ballots and Party Discrepancy by Voter Method

Pennsylvania law prevents election officials from processing absentee ballots until [7 a.m. on Election Day](#). Given this short timeframe and the massive increase in expected use of absentee ballots due to the COVID-19 pandemic, most [experts agree](#) that Pennsylvania will not be able to provide conclusive election results on election night or shortly thereafter. In addition, it will be especially difficult for third party organizations to project the Pennsylvania race due to a reported [discrepancy](#) between party preference by voting method. For example, according to an [online survey](#) of likely voters in October, Pennsylvania voters planning on voting early or by mail prefer Biden by a +52 margin, while voters planning on voting on Election Day prefer Trump by a +31 margin. In addition, of the nearly 2.4 million Pennsylvania voters who have [already voted](#) by October 31, over two-thirds of these voters are registered Democrats compared to 22.9% registered Republicans. Given this discrepancy, and the fact that in person Election Day votes will be counted before absentee ballots, projecting a winner in the days after November 3 will likely be more [difficult](#) than other states and possibly [contested](#) by both major parties. Indeed, although Secretary of State Kathy Boockvar has [asked counties](#) to start counting absentee ballots on Election Day as early as possible, at least [seven](#) counties have already indicated that they will not begin counting mail-in ballots until the day after the election.

### C. Absentee Rejection Rates, Secrecy Sleeves, and Provisional Ballots

Pennsylvania's rejection rate of absentee ballots has historically been [around 1%](#), but that rate could go up as an increasingly large number of voters opt to vote by mail in 2020, many for the first time. Rule changes to ballots arriving without [secrecy sleeves](#), among other technical requirements, could also lead to the rejection of around 100,000 ballots by some estimates. In addition, officials have [urged voters](#) to make use of provisional ballots if they believe that they failed to include the secrecy sleeve in their absentee ballot. This guidance could have a significant impact on the counting of the vote because provisional ballots are usually the last ballots to be counted. Finally, since the vast majority of rejected ballots in Pennsylvania have historically been rejected due to [arriving too late](#), the fate of the state's November 6 ballot deadline could have a large impact on the number of absentee ballots ultimately rejected. This is especially true because of [reported USPS delays](#) in the last week before Election Day, including over 42% of all first-class mail in Philadelphia taking longer than five days to be delivered, up from just 13% at the start of 2020.

### D. Voter Intimidation on Election Day

With both the Biden and Trump campaigns focusing much attention on Pennsylvania, the Department of State Secretary [Kathy Boockvar](#) has reminded voters that they must be authorized to be poll watchers on Election Day and that voter intimidation from poll workers, watchers, or voters is illegal. As a result of President Trump [encouraging](#) supporters to go to the polls in Philadelphia and “watch very carefully” during the first Presidential debate, the Mayor of Philadelphia vowed to [develop](#) an interagency plan for potential voter intimidation during the general election. In addition, concerns about voter intimidation efforts increased after it was revealed that the Trump campaign has been [videotaping Philadelphia voters](#) while they deposit their ballots in drop boxes in an apparent effort to find voters violating election laws. According to Pennsylvania's [attorney general](#), however, videotaping ballot drop boxes is not a permitted poll watching practice and could amount to illegal voter intimidation. Finally, [both parties](#) are “training a small army of partisan poll watchers to be their eyes and ears at voting sites across the state” for Election Day, and there is some worry that these efforts could cross the line from acceptable poll watching to illegal intimidation. Yet, under current law, poll watchers are not permitted to ask voters for documentation or make any voter challenges based on

race, appearance, national origin, surname, language, religion, or other characteristics not relevant to someone's qualifications to vote.

## II. Key Dates and Deadlines

- **September 14, 2020 to October 27, 2020:** Early in-person voting period
- **October 19, 2020 :** Last day to register before the November election
- **October 27, 2020:** Last day to apply for a mail-in or civilian absentee ballot
- **November 3, 2020:** General Election. Polls are open from 7 A.M. to 8 P.M.
  - Deadlines for returning your mail-in or civilian absentee ballot:
    - **By mail:** must be postmarked by 8 P.M.
    - **In-person:** must be returned to your county board of elections office or other designated location or drop box by 8 P.M.
  - Counting timeline:
    - [Pre-canvassing](#) – inspecting, opening, and taking ballots out of their envelopes – may begin once polls open on Election Day at 7:00 AM.
    - Canvassing (counting) ballots may begin after the polls close at 8:00 PM on Election Day. Canvassing the absentee ballots must end by **8 days** after the election.
- **November 6, 2020:** Mail-in and absentee ballots (postmarked before 8 P.M. on election day) must be received before 5 P.M. by your county election office. The November 6th deadline applies to ballots that have been returned by mail only. Ballots [may not](#) be delivered in-person to your county board of elections after 8 p.m. on Election Day, November 3.
  - In addition, county boards of election start the process of canvassing and certifying the vote count at 9:00 AM the third day after the election
- **November 10, 2020:** Last day for County Boards of Elections to receive voted military and overseas absentee ballots (submitted for delivery no later than 11:59 P.M. on November 2).

### III. Voter Registration in Pennsylvania

As of October 2020, there are [9.9 million registered voters](#) in Pennsylvania, including 4.2 million registered Democrats, 3.5 million registered Republicans, and 875,000 voters of other parties or with no party affiliation. Prospective voters must register by October 27, 2020, which can be done [online](#), by mail, or in person. During the 2016 presidential election, around [6 million Pennsylvanians](#) voted, representing 61.04% of the voting age population and 70.11% of the [8,722,977](#) registered voters.

### IV. Absentee Voting

Voters in Pennsylvania may vote by mail without an excuse. To receive a ballot, voters must reapply for an absentee or mail-in ballot each year. While there is now widespread access to mail-in ballots, Pennsylvania has limited experience administering mail voting because no-excuse vote by mail was first enacted in 2019. For instance, Pennsylvania voters requested [107,000](#) absentee ballots in the 2016 primary and more than [1.8 million](#) mail ballots for the June 2nd primary. Since the primary, Pennsylvania has [rejected around 370,000](#) requests for mail ballots, but 90% of these rejections were simply due to accidental duplicate requests. According to [the Inquirer](#), “people who had requested mail ballots for the state’s June 2 primary did not realize they had [also] checked a box to be sent ballots for the general election,” so most of these voters will still receive absentee ballots. All told, about 20 percent of Pennsylvania’s absentee requests were rejected.

#### A. Ballot Drop Off Options

Pennsylvania voters have multiple options to return their completed absentee ballot. Other than mailing in their ballot, voters can use drop boxes in most counties (which are now available after a [legal battle](#)). Pennsylvania voters can also vote in person before Election Day through a process called absentee in-person voting. The period for absentee in-person voting runs from Monday, September 14, 2020 to Tuesday, October 27, 2020. In Philadelphia, at least, voters can drop off completed ballots at early voting centers, according to a phone call with election officials. Finally, any voter can drop off a ballot at that voter’s [county election office](#) by 8 p.m. on Election Day.

Pennsylvania, however, does not allow voters to drop off completed absentee ballots at polling places on Election Day. Instead, if a voter requested to vote by mail, they can bring their ballot with them and hand it over to poll workers [to be voided](#). At that point, voters will be allowed to vote on the machines as though they never requested a mail ballot at all. In addition, Pennsylvania law requires voters to submit their own ballot personally, rather than being able to authorize any third parties to drop off ballots on their behalf. Finally, on October 10 a [federal court dismissed](#) a related lawsuit by the Trump campaign and Pennsylvania Republican party. As a result, ballot drop boxes in Pennsylvania are allowed and the state's new signature matching protocols (see below) are acceptable.

## B. Signature Verification

The absentee ballot envelope in Pennsylvania requires a signature, printed name, date, and address. Due to recent litigation, however, Pennsylvania has advised its county election officials *not* to reject ballots based solely on signature mismatches. Officials still verify whether the ballot envelope is missing a signature, however, and can reject a ballot on that basis.

Pennsylvania has historically reviewed and rejected absentee ballots by comparing the signature on the ballot envelope to the voter file. However, due to recent litigation regarding lack of statewide signature verification standards before and after the June 2020 primary, Kathy Boockvar, the Secretary of the Commonwealth, published [new guidance concerning examination of absentee ballots and mail-in ballot return envelopes](#) on September 11. The new guidance altogether prevents any of the 67 county boards of elections to “set aside returned absentee or mail-in ballots based solely on signature analysis.”

According to Secretary Boockvar's guidance, Pennsylvania election officials will no longer engage in signature matching to verify a voter's identity for a ballot. However, there are still laws in place that address signatures and signature matching from before the recent guidance. Those [pre-existing laws](#) do not provide any clear standards for assessment of signatures, other than there should be a “comparison of elector's signature with the signature on the district register.” The ballot envelope will still be examined by officials to ensure it has been signed.

Moreover, on October 10, a [federal court dismissed](#) a lawsuit by the Trump campaign and Pennsylvania Republican party. The court held that the “**Election Code does not require signature**

**comparison for mail-in and absentee ballots or ballot applications.”** It also held that the lack of a signature comparison does not violate substantive due process. Finally, on October 23 the Pennsylvania Supreme Court issued a [unanimous decision](#), holding that county boards of elections **cannot throw out absentee ballots due to alleged signature mismatches.**

In the event the ballot envelope is missing a signature, the ballot is considered challenged and the elector must complete an affidavit to validate the ballot. The voter [must](#) appear or provide to the county board of elections an “electronic, facsimile, or paper copy” of an affirmation that the voter is who they say they are. There is codified guidance for voters who have serious vision impairments or who have “lost the hand with which he was accustomed to sign his name, or shall have been otherwise rendered by disease or accident unable to sign his name.” In this case, the voter still must “establish his identity to the satisfaction of the election officers.” Registered voters who want to look up their signature to ensure that they sign their ballot envelope correctly are barred from doing so until after they have signed the ballot.

The state code regarding election observers does not specifically state whether observers can observe or challenge the signature verification process, but the question is now moot since signature matching no longer exists in Pennsylvania. According to PA Election Code § 2687 and older Secretary of State [guidance](#), partisan citizen observers can be given access to pre-election, Election Day, or post-election procedures in the state. Furthermore, Section 310(c) states that “[a]ny candidate, attorney or watcher present at a recount or recanvass is entitled to examine the ballots and raise objections regarding such ballots.” Counties’ Boards of Elections are also [given](#) the ability to reasonably issue regulations on the behavior and duties of observers.

Due to a significant increase in absentee and mail-in balloting expected this year, the number of rejected ballots may also climb in Pennsylvania. The following is a summary of rejection rates from the 2016 General Election and 2018 Midterm:

- The bulk of rejections in 2018 were due to late-arriving ballots to county election offices.
- The [rejection rate of absentee ballots in the June 2020 Primary](#) was 1.7% (about 26,000 of 1,500,000 ballots).
- Use of absentee ballots increased 750% from the 2018 midterm election to the June 2020 Primary. This is in part because of [Act 77](#), passed in 2019, which expanded access to mail-in balloting.

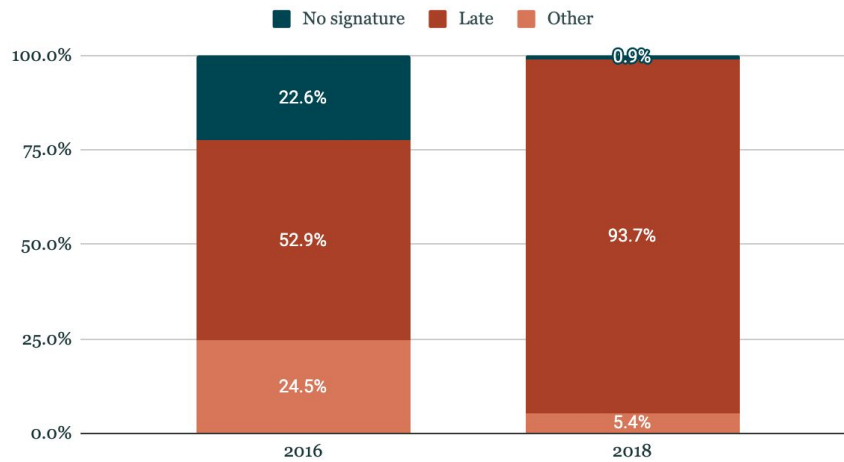


- The ruling removing signature matching will likely reduce the number of rejected ballots.

Table 1: Rejection rates in Pennsylvania due to late ballots or missing signatures

	<i>Ballots received</i>	<i>Vote By Mail (VBM) total</i>	<i>Total VBM rejections</i>	<i>Rejected for lateness</i>	<i>Rejected for missing signature</i>
<b>2016 General (#)</b>	6,223,150	266,208	2,534	1,341	573
<b>2016 General (%)</b>		4.3%	1.0%	52.9%	22.6%
<b>2018 Midterm (#)</b>	5,057,630	195,953	8,714	8,162	77
<b>2018 Midterm (%)</b>		3.9%	4.4%	93.7%	0.9%

Figure 2: Reason for ballot rejections in 2016 and 2018



### C. Pennsylvania’s Secrecy Sleeve Requirement

On September 17, 2020, the Pennsylvania Supreme Court [ruled](#) that returned absentee ballots arriving without secrecy envelopes will be rejected and therefore not count in the upcoming November election. In the June primary election, [most counties](#) in Pennsylvania, including Philadelphia, did not reject these ballots. And, according to [one estimate](#), rejecting those ballots

statewide would have amounted to over 11,000 fewer votes being counted, or over 6% of all absentee votes.

Four days later, on September 21, Philadelphia’s City Commissioner Lisa M. Deeley sent a [letter](#) to the state legislature, urging it to take immediate action in response to the court decision. Describing the secrecy envelope requirement as a “vestige of the past” that only served to “disenfranchise well intentioned Pennsylvania voters,” Deeley noted that secrecy sleeves had lost relevance over time. In a previous era, secrecy sleeves protected the identifying information of voters because absentee ballots were counted in public view at individual polling locations. Today, however, absentee ballots are counted at a central location and through an “industrialized process,” Deeley explained, so their primary purpose has disappeared.

In addition, Deeley wrote that removing the secrecy sleeve requirement would save thousands of dollars per year and speed up the counting process. Without any secrecy envelopes, for example, absentee votes could be removed from envelopes at 24,000 ballots an hour (double the current rate) and scanned at 32,000 ballots an hour. At that speed, Deeley wrote, “there is no opportunity to stop, or even slow down, and identify how an individual voted—anonymity is maintained.”

Because all absentee ballots arriving without sleeves will be rejected, Deeley estimated that over 100,000 ballots in Pennsylvania could be thrown out during the 2020 general election, based on estimates from previous elections and the massive increase in first-time absentee voters expected this year. Notably, the 2016 presidential election in Pennsylvania was decided by just over [44,000 votes](#). It is difficult to independently estimate the impact of the court decision because many counties (including Philadelphia) [did not keep track](#) of “naked ballots” during the primary. However, [Mercer County](#) and [Lawrence County](#) tracked naked ballots and found that 5 percent of all absentee mail ballots lacked a secrecy envelope. And, according to Lawrence’s elections director [Ed Allison](#), there were more rejected naked ballots than late ballots during the primary.

The Pennsylvania Supreme Court decision came down to whether or not the statutory language of Pennsylvania’s secrecy envelope provision was mandatory or directory. Justice Baer’s [majority opinion](#) concluded that the provision was indeed mandatory, and that “[w]hatever the wisdom of the requirement, the command that the mail-in elector utilize the secrecy envelope and leave it unblemished by identifying information is neither ambiguous nor unreasonable.” The decision

also ruled on a number of other voting-related matters, allowing ballots to be counted if received up to three days after Election Day, permitting the use of ballot drop boxes, and blocking the use of partisan poll watchers in out-of-county locations. After the decision, Pennsylvania Republicans [asked](#) the U.S. Supreme Court to stay the holding, but on October 19 the Supreme Court [denied the request](#), with [4 justices dissenting](#). The decision has also sparked a flurry of voter education efforts from nonprofit organizations and political campaigns, which include graphics and videos that highlight the now-required secrecy envelope.

Since the court decision, election officials have [urged voters](#) to make use of provisional ballots if they believe that they failed to include the secrecy sleeve in their absentee ballot. The Pennsylvania Department of State released a statement that said “[i]f the voter believes that he/she has not returned or cast the ballot successfully or otherwise contests his/her ballot status, the poll worker shall provide the voter a provisional ballot.” According to the Philadelphia Inquirer, “[i]f your original mail ballot is rejected, the online status tracker will say so and you will receive a rejection notification . . . [and] after about a week, you can [check the status of your provisional ballot online](#) to know whether it was counted.”

In addition to Pennsylvania’s secrecy sleeve requirement, the state also [rejects ballots](#) if they are “so marked as to be capable of identification shall be counted.” That is, voters who mark the ballot itself with their name or other identifying information will likely have their ballot rejected. [State law](#) also requires the rejection of ballots with identifying information written on the secrecy envelope, including “any text, mark or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference.”

#### D. Mail Ballot Rejections in the 2020 Primary

Taken as a proportion of all ballots cast, the rejection rate of Democratic mail ballots cast during the Pennsylvania 2020 primaries was 1.7%. The rejection rate of Republican mail ballots cast was 0.8%. The most common reason for rejection, by far, was that a ballot was returned after the deadline. It is unclear how much of this is due to late postal service or voters mailing their ballots late.

Reason for Cancelled Ballot	Democrat Ballots	Republican Ballots	Other	Total Ballots Rejected By Cause	Dem Rejection Rate	Repub Rejection Rate
Returned After Deadline	11,572	3,740	298	15,610	0.71%	0.32%
Undeliverable	5,152	1,338	131	6,621	0.31%	0.11%
Label Cancelled	4,605	1,661	17	6,283	0.28%	0.14%
Replaced	4,341	1,727	3	6,071	0.26%	0.15%
No signature	1,393	340	35	1,768	0.08%	0.03%
Vote Cancelled	44	561	2	607	0.00%	0.05%
Email Ballot Und Batch	60	10	0	70	0.00%	0.00%
No ID	18	23	0	41	0.00%	0.00%
Email Ballot Undeliverable	35	4	0	39	0.00%	0.00%
Vote Challenged	1	8	0	9	0.00%	0.00%
<b>Total</b>	<b>27,221</b>	<b>9,412</b>	<b>486</b>	<b>37,119</b>	<b>1.66%</b>	<b>0.80%</b>

### E. Ballot Tracking and Opportunity to Cure

Pennsylvania provides a [ballot tracking website](#) for absentee voters, although a [technical glitch](#) in September showed some voters that their ballot had already been mailed before ballots were printed. The ballot tracking website is powered by election officials who scan the barcode on every received ballot, marking them in the state’s voter database and sending notification emails to voters. When voters make technical errors resulting in the rejection of their absentee ballots, Pennsylvania does not have consistent rules on notifying voters of these rejections. Jonathan Marks, Pennsylvania’s deputy secretary for elections and commissions, advised all counties to scan all flawed ballots as quickly as possible and mark them as canceled in order to trigger notification emails to voters. Some counties (such as Lycoming County), however, have decided to mark these ballots as received with [no indication of any problem or ballot rejection](#). Other counties, meanwhile, mark them as cancelled and send voters a warning email. Some counties are going even further, attempting to contact voters via mail or phone, helping voters “cure” their ballot rejections. Allegheny County, unlike all other

Pennsylvania counties, mails the flawed ballots right back to voters but does not mark these ballots in the tracking system at all. On November 2, the day before Election Day, dozens of voters waited in line outside of [Bucks County's courthouse](#) to correct issues with their absentee ballots after receiving a notification from the county.

## F. 2020 Absentee Ballot Outlook

In October, Secretary of the Commonwealth [Kathy Boockvar](#) said that nearly 2.5 million people had already requested mail-in ballots in Pennsylvania, including over 1.6 million Democrats, 600,000 Republicans, and 250,000 from other parties or non-affiliated voters. As of the first week of October, 96% of these requests have been “approved and processed” and the state is preparing for the large influx of mail-in votes, more than the 1.5 million voters who used absentee ballots during the 2020 primary. As of October 30, according to the [U.S. Elections Project](#), over 2.3 million Pennsylvania voters have already returned completed absentee ballots. Of these voters, over 66% are registered Democrats and 23% are registered Republicans.

Ultimately, Pennsylvania may see more than a [200%](#) increase in absentee voters between the primary and the general election. After Pennsylvania struggled dealing with mail-in ballots in the primary, increasing the scale this November could become a challenge. To improve the speed at which mail-in ballots are counted, some counties have invested in new equipment. [Bucks County](#), for example, bought two on-demand ballot printers, six ballot scanners, and four machines to extract ballots from envelopes, using some of the \$109 million the county received from the CARES Act to respond to COVID-19. Philadelphia County is also [spending](#) several million dollars to prepare for November, and Delaware County, a suburb of Philadelphia, has spent [over \\$2](#) million to prepare for the election.

## V. Early Voting

Pennsylvania voters can vote before Election Day through an early voting process officially called “absentee in-person voting.” In 2020, early voting runs from Monday, September 14, 2020 to Tuesday, October 27, 2020. As part of absentee in-person voting, Philadelphia and its adjoining counties expanded the use of early voting [satellite elections offices](#) where voters can request and then

submit a mail-in ballot on the spot. In Philadelphia alone, there are at least [17 early voting locations](#). According to the state’s [website](#), “satellite locations may be open additional hours, including weeknights and weekends.” In addition, each satellite location has a secure ballot box to store completed mail-in and absentee ballots submitted at the location. However, only [seven of the state’s 67 counties](#) — Philadelphia, Centre, Chester, Delaware, Allegheny, Bucks and Montgomery — have opted to create satellite offices for early, in person voting.

Early voting locations in Pennsylvania are not traditional polling places where voters cast in-person ballots; instead, they are [absentee in-person voting locations](#), allowing voters to request mail ballots, receive them on demand, fill them out, and return them all during the same visit. This caused [some controversy](#) on the last day of early voting in Pennsylvania, where some counties (such as Philadelphia) allowed voters who were in line by 5 p.m. (the absentee request deadline) to still cast early ballots, while other counties imposed a hard stop-deadline and turned voters away after 5 p.m. on October 27.

Some lingering problems might make it difficult to keep polling places efficient and operational. Many counties in Pennsylvania, for example, struggled during the summer from possible [poll worker shortages](#). Because of COVID-19, many poll workers, a majority of whom are over 60 historically, are unable or unwilling to participate this election cycle. This problem is exacerbated because [Pennsylvania law](#) requires poll workers to reside in the precinct in which they work. This may also increase the time it will take to tabulate results because poll workers also help count [mail-in ballots](#), which are expected to increase this cycle. Nevertheless, as discussed in more detail below, election officials in most counties now [have a surplus](#) of volunteers for the general election, including for early satellite offices. Some uncertainty still remains, however, as 2020 is the first presidential election with an in-person early voting period. In 2016, Pennsylvania did [not have early voting at all](#).

## VI. Election Day in Pennsylvania

### A. Rules on Election Day Intimidation Efforts or Violence

Pennsylvania state law dictates that no person shall, by [intimidation](#), “intentionally prevent or attempt to prevent an applicant who is a qualified elector from being registered or a registered elector

from changing political enrollment.” Per the Pennsylvania Department of State, it is [illegal](#) for any person or corporation:

- “to directly or indirectly practice intimidation or coercion through the use of force, violence, restraint, or infliction or threatened infliction of injury, damage, harm, or loss, in order to induce or compel a person to vote or refrain from voting for a particular candidate or on a particular political issue”; or
- “to use abduction, duress, coercion, or any other forcible or fraudulent means to impede, prevent or otherwise interfere with a person’s right to vote.”

Individuals who intimidate voters can be [fined](#) up to \$5,000 and face up to two years in prison. Each County Commission is [required](#) to investigate alleged violations and report them to the District Attorney, who has the authority to prosecute such violations.

The Pennsylvania Department of State [has published](#) nonbinding guidance that lays out a non-exhaustive list of examples of voter intimidation, including aggressive behavior outside the polling place, blocking the entrance to the polling place, direct confrontation or questioning of voters, disrupting voting lines, disseminating false or misleading election information, ostentatious display of weapons, photographing or videotaping voters to intimidate them, using raised voices or insulting offensive or threatening language or making taunting chants inside the polling place, vandalism of polling places, verbal or physical confrontation of voters by persons dressed in official-looking uniforms, and violence or using the threat of violence to interfere with a person’s right to vote.

Pennsylvania state law includes provisions regarding the conduct of election officials and police officers on election day. Per state law, any “registrar or clerk who, without reasonable cause, refuses to register a qualified elector lawfully entitled to be registered commits a misdemeanor of the first degree.” The Pennsylvania Department of State further [prohibits](#) poll watchers from confronting, hovering or directly speaking to voters, posting signs inside the polling place of penalties for “voter fraud” voting or support for a candidate, routine and frivolous challenges to voters by election workers and private citizens that are made without a stated good faith basis, and challenges based on the voter’s lack of eligibility to register to vote as examples of voter intimidation. If necessary, a commission may call on police officers to maintain the peace at a place of registration. However, police are [banned](#) from coming within 100 feet of the polling place otherwise and are expressly forbidden from using or

practicing “any intimidation . . . nor, in any manner, unduly influence or overawe any elector or prevent him from voting or restrain his freedom of choice.”

Notably, [Pennsylvania](#) does allow police officers to enter the voting enclosure when “necessary for the preservation” of peace or order. If violence at a particular polling location gets more serious, an emergency polling place relocation is possible [under Pennsylvania law](#) unless there is a majority objection by registered electors of the district. Registering such an objection would likely be difficult given the short timeframe and general confusion engendered by an emergency relocation. Pennsylvania also prohibits electioneering, demonstrating, and/or protesting, but it only imposes a [10-foot boundary](#), which is much lower than other states. If there is a dispute about relocating a polling place or extending vote hours, Pennsylvania [law](#) also requires local courts to remain open during an election to make emergency decisions.

According to a 2020 Guide for Election Board Officials in Philadelphia County, “[e]lectioneering is not allowed within 10 feet of the polling place (the entrance to the room in which the voting machines are located.) Electioneering includes, but is not limited to . . . Handing out campaign materials . . . Placing campaign materials on the same table where the Election Board is sitting . . . Telling voters which candidates to support . . . [and] Wearing a t-shirt or button supporting a candidate, campaign, or political party (except voters in the act of voting).”

As a result of President Trump [encouraging](#) supporters to go to the polls in Philadelphia and “watch very carefully” during the first Presidential debate, the Mayor of Philadelphia vowed to [develop](#) an interagency plan for potential voter intimidation during the general election. This development came amidst [claims](#) of voter intimidation in communities of color during the Pennsylvania primary, evidence that the Trump campaign is filming voters who submit ballots via ballot drop boxes, and during the Pennsylvania Attorney General’s Office [investigation](#) of robocalls telling voters that their information will be used to issue arrest warrants and collect on old credit card debts. Finally, a recent [police killing](#) of a Black man named Walter Wallace has led to largely [peaceful protests](#) in West Philadelphia, sparking some concerns that voting on Election Day could be impacted by heightened tensions among law enforcement, protestors, and possibly counter-protesters.

## B. Poll Workers on Election Day



Leading up to the June primary, Pennsylvania suffered from massive [poll worker shortages](#) that contributed to the closure of 75% of polling places in Philadelphia County and 85% of polling places in Allegheny County. While many counties anticipated [poll worker shortages](#), however, the consolidation of polling places and state guidance providing for a minimum of five poll workers at each polling place appear to have avoided significant staffing issues. Allegheny County, for example, recruited [sufficient poll workers](#) to staff its dramatically reduced set of polling places (around 150, compared with 1,300 in previous elections). [Voter Protection Corps](#), a national nonprofit, also partnered with the Erie County Board of Elections to help the county recruit more poll workers, helping avert a shortage; the organization offered Philadelphia’s City Commissioners the same assistance. In addition, [Pennsylvania](#) mobilized the state’s National Guard to help with their primary elections.

For the general election, election officials in most counties now [have a surplus](#) of volunteers. Many thousands of volunteers signed up to be poll workers around Pennsylvania, including over 20,000 volunteers in Philadelphia for just 8,500 poll worker positions. Pennsylvania Secretary of State Kathy Boockvar said that “every county is in far better shape than, I think, maybe ever, in the history of elections because of this huge, huge influx of volunteers in the community.” Philadelphia has also created “reserve” lists and is planning on calling these volunteers in case of last-minute cancellations or unexpected need.

### C. Poll Watchers and Challenge Rules

According to Department of State [guidance](#) issued in October, Pennsylvania law allows each candidate to appoint up to two poll watchers for each election district, but only one poll watcher may be present in the polling place at a time and all poll watchers must remain outside the enclosed space. All official poll watchers must have a certificate form provided by the County Board of Elections, and all are required to show their certificates when requested to do so.

On October 10 a [federal court dismissed](#) a lawsuit by the Trump campaign and Pennsylvania Republican party. The court held that Pennsylvania’s requirement that restricts a registered voter from serving as a poll watcher outside the county of his or her residence is constitutional. According to the court, the “county-residency requirement neither burdens a fundamental right, including the right to vote, nor discriminates based on a suspect classification.”

Poll watchers may keep a list of voters and “may make good faith challenges to an elector’s identity, continued residence in the election district, or qualifications as an eligible voter.” Any challenge must be made directly to the Judge of Elections, who must then determine if the challenge is based on evidence and decide whether the challenged voter is a qualified elector.

Challenges, however, may not be based on race, appearance, national origin, surname, language, religion, or other characteristics not relevant to someone’s qualifications to vote. According to the October guidance, “[d]iscriminatory challenges that interfere with the free exercise of the elective franchise are unlawful under Pennsylvania law.” The Judge of Electors is required to reject routine or frivolous challenges. As discussed above, challenges may also [never](#) be based upon a signature analysis.

Absentee and mail-in ballot applications may only be challenged prior to 5:00 pm on the Friday prior to the election, and they can not be later challenged by a candidate’s authorized representatives during the pre-canvas or canvass process. Importantly, under Pennsylvania [law](#) and [state guidance](#), challenges to absentee ballots must be on the grounds that the would-be voter is not a “qualified elector.” More specifically, acceptable challenge claims will likely be limited to a voter’s identity (*i.e.*, that they are not who they claim to be) or their residence (*i.e.*, that they live outside the state or relevant jurisdiction). It is unclear from the 2020 guidance if other challenges (such as challenging a would-be voter’s citizenship) are acceptable under current law, especially because any validly registered Pennsylvania voter has already shown their citizenship status.

Official poll watchers may inspect the voting checklist and the numbered list of voters maintained by the County Board of Electors, but they can only do so when voters are not present in the polling place (including if voters are waiting to vote). Poll watchers may also not make marks or alter any official election records. Poll watchers must “remain a safe and respectful distance away from the space where voting is occurring.” They cannot engage with voters or otherwise interfere with the orderly processing of votes, including through voter intimidation or harassment. Poll watchers cannot participate in electioneering. They also **cannot**:

- Photograph or videotape voters
- Disseminate false or misleading election information to voters

- Block the entrance to a polling place
- Confront, hover, or directly speak to or question voters
- Ask voters for documentation

If a poll watcher violates these rules, the Judge of Elections is obligated to remove them from the polling place. In addition, “[a]fter the voting is complete, poll watchers may remain in the polling place, but outside the enclosed space where ballots are being counted and voting machines are being canvassed.”

Finally, poll watchers have “no legal right” to observe or even be present at county election offices, satellite offices, or designated ballot return sites, except to vote their own ballot in an individual capacity. Moreover, on October 23, a federal court [rejected](#) a Republican party motion to allow poll watchers at satellite voting locations.

#### D. Mask Compliance on Election Day

During the primary, polling place workers were required to wear masks, but [voters were not](#). Anecdotally, there were some reports of mask-related conflict in polling places. Poll workers in one polling place in [Dauphin County](#) allegedly refused to wear them, and a [fight broke out](#) in Allegheny County after a voter refused to do so.

During the general election, Pennsylvania recommends that voters wear masks but [does not mandate mask usage](#). The department of state “strongly encourage[s] voters to wear masks out of respect for their fellow voters and for the dedicated poll workers staffing the polling places. Voters who are not wearing a mask will not be denied their right to vote.”

## VII. After the Election

Pennsylvania has the potential to decide the 2020 election, but the results may not be ready the morning after. In 2019, vote-by-mail was expanded to all registered voters, regardless of whether or not they will be present in their county during the election to vote in person. As a result of this new law and the coronavirus pandemic, the use of mail-in ballots has [increased](#) significantly. Pennsylvania has

received much [attention](#) for its rule that the tabulation of mail-in ballots can begin only after the close of polls on Election Day, which may mean not knowing the result of the election until days after the election, depending on the results of a few key counties. Around half of the counties were still tabulating votes a week after the [primaries](#) in June, suggesting there is some merit to this concern.

The tabulation and canvassing system in Pennsylvania is fairly standardized. [District](#) level tallies are physically delivered to county offices, where they are aggregated, along with mail-in ballots and provisional ballots. Discrepancies and challenges over provisional ballots are also dealt with at the [county](#) level. As the returns come in to the counties and as counties canvas mail-in ballots, they [report](#) the unofficial count to the Department of State and the unofficial count is updated on the statewide election night reporting site. The third [day](#) after the election, the counties begin canvassing returns and once the official count is certified, a sealed copy is physically [delivered](#) to the Department of State.

Pennsylvania's procedure for collecting and counting mail-in ballots ([Title 25 P.S.](#)) has recently undergone significant legal changes, introducing multiple new procedures and rules for counties to adopt. [Act 77](#), passed in October 2019, expanded vote-by-mail to anyone who requested a ballot and centralized mail ballot processing at the county level. [Act 12](#), passed in March 2020, [responded](#) to COVID-19 concerns regarding the primaries and updated the procedural timeline for pre-canvassing and canvassing mail-in ballots. Two subsequent rulings on [Act 77](#) ([\[J-96-2020\]](#) and [\[J-97-2020\]](#)) by the Pennsylvania Supreme Court in September extended the period mail-in ballots can be received to three days after the election and allowed secure drop-off locations for mail-in ballots, but maintained that mail-in ballots received without their inner secrecy envelopes ("naked ballots") cannot be counted. These changes may have a significant impact on the result of the November 2020 election in this key swing state.

## A. Processing Mail-In Ballots

The county boards of election are responsible for processing mail-in ballots. They cannot begin opening and counting ballots until the morning of Election Day, and can only start recording and publishing results after the close of polls. [Pre-canvassing](#), the process of inspecting, opening, and taking ballots out of their envelopes, may begin once polls open on Election Day at 7:00 AM ([25 P.S. §3146.8\(1.1\)](#)). After the polls close at 8:00 PM, the county can begin canvassing (counting) ballots, and this process continues until all valid mail-in ballots have been counted ([25 P.S. §3146.8\(2\)](#)). As

discussed above, a Pennsylvania Supreme Court [ruling](#) allows for ballots sent on Election Day to be counted so long as they are received three days after Election Day and there is no evidence that they were mailed after Election Day. In addition, military ballots are allowed to be received [seven days](#) after Election Day, and thus, the pre-canvassing and canvassing period is required to continue until at least [eight days](#) after the election. The main difference between pre-canvassing and canvassing is that, while the mechanics are the same, canvassing begins after the polls close, at which point the count can be recorded or published ([25 P.S. §3146.8\(2\)](#)). Once canvassing starts, the county board gathers to verify and tabulate ballots, with one representative allowed from both candidates and both parties to be in the room to observe ([25 P.S. §3146.8\(1.1\)](#)).

While the official process cannot begin until Election Day, county boards of elections do collect and record that ballots have been returned. According to Department of State [guidance](#), once receiving mail ballots, officials stamp the date of when a ballot was received and scan the “correspondence ID barcode” that is found on the outside of the outer envelope to the [SURE](#) system, Pennsylvania’s statewide uniform registry of electors. Each issued mail ballot has its own unique [correspondence ID](#) printed on the official outer envelope, and the SURE system will not accept the same ID twice. The [SURE system](#) also records when the ballot was received, and if a ballot is cancelled. All ballots are then [stored](#) in a secure location until they can be pre-canvassed and canvassed on Election Day.

During the pre-canvassing and canvassing process, there are several reasons why ballots may be set aside and not counted. PA mail-in ballots include a larger envelope that has the voter’s declaration and the voter’s county, district, and signature ([25 P.S. §1304-D](#)). A smaller envelope labeled “Official Election Ballot” with the actual ballot is inside the larger one, and is designed to hide the identity and party of the voter ([25 P.S. §1304-D](#)). If the ballot arrives without its secrecy envelope, per the previously-discussed Supreme Court [ruling](#), it is set aside and not counted. Furthermore, if there is any indication of the voter’s identity or party on the “Official Election Ballot” envelope, then the ballot is set aside and not counted ([25 P.S. §3146.8\(4\)\(ii\)](#)). Any deceased voters’ ballots are also set aside, as well as any ballots that are [blank](#). The gathered board then checks the name on the ballot against the “Registered Absentee and Mail-in Voters File” and/or the “Military Veterans and Emergency Civilians Absentee Voters File” through the [SURE](#) system to verify that the individual is registered and has a right to vote ([25 P.S. §3146.8\(3\)](#)). During this time, a member of the board may challenge a ballot “on the basis that the applicant is not qualified to vote,” according to a recent Department of State

[directive](#), but cannot challenge the ballot “based on signature analysis.” If not challenged or discarded, the envelope is opened and the ballot is tallied ([P.S. §3146.8](#)). Ballots that have been challenged are set aside for a hearing ([25 P.S. §3146.8\(5\)](#)) and the challenge is recorded in the [SURE](#) system.

Although individual county boards of election have much discretion when it comes to counting methods and use of technology, they generally apply a similar process. Clerks open and scan individual ballots into a certified county tabulation system. For example, [Montgomery County](#) has clerks scan outer envelopes as well as the ballots within, and has invested in “ballot extraction devices and high-density scanners.” This county-level discretion has also created some controversy over when some counties will start canvassing absentee ballots. Although Secretary of State Kathy Boockvar has [asked counties](#) to start counting absentee ballots on Election Day as early as possible, at least [seven](#) counties have already indicated that they will not begin counting mail-in ballots until the day after the election.

There are several ongoing negotiations and bills that may affect vote-by-mail procedures. For instance, there is a Republican-sponsored [resolution](#) that has made it out of committee to create a “Select Committee on Election Integrity,” which Democrats fear could be abused and used to “[impound uncounted ballots](#).” In addition, there are [ongoing negotiations](#) in the state government that would allow counties to start processing mail-in ballots earlier. One proposal would allow election workers to [pre-canvass](#) mail-in ballots. It is unlikely, however, that any legislation will pass into law before Election Day, given that there are no compromises currently on the table.

According to October guidance provided by the Department of State, each candidate is allowed to authorize a representative who can remain in the room at the election county board where the pre-canvass and canvass meetings occur. These representatives can be present when envelopes are opened but they “may not challenge an absentee or mail-in ballot during the pre-canvass or canvass of the ballots.” Moreover, “[a]bsentee and mail-in ballot applications may only be challenged prior to 5:00 pm on the Friday prior to the election, and only on good-faith grounds that the applicant was not a qualified elector.” Meanwhile, challenges to mail-in or absentee ballots based on signature analysis are not permitted at any time.

## B. Tabulating the Vote

Pennsylvania’s tabulation of in-person ballots begins at the district level at the close of election night and is mostly processed by voting machines. Pennsylvania recently required all counties to upgrade their voting systems to a new safety standard [outlined](#) by the Department of State that required “voter-verifiable paper records” be printed from each machine so that there is a paper trail for votes. Once polls close on election night at 8:00 PM, the tabulation process begins ([25 P.S. §3031.13](#)). In districts with paper ballots or ballot cards, officials announce the vote totals, compare it with a voting checklist to check for any discrepancies, and input the tabulation into a voting system, if they have one ([25 P.S. §3031.13\(g\)](#)). If the district tabulates votes through a voting system directly, then the automated tabulation process begins at the close of polls ([25 P.S. §3031.13\(f\)](#)).

Individual districts are responsible for delivering a copy of their return numbers to their counties. When the district has a system to tabulate votes, two copies of the results in the form of “district total cards” (*i.e.*, flash drives) and “reporting forms” are made ([25 P.S. §3031.13\(b\)\(f\)](#)). These are sealed in envelopes; one copy stays in the district and one is physically delivered to the county board of election ([25 P.S. §3031.13\(f\)\(g\)](#)). In Allegheny county, however, the physical returns are transferred to regional centers and then electronically relayed to the county, according to a January 2019 [study](#) by the Blue Ribbon Commission at the University of Pittsburgh. Returns, supplies, and provisional ballots must be delivered to county offices by 2:00 AM the day after the election ([25 P.S. §3031.13\(j\)](#)). It is also the responsibility of districts to publicly post the results at the district polling place ([25 P.S. §3031.13\(f\)](#)).

This aspect of the tabulation process has created some controversy in the week leading up to Election Day. It was [reported](#) that the Trump campaign “asked officials in Cumberland County for the names of people who transport ballots and voting machines once polls close, the names of people who have access to the ballots afterward, and the precise locations where the ballots are stored, including room numbers.” County Commissioner Gary Eichelberger, a Republican, said that this request was intrusive and that responding might disrupt election administration, sparking concerns about why the campaign wanted this sensitive ballot security information.

County boards are also responsible for aggregating district results. This happens through tabulation machines at a “central tabulation center” ([25 P.S. §3031.14](#)). Although counties [have](#) a wide

array of election voting and management systems that they can use to tabulate and create records of the vote, all such systems must satisfy a statewide set of security [requirements](#). In addition to aggregating results, county boards canvass and count write-in ballots and provisional ballots.

There are some cases when a voter must cast a provisional ballot. If an individual comes to the polls and their identity is not verifiable, and their proof of identity and right to vote is challenged (perhaps because their name does not appear on the list of registered electors), then they must cast a provisional ballot ([25 P.S. §3050](#)). In addition, if an individual requested a mail-in ballot, but goes to vote in the polls to vote and does not bring their mail-in ballot to be discarded, then their vote must be cast as a provisional [ballot](#). Within seven days of the election, county boards of election evaluate the provisional ballots and make a determination on each provisional ballot's validity ([25 P.S. §3050.4](#)). If the board determines the ballot is valid, it will be included in the tabulation ([25 P.S. §3050.4\(5\)\(i\)](#)). Otherwise, the ballot is securely stored, and within seven days of the challenge a hearing will be held where the voter can object to the decision ([25 P.S. §3050](#)).

### C. Reporting the Vote

The regulation of election night reporting comes mostly from Department of State (DOS) directives. Under [25 P.S. § 3031.14\(e\)](#), counties “*may* unofficially report the progress of the count.” The Department of State (DOS) points voters to a designated public [website](#) where county boards of election submit uncertified election counts by uploading exported files from their election management system to the [SURE](#) portal. This website and other DOS sites have had outages as recently as [October](#). Although most counties directly submit election night returns to the DOS electronically, a few counties report returns to the DOS via fax, and some counties allow the DOS to manually scrape election returns from the county's website (according to a January 2019 [study](#) by the Blue Ribbon Commission at the University of Pittsburgh). This [study](#) further claims that for counties that submit returns electronically, the computer they use to transmit the results should be completely separated from other computer components connected to the election management system. Some counties also have their own public-facing web portals where they announce uncertified vote counts on election night and in the days following. Allegheny county, for example, has a designated [website](#) for election night reporting.



A recent [directive](#) from the Department of State lays out additional guidelines for how and when to submit returns, given the potential for a drawn-out tabulation period. County boards of election have been [directed](#) to label counting groups and report them to the Department of State as falling under one of three categories: Election Day, mail (combination of absentee and mail-in ballots), and provisional. County boards of election [must](#) submit the following counts on election night to the Department of State, along with a daily updated version, after election night: “1) a precinct-level results file; 2) a county-level summary report from the EMS system; and 3) a precinct-level summary report from the EMS system.” This same [directive](#) asks counties to submit updated reports on the close of polls, daily as the canvassing process continues, during certification, and when they submit the final results per county.

#### D. Certifying the Vote

County boards of election start the process of canvassing and certifying the vote count at 9:00 a.m. the third day after the election ([25 P.S. §3154\(a\)](#)). This process has been outlined by a DOS [checklist](#). [First](#), the commissioners retrieve and check the total registration number of each district and verify that it aligns with the elector lists and voting machine lists. If the commissioners find discrepancies, then this triggers an investigation by the return board ([25 P.S. § 3154\(b\)](#)), which, barring special circumstances, consists of two or more judges from the court of common pleas ([25 P.S. § 3153\(b\)](#)). The number of ballots, extra ballots, spoiled ballots, and number of absentee ballots are then verified and discrepancies accounted for ([25 P.S. § 3154\(c\)](#)). Finally, the paper ballot returns for each district (from district totals cards) are read out loud and checked for discrepancies (on the general returns sheet) ([25 P.S. § 3154\(d\)](#)). If a district used machines, the individual machines registration number and returns are read out loud and checked for discrepancies. Lastly, the board conducts “a statistical recount of a random sample of ballots” ([25 P.S. § 3031.17](#)), which must be a manual recount of ballots or “e-ballot images contained in the system” (according to a 2011 [directive](#)). Official results, “certified under the seal of the county,” are delivered to the Department of State in [physical form](#).

#### E. Recount Procedures

Under Pennsylvania [law](#), if there is a discrepancy between the number of registered electors and the total vote, the county board is authorized to “recount the ballots.” In addition, a recount must

occur under a number of circumstances, including if “a discrepancy is found in the comparison of the sealed and unsealed general returns.”

[Pennsylvania law](#) also provides for “close vote margin recounts” when candidates or ballot questions “appearing on the ballot in every election district in [the] Commonwealth” have a margin of [0.5% or less](#) of all votes cast. Close vote margin recounts may also occur “if three qualified electors of the election district shall file . . . a petition duly verified by them, alleging that upon information which they consider reliable they believe that fraud or error, although not manifest on the general return of votes made therefrom, was committed in the computation of the votes cast . . . It shall not be necessary for the petitioners to specify in their petition the particular act of fraud or error which they believe to have been committed, nor to offer evidence to substantiate the allegations of their petition.”

Candidates themselves cannot directly request a recount in Pennsylvania, but they [may appeal](#) the “order or decision of any county board regarding the computation or canvassing of the returns of any primary or election, or regarding any recount or recanvass thereof.” This process can result in a recount.

Although Pennsylvania law does not require recounts to be conducted in public, various types of recounts allow each candidate (or an attorney from the candidate) to be present at the recount or recanvass. Moreover, “[a]ny candidate, attorney or watcher present at any recount of ballots or recanvass of voting machines [shall be entitled to examine the ballots](#), or the voting machine and to raise any objections regarding the same.”

## F. Electoral College and Safe Harbor Scenario

Electors from every state and the District of Columbia are scheduled to cast their states’ votes for president on December 14, 2020, as part of the Electoral College process established by the Constitution. The Electoral College activities are also governed by certain federal laws. For instance, 3 U.S.C. § 5 requires that, as long as a state has chosen its electors at least six days before the designated Electoral voting date, Congress will accept that state’s electors. For 2020, this so-called “safe harbor date” is December 8th.

If the safe harbor deadline is fast approaching but a state has not been able to select its electors, the state legislature could theoretically appoint electors loyal to the majority party, regardless of which candidate won the popular vote count in their state. Given the expected delays in counting an unprecedented number of mail-in-ballots this year, this alternate scenario is a greater possibility than in past elections (but it is still unlikely).

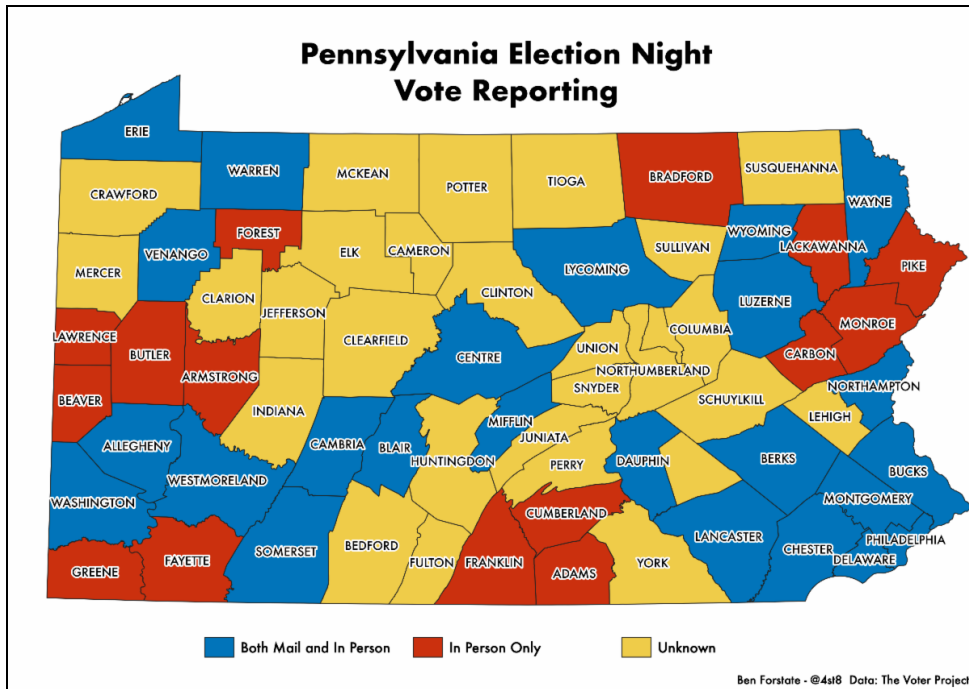
Barton Gellman of *The Atlantic* [spoke with](#) Republican leaders in Pennsylvania who signaled an openness to having the Republican-controlled legislature appoint loyal electors in the case of an uncertain outcome as the safe harbor deadline approaches. *The Atlantic* quoted the Pennsylvania Republican Party chairman as saying “I just don’t think this is the right time for me to be discussing those strategies and approaches, but [direct appointment of electors] is one of the options. It is one of the available legal options set forth in the Constitution.”

The Electoral Count Act of 1887 and Article II of the Constitution could be cited as justifications for a state legislature selecting a slate of electors loyal to the legislature’s majority party and preferred presidential candidate, if the state experiences prolonged delays in counting the votes of the people. Yet there are ambiguities open to different interpretations, and there are also concerns on whether or not the Electoral Count Act itself is constitutional, opening the door to potential judicial involvement. This would also likely create a battle between Pennsylvania’s Democratic Governor and its Republican-led legislature.

## Appendix

### A. Election Night Reporting by County

According to The Voter Project, election night reporting on November 3 will vary by county. Since all 67 Pennsylvania counties administer their own elections with county-specific election reporting methods, the below map is subject to change. See also [this detailed spreadsheet](#) for the latest information on each county’s reporting plan.



## B. Relevant Litigation

### *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850 (E.D. Pa.)

The League of Women Voters of Pennsylvania, the Urban League of Greater Pittsburgh, and two individual voters seek to force election officials to give voters the chance to fix ballots that are missing signatures or a perceived signature mismatch. Plaintiffs withdrew the lawsuit after the Secretary of the Commonwealth issued new guidance on September 11, 2020, that counties should not engage in the signature verification process ([Brennan Center](#)).

### *Crossey v. Boockvar*, No. 266-MD-2020 (Penn. Commonw. Ct.)

Plaintiffs [argued](#) Pennsylvania’s vote by mail process violated the Pennsylvania Constitution because it did not require the State to: (1) provide prepaid postage for all absentee and mail-in ballots; (2) establish emergency procedures to ensure that ballots delivered after 8 p.m. on election day due to mail service delays or disruptions are counted, to the extent otherwise eligible to be counted; (3) allow voters to designate a third party to assist them in collecting and submitting absentee or mail-in ballots and ensure that all such ballots would be counted, if otherwise eligible; or (4) provide uniform guidance and training to election officials involved in verifying mail ballots and implement procedures to ensure that voters receive reasonable notice and an opportunity to cure signature-related defects on absentee or mail-in ballots before any ballot was rejected.

On [September 17](#), the court dismissed as moot the Petitioner’s request to extend the ballot receipt deadline for mail-in ballots because the court granted such an extension in *Pennsylvania Democratic Party, et al. v. Boockvar, K., et al.*, 133 MM 2020. The court also dismissed as moot the Petitioner’s request that prepaid postage be provided on mail-in ballots given that the Department of State announced that it will provide funds to county election boards for postage on mail-in ballots. Finally, the court denied the Petitioner’s request that voters be permitted third-party assistance with the return of mail-in ballots. The court did not order the state to provide signature verification guidance for election officials, likely because Secretary Boockvar ordered on September 11 that no county should reject ballots on the basis of handwriting analysis alone.

**[Pennsylvania Democratic Party v. Boockvar](#), No. 407 MD 2020 (Commonwealth Ct. Pa.); No. 133 MM 2020 (Pa. Sup. Ct.)**

Plaintiffs requested (i) declaratory judgment that secure ballot drop-boxes be permitted; (ii) an injunction that mail-in and absentee ballots must be counted if they are postmarked by 8 p.m. on Election Day and received by the UOCAVA (Uniformed and Overseas Citizens Absentee Voting Act) deadline; (iii) injunction requiring boards to contact electors whose mail-in or absentee ballots contain facial defects and provide an opportunity to cure such defects by the UOCAVA deadline; (iv) declaratory judgment that boards must clothe and count naked ballots and an injunction against boards from excluding such ballots; and a (v) declaratory judgment that the poll watcher residency requirement does not violate the law.

On [September 14](#), the court (1) ruled that the Election code permits drop-boxes, (2) extended the absentee and mail-in ballot received-by deadline to 5:00 p.m. on November 6, 2020, if the ballot envelope is postmarked by 8:00 p.m. November 3, 2020, (3) ruled that the poll watcher residency requirement is constitutional, (4) denied the Plaintiffs' request that the Board of Elections contact individuals whose mail-in or absentee ballots contain a minor facial defect and provide them an opportunity to cure those defects, and (5) denied the request to count ballots returned without the secrecy envelope instead of invalidating them.

**[Donald J. Trump for Pres., Inc. v. Boockvar](#), No. 2:20-cv-00966 (W.D. Pa.)**

The Trump Campaign, four Republican members of Congress, the RNC, and two PA residents sued the PA Secretary of State, and the County Election Boards of all 67 PA counties. The general theme of the complaint is that mail-in-voting is the “single greatest threat to free and fair elections.” The specific legal claim(s) are that PA’s vote-by-mail election process violates: (1) the First Amendment to the U.S. Constitution; (2) The Equal Protection Clause of the U.S. Constitution; (3) the Fourteenth Amendment to the U.S. Constitution; (4) PA Constitution’s Free and Equal Elections Clause; (5) PA Constitution’s Equal Protection Guarantees; and (6) the PA Election Code. Plaintiffs seek an order: (1) that prohibits Defendants from permitting the return of mail-in ballots to locations other than the respective office of the county boards of elections. Or, to instruct Defendants to publish uniform statewide guidance on mail-in ballot drop boxes, subject to the same notice and determination requirements that Pennsylvania law currently provides for polling places; (2) that bars County Election Boards from counting mail-in ballots that lack an “Official Election Ballot” secrecy envelope; and (3) that permits poll watchers, regardless of their county of residence, to be present in all locations where votes are cast, including without limitation where mail-in ballots are being returned before and on Election Day and at any pre-canvass meetings. On [October 10](#), The court dismissed Plaintiff Donald J Trump for President’s claims that certain election practices were unconstitutional under the federal Constitution or under the Pennsylvania state constitution.

**[Libertarian Party v. Wolf](#), No. 20-2481 (3d Cir.)**

Third parties and their candidates for US House, Senate, and President sued the Virginia State Board of Elections to eliminate the petition signature requirement for the 2020 election due to

COVID. After a one-day bench trial on 7/13/20, the Court concluded that the signature requirements were unconstitutional as applied to the plaintiffs this election year. The deadline for collecting signatures for House and Senate candidates was extended to August 1, and the signature threshold number was reduced to 35% of the statutory figure. Candidates for President had the signature threshold reduced to 50% of the statutory figure. A previous consent decree entered in the case allows petition circulators to witness signatures over the internet so long as the circulator can actually see the voter sign the form. The original form must also be returned to the circulator so that the circulator can sign the affidavit. After a bench trial in favor of Plaintiffs, Defendants appealed. On July 28, the US Court of Appeals for the Third Circuit affirmed the District Court for the reasons set forth in the District Court opinion. On [August 14](#), the case was voluntarily dismissed by plaintiffs.

**[Disability Rights Penn. v. Boockvar](#), No. 83-MM-2020 (Penn. Sup. Ct.)**

Disability Rights Pennsylvania; SeniorLAW Center; Southeast Asian Mutual Assistance Associations Coalition, Inc. (SEAMAAC); Suzanne Erb; The Barristers' Association of Philadelphia (Petitioners), challenged the constitutionality of sections 1302, 1302.1, 1302.2, and 1308 of the 2019 Omnibus Amendments to the Pennsylvania Election Code (Act 77). Petitioners filed their suit against Kathy Boockvar, in her capacity as Secretary of the Commonwealth of Pennsylvania and Jessica Mathis, in her capacity as Director of the Bureau of Election Services and Notaries of the Pennsylvania Department of State (Respondents) claiming the deadline for receipt of absentee and mail-in ballots violates (1) Pennsylvania's Free and Equal Elections Clause, Art. I, §5;; (2) Pennsylvania Constitution's Free Expression and Association Clauses, Art. I, §§7, 20; (3) Pennsylvania Constitution's Equal Protection Guarantees, Art. 1, §§ 1, 26; (4) Article VII, Section 14(a) of the Pennsylvania Constitution (Absentee Voting Guarantee). Pennsylvania law provides for two categories of voters who are permitted to vote by means other than voting in person at a polling location: absentee voters and mail-in voters. Any registered voter who does not qualify as an absentee voter may apply to submit their ballot by mail-in voting, without providing a justification. Under Pennsylvania law, a mail-in or absentee ballot will not be counted unless it is received by a county election board "on or before eight o'clock P.M. the day of the primary or election" ("receive by" deadline). Petitioners claim that due to the COVID 19 pandemic and increased numbers of absentee and mail in ballots, the "receive by" deadline will disenfranchise many voters who timely mail in their ballot but they arrive too late due to the delays caused by the COVID 19 pandemic. On [May 15](#), the petition was dismissed.

**[Drenth v. Boockvar](#), No. 1:20-cv-00829 (M.D. Penn.), 2020 WL 2745729**

Joseph Drenth and National Federation of the Blind in Pennsylvania brought a civil rights case under the Americans with Disabilities Act and the Rehabilitation Act asserting that Pennsylvania's election policies violated the rights of the blind by not providing accessible ballots for blind individuals to vote privately and independently from home. Due to COVID, their argument was that these policies (i.e., not providing accessible ballots) forced blind individuals to either forfeit their right to vote privately and independently or risk their health and safety by traveling to a polling place to vote in person. They moved for a TRO/PI seeking to compel Pennsylvania to remedy this violation in time for the primary elections. On [August 18](#), Defendants' motion for summary judgment was granted.

**[Delisle v. Boockvar](#), No. 319-MD-2020 (Penn. Commonw. Ct.), transferred from: No. 95-MM-2020 (Penn. Sup. Ct.)**

The case concerns an emergency petition for an extension of time to allow the Bucks County, PA, Board of Elections to count the Voted Absentee and Mail-in Ballots that were received during the 2020 Pennsylvania Primary Election. On May 29, 2020, the Supreme Court of Pennsylvania, Middle District, issued an order transferring the matter to Pennsylvania's Commonwealth Court, on account of expiration of the 180-day time period during which the Court had jurisdiction to adjudicate the matter under relevant law. On September 5, the case was withdrawn.

**[In re: Extension of Time for Absentee and Mail-in Ballots](#), No. 2020-02322-37 (Penn. Ct. Common Pleas, Bucks Cnty.)**

Due to the high number of applications for mail-in and absentee ballots on account of the pandemic, despite its best efforts (including appropriating resources from other county agencies), the county board of elections was unable to process applications in a timely manner. The board feared that many applicants, through no fault of their own, would not receive their ballots in time to return them prior to the deadline for counting (June 2, 2020 at 2000 hours). The board petitioned the court for, and the court granted, an extension of the deadline for receipt of mail-in and absentee ballots for



an additional seven days (until June 9, 2020 at 1700 hours) for those ballots that were postmarked no later than the standing deadline to submit (June 1, 2020). This allowed for extra time for transit of the ballots by mail, but did not extend the deadline by which ballots must be postmarked. The court also ordered that all ballots received during the extended period be segregated and logged for receipt, but be counted as regular ballots unless the same voter also cast a provisional ballot. On [June 2](#), Petition was granted

**[NAACP Penn. State Conference v. Boockvar](#), No. 364-MD-2020 (Penn. Commonw. Ct.)**

Plaintiff NAACP Pennsylvania State Conference sued Pennsylvania's Secretary of State and Director of the Bureau of Election Services and Notaries ("State Defendants"). It alleges that Pennsylvania's election laws and practices during the pandemic severely burden the right to vote and disproportionately burden African-American and Latino voters in violation of Article I, sec. 5 of the Pennsylvania Constitution. It further alleges Pennsylvania's election laws and practices, including reducing polling places and restricting access to mail-in and early voting disproportionately burden some but not other voters in violation of Article I, sections 1 and 26 of the Pennsylvania Constitution. It seeks injunctive relief that defendants be required to maintain a sufficient number of polling places, give adequate notice to voters of any change in polling places through mail, permit early voting for the General Election, increase access to vote by mail, and use hand-marked paper ballots for the General Election in all polling places while retaining at least one accessible voting machine per polling place for those who request one and as required by federal law. On [September 11](#), the court denied NAACP's petition for a mandatory preliminary injunction on the grounds that the NAACP failed to meet the standard for a preliminary injunction. In particular, the NAACP failed to prove that absent the requested mandatory preliminary injunction relief the NAACP and/or its members would likely suffer immediate and irreparable harm. This conclusion was based on a failure to show that the difficulties of the June Primary election would recur in November, especially the consolidation of polling places.

**[Commonwealth of Pennsylvania, State of California, State of Delaware, District of Columbia, State of Maine, Commonwealth of Massachusetts, and State of North Carolina v. Louis DeJoy and the United States Postal Service](#)**, No. 2:20-cv-04096 (E.D. PA)

Plaintiffs PA, CA, DE, DC, ME, MA, and NC bring suit against DeJoy, Duncan (chairman of the Postal Service Board of Governors), and USPS challenging recent changes to USPS policies resulting in delay of the mail with impacts on the election. Under the Postal Reorganization Act, USPS is required to meet certain mail delivery standards and is further required to seek an advisory opinion requiring a hearing and opportunity for comment from the Postal Regulatory Commission prior to instituting any changes which impact national service. The changes specifically challenged include 1) prohibiting late or extra trips by postal workers 2) requiring carriers to adhere to rigid start and stop times 3) limiting the use of overtime 4) no longer treating election mail as first class mail automatically and 5) no longer delivering first-class mail regardless of whether or not it has sufficient postage. The States allege harm to their sovereign, quasi-sovereign and proprietary interests in administering elections, not having to devote significant additional resources to administering elections and conducting government functions including the operation of the state civil and criminal judicial systems. The States assert four causes of action. 1) violation of the Postal Reorganization Act by failing to follow the procedural requirements before instituting changes 2) violation of the Postal Reorganization Act by failing to satisfy the mail standards for delivery under the act due to changes 3) violations of the States' rights under the elections and elector clauses by undermining the States' ability to regulate elections under both clauses and 4) a violation of the 26th amendment caused by the fact that changes to USPS delivery standards resulting in a diminished ability to vote by mail will most impact older voters who are most likely to vote by mail. Six states sought to enjoin the Postal Service from implementing several changes that resulted in delayed mail service. On [September 28](#), the district court issued a nationwide injunction, finding that postmaster DeJoy's policy changes violated federal statutes.

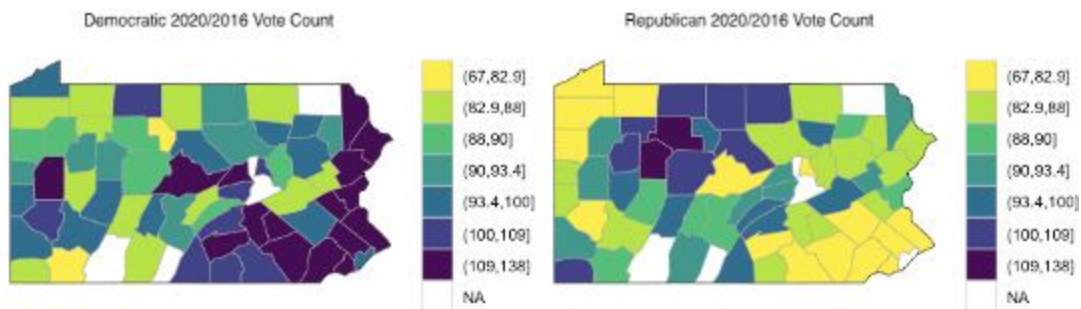
### C. Pennsylvania's 2020 Primary

To see our full primary analysis, see our full report [here](#). Pennsylvania's June 2, 2020 primary election highlighted several challenges to running a successful election during a pandemic. Although the state now allows no-excuse absentee balloting due to a 2019 change to voting laws, it has faced challenges in implementation. Counties struggled to process the large volume of mail-in ballot requests, and technical issues and mail delays interrupted delivery. Furthermore, tight deadlines to request and return ballots resulted in counting delays and uncounted votes. At the same time, the state

saw a significant reduction in the number of in-person polling places as well as reports of insufficient social distancing.

### *Overall Turnout*

Overall, 2.8 million voters turned out for the 2020 presidential preference primary, compared to 3.0 million in 2016. However, more Democrats voted in 2020 (1.64 million) compared to 2016 (1.56 million), despite concerns stemming from the pandemic, while Republican turnout fell from 1.46 to 1.17 million.



### *Vote-By-Mail Performance in June*

Counties across Pennsylvania struggled to deal with the increase of mail-in ballots. Issues with mail-in-voting occurred at all stages of implementation: processing requests for ballots, delivery, and counting.

First, counties had difficulties processing all the mail ballot applications. High demand for the ballots, coupled with under-staffed election offices, contributed to long [processing](#) times for ballot applications. When asked about handling the increased volume of requests, [Secretary of State Kathy Boockvar responded](#) “absolutely” to the question “are there lessons to be learned from suddenly finding yourself with 17 times as many mail-in ballots as you used to have?” Second, delivery of ballots was interrupted by design flaws, technical issues, and mail delays. In Montgomery County, a [design flaw](#) in the state’s online application omitted voters’ apartment numbers from printed ballots.

Without this address information many ballots became undeliverable and were returned to the county board of elections. Counties also suffered from technical problems. Allegheny County had an issue with its election software's [label printing function](#) that caused several voters to receive multiple ballots. Montgomery County similarly sent the [wrong ballots](#) to approximately 2,000 voters because of a software glitch that occurred when printing.

Third, [mail delays](#) with the USPS also caused voters to receive ballots too late to cast. The USPS recommended giving voters at least [two weeks](#) to receive and mail their ballots. Despite this guidance, the state's deadline to request a ballot was May 26th, one week before the election, which allowed insufficient time for some voters to receive and submit ballots on time. As a result, [thousands of ballots](#) were uncounted because officials received them after the deadline. According to the Philadelphia Inquirer, approximately [92,000 ballots](#) could have been uncounted because of this tight deadline. In a state that recently saw a margin of victory of just [44,000 votes](#), tight deadlines coupled with slow mail delivery could influence the outcome of the election. Ultimately, Governor Tom Wolf issued an executive order to extend the deadline to count mail-in ballots in six counties by a full week. This extension allowed for some late ballots to be counted, but [tens of thousands](#) received in the days after the election were not.

Pennsylvania also faced challenges counting mail-in ballots. In Philadelphia County, Bucks County, Delaware County, and Montgomery County, election officials took about [two weeks](#) to count all the mail-in ballots. All told, about [half](#) of all counties in Pennsylvania took at least a week to count ballots. Just opening the two envelopes in which the ballots are mailed is incredibly time consuming, and some counties experienced difficulties with their electronic letter openers. For instance, [Lehigh County's](#) machines require workers to slide each envelope through it individually to open just the outer envelope and the motor in one of their three machines burned out on the second day of counting. Furthermore, tens of thousands of ballots were disqualified because of the state's [signature verification](#) process. Many of these voters are given no notice of their disenfranchisement, and so cannot correct the error or submit another ballot. Signature verification processes disproportionately impact [young voters](#), [old voters](#), [voters of color](#), [voters with disabilities](#), [women](#), [trans and gender non-conforming voters](#), and [military personnel](#).

### *In-Person Voting in June*

Leading up to the election, the Pennsylvania Department of State released [guidelines](#) for polling places. These guidelines included:

- Remote poll worker training, including online Q&A sessions and pre-recorded videos
- PPE for poll workers, such as gloves and masks
- Physically marking out spaces for voters to stand in line and vote at a safe distance
- Posting poll workers as “greeters” to explain social-distancing protocols
- Making hand sanitizer available on entry and exit from polling places
- Maintenance of separate check-in and polling areas for “consolidated” precincts in which voters from multiple precincts share the same polling place

The Department of State allowed for large [reductions](#) in poll workers and polling places for the June 2 primary. It also required polling places to have a minimum of five poll workers per polling place. Many counties, such as Philadelphia County, Allegheny County, Delaware County, and Montgomery County [closed over half](#) of all their polling places. Allegheny County closed about [85%](#) of its polling places, and Philadelphia County closed about [75%](#) of its polling places. Together these measures enabled polling places to maintain sufficient staffing levels. Poll workers were required to wear masks, but voters were not. Philadelphia County had trouble enforcing [social distancing](#), in no small part because several voting machines were “crammed together.”

In the wake of COVID, Philadelphia and its adjoining counties are trying to [innovate](#) in order to create an accessible election this November. These counties all plan to host early voting [satellite elections offices](#) where voters can request and then submit a mail-in ballot on the spot. The goal is to not only streamline the voting process for the voters, but to also reduce lines and congestion at the polls.

However, some lingering problems make it difficult to keep polling places efficient and operational come November. Many counties in Pennsylvania are suffering from severe [poll worker shortages](#). Because of COVID, many poll workers, a majority of whom are over 60 historically, have declined to participate this election cycle. This problem is exacerbated because [Pennsylvania law](#) requires poll workers to reside in the precinct in which they work. This may also increase the time it will take to tabulate results because poll workers also help count [mail-in ballots](#), which are expected to increase this cycle. Looking ahead, some counties are concerned about [poll worker shortages](#). For

instance, [Allegheny County](#) is thinking about how to staff its polling places and address reports that it was difficult to physically distance at the polls in June.

### *Voter Survey*

Immediately following the primary, the Healthy Elections Project administered questions from the [Survey of the Performance of American Elections](#) to registered voters in Pennsylvania, to gauge their experience in voting during the election, and to understand why those who did not vote decided not to cast a ballot. The following analysis compares the results from the 2020 primary to answers to the same questions following the 2016 presidential election. Note that the number of observations from the 2020 post-primary survey was 1,000 registered voters. There were 200 respondents to the 2016 survey. The topline results for Pennsylvania voters are:

#### *2016 and 2020 Primaries: Characteristics of voters and voting*

- In 2016, 5% of voters polled voted absentee or by mail compared to 59% in 2020.
- In the 2020 primary, the most common type of polling place was a school building (25%). In 2016, it was a church (25%).

#### *2016 and 2020 Primaries: Voter Experience*

- The vast majority of voters reported that it was “very easy” to find their polling place in both 2020 and 2016. However, that majority *shrank* from 91% to 85%.
- The vast majority of voters reported that their polling place was run very well and that they had not seen any problems. However, this majority *increased* significantly, from 78% in 2016 to 80% in 2020.
- In 2020, most voters (57%) did not have to wait in a line to vote. In 2016, that portion was 33% (and the plurality of sample voters needed to wait less than 10 minutes in line).
- In 2020, 97% of voters experienced no problems with voting equipment. In 2016, 98% experienced no problems.
- In 2020, 66% of polled voters rated poll worker performance as “excellent.” 69% of voters polled in 2016 said the same.

#### *2020 Primary: Absentee Voting Experience*

- 96% of voters polled reported no problems receiving a mail ballot.

- 98% of voters polled reported no problems marking a mail ballot

#### *2020 Primary: Voter Concerns*

- The most common reason for not voting in 2020 (not including the “Other” category) was anxiety about the COVID-19 virus.
- The most common reason (76%) for requesting an absentee ballot in 2020 was anxiety about COVID-19.
- In 2020, 70% of voters were very confident that their vote was counted as intended, down slightly from 73% in 2016.
- In 2020, 45% of voters were very confident that their county votes were counted as intended, down from 55% in 2016.
- In 2020, 33% of voters were very confident that votes in their state were counted as intended, down from 38% in 2016.

#### *Voter Projections for 2020*

- 91% of 2020 respondents said they intended to vote in November.
- 63% of respondents said it was likely or very likely they would vote absentee in November, while 37% said it was unlikely or very unlikely.
- 75% of respondents said they were very or somewhat confident about Pennsylvania’s COVID preparation for voting in November.