Pennsylvania Voter Protection Laws in a Nutshell, 2014
DISCLAIMER

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INTRODUCTION

This publication ("Nutshell") is intended to distill complex election law for lawyers, advocates, voter registration campaigns, and "get out the vote" campaigns. It combines state election law with state regulations, rules, attorney general opinions, and other election materials to provide a comprehensive interpretation of the law and practices with respect to elections. While this Nutshell does not cover every provision of state election law, it highlights those provisions that, in our experience, have most affected the voting rights of voters of color.

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ABOUT ADVANCEMENT PROJECT

Advancement Project is a next generation, multi-racial civil rights organization. We tackle inequity with innovative strategies and strong community alliances. With a national office in Washington, DC and two offices in California, we combine law, communications, policy and technology to create workable solutions and achieve systemic change. We aim to inspire and strengthen movements that expand opportunity for all. See www.advancementproject.org for more information.
Who may register to vote in Pennsylvania?

An individual may become a registered voter in Pennsylvania if s/he is:

- At least 17 years old and will be 18 years old by the next election;
- A citizen of the United States for at least one month prior to the election; and
- A resident of the Commonwealth of Pennsylvania and the election district where s/he desires to vote for at least 30 days prior to the election.¹

Although Pennsylvania statutes provide that a person convicted of a felony and incarcerated within the past five years may not vote in the Commonwealth, the Supreme Court of Pennsylvania has ruled this waiting period unconstitutional.² Accordingly, this provision in the law is no longer enforceable and should not be considered an eligibility factor.

Additionally, pretrial detainees, all individuals incarcerated on misdemeanor violations, and all individuals under house arrest are entitled to register, regardless of the nature of the underlying offense.³ Individuals transferred to halfway houses as a condition of probation or parole (and not as part of a pre-release program) are entitled to vote but may not list the halfway house as their place of residence on their voter registration form.⁴

Homeless persons are entitled to register using an address where they receive mail, such as a homeless shelter or P.O. Box.⁵ They may also indicate on the map on the voter registration application form the area in which the voter spends most of his time.

Finally, students attending a Pennsylvania institution of higher learning can register in the district where s/he lives while attending the school.⁶

When will the general election be held?

The general election will be held on November 4, 2014.
What is the voter registration deadline for each election?

Under Pennsylvania law, voter registration applications must be received by the county voter registration office thirty days before the election or be postmarked no later than the thirtieth day before the election.\(^7\) No application will be received on Sunday, a holiday, or the day of the election.\(^8\)

- **General Election.** The registration deadline for the general election is October 6, 2014.

Where can a person apply for voter registration?

In Pennsylvania a person qualified to vote may apply to register:

- In-person in front of a registration commissioner or the commission, before a registrar or a clerk at the office of the registration commission, or at a place designated by the commission which may include polling places, schools, or municipal buildings.\(^9\)
- When applying for or renewing a driver’s license at the Pennsylvania Department of Transportation or when applying for a non-driver photo ID.\(^10\)
- By mail;\(^11\) or
- At any Pennsylvania public assistance agency, orphans’ court, marriage license bureau, any agency providing state-funded services to persons with disabilities, and all armed forces recruitment centers.\(^12\)

What information must be provided on a voter registration application?

In Pennsylvania, a complete voter registration application is judged against information that must be included on the federal voter registration form.\(^13\) As a result, at a minimum, the following information about the applicant must appear on the voter registration application in order for it to be processed:

- Full name
- Residence address
- Mailing address (if different from residence address)
- Date of birth
- ID number (Acceptable ID number includes complete Pennsylvania driver’s license number or other Pennsylvania-issued state ID, last four digits of social security number, or previously assigned voter identification number. If the voter does not have one of these ID numbers, she should write “none” in the ID box and the state will assign a unique ID number to the applicant)
- Signature or mark
- Political party designation, if the applicant wants to vote in a primary election.\(^14\) If the applicant does not select a party affiliation, s/he can request the commissioner, registrar, or clerk amend the registration record to reflect a party affiliation at a later date. This request must be made by the registration deadline.\(^15\)
Pennsylvania law specifically prohibits a voter registration application from requiring notarization, other formal authentication, or any additional information other than that which is necessary to allow election officials to: A) determine eligibility of the applicant; and B) administer voter registration and other parts of the election process.\textsuperscript{16}

**How does a homeless person register to vote?**

The Pennsylvania voter registration mail application includes a basic map where an individual who does not have a specific address can indicate where s/he lives.\textsuperscript{17} If the individual does not have a permanent address, the applicant should:

- Note on the map where s/he spends most of her/his time; this will serve as the applicant’s residence.\textsuperscript{18} And,
- Provide a mailing address where the applicant can receive mail, including a post office box, general delivery at a post office or at a shelter.\textsuperscript{19}

**May a person register to vote by mail? If so, are there special requirements for first-time voters who register to vote by mail?**

Yes, a person may register to vote by mail. Special requirements for first-time voters who register by mail do exist.

- The Help America Vote Act of 2002 (HAVA) requires states to obtain an identification (ID) number from first-time voters who register to vote by mail after January 1, 2003. HAVA requires a current and valid driver’s license number or the last four digits of the applicant’s social security number. If the applicant has neither a driver’s license nor a social security number, the state will assign the applicant an identification number for voter registration purposes.\textsuperscript{20}

In conformance with HAVA, Pennsylvania requires each applicant to provide the number from her/his ID issued by the Pennsylvania Department of Transportation or the last four digits of her/his social security number when registering.\textsuperscript{21} Applicants who have neither a Pennsylvania state-issued ID nor a social security number must write “none” in the space for the ID number.

- While a registrant must provide identifying information on the application, Pennsylvania election law does not require the registrant to physically present an ID at the time of registering. The lack of a Pennsylvania Department of Transportation ID number or Social Security number will not prevent a person from registering to vote.
Will mail-in voter registration applications be accepted if they are received by the registrar’s office after the registration deadline?

Yes. An individual’s application will be accepted if it is postmarked by the 30th day before the election and in the case of an illegible or missing postmark, up to five days after the registration deadline if it was delivered by mail. 22

Additionally, a valid voter registration application submitted at least 30 days before the election to either the Pennsylvania Department of Transportation or to a government agency designated as a voter registration agency, will be accepted.23

May a person correct or complete a form after the deadline for voter registration if it was submitted before the deadline?

Yes. In Pennsylvania an individual who submits a timely voter registration application that cannot be processed, will be sent a notice letter telling the applicant why the application was denied or cannot be processed. Upon receipt of the notice, the applicant then has until the fifteenth day before the next election to provide the missing information24 or to file a petition requesting registration.25 In practice, county election offices often accept corrections to timely received registrations up until Election Day.

Are there any rules relative to assisting others with the completion of a voter registration application?

Yes. Pennsylvania election law requires that every person providing assistance in filling out the voter registration application must provide his or her name, address, and telephone number.26

How many voter registration applications may individuals or groups conducting voter registration drives receive from the State Board of Elections and/or from local registrar offices?

No restrictions of this sort exist in Pennsylvania.27

Are there any special rules pertaining to the federal voter registration application?

No.
May persons conducting voter registration drives make copies of completed voter registration applications before delivering them to the registrar’s office?

Yes. While there appears to be no statute or definitive ruling by a Pennsylvania court directly answering this question, statutory language relating to the viewing and copying of voter registration applications suggests it would not violate Pennsylvania law for persons registering new voters to copy voter registration information prior to the submission of the information. Nevertheless, because Pennsylvania law does prohibit a registered voter’s electronic signature, her driver’s license or ID number, and the last four digits of her social security number from being made public, redaction of these items should be considered prior to copying.

Are persons conducting voter registration drives required to deliver or mail completed voter registration applications to registrar offices within a certain time limit?

No, but as a practical matter it is essential that applications collected prior to a registration deadline also be submitted prior to that deadline. Lengthy retention of completed voter registration applications can lead to confusion over the voter’s current address.

- For example, after completing the initial voter registration application, the applicant could change residence. S/he might then re-register using the new address.
- In such cases, a completed registration application that is retained for a long period of time might actually be received and processed by election officials after the individual has submitted their updated registration. If this happens, the individual's most recent information will be replaced by the outdated information.

When voter registration applications are mailed or delivered to election officials, how long will it take for the applications to be processed?

Pennsylvania election law provides that an applicant can expect to receive a voter identification card within 14 days of the date the application is delivered to the registrar’s office, if the applicant is deemed to be a qualified registrant.
Can election officials delay the processing of a voter registration application or deny registration outright, based on their inability to match the applicant’s HAVA ID number with a record in the Social Security Administration or state driver’s license database?

No. Pennsylvania state election officials have examined this question and in August 2006 issued a state-wide directive informing local election officials that they are not authorized to deny a voter registration application from an otherwise eligible applicant simply because the applicant’s ID number cannot be matched against the necessary data base. They made this decision, in part, because they determined that a positive ID match is not a prerequisite to voting.31

If election officials delay or deny processing a voter registration application because the applicant’s HAVA ID number cannot be verified, will the applicant be notified?

Yes. In the event of mismatch, counties send notices to voters requesting that the voter provide the number again. While practices vary, voters generally have between 15 to 30 days to respond to the notice with additional information. In practice, county election offices often accept corrections to timely received registrations up until Election Day. If the voter does not respond to the notice, elections officials may not register the voter because of a mismatch.

Although voter registration applications of otherwise eligible applicants cannot be delayed or denied based solely on election officials’ inability to make a positive ID match against either the Social Security Administration or state driver’s license data base, in many instances, counties are rejecting applications when they are unable to exactly match the numbers from the application to the databases.

What can a person do if her application is denied?

New Registrations. In Pennsylvania the election registration commission may not reject a voter registration application less than ten days before the very next election following the filing.32 Where a voter registration application is timely rejected, the commission must notify the applicant by first class, nonforwardable mail, return postage guaranteed, of the rejection and the reason for the rejection.33

If a registrant believes her voter registration application has been erroneously denied s/he may file a petition objecting to the rejection with the commission no later than 15 days before the election.34 Upon receipt of the petition, the commission will schedule a public hearing no later than ten days prior to the election.35 If after the hearing the commission finds the rejection of the registration unnecessary, they will direct the registrar to add the person to the voter list.36
Additionally, Pennsylvania election law allows an individual whose claim for registration has been denied to file an appeal in the appropriate Court of Common Pleas. The appeal must be filed no later than one week before the election, it must request relief, and must set forth the particular grounds for relief.

**Updated Registrations.** Where the individual submits information to the commission for the purpose of updating her/his address within the same county, changing her/his name, or changing party affiliation but the commission is not satisfied that the request comes from the voter, the voter can appear before the commission to provide more information. The commission must send the voter a written notice directing the applicant to appear before the commission to answer questions they deem necessary in order to proceed. If the applicant does not appear, the commission may not make the requested change and must inform the applicant of its decision in writing.
**IDENTIFICATION REQUIREMENTS**

**What identification is required for voter registration?**

The Help America Vote Act of 2002 (HAVA) requires states to obtain an identification (ID) number from first-time voters who register to vote by mail after January 1, 2003. Under HAVA this number can either be a current and valid driver’s license number or the last four digits of the applicant’s social security number. If the applicant does not have either number, the state will assign the applicant an identification number for voter registration purposes.\(^{42}\)

In conformance with HAVA, Pennsylvania requires each applicant to provide the number from her/his ID issued by the Pennsylvania Department of Transportation or the last four digits of her/his social security number when registering.\(^{43}\) Applicants who have neither number must write “none” in the space for the ID number.

- While an applicant must provide an ID number on her application, Pennsylvania election law does not require her to *physically present* an ID at the time of registering.\(^{44}\)

**What identification is required at the polling place?**

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***IMPORTANT: In January 2014, the Commonwealth Court held the 2012 Photo ID Law unconstitutional and permanently halted enforcement of the law.\(^{45***}\)

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For the November 4, 2014 election, only voters who are voting for the first time in their precinct will be required to show ID.

In Pennsylvania all voters appearing to vote in the election district, precinct, or district for the **first time** must present a form of ID. The ID can be **one** of the following forms of photo ID:

- A valid driver’s license or ID card issued by the Department of Transportation (PennDOT)
- A valid identification card issued by a Pennsylvania agency
- A valid identification card issued by the United States Government
- A valid United States passport
- A valid student identification card
- A valid employee identification card, or
- A valid United States armed forces identification card.\(^{46}\)
Note that the IDs for first time voters do not need an expiration date and the name on the ID does not have to “substantially conform” to the name on the voter registration rolls.

If the first time voter does not have one of the above photo identifications she may present one of the following forms of non-photo ID that bears the voter’s name and address:

- A non-photo identification issued by the Commonwealth of Pennsylvania or any agency thereof (such as your voter ID card)
- A non-photo identification issued by the United States Government, or any agency thereof
- A firearm permit
- A current utility bill
- A current bank statement
- A paycheck, or
- A government check.

If a first time voter cannot provide any ID, she is entitled to cast a provisional ballot. See Section “Provisional Ballots” below for more information on provisional ballots.

What identification is required to obtain or file an absentee ballot?

Pennsylvania does not require voters wishing to vote by absentee ballot to present an ID to obtain or file an absentee ballot. Rather, any registered voter who meets the absentee voting requirements is entitled to vote by absentee ballot. However all voters wishing to vote by absentee ballot must provide one of the following proofs of identification on her application in order to obtain an absentee ballot:

- The voter’s driver’s license number, or non-driver photo ID number, or
- If the voter does not have a driver’s license or non-driver photo ID, the last four digits of the voter’s Social Security number, or
- If the voter does not have either of those numbers, a copy of one of the following forms of photo ID:
  - A valid driver’s license or non-driver photo ID issued by the Department of Transportation (PennDOT);
  - A valid photo ID issued by the Commonwealth;
  - A valid photo ID issued by the United States Government
  - A valid United States passport;
  - A valid photo ID issued by an accredited Pennsylvania college or university;
  - A valid photo ID issued by a Pennsylvania municipality to an employee of the municipality;
- A valid United States military or Pennsylvania National Guard photo ID, or
- A valid Pennsylvania nursing/personal-care facility photo ID.

When an absentee ballot is requested, election officials are required to verify the requester’s proof of identification, if necessary, and the other information provided in the absentee ballot application.\(^{52}\) If a voter does not provide proof of identification where required, the voter will be sent a notice along with the absentee ballot requesting proof of identification.\(^{53}\) If the voter fails to provide proof of identification by the sixth calendar day after the election the absentee ballot will not be counted.\(^{54}\)

**What identification is required to validate a provisional ballot?**

Pennsylvania election law does not require the voter to present an ID in order to validate a provisional ballot. In accordance with HAVA, Pennsylvania relies on state election law to determine whether the provisional ballot will be counted.\(^{55}\) *See Section “Provisional Ballots” below* for more information on provisional ballots.

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**VOTER REGISTRATION LIST MAINTENANCE**

**For what reasons can a person’s name be removed from a list of registered voters?**

Under Pennsylvania law a voter’s name may be removed from the voter registration list for the following reasons:

- At the voter’s request\(^ {56}\)
- Upon the death of the voter\(^ {57}\)
- Upon confirmation that the voter has moved to a residence outside the county\(^ {58}\)
- The voter has violated the Pennsylvania Election Code and has had her right to vote revoked\(^ {59}\)
- The voter has not voted within the past five years, the board of elections has no knowledge of a change of address for the voter and the voter has not responded to an address confirmation notice in addition to not appearing to vote in two federal elections after the address confirmation notice was sent.\(^ {60}\)

A commission must complete the voter removal program no later than ninety days before a municipal or general election and at least once each year.
However, the names of those voters requesting removal and the names of those voters who die, can be removed at any time.61

**Under what circumstances will a person’s name be placed on a list of inactive voters?**

Any voter who is sent a “confirmation mailing” as part of a list maintenance program and who has not responded to the mailing will have her/his registration record marked as inactive in the poll book; an “I” will appear next to her/his name.62

Additionally, while Pennsylvania’s Election Code continues to reflect various other instances where a voter’s registration status can be taken off of the active voter rolls, these sections have been suspended because they conflict with federal law prohibiting the cancellation of voter registration for failure to vote.63

**How does the voter get her/his name back on the active list?**

A registered voter whose registration has been placed on the “inactive list” can be taken off of the list if the voter:

- Timely responds to the notice sent to her by the commission, or
- If the individual reports a change of name, address, telephone number, or political affiliation,64 or
- In the case of a voter who has moved to an address that is covered by her/his former polling place, one that is covered by a different polling place, or if s/he has moved from one county to another, s/he updates her address by signing a written affirmation before an election official on Election Day. This affirmation can be signed at the voter’s original polling place.65
- If the individual has not changed address and votes at the voter’s polling place.

Poll workers are given blank affirmations. They are commonly found in their supply box.

**What should the voter do if s/he changes her/his address?**

A voter who changes their address has two options: (1) Submit a new voter registration application with her/his new address and a mark in the “change of address” box, or (2) S/he can file a “removal notice” with the commission.66 The “removal notice” should come pre-addressed to the office of the commission and provide space for the voter to provide the following information: The voter’s current address, including municipality; last address, including municipality; the date s/he moved to her/his current address; and signature. The signature must match the signature on file for the voter.67 Finally, the “removal notice” should contain a statement informing the voter that by filling out, signing, and returning the form s/he can transfer their registration to their new address and that the
transfer will be effective for all elections taking place at least 30 days after the date when the voter moved.\textsuperscript{68}

**What are the procedures for removing names of persons who have felony convictions from the registration rolls?**

Pennsylvania election law does not require election officials to remove the names of individuals who have been convicted of a felony from the voter registration rolls. Nevertheless, individuals who are incarcerated on Election Day as a result of a felony conviction are not entitled to vote.\textsuperscript{69}

**May a person whose name has been removed due to a felony conviction have her/his right to vote restored?**

Yes. The voting rights of a person who has been incarcerated due to a felony offense will be automatically restored upon release.\textsuperscript{70} The voter’s registration may only be removed pursuant to a voter removal program. It is recommended that a person in this situation re-register to vote if s/he was registered prior to a long period of incarceration. Like all other applicants, s/he should register by the voter registration deadline. On the other hand, if the individual was registered before becoming incarcerated and s/he was only incarcerated for a short period of time, it is likely her/his voter registration information will remain active.

**What are the procedures for removing names of persons who have been found mentally incompetent?**

Pennsylvania election law does not specifically prohibit individuals who are mentally disabled or who are confined to a mental institution from voting. Thus, if the mentally disabled person is an otherwise qualified voter able to complete a ballot, s/he should be allowed to vote.

- However, the law clearly states that a person who is *confined* to a mental institution is not a “qualified absentee elector.”\textsuperscript{71}

**What may a voter do if s/he learns that her/his name has been removed from the registered voters’ list in error?**

In Pennsylvania, a voter whose name has been incorrectly removed from the voter registration list may petition the registration commission for reinstatement no later than the tenth day before the election.\textsuperscript{72} The commission will hold a hearing on the petition and if it finds that the voter’s name was removed in error it will reinstate the voter.\textsuperscript{73} Pennsylvania law does not specify when the hearing must be held or when the commission must render its decision.\textsuperscript{74}

A voter who has been incorrectly identified as deceased and therefore removed from the registered voters’ list, may appear in person before the commissioner, registrar, or clerk at the office of the commission and prove her/his identity.\textsuperscript{75}
Finally, a voter whose registration has been cancelled by the commission may file an appeal in the Court of Common Pleas.\textsuperscript{76} The appeal must be filed no later than one week before the election and must not only request relief but must also set forth the particular grounds for relief.\textsuperscript{77}

**Who may obtain a list of registered voters?**

Under Pennsylvania law the records of a registration commission, district registers, street lists as well as official voter registration applications, petitions and appeals, witness lists, accounts and contracts and reports are open to public inspection. Upon request, a photocopy or computer-generated data record must be provided. The records will be provided at cost and cannot be used for commercial or improper purposes.\textsuperscript{78}

A commission *must* provide for computer inquiries as to individual registered voters and shall provide as to each voter for whom information is requested, the following:

- Name
- Address
- Date of birth, and
- Voting history.\textsuperscript{79}

Upon request, the commission is required to provide a written list containing this information.

Furthermore, the commission *may* make available for public inspection a list containing the same type of information for every voter in the county.\textsuperscript{80} In order to inspect or obtain the list of registered voters, the individual requesting the list must first provide identification to the public official who has custody of the list and must state in writing that any information obtained from the list will not be used for purposes unrelated to elections, political activities, or law enforcement.\textsuperscript{81} The commission must provide paper copies of the list and may provide “copies in some other form” to any registered voter in Pennsylvania within ten days of receiving a written request and payment for the cost of reproduction and postage.
ABSENTEE VOTING

Who is permitted to vote by absentee ballot?

The following qualified voters may request an absentee ballot:

- A registered voter who because of illness or physical disability is unable to go to his/her polling place on Election Day or who is unable to operate a voting machine. 82
- A registered voter who expects to be outside the territorial limits of the United States because his/her duties, occupation, or business require him to be elsewhere during the entire period the polls are open for voting. 83
- A registered voter who is a civilian employee of the United States outside the territorial limits of the United States, if at the time of voting, he/she is absent from municipality of residence. 84
- A registered voter who is or expects to be absent from his/her municipality of residence, because his/her duties, occupation or business require him/her to be elsewhere during the entire period the polls are open for voting. 85
- The spouse or dependents of voters who are residing with or accompanying voters who are outside the territorial limits of the United States and therefore also expect to be absent from their municipality of residence on Election Day. 86
- Any voter who is a county employee and cannot vote due to duties on Election Day relating to the conduct of the election. 87
- Any voter who will not go to their polling place on Election Day because of their observance of a religious holiday. 88
- A voter who is or who may be in the U.S. military, even if at the time of voting s/he is present in her election district and without regard to whether s/he is already registered to vote, because the commission is entitled to treat a request for an absentee ballot by a military voter, as a request to register to vote. 89
- A spouse or dependent residing with or accompanying a person in the U.S. military and if, at the time of voting, is absent from the municipality of her/his residence. 90
- A member of the U.S. Merchant Marines and his/her spouse and dependents residing with or accompanying the Merchant Marine, who expects to be absent on Election Day from the municipality of residence during the time of voting. 91
- A voter who is or who may be in a religious or welfare group officially attached to and serving with the armed forces and his/her spouse and dependents residing with or accompanying the voter, who will be absent from their municipality of residence during the time of voting. 92
• Any qualified war veteran voter who is bedridden or hospitalized due to illness or physical disability and who because of such illness or disability is absent from the municipality of her/his residence, regardless of whether the individual is registered and enrolled,\textsuperscript{93} and
• Any spouse or dependent accompanying a person employed by the Commonwealth or the Federal Government, in the event that the employee’s duties, occupation, or business on Election Day require her/him to be absent from the municipality of her residence.\textsuperscript{94}

Pennsylvania law provides that a person confined to a mental or penal institution is not a “qualified absentee voter.”\textsuperscript{95} However, when it comes to persons in penal institutions, this limitation only applies to those who are incarcerated due to a felony conviction and not to pretrial detainees or to those convicted of misdemeanors.\textsuperscript{96}

Additionally, a registered voter who affirms their absence from the voting district on Election Day, for any reason, is entitled to vote by absentee ballot for President and Vice-President only.\textsuperscript{97}

**How may a person request an absentee ballot?**

A person who wants to vote by absentee ballot may apply in the following ways:

• By sending a letter or other signed document to the county board of election in the county in which they are registered (such as the county’s official application for requesting an absentee ballot)\textsuperscript{98}
• By applying in person\textsuperscript{99}
• By completing any form supplied by the Federal Government,\textsuperscript{100} or
• By completing any official county board of election form that is addressed to the Pennsylvania’s Secretary of the Commonwealth or county board of elections of the county in which the voter resides.\textsuperscript{101}

**When is the deadline for requesting an absentee ballot?**

To be processed, requests for absentee ballots must be received in the office of the county board of elections no later than five o’clock p.m. on the Tuesday immediately before any primary or general election.\textsuperscript{102} Limited exceptions to the five o’clock deadline exist and are discussed below, under “Exceptions.”

Additionally, applications for absentee ballots will not be processed before the 50\textsuperscript{th} day before the very next election.\textsuperscript{103} Where an application for an absentee ballot is received earlier than 50 days before the election, the application must be held and processed when the 50-day window begins.\textsuperscript{104}
The application for an official absentee ballot for absentee voters defined in 25 Pa. Stat. 3146.1 (a-h) must contain:

- The voter’s name;
- Length of time as a citizen of the United States;
- Length of residence in Pennsylvania;
- Date of birth;
- Length of time of residence in the voting district;
- The voter’s voting district (if known);
- The voter’s party choice (in the case of a primary);
- For a military voter, her/his stateside military address, FPO or APO number, and serial number, and
- The voter’s signature

The application for an official absentee ballot for voters who will be absent because of business duties or occupation or a county employee involved in election duties, or a voter who cannot attend because of a religious observance must contain:

- the signature of the applicant;
- the applicant’s surname and given name or names;
- proof of identification;
- his occupation;
- date of birth;
- length of time a resident in voting district;
- voting district if known;
- place of residence;
- post office address to which ballot is to be mailed;
- the reason for his absence;
- and such other information as shall make clear to the county board of elections the applicant’s right to an official absentee ballot.

“Proof of identification” means that a voter must provide a current and valid driver’s license number. In the event the voter does not have a valid driver’s license, the voter must provide the last four digits of her Social Security number. If a voter does not have a Social Security number, the voter must provide a copy of a document that satisfies photo identification requirements enacted in 2012 for absentee ballot applications. See Section “Identification Requirements,” above for more information on photo ID.

Voters who request an absentee ballot because they are unable to attend their polling place on Election Day due to illness or physical disability must include—in addition to the information listed above -- a declaration stating the nature of their disability or illness, and the name, office address and office telephone number of their attending physician. Voters who are eligible to vote absentee because of
illness or disability are excused from signing their applications if they affirm their inability to sign because of illness or disability. A bedridden or hospitalized veteran must provide the same information as above but also provide the name and address of present residence or hospital at which hospitalized.

**Exceptions**

Exceptions to the Tuesday deadline are made for the following voters:

- **Military and Overseas Voters.** Qualified absentee military or overseas voters may submit their application requesting an official absentee ballot by facsimile and their ballot will be counted so long as the original application requesting the ballot is received by the county election office before the election. If placed on the list, the voter will be mailed an absentee ballot application for each primary and election. The voter will need to complete the application but will not need to file a physician’s certificate with each application. The voter will, however, need to submit a statement every four years asserting her/his continuing disability.

Note: A qualified voter may apply to be placed on the permanently disabled absentee ballot list upon certification by her/his attending physician that s/he is permanently disabled. If placed on the list, the voter will be mailed an absentee ballot application for each primary and election. The voter will need to complete the application but will not need to file a physician’s certificate with each application. The voter will, however, need to submit a statement every four years asserting her/his continuing disability.

- **Veterans.** Any bedridden or hospitalized veteran absent from the municipality of her/his residence and unable to attend their polling place because of such illness or physical disability may apply for an absentee ballot any time before an election or primary regardless of whether s/he is registered. The application must contain, in addition to the above information, her/his address at the time s/he became bedridden or hospitalized and the name and address of her/his present residence or hospital.

- **Voters who Change Residence.** A qualified registered voter who affirms s/he no longer lives in Pennsylvania or that s/he has moved to a new Pennsylvania election district within the thirty days before an election for President or Vice-President, and that because of the recent move is not eligible to register to vote at her/his new address. An individual in this situation is entitled to vote for President and Vice-President only by absentee ballot cast in their former election district if s/he applies for the absentee ballot no later than seven days before the election. The absentee ballot will be counted if s/he returns the ballot to the appropriate official before poll closing.

Pennsylvania law provides a process for Emergency Absentee ballot applications for the following types of voters:

- **Disabled or Sick Voters.** A qualified registered voter who is so physically disabled or ill on or before the first Tuesday before the election that s/he cannot file her absentee ballot application in time, or who becomes
disabled or ill after the Tuesday deadline and is therefore not able to vote in person, is entitled to receive an absentee ballot at any time before 5:00 p.m. on the Friday before the election provided s/he files an Emergency Absentee Ballot Application with election officials.\textsuperscript{120}

- **Employment obligations.** A qualified registered voter whose business, duties, or occupation requires her/him to be absent from her municipality on the day of the election but who did not know or who could not have reasonably known that s/he would have to be absent before the first Tuesday before the election, is entitled to receive an absentee ballot at any time before 5:00 p.m. on the Friday before the election provided s/he files an Emergency Absentee Ballot Application with election officials.\textsuperscript{121}

Additionally, if a voter discovers that her/his employment requires her to be absent from the municipality on Election Day (and s/he could not have known or reasonably have known this would happen sooner) or if s/he becomes so physically ill or disabled after the regular deadline for filing an Emergency Absentee Ballot Application has passed (5:00 p.m. on the Friday before the election) that s/he cannot vote in person, s/he can nevertheless file the Emergency Application. The Emergency Application or a letter or other signed document which includes the same information as is provided on the Emergency Application, will have to be filed with the Court of Common Pleas in the county in which s/he is registered to vote.\textsuperscript{122} If the judge determines that s/he is a qualified absentee voter, they can give the ballot to an authorized representative of the voter, as long as that authorization is in writing.\textsuperscript{123} Specifically, this rule applies when the emergency situation arises between 5:00 p.m. on the Friday before the election and 8:00 p.m. on the day of the election.\textsuperscript{124}

Finally, it is important to keep in mind that Pennsylvania election law allows an application for an absentee ballot to be challenged on the grounds that the applicant did not possess the qualifications of an absentee voter.\textsuperscript{125}

**May a first time voter cast an absentee ballot?**

Yes. A first-time voter must follow the rules for submitting proof of identification that apply to all absentee voters. See Section “Identification Requirements” above for more information about absentee ballot identification.

**What options exist for military or overseas voters?**

A military or overseas voter\textsuperscript{126} may submit his application for an official absentee ballot by fax if the original application is received prior to the election by the county election office. However, a military or overseas voter may not submit his or her ballot by fax.\textsuperscript{127} Military and overseas absentee ballots will be counted so long as the original application requesting the ballot is received by the county election office before the election.\textsuperscript{128}
A county may not reject an application by a military voter for failure to include any required information if the information may be ascertained by the county board of elections in a reasonable time.\textsuperscript{129}

**What steps must a voter take if s/he requests but does not receive an absentee ballot?**

While Pennsylvania election law does not address this issue directly, the law states that if an application requesting an absentee ballot is not approved, the board of elections must notify the voter immediately of the rejection and the reason for the rejection.\textsuperscript{130} Therefore, if after submitting a request for an absentee ballot, the voter does not receive a ballot or a notice of rejection from the board within short order, she should contact the board immediately.

**How must voters cast an absentee ballot to ensure it is counted?**

Upon receiving the absentee ballot, the voter should mark the ballot with either black lead pencil, indelible pencil, or blue, black, or blue-black ink, in fountain pen or ball point pen.\textsuperscript{131} After the ballot is properly completed it should be folded, enclosed, and securely sealed in the provided envelope that is stamped or endorsed “Official Absentee Ballot.” If an absentee voter envelope has any extraneous marks or identifying symbols, other than the words “Official Absentee Ballot,” it will be set aside and the ballot will be declared void.\textsuperscript{132} This envelope must then be placed in a second envelope, which has the form of declaration, the name and address of the voter’s county board of election, and the voter’s local election district printed on it. The voter must complete, date, and sign the declaration printed on the second envelope.\textsuperscript{133} Finally, this envelope should both be placed inside a third mailing envelope.\textsuperscript{134}

- A voter who cannot sign the declaration due to illness or physical disability must provide a declaration, witnessed by an adult, attesting to the fact that s/he is unable to provide a signature and that s/he received assistance marking the absentee ballot. **The person rendering assistance may not be the voter’s employer or agent of the employer or an officer or agent of the voter’s union.**\textsuperscript{135}

A voter, spouse of the voter, or dependent of the voter who will be absent on Election Day because of the voter’s service in a religious or welfare group serving with the armed forces or who will be absent from the United States because of business or work obligations must include on the form of declaration a supporting declaration, signed by the head of the department, division or bureau in which the voter is employed, that sets forth the identity of the voter, his/her spouse, or his/her dependents.\textsuperscript{136}
When is the deadline for casting an absentee ballot to ensure it is counted?

To ensure the absentee ballot is counted the voter must return the completed ballot, either by mail or by hand, to the county board of elections no later than 5:00 p.m. on the Friday before the election.\(^{137}\) A regular absentee ballot received after 5 p.m. on the Friday before the election, but before the closing of the polls on Election Day, is only valid for its Presidential and Vice Presidential votes.\(^{138}\) Absentee ballots may not be delivered by third parties.\(^{139}\)

In addition, while a voter who obtained an absentee ballot by filing a regular Emergency Application with election officials can obtain the ballot at any time prior to 5:00 p.m. on the Friday before the primary or election, like regular absentee voters, s/he must also cast the ballot by 5:00 p.m.\(^{140}\)

Lastly, a voter who obtains an absentee ballot by filing an Emergency Absentee Ballot Application with the courts, must cast her/his absentee ballot by 8:00 p.m. on the night of the election.\(^{141}\) For more on Emergency Absentee Ballot Applications that are filed with the court, see: “Exceptions” under “When is the deadline for requesting an absentee ballot,” above.

When will absentee ballots be counted?

Absentee ballots will be canvassed on Election Day.\(^{142}\) Upon receipt of the absentee ballots, the county board of elections will keep them in sealed locked containers until they distribute the election supplies to the appropriate local election districts, after which the canvassing will start and continue until after the close of the polls on Election Day. Canvassing should ordinarily wait until the close of the polls because absentee voters who are able to attend their polling place must do so and void their absentee ballots.\(^{143}\) The results of the canvass of the absentee ballots will then be included in and returned to the county board with the returns of the district.\(^{144}\)

What is the procedure for determining whether the absentee ballot will be counted?

Upon receiving the absentee ballot the local election board will compare the information in the declaration on each absentee ballot envelope with the information contained in the “Registered Absentee Voters File,” the absentee voters’ list, and the “Military Veterans and Emergency Civilians Absentee Voters File.”\(^{145}\) If the local election board finds the declaration is sufficient and matches the information contained in one of these files, it will announce the name of the voter, giving any watcher present an opportunity to challenge the ballot.\(^{146}\)

If a challenge occurs the local election board will mark “challenged” on the envelope along with the reason(s) for the challenge and set the ballot aside,
unopened and uncounted, to be returned to the county election board for a hearing. All absentee ballots that are not challenged will be counted and included with the general return of the ballots. Again, if an absentee voter envelope has any extraneous marks or identifying symbols, other than the words “Official Absentee Ballot,” it will be set aside and the ballot will be declared void.\textsuperscript{147}

\textbf{What should a person do if s/he requested an absentee ballot but wants to vote in person on Election Day?}

A voter who receives an absentee ballot but is capable of voting at her/his polling place on Election Day must void the absentee ballot and vote in person at their polling place.\textsuperscript{148} If the voter has already \textit{cast} the absentee ballot s/he must nevertheless vote in person. In such a case, before casting the in-person ballot, the voter must sign an affidavit—before a judge of elections—requesting that the absentee ballot be voided.\textsuperscript{149} Pennsylvania election law clearly states that any absentee ballot cast by an individual who, after casting her/his absentee ballot is able to vote in person, must be declared void.\textsuperscript{150}

\section*{POLLING PLACE LOCATIONS AND PROCEDURES}

\textbf{What hours are the polls open on Election Day?}

In Pennsylvania, polls are open from 7 a.m. to 8 p.m.\textsuperscript{151}

\textbf{When is the final list of polling place locations made available to the public?}

The county board of elections publicly announces the list of polling places twenty (20) days before the election by posting the list at its office in a conspicuous place.\textsuperscript{152}

In Pennsylvania, the location of a polling place can change at any time for any reason the county board of elections deems proper. However, except in the case of an emergency or unavoidable event that takes place within 20 days of the election, if the location is to be changed the county board of elections must post at the existing polling place and in the immediate vicinity thereof, a notice that announces the proposed change in locale at least five days before making the change. Furthermore, the county board must provide written notice of the proposed change to the occupant or owner of the polling place at least five days before making the change.\textsuperscript{153}
Pennsylvania election law proscribes that in the city of Philadelphia the select and common city councils will notify the sheriff of polling place locations no later than thirty days before the second Tuesday in October.\textsuperscript{154}

How are decisions about precincts and polling place locations made?

The county board of elections selects polling places in Pennsylvania.\textsuperscript{155} Wherever possible, the Board is required to select public buildings as polling locations; public buildings can include schools, municipal buildings or rooms, or other public buildings.\textsuperscript{156} The county board may change the location of any polling place for any reason that seems proper either on its own motion or on the petition of ten qualified registered voters.\textsuperscript{157} If a majority of registered voters who are within the relevant district object to a change in polling place, on or before the day the county board has scheduled a hearing on such change, the change in polling place will not occur.\textsuperscript{158}

In Philadelphia, the select and common city councils have full authority to remove and change polling place locations when the polling place, for whatever reason, becomes unusable.\textsuperscript{159}

How can voters find their polling places?

Generally, a voter’s polling place is printed on the voter’s voter registration card. Voters can call their county board of elections to ask about the location of their polling place. In addition, voters can check the Department of State’s website which voter registration confirmation tool that also included the polling place location.\textsuperscript{160}

How and when will voters be notified about polling place changes?

Voters in Pennsylvania will be notified at least five days before their polling place is changed. The county election board is required to notify these voters by posting notices at the existing polling place and the immediate vicinity thereof.\textsuperscript{161}

What activities are restricted at polling places on Election Day?

Under the Pennsylvania Election Code, no person within a polling place may electioneer or solicit votes for any political party, political body, or candidate, nor may any unauthorized written or printed materials be posted within the polling place.\textsuperscript{162}

Only election officers, clerks, machine inspectors, overseers, watchers, persons in the course of voting (not to exceed ten at one time), persons lawfully giving assistance to voters, and police officers in the act of voting or who have been called to the polling place to preserve the peace, are allowed within ten feet of the polling place while voting is in progress.\textsuperscript{163} Everyone else, including
individuals handing out campaign literature, must remain at least 10 feet away.\textsuperscript{164} See section “Voter Intimidation” below for more information on police presence.

The Pennsylvania Election Code contains several dozen penalties for unlawful behavior surrounding elections.\textsuperscript{165} Certain activities at the polling places are prohibited, including, willfully removing or tearing down posted information or instructions to voters,\textsuperscript{166} willfully hindering the voting of others,\textsuperscript{167} preventing elections officers from performing their duties,\textsuperscript{168} driving away persons permitted to be in the polling place,\textsuperscript{169} or interfering with the conduct of any election.\textsuperscript{170} The Election Code also prohibits striking, wounding, or committing assault and battery upon a voter who is at or near the polling place during a primary or election.\textsuperscript{171}

**What activities are permitted at polling places on Election Day?**

Providing assistance to voters while they are inside the polling place, when such voters request assistance, is permitted under certain circumstances. See below for more information.

While electioneering is permitted near the polling place, it is not permitted inside of the polling place.\textsuperscript{172} Any electioneering that takes place near the polling place must take place 10 feet or more from the entrance of the polling place.\textsuperscript{173}

**Can voters request assistance with voting equipment at the polling place?**

Yes. Voters present at the polling place are entitled to receive instructions on how to operate the voting machines before entering the voting booth; instructions may include diagrams and a model.\textsuperscript{174} Additionally, voters are entitled to receive audible instructions from any election officer if the voter determines s/he needs assistance with the machine after entering the voting booth but the election officer may not enter the booth with the voter or suggest, attempt to persuade, or induce the voter to vote in any particular manner.\textsuperscript{175}

Finally, help can be given to any voter who is blind, disabled, unable to read or write, or who is unable to read the names on the ballot, on the voting machine labels, or who is unable to operate the machine or enter the booth without assistance.\textsuperscript{176} A voter who needs assistance is entitled to select the person who will provide the necessary assistance so long as the person selected is not the judge of election, the voter’s employer or agent of the employer, or an officer or agent of the voter’s union.\textsuperscript{177}

**Can a child/minor enter the voting booth with the voter?**

Yes. While a voter can enter the polling place with more than one of her/his minor children, s/he can only take one child into the voting booth.\textsuperscript{178}
What accommodations must be made for non-English speakers or persons unable to read?

A registered voter who is unable to read or write may receive assistance with voting by taking one of two actions:

- Personally applying to the commission, registrar or clerk, for a “need for assistance” entry onto her/his voter registration card. To do this, the application must be made at least ten days before the next election and it must give the exact nature of the voter's disability; or
- Completing a declaration at the polling place stating the need for assistance and the reason(s) why. In this instance, the voter will be entitled to assistance on the spot and her/his voter registration card will be updated after the election. Poll workers have blank declaration forms in their poll worker supply box.

A voter in need of assistance is entitled to select the person who will assist her/him with voting, so long as the person selected is not the judge of election, the voter’s employer or agent of the employer, or an officer or agent of the voter’s union. See below for non-English speaking voters.

Must ballots be printed in languages other than English?

The Voting Rights Act of 1965 requires some states to provide voting materials, including ballots, in English and other languages. As of the 2010 Census, Philadelphia, Berks and Lehigh counties are required to provide ballots, poll workers, information, and other resources in Spanish and English.

What accommodations must be made for voters with disabilities?

Polling places must be accessible to disabled voters. Additionally, a voter who is disabled and in need of assistance on Election Day may file with the commission, a registrar, or a clerk, an application setting forth the exact nature of her disability. This application must be made at least ten days prior to the election. If the voter’s disability is not entered on her/his voter registration card by Election Day, the voter may nevertheless receive assistance at the polls if s/he completes a declaration setting forth the disability and need for assistance. Finally, if a disabled voter is assigned to an inaccessible polling place, s/he is entitled to vote by alternative ballot. To obtain an alternative ballot, the voter must submit an alternative ballot application.

If a voter is in line to vote at poll closing time but has not voted, may the voter still vote?

Yes. A qualified voter may cast a ballot if s/he is in line waiting to vote either inside or outside the polling place at poll closing.
May voters who have moved to a new address in another precinct but who have not registered at their new address, be allowed to vote at the precinct for their old address?

Yes. A registered voter who has moved from an address in the county covered by one polling place to a new address which is covered by the same polling place, may vote in her/his original polling place even if s/he has not yet updated her voter registration. On Election Day, the voter must provide a written affirmation before an election official at the polling place, indicating that s/he has moved. The poll workers’ supply box contains a blank affirmation for this purpose.

Likewise, a registered voter who moves from one address in the county to another address in the same county but which is covered by a different polling place and who has failed to notify the commission of the change of address prior to the election, may vote at her/his former polling place. This voter must provide a written affirmation before an election official at the former polling place, indicating that s/he has moved. A voter can vote at their former polling place only once following their move. Again, poll workers have affirmations designed for this use in their supply box.

Are poll watchers or other non-voters permitted inside the polling place?

Yes. Election officers, clerks, machine inspectors, overseers, and watchers are permitted in the polling place. Additionally, minor children accompanying their parents are permitted inside, as are individuals providing assistance to the disabled, non-English speakers, and to those unable to read.

Finally, police officers in the act of voting or who are serving a warrant or who have been called upon to keep the peace, are also permitted inside the polling place. Otherwise, law enforcement officers whether in uniform or citizen’s clothes, may not be within 100 feet of the polling place during the election.

What happens if the electronic voting machines are malfunctioning at my polling place?

If 50% or more of electronic voting machines in a precinct are not operating, Pennsylvania law requires that paper ballots must immediately be distributed to eligible voters. These emergency paper ballots should be used until the malfunctioning machines can be repaired or replaced. In the past, when 50% or more of electronic voting machines have malfunctioned, some districts have distributed provisional ballots instead of emergency paper ballots. Voters who vote by emergency paper ballot are voting regular ballots and should not be required to comply with the procedural rules applicable to provisional ballots. A voter is legally entitled to an emergency paper ballot and should not vote via
provisional ballots, since they are not always counted. If provisional ballots are used for emergency ballots, the ballot envelope should be clearly marked and distinguished, and those ballots should be counted immediately and not through the provisional ballot process. A voter voting by emergency ballot should not sign the poll book even if her/his name is in the book. Doing so will make it appear as though the voter voted on the machine in addition to also casting a emergency ballot.

If a voter casts a provisional ballot due to malfunctioning or inaccessible machines, some local election officials have recommended that once the voter places the ballot inside the required envelopes, the outside envelope should be marked with the phrase “broken machine” or “inaccessible machine” in order to clearly indicate that the provisional ballot should be treated and counted like a regular ballot. Some counties have added a check box on the outside of the provisional ballot envelope that states “emergency ballot” while other counties use a different color envelope. Both of these procedures alert the board of elections that the ballot must be counted like a regular ballot.

**CHALLENGES AND VOTER INTIMIDATION**

*Can a person’s right to vote be challenged at the polls?*

Yes, but a challenge alone is not enough to keep a voter from voting. A person whose name appears in the poll book can only be challenged as to identity, residence in the election district, or a violation of election law. But, no voter whose name appears in the poll book may be challenged on the basis that s/he has moved out of the district because a voter in this situation is entitled to vote at her/his old polling place one last time after signing an Affirmation of Elector, updating her/his address.

*Who can challenge a person’s right to vote at the polls?*

Any qualified voter, election officer, overseer, or watcher is entitled to challenge a voter at the polls.

*What can a person do if s/he is challenged at the polls?*

When a voter is challenged as to identity or residency, s/he must be put under oath by the judge of elections, sign a Challenge Affidavit, and produce a qualified voter of her/his division to affirm her/his identity. This voter must also sign the Challenge Affidavit.
What steps are taken if a voter’s name does not appear on the poll book?

A voter has a variety of options, all of which are dependent upon when the voter discovers her/his name is not on the books.

Before Election Day. If prior to Election Day a voter learns that her/his name has been incorrectly removed from the voter registration list, s/he may petition the registration commission for reinstatement. This must happen no later than the tenth day before the election. The commission will hold a hearing on the petition and if it finds that the voter’s name was removed in error it will reinstate the voter. Pennsylvania law does not specify when the hearing must be held or when the commission must render its decision.

Additionally, a voter who has been incorrectly identified as deceased and therefore removed from the registered voters’ list, may appear in person before the commissioner, registrar, or clerk at the office of the commission and prove her/his identity.

Finally, a voter whose registration has been cancelled by the commission may file an appeal in the Court of Common Pleas. The appeal must be filed no later than one week before the election and must not only request relief but must also set forth the particular grounds for relief.

On Election Day. On the other hand, if a voter learns that her/his name does not appear on the poll books when s/he appears to vote, s/he should first ask the poll workers to look for her/his name on the supplemental list. The supplemental list contains the names of voters whose name was not added to the books before book closing. If the voter’s name is not on the supplemental list either, the voter should insist that the local board of elections call the county board of elections to verify the voter’s registration. Otherwise, the voter is entitled to cast a provisional ballot if s/he claims to be properly registered and eligible to vote in the election district.

Prior to casting a provisional ballot the voter will be required to sign an affidavit affirming her/his name, date of birth, that s/he is registered to vote, the municipality in which s/he is registered, and that s/he has not already cast a ballot in the election. This ballot will be counted if upon inspection of the ballot (by the county board of elections) it is determined the individual was registered and entitled to vote in the election district where the ballot was cast, that s/he did not cast any other type of ballot—such as an absentee ballot or alternative ballot—and if the county board is able to match the signature on the outside of the provisional ballot envelope with the signature on the voters registration form.
What constitutes illegal intimidation of voters at the polls?

In Pennsylvania it is illegal for any person or corporation to directly or indirectly practice intimidation or coercion through 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.\(^{208}\)

Additionally, it is illegal for a person or corporation 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.\(^{209}\) Further, no election officer may knowingly refuse the vote of a registered voter.\(^{210}\)

Moreover, employers in Pennsylvania are prohibited from attempting to influence an employee's vote by placing an employee’s paycheck in an envelope that displays any political motto or written statement.\(^{211}\) It is likewise illegal for an employer to exhibit in the workplace any handbill or placard containing any threat, notice, or information that implies if a certain candidate is elected or defeated there will be repercussions in the workplace that could include employees’ wages being cut and closing of the job site.\(^{212}\)

Finally, it is illegal for any police officer to intimidate, threaten force, or unduly influence any voter into not voting or voting in a certain way.\(^{213}\) Nor is it permissible for any person to unlawfully hit, wound or commit assault and battery on any voter at or near the polls.\(^{214}\)

Are law enforcement officers allowed in a polling place during voting hours?

A commissioned police officer, whether in uniform or in citizen’s clothes, may not be within 100 feet of the polling place during the election unless s/he is exercising her/his privilege to vote, is serving a warrant, or is called upon to preserve the peace.\(^{215}\)

To whom should a person report acts of voter intimidation?

Pennsylvania’s Department of State recommends that persons who are victims of or who witness voter intimidation report the incident to their county board of elections.\(^{216}\) In Pennsylvania, each county commission is required to investigate alleged violations and report them to the District Attorney.\(^{217}\) The District Attorney has the authority to prosecute such violations.\(^{218}\) It is also recommended that a voter also report incidents of voter intimidation to the County District Attorney.
PROVISIONAL BALLOTS

What is a provisional ballot?

A provisional ballot is a paper ballot which should be provided to individuals who believe they are registered voters but whose names are not on the rolls or first-time voters who do not provide proper ID at the polls on Election Day.219

Who may request a provisional ballot?

Any individual who claims to be properly registered and eligible to vote in the election district, but whose name does not appear in the poll book or on the general voter registration list, is entitled to request and receive a provisional ballot.220 Additionally, a first-time voter who is unable to produce the necessary photo ID is also entitled to cast a provisional ballot.221

Why and when will provisional ballots be provided to voters?

A provisional ballot will be provided to an individual voter if:

- The individual claims to be properly registered and eligible to vote at the election district but her/his name does not appear on the general voter registration list.222
- The individual does not have the requisite form of identification,223 or
- The individual presents a federal or state court order to vote.224

Prior to casting a provisional ballot the voter will be required to sign an affidavit affirming her/his name, date of birth, that s/he is registered to vote, the municipality in which s/he is registered, and that s/he has not already cast a ballot in the election.225 Once the voter makes her selections, she must put her ballot in a secrecy envelope and then place the secrecy envelope in the outer provisional ballot envelope.226 The envelope has the affirmation described above printed on it. The voter must then additional sign the front of the envelope.227

Who decides whether a voter gets a provisional ballot?

On Election Day, the decision of whether a voter has the right to vote rests with the inspectors. In the event the inspectors cannot agree, the decision is made by Judge of Elections.228
What can a voter do if s/he requests but does not receive a provisional ballot?

A voter should contact the county election board immediately to report the problem and insist upon immediate action to remedy the situation so that the voter may cast her/his ballot.

What information must be provided to voters who cast provisional ballots?

The Help America Vote Act (HAVA) requires that each person casting a provisional ballot be given written instructions on how to contact a “free access system” to determine whether the voter’s ballot was counted. In Pennsylvania, voters who cast a provisional ballot should receive a Provisional Ballot Identification Receipt. The receipt will provide instructions on how to access the Commonwealth’s free access system.

How do election officials determine whether a provisional ballot will be counted?

The provisional ballot will be counted if upon inspection by the county board of elections the following is determined:

- Both the provisional ballot envelope and the affidavit are signed by the voter,
- The voter is registered and entitled to vote in the election district where the ballot was cast, and
- The voter did not cast any other ballot in the election—such as a conventional, absentee, or alternative ballot.

If the secrecy envelope is missing, or upon examination, any of the signatures on the envelope are not genuine or appear to be signed by different persons, the ballot will not count. The county board of elections will also compare the signature on the outside of provisional ballot envelope with the signature on the voter’s registration form and if the signatures are determined to be genuine, the ballot will be counted.

On the other hand, if upon inspection by the county board of elections, it is determined that the individual casting the provisional ballot was eligible to vote but not in the election district where the ballot was cast, the county board of elections will count the portion of the ballot that would have been proper in the election district where the ballot should have been cast. Thus, if the voter was in the correct congressional, state or local voting district, the vote will count along with votes for statewide and president/vice presidential candidate.

Under Pennsylvania election law, the Voting Standards Development Board is charged with the responsibility of developing uniform and nondiscriminatory standards for determining what constitutes a valid vote cast on a paper ballot.
Does the voter who cast a provisional ballot have a right to present evidence or appear before the election officials evaluating whether it will count?

Yes, but the Election Code provides that the opportunity for the voter to present evidence is preserved after the provisional ballot is challenged. In Pennsylvania, provisional ballots will be counted if the county board of elections determines the voter did not also cast another ballot in the election—such as a conventional, absentee, or alternative ballot—and if the Board is also able to verify the signature on the outside of the provisional ballot envelope with the signature on the voter’s registration form. Despite this, if the procedural requirements were not observed, the provisional ballot will not be counted.

When will provisional ballots be counted?

Within seven calendar days of the election, each provisional ballot will be individually examined by the county board of elections to determine if the individual was entitled to vote in the election in that particular election district.

One authorized representative of each candidate and one representative from each political party is allowed to be in the room where the provisional ballot examination process is taking place.

How can voters find out whether the provisional ballot they cast were counted?

In Pennsylvania, voters who cast a provisional ballot will receive a Provisional Ballot Identification Receipt containing instructions on how to access the Commonwealth’s free access system and instruction as to what information the voter must provide in order to find out whether her ballot was counted, partially counted, or not counted at all.

Does the voter have a right of appeal?

Yes, but it appears that a specific right to appeal the determination of the county board of elections is preserved only after a provisional ballot is challenged and the board has either upheld or denied the challenge. In general, however, any person “aggrieved” by any order of the county board of elections regarding the computation or canvassing of the returns, may appeal within two days after the order or decision is made. Arguably, this process applies to the computation of provisional ballots.
ENDNOTES

1 25 PA. CONS. STAT. § 1301(a) (2014).
3 See infra VOTING RIGHTS OF CONVICTED FELONS, CONVICTED MISDEMEANANTS AND PRETRIAL DETAINEES, PENNSYLVANIA DEPARTMENT OF STATE (2014), Appendix B.
4 Id.
6 Id. § 183.3(a)(4).
8 Id. § 1326(c)(2).
9 Id. § 1322. The county commissioners constitute the registration commission in each county. 25 PA CONS. STAT. § 1203. In Philadelphia, the City Commissioners constitute the registration commission.
10 Id. § 1323(a).
11 Id. § 1324(a).
12 Id. § 1325(a).
13 Id. § 1327(a)(2).
14 Id. § 1327(a)(1)(v). See also § 295 (noting if a person does not want to vote in a primary, party affiliation is not needed). See generally §§ 299, 300, 2812.
15 Id. § 1503 (2014).
16 4 PA. CODE § 183.10(c) (2014).
17 Id. § 183.3(a)(3) (2014).
18 Id. § 183.3(a)(3)(i) (2014).
19 Id. § 183.3(a)(3)(ii) (2014).
21 PA. Voter Registration Application (To obtain a copy go to http://www.votespa.com). See also 4 PA. CODE § 183.1(a)(i)(M-N) (2014) (including definition of “Voter registration mail application form”).
23 Id. § 1326(b)(1, 3).
24 See 4 PA. CODE § 183.5(c) (relating to notification of incomplete registration; see also 25 PA. CONS. STAT. § 1303(a).
25 See 25 PA. CONS. STAT. § 1303(a).
26 See id. §§ 1327(a)(3), (b)(3) (including an exception for employee or agent of Department of Transportation and/or government agency who, acting in their official capacity, provides assistance. Such an individual is only required to provide her/his initials and employer ID number or her/his initials and employee/agent ID number).
27 See generally id. § 1327(c)(6) (stating who is entitled to obtain voter registration applications but placing no limit on the number of applications such individuals or groups may have).
28 See id. § 1207 (2014).
29 Id. § 1404(a)(3); 4 PA. CODE § 183.13(c)(5)(i, iii) (2014).
31 See infra “Pennsylvania Department of State state-wide directive on HAVA matching procedures” (August, 2006) Appendix D.
33 Id.
34 Id. § 1330(a).
35 Id. § 1330(b)(1).
36 Id. § 1330(b)(4).
37 Id. § 1602(a)(1).
38 Id. §§ 1602(b-c).
40 Id.
41 Id.
43 Pennsylvania Voter Registration Application (To obtain a copy go to www.dos.state.pa.us). See also 4 PA. CODE § 183.1(a) (2014) (including definition of Voter registration mail application form (i)(M-N).
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48 25 PA. STAT. ANN. § 3050(a.2) (2014)(unfortunately Pennsylvania law is not clear as to whether, under such circumstances, the provisional ballot will be counted).


50 25 P.A.S.S.TAT.ANN. § 3050(a.2) (2014)(unfortunately Pennsylvania law is not clear as to whether, under such circumstances, the provisional ballot will be counted).


52 Id. §§ 3146.2(a, c-e) (2014).

53 Id. §§ 3146.2(a, c-e) (2014).

54 Id. §§ 3146.2(a, c-e) (2014).

55 Id. §§ 3146.2(a, c-e) (2014).

56 Id. §§ 3146.2(a, c-e) (2014).


58 Id. §§ 3146.1(a-b) (2014).

59 Id. §§ 3146.1(a-b) (2014).

60 Id. §§ 3146.1(a-b) (2014).

61 Id. §§ 3146.1(a-b) (2014).

62 Id. §§ 3146.1(a-b) (2014).

63 Id. §§ 3146.1(a-b) (2014).

64 Id. §§ 3146.1(a-b) (2014).

65 Id. §§ 3146.1(a-b) (2014).

66 Id. §§ 3146.1(a-b) (2014).

67 Id. §§ 3146.1(a-b) (2014).

68 Id. §§ 3146.1(a-b) (2014).


73 Id. § 1322 (2014).

74 Pursuant to 25 PA. STAT. 1330, the commission must set a hearing for an appeal of the denial of a registration application no later than 10 days before the election.

75 25 PA. CONS. STAT. § 1322 (2014).

76 Id. §§ 1322(b-c) (2014).

77 Id. §§ 1322(b-c) (2014).

78 Id. §§ 1322(b-c) (2014).

79 Id. §§ 1322(b-c) (2014).

80 Id. §§ 1322(b-c) (2014).

81 Id. §§ 1322(b-c) (2014).

82 25 PA. STAT. ANN. § 3146.1(k)

83 Id. § 3146.1(k)

84 Id. § 3146.1(k)

85 Id. § 3146.1(k)

86 Id. § 3146.1(k)

87 Id. § 3146.1(k)

88 Id. § 3146.1(k)

89 Id. § 3146.1(l). See also 25 PA. CONS. STAT. § 1324(3)(c) (Upon receiving such a request the Commission will forward to the requester a packet which includes an absentee ballot and a voter registration application. The requester must then submit both pieces of information in timely fashion in order for the absentee ballot to be counted.).

90 Id. § 3146.1(l)

91 Id. §§ 3146.1(i-c) (2014).

92 Id. §§ 3146.1(i-c) (2014).

93 Id. §§ 3146.1(i-c) (2014).

94 Id. §§ 3146.1(i-c) (2014).

95 Id. §§ 3146.1(i-c) (2014).


These provisions relate to military voters, members of the merchant marine, voters who are in religious or welfare group serving with the armed services, voters who are outside the United States on business, including civilian employees of the United States and their spouses and dependents.

As defined by the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924),
Pennsylvania Voter Protection Laws in a Nutshell, 2014


An alternative ballot is also available to voters who are age 65 or older and who are also assigned to an inaccessible polling place. 42 U.S.C. § 1973ee-1.


Id.


Id.

Id. § 3508

Id. § 3509

Id. § 3527


25 P.A. Stat. Ann. § 3058(b)


An alternative ballot is also available to voters who are age 65 or older and who are also assigned to an inaccessible polling place. 42 U.S.C. § 1973ee-1.


Id.


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HAVA, 42 U.S.C. § 15482(a)(5). See also Pennsylvania Department of State’s website on provisional voting at http://www.hava.state.pa.us.


See Pennsylvania Department of State’s website on provisional voting at www.hava.state.pa.us.

Pennsylvania Voter Protection Laws in a Nutshell, 2014
Voting Rights of
Convicted Felons, Convicted
Misdemeanants
and
Pretrial Detainees

Commonwealth of Pennsylvania
Department of State

Edward G. Rendell
Governor

Pedro A. Cortés
Secretary of the Commonwealth

www.dos.state.pa.us
WHO CAN REGISTER AND VOTE

The following individuals may register and vote if they have been citizens of the United States for at least one month before the next election; have been residents of Pennsylvania and their respective election districts for at least 30 days before the next election; and will be at least 18 years of age on the day of the next election:

• Pretrial Detainees (individuals who are confined in a penal institution awaiting trial on charges of a felony or a misdemeanor).

• Convicted Misdemeanants (individuals who are confined in a penal institution for conviction of a misdemeanor only).

• Individuals who have been released (or will be released by the date of the next election) from a correctional facility or halfway house upon completion of their term of incarceration for conviction of a misdemeanor or a felony.

• Individuals who are on probation or released on parole, including parolees who are living in a halfway house.

• Individuals who are under house arrest (home confinement), regardless of their conviction status or the status of their conditions of confinement.

WHO CANNOT REGISTER AND VOTE

• Individuals who are currently confined in a penal institution for conviction of a felony (even if they are also incarcerated for one or more misdemeanor offenses) and who will not be released from confinement before the next election.

• Individuals in a halfway house or other alternative correctional facility on pre-release status for conviction of a felony and who will not be released before the date of the next election.

• Individuals who have been convicted of violating any provision of the Pennsylvania Election Code within the last four years.

RESIDENCY RULES

• For the purpose of determining residence, an inmate in a penal institution is deemed to reside where the individual was last registered to vote before being confined in the penal institution; or

• If the inmate was not registered to vote prior to confinement, the individual is deemed to reside at the last known address before confinement; or
• A new residence established while confined (for example, if the inmate's spouse establishes a new residence in which the inmate intends to reside upon his/her release from confinement).

• A penal institution (including a halfway house) cannot be a residence address for registering to vote.

HOW TO REGISTER

Individuals who are qualified to register to vote may apply to register by one of the following methods:

• Mail. A voter registration mail application can be obtained by contacting their county board of elections. Individuals can also request a voter registration mail application over the phone by calling the Department of State at 1-800-552-VOTE (1-800-552-8683).

• Internet. Download and print the voter registration application from the Department of State’s website at www.dos.state.pa.us.

IMPORTANT INFORMATION FOR REGISTRANTS WHO ARE CONFINED IN A PENAL INSTITUTION

If individuals are currently confined in a penal institution for the conviction of a misdemeanor only or if they are awaiting trial, they must register from their last known address before confinement or an address (other than the penal institution) that they have established as their permanent residence.

If they were registered to vote before being confined, their residence is considered to be the address where they were last registered before confinement or the address (other than the penal institution) that they have established as their residence address or another address that they have established as their permanent address.

HOW TO VOTE

IF INDIVIDUALS ARE CONFINED IN A PENAL INSTITUTION…

Contact their county board of elections and request an absentee ballot application.

Complete the absentee ballot application card and return it to their county board of elections. (See paragraph B below)
 Upon receiving their absentee ballot, they must complete the ballot in secret, enclose it in the envelope marked “Official Absentee Ballot” and then place it in the second envelope on which is printed the declaration of the elector (voter).

Fill out, date and sign the declaration of the elector printed on the envelope.

Seal the envelope and mail it to their county board of elections.

IF INDIVIDUALS ARE NOT CONFINED IN A PENAL INSTITUTION, HALFWAY HOUSE OR UNDER HOUSE ARREST (HOME CONFINEMENT)...

A. They may vote in person at their assigned election district (precinct). The location of their polling place should be included on their voter identification card, which was mailed to them by their county voter registration commission after they registered to vote.

-or-

B. If they will be absent from their municipality on the day of the election or unable to attend their polling place due to illness or disability (including incarceration or home confinement), they may vote by absentee ballot. Please refer to the procedures outlined above.

FOR ADDITIONAL INFORMATION, CONTACT THE COUNTY BOARD OF ELECTIONS WHERE YOU RESIDE. THE LINK BELOW PROVIDES COUNTY NAMES, PHONE NUMBERS AND ADDRESSES.

http://www.dos.state.pa.us/voting/cwp/view.asp?a=1195&q=443005&votingNav=
LORENZO L. MIXON, NATHANIEL BROWN, DOLORES FIGUEROA, JOSEPH HILL, JEFFRIE S. MCKINZIE, WILLIAM P. ALSTON and MAUREEN WILLIAMS, Petitioners v. COMMONWEALTH OF PENNSYLVANIA and KIM HANNA PIZZINGRILLI, SECRETARY OF THE COMMONWEALTH, Respondents

No. 384 M.D. 1999

COMMONWEALTH COURT OF PENNSYLVANIA

759 A.2d 442; 2000 Pa. Commw. LEXIS 534

March 8, 2000, Submitted on Briefs
September 18, 2000, Decided
September 18, 2000, Filed

COUNSEL: [**1]  Samuel C. Stretton, West Chester, for petitioners.

Francis R. Filipi, Harrisburg, for respondents.

JUDGES: BEFORE: HONORABLE JOSEPH T. DOYLE, President Judge, HONORABLE JAMES GARDNER COLINS, Judge, HONORABLE BERNARD L. McGINLEY, Judge, HONORABLE DORIS A. SMITH, Judge, HONORABLE DAN PELLEGRINI, Judge, HONORABLE JIM FLAHERTY, Judge, HONORABLE BONNIE BRIGANCE LEADBETTER, Judge. OPINION BY PRESIDENT JUDGE DOYLE. CONCURRING AND DISSENTING OPINION BY JUDGE McGINLEY. Judge Flaherty joins in this concurring and dissenting opinion. CONCURRING AND DISSENTING OPINION BY JUDGE LEADBETTER.

OPINION BY: JOSEPH T. DOYLE

OPINION

[*444] OPINION BY PRESIDENT JUDGE DOYLE

Before the Court en banc are the preliminary objections of Respondents, the Commonwealth of Pennsylvania and Kim Pizzingrilli as Secretary of the Commonwealth, filed in response to a petition for review filed under our original jurisdiction. The Petitioners are six convicted felons who are present or former confinees (Convicted Petitioners) of the Pennsylvania Department of Corrections (DOC) and Maureen Williams (Petitioner Williams), a resident of Philadelphia and a black female elector [**2]  who is currently registered to vote. The Convicted Petitioners consist of two incarcerated felons (Messrs. Mixon and McKinzie, collectively "Registered Felons") who are registered voters, but who are not "qualified absentee electors" under the Pennsylvania Election Code (Election Code); 2 two incarcerated felons (Messrs. Hill and Alston, collectively "Non-registered Felons") who may neither register nor obtain an absentee ballot under the Election Code and the Pennsylvania Voter Registration Act; 3 and two convicted felons (Messrs. Brown and Figueroa, collectively "Released Felons") who have been released from a state correctional institution, who are not presently registered to vote and who may not lawfully register to vote because of the Pennsylvania [**3]  Voter Registration Act.

1 The terms "black female" and "black felons" are the terms used by Petitioners in their brief, and we will deferentially use these terms throughout this opinion.


On June 21, 1996, one year prior to becoming eligible for parole, Petitioner Mixon was transferred by the DOC from confinement at the State Correctional Institution at Huntington (SCIH) to confinement at the DOC Community Correction Center at Third and Arch Streets in Philadelphia, to serve the remaining year of his minimum term. While on a temporary authorized absence from confinement, Petitioner Mixon voted at his Delaware [*445] County polling place of record during the November 1996 general election. Subsequently his parole was denied and he was returned to Huntington. In April 1999, Petitioner Mixon submitted a written
application for an absentee ballot to the Delaware County Bureau of Elections for the purpose of voting in the May 1999 primary election. His application was denied on the basis that he was not a "qualified absentee elector" pursuant to 25 P.S. §§ 2602(w) and 3146.1, which provide in pertinent part as follows:

The words "qualified absentee elector" shall in nowise be construed to include persons confined in a penal institution ....

25 P.S. § 2602(w).

The words "qualified absentee elector" shall in nowise be construed to include persons confined in a penal institution ....

25 P.S. § 3146.1.

Petitioner McKinzie is currently confined at SCIHI and is a registered elector in Allegheny County. Prior to the November 1998 general election, he submitted a written application for an absentee ballot to the Allegheny County Election Division. His application was denied pursuant to 25 P.S. § 3146.1. In April 1999, he again submitted an application for an absentee ballot but, as of the date his petition was filed in this matter, he had received no reply.

Petitioners filed a complaint in equity on July 8, 1999, seeking declaratory relief challenging the sections of the Election Code that exclude felons confined in a penal institution from the definition of "qualified absentee electors," and the provisions of the Pennsylvania Voter Registration Act that bar a felon released from a penal institution less than five years from registering to vote, as unconstitutional. Section 501 of the Pennsylvania Voters Registration Act precludes registration by an incarcerated felon within five years of release from incarceration by stating in pertinent part:

§ 961.501. Qualifications to register

Eligibility. - A qualified elector who will be at least 18 years of age on the day of the next election, who has been a citizen of the United States for at least one month prior to the next election and who has resided in this Commonwealth and the election district where the qualified elector offers to vote for at least 39 days prior to the next ensuing election and has not been confined in a penal institution for a conviction of a felony within the last five years shall be entitled to be registered as provided in this chapter.

25 P.S. § 961.501 (emphasis added).

Petitioners also seek a permanent injunction barring enforcement of the above statutory provisions. Respondents have filed with this Court preliminary objections, challenging Petitioners' ability to maintain this action asserting: (1) that the petition for review fails to state a claim for which relief may be granted; and (2) that Petitioner Williams lacks standing to assert any claim in the petition for review because she is not a convicted felon.

The basic theories underlying these claims are that Article I, Section 5 of the Pennsylvania Constitution of 1968 permits no modification of an elector's qualifications for voting, which are age and residency; that Article I, Section 25 of the Pennsylvania Constitution of 1968 denies the General Assembly the authority to alter these qualifications without amendment to the Constitution; and that the language contained in Article VII, Section *446 of the Pennsylvania Constitution of 1968 only permits the General Assembly to enact laws governing the time and place of elections, but not the qualifications for electors. The Convicted Petitioners argue that a provision of the Pennsylvania Voting Rights Act requiring the disenfranchisement of felons, although facially neutral, has a disparate impact on black Pennsylvanians. They contend that there has been a sordid history of disenfranchisement in this country, largely directed at minorities. They challenge their disenfranchisement under the Pennsylvania Constitution of 1968, which, they allege, permits voting as the fundamental right of electors who meet the constitutional requirements of age and residency. The Convicted Petitioners argue that Pennsylvania lacks a compelling reason to justify disenfranchisement of felons, and that the true reason for such state action is to impose a disproportionate disadvantage on blacks. They also contend that Article I, Section 25 of the Pennsylvania Constitution prevents the General Assembly from enacting laws that interfere with, or prevent, the free exercise of the right of suffrage. The Convicted Petitioners rely on Winston v. Moore, 244 Pa. 447, 91 A. 520 (1914), for the proposition that, pursuant to the free and equal clause of our Pennsylvania Constitution, the right to vote cannot be denied them.

4 Article I, Section 5 states: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

5 Article I, Section 25, states:

§ 25. Reservation of powers in people

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.
6 Article VII, Section 1, reads as follows:

§ 1. Qualifications of electors

Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.

He or she shall have been a citizen of the United States at least one month.

He or she shall have resided in the State ninety (90) days immediately preceding the election.

He or she shall have resided in the election district where he or she shall offer to vote at least sixty (60) days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within sixty (60) days preceding the election.

7 We note here that none of the petitioners have raised federal constitutional issues.

8 The NAACP (Amicus), as an amicus, contends that the challenged provisions of the Election Code and the Voters Registration Act, which impose suffrage-denying qualifications, are devices that deny individuals the right to vote on the basis of race. Amicus argues that selective prosecutions reinforced by racial profiling have resulted in larger numbers of black arrests and convictions, thus perpetuating the disproportionately higher number of black felons. Amicus alleges that vote dilution has been found to exist where an election practice results in dilution of minority voting strength, and that the legal system's failure to address the obvious racial inequities fostered by the felon disenfranchisement statutes undermines the criminal justice system's legitimacy for African Americans in Pennsylvania.

9 Article VII, Section 14, dealing with absentee voting, states:

The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the State or county of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

10 We note here that the Convicted Petitioners declare that they are not proceeding on either a federal or state equal protection basis, but on the constitutional guarantee that no citizen shall suffer discrimination based on race or on the exercise of any civil right. They allege that at trial, statistics will be presented to show the disproportionate number of minorities in the prison system. In this manner, they intend also to support the vote dilution claim of Petitioner Williams.

[**10] The Convicted Petitioners further maintain that Section 501 of the Voters Registration Act impliedly repeals the definition of "qualified absentee elector," and, moreover, contend that there is no compelling reason why Pennsylvania has denied suffrage only to felons sentenced to imprisonment rather than to probation, or permitted convicted felons who are registered to vote prior to incarceration to vote on their release, while those not registered to vote prior to incarceration may not register until five years following their release.

10 We note here that the Convicted Petitioners declare that they are not proceeding on either a federal or state equal protection basis, but on the constitutional guarantee that no citizen shall suffer discrimination based on race or on the exercise of any civil right. They allege that at trial, statistics will be presented to show the disproportionate number of minorities in the prison system. In this manner, they intend also to support the vote dilution claim of Petitioner Williams.
"Provided, however, That the words 'qualified absentee elector' shall in nowise be construed to include persons confined in a penal institution or a mental institution nor shall it in anywise be construed to include a person not otherwise qualified as a qualified elector in accordance with the definition set forth in section 102(t) of this act," 25 P.S. § 2602(w) (emphasis added), and that our Supreme Court in Ray v. Commonwealth, 442 Pa. 606, 276 A.2d 509 (1971), decided that the definition of "qualified absentee elector" as excluding persons confined in penal institutions, did not violate either the state or federal constitutions.

Finally, Petitioner Williams asserts that language contained in Bergdoll v. Kane, 557 Pa. 72, 731 A.2d 1261 (1999), supports her argument that she has standing to proceed in this matter based on vote dilution and her desire to protect the fundamental **12 right to vote.

I. The Registered Felons

The starting point of our analysis is the presumption of constitutionality that all legislative enactments enjoy under both the rules of statutory construction and the decisions of our courts. See 1 Pa. C.S. § 1922(3); Common Cause of Pennsylvania v. Commonwealth, 668 A.2d 190 (Pa. Cmwlth. 1995), aff'd, 544 Pa. 512, 677 A.2d 1206 (1996). Any party challenging a legislative enactment has a heavy burden, and legislation will not be invalidated unless it clearly, patently, and plainly violates the Constitution of this Commonwealth. Any doubts are to be resolved in favor of a finding of constitutionality. 1 Pa. C.S. § 1922(3). While deference is generally due the legislature, we are mindful that the judiciary may not abdicate its responsibility to ensure that government functions within the bounds of constitutional prescription under the guise of its deference to a coequal branch of government. Pennsylvania AFL-CIO v. Commonwealth, 691 A.2d 1023 (Pa. Cmwlth. 1997).

We remark initially that the Registered Felons' position cannot [**13] prevail under the rule of stare decisis. As documented by Respondents, our State Supreme Court has specifically held in Ray v. Commonwealth that the definition of "qualified absentee elector" excludes persons confined in penal institutions. In Ray, the appellant was confined in a penal institution for an armed robbery conviction. He sought to secure an absentee ballot to facilitate voting and contended that the absentee ballot statute was unconstitutional because it prohibited him from voting as an absentee *448 elector. Justice Barbieri, writing for the Court, found that the legislature had the power to define qualified electors. We are bound by that decision. In addition, this Court concluded in Martin v. Haggerty that provisions of the Election Code which excepted those confined in penal institutions from the definition of "qualified absentee elector" do not violate the Pennsylvania Constitutional provision that every citizen who meets enumerated age and residency requirements is entitled to vote in all elections, subject to such laws requiring and regulating registration of electors as the General Assembly may enact. The Convicted Petitioners urge us to reexamine [**14] Martin v. Haggerty and Ray v. Commonwealth in light of the flaws they contend exist in their reasoning. 11

11 Petitioners argue that the analysis in Ray is flawed because it failed to fully utilize the holding in Winston. They maintain that, while the Supreme Court cited Winston's first requirement that elections be free and equal, it failed to consider the remaining factors contained in the same quote, specifically that "the regulation of the right to exercise the franchise does not deny the franchise itself." Winston v. Moore, 244 Pa. at 457, 91 A. at 523. They contend that Ray never addresses the concept that the legislative enactments at issue here completely disenfranchise the confined felon or the felon who is on probation or parole, but within five years of release. We cannot agree. The legislative enactments at issue here do not completely disenfranchise the convicted felon, as is the case in fourteen of our sister states; it merely suspends the franchise for a defined period. Petitioners also assert that our decision in Martin v. Haggarty is wrongly decided because it is based on Ray.

[**15]

Although every citizen has a general right to vote, states have broad powers to determine the conditions under which the right of suffrage may be exercised, and an individual's criminality is a factor which a state may take into consideration in determining the qualifications of voters. Lassiter v. Northampton County Board of Elections, 360 U.S. 45, 3 L. Ed. 2d 1072, 79 S. Ct. 985 (1959). Most ancient, medieval, and early modern societies conceived of disenfranchisement as a form of punishment. In Rome, an offender could be deprived of the right to vote if, as part of his censure, the label "infamia," the highest degree of dishonor, was cast upon him. United States v. Cox, 342 F.2d 167 (5th Cir. 1965), cert. denied sub nom, Cox v. Hauberg, 381 U.S. 935, 14 L. Ed. 2d 700, 85 S. Ct. 1767 (1965). During the middle ages, extreme punishments included deprivation of all civil rights and excommunication from the community. Later, England's attainder system maintained the loss of civil rights as a penalty, along with forfeiture of property and "corruption of blood." McCafferty v. Guyer, 59 Pa. 109 (1868). Modern thought [**16] perceives disenfranchisement of convicted felons, not as punishment, but rather as a "nonpenal exercise of the

The power to regulate elections is legislative, and has always been exercised by the lawmaker branch of the government. Errors of judgment in the execution of the legislative power, or mistaken views as to the policy of the law, or the wisdom of the regulations, do not furnish grounds for declaring an election law invalid unless there is a plain violation of some constitutional requirement. Legislation may be enacted without showing an unwillingness to abide by those rules, and indicated that "lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Price v. Johnston, 334 U.S. 266, 92 L. Ed. 1356, 68 S. Ct. 1049 (1948).

In Pennsylvania, Article I, Section 5 of our Constitution states that: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." The Registered Felons contend that legislative passage of portions of the Election Code and the Voters Registration Act exceed the authority of the legislature to restrict the franchise, and, as already indicated, they rely on Winston v. Moore for support of their contention. However, Petitioners' reliance on Winston is misplaced. Justice Elkin, writing for the Supreme Court stated:

The power to regulate elections is legislative, and has always been exercised by the lawmakers branch of the government. Errors of judgment in the execution of the legislative power, or mistaken views as to the policy of the law, or the wisdom of the regulations, do not furnish grounds for declaring an election law invalid unless there is a plain violation of some constitutional requirement. Legislation may be enacted which regulates the exercise of the elective franchise, and does not amount to a denial of the franchise itself.

Winston v. Moore, 244 Pa. at 454-55, 91 A. at 520. In addition, Justice Elkin concluded that the Act of July 24, 1913, P.L. 1001, known as the Nonpartisan Ballot Law, was constitutionally sound and indicated: "Judged by the tests, the act of 1913 cannot be attacked successfully on the ground that it offends against the 'free and equal' clause of the bill of rights. It denies no qualified elector the right to vote..." Id. at 457, 91 A. at 523 (emphasis added).

Of more recent vintage, former Chief Justice Nix addressed the meaning of the "free and equal" clause when he wrote: "Elections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike... when
every voter has the same right as any other voter, when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation [**21] of the right to exercise the franchise does not deny the franchise itself ... and when no constitutional right of the qualified elector is subverted or denied...." In re Pennsylvania Legislative Reapportionment Commission, 530 Pa. 335, 356, 609 A.2d 132, 142 (1992) (citations omitted) (emphasis added).

Article VII, Section 1 of the Pennsylvania Constitution sets forth the qualifications for electors and must be read in pari materia with Article I, Section 5. Under this provision, every citizen who meets the age and residency requirements is entitled to vote in all elections, subject, however, to "such laws requiring and regulating the registration of electors as the General Assembly may enact." The authority of the legislature to promulgate laws regulating elections was settled long ago in Patterson v. Barlow, 60 Pa. 54 (1869). A group of property owners and residents of this Commonwealth brought suit to have the legislatively enacted Registry Law, requiring the registration of voters, declared unconstitutional under the "free and equal" clause of the Pennsylvania Constitution. Justice Agnew delivered the opinion of the Court and stated:

[**22] It is admitted that the Constitution cannot execute itself, and that the power to regulate elections is a legislative one, which has always been exercised by the General Assembly since the foundation of the government. The Constitution appoints the time of the general election, prescribes the qualifications of voters, and enjoins the ballot; and for all the rest the law must provide .... This undoubted legislative power is left by the Constitution to a discretion unfettered by rule or proviso, save the single injunction "that elections shall be free and equal." But to whom are the elections free? They are free only to the qualified electors of the Commonwealth.... There must be a means of distinguishing the qualified from the unqualified ... and therefore the legislature must establish ... the means of ascertaining who are and who are not the qualified electors....

Id. at 75. The General Assembly has done this, and despite the Registered Felons' arguments to the contrary, we see no constitutional infirmity here. Under the laws enacted within this Commonwealth, we again hold, as we did in Martin v. Haggerty and our State Supreme Court did in Ray v. Commonwealth, [**23] that incarcerated felons are not qualified absentee electors.

The Registered Felons next argue that the language of Section 5102 of the Voter Registration Act, 25 P.S. § 961.5102 (a), contains no exemption for confined felons, 13 and in fact supersedes the challenged portions of the Election Code. We point out that they ignore the remaining language of Section 5102 (a) which clearly states that those permitted to make application for an absentee ballot must be a qualified elector. 25 P.S. § 961.5102 (a) (1) and (2). Because we have determined that incarcerated felons are not qualified electors in Pennsylvania, there is no relief for the Registered Felons here. Therefore, the Court holds that no violation of constitutional rights occurs in the disenfranchisement of incarcerated felons, and this preliminary objection of Respondents is sustained on the basis of failure [*451] to state a claim upon which relief can be granted.

13 The Convicted Petitioners assert that the initial language of the statute, "Notwithstanding the provision of this Act or the Act of June 3, 1937 known as the Pennsylvania Election Code, the following persons may make application for absentee ballot by sending a letter or other signed document to the County Board of Elections in the county in which the person's voting address is located ...." overrides the specified sections that have the confined felon disqualification, and that these statutes are superseded. 25 P.S. § 961.5102(a) (emphasis added).

[**24] Non-Registered Felons

The Non-Registered Felons, who are incarcerated but not registered, assert that they should be permitted to register and vote during their period of incarceration. In support of their claim, they advance the same arguments as those of the Registered Felons refuted above, namely that the General Assembly impermissibly enacted legislation affecting the qualifications of absentee electors and that the Pennsylvania Constitution does not bar incarcerated felons from voting. Because the substantive arguments underlying these assertions do not provide a basis for relief, as observed above, their claims must also fail.

III. Released Felons

The Released Felons, who had not been registered prior to their incarceration and who have served at least their minimum sentences, contend that the Voter Registration Act impermissibly repealed sections of the Election Code by adding an additional qualified elector registration requirement that the registrant not have "been confined in a penal institution for a conviction of a felony within the last five years." 25 P.S. § 961.501(a). The Released Felons argue that Respondents "cannot claim a compelling state [**25] interest of sufficient magnitude to arbitrarily deny the fundamental right of suffrage guaranteed by Article I, §§ 1, 5, 25 and 26 of the
Constitution of Pennsylvania." (Petition for Review, p. 22.)

However, while the right of felons to vote is not a fundamental right, and therefore, the Commonwealth is not required to show a "compelling state interest" to justify excluding felons from the franchise, Owens v. Barnes, 711 F.2d 25 (3d Cir. 1983), cert. denied, 464 U.S. 963, 78 L. Ed. 2d 341, 104 S. Ct. 400 (1983), we nevertheless conclude that there is no rational basis to preclude the registration of those who have been incarcerated within the last five years and who had not been registered previously, when those who were legally registered prior to incarceration may vote upon their release. Although a state may not only disenfranchise all convicted felons it may also distinguish among them, but the distinction must be such that it is rationally related to a legitimate state interest. Owens. The United States Supreme Court has indicated that while minors, felons and other classes of citizens may be excluded from voting, once the body of voters [*26] is determined, and their qualifications specified, there is "no constitutional way by which equality of voting power may be evaded." Gray v. Sanders, 372 U.S. 368, 380-81, 9 L. Ed. 2d 821, 83 S. Ct. 801 (1963).

The Third Circuit Court of Appeals in Owens, found relevant the Commonwealth's concession that it "could not disenfranchise similarly situated blue-eyed felons but not brown-eyed felons." Owens, 711 F.2d at 27. The Released Felons allege that this is the existing scenario in Pennsylvania today. We agree, and restricting registration under 25 P.S. § 961.501 as it presently exists, does not present a rational relationship to a legitimate state interest. We can conceive of no rationale for permitting those who were registered previous to incarceration to vote on their release, while those who were not previously registered, cannot. Such a statute has the appearance of penalizing ex-incarcerated felons for their status. Moreover, implicit in a presumption that an unregistered individual who commits a crime, and is punished therefor, remains civilly corrupt for five years following release, is the unwarranted assumption that there was no possibility [*27] of rehabilitation during that period of incarceration and for five years thereafter. There is nothing of which we are aware to support this logic and underpin the implication that, after five years have elapsed following a convicted felon's release from confinement, that individual has magically acquired the [*452] wherewithal to be a responsible, qualified elector. We therefore conclude that the prohibition against registration for five years after release from confinement is constitutionally infirm, and overrule this preliminary objection.

III. Petitioner Williams

Respondents have challenged Petitioner Williams' standing to maintain her claim contending that Williams is not a convicted felon and has not alleged that she is someone who will be unable to register and vote. Williams relies on Bergdoll v. Kane to support her position. In Bergdoll, the Pennsylvania Bar Association (PBA) and individual petitioners commenced a quo warranto action against the Secretary of the Commonwealth, challenging the placement of a proposed constitutional amendment on the ballot that would have amended the confrontation clause of Article I, Section 9 of the Pennsylvania Constitution [**28] and would have permitted the General Assembly to enact legislation regarding the manner in which children would testify in criminal proceedings. Williams cites a passage from that case in which Justice Saylor wrote:

By defining the interest that appellees seek to protect as a criminal defendants' interest in the confrontation of a witness at trial, Secretary Kane minimizes what is truly at stake in this action. The interest sought to be protected is the fundamental right to vote.

Bergdoll v. Kane, 731 A.2d at 1268. Williams asserts that the Court found standing based on this passage and the fact that "some of the appellants were not criminal defendants." (Petitioners' Brief, p. 31.) Nothing could be farther from the truth, and this passage offers Williams no assistance.

The voting issue in Bergdoll revolved around whether the single proposed amendment to the Pennsylvania Constitution actually comprised two amendments - one to the confrontation clause and one to the constitutional provision relating to judicial administration - but did not permit the electorate to vote separately upon each of the amendments. The challenge to the amendment was brought by individual [**29] petitioners and the Secretary opposed PBA's standing on the ground that the association did not have a "substantial, direct and immediate interest in the outcome of the litigation because they were not criminal defendants whose right to confront witnesses would be limited by a change in the law." The Bergdoll court determined that PBA had standing as "attorneys, taxpayers, and electors in the Commonwealth." Bergdoll, 731 A.2d at 1267. More important, the Secretary challenged the standing of the individual petitioners on the same ground, that is, that they did not have a "substantial, direct and immediate interest in the outcome of the litigation because they were not criminal defendants whose right to confront witnesses would be limited by a change in the law." Id. The court concluded that the Secretary had waived the issue of standing by failing to raise the issue in her pleadings, although the court went on to determine that the individual petitioners

It has been long settled that an interest to be justiciable must be more than a general interest and must be direct, substantial and present, as contrasted with remote or speculative. *Smith v. McCarthy*, 56 Pa. 359 (1867). Moreover, it is hornbook law that a person whose interest is common to that of the public generally, in contradistinction to an interest that is peculiar to herself, lacks standing to attack the validity of a legislative enactment. See, *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 142 L. Ed. 2d 797, 119 S. Ct. 765 (1999); *Doremus v. Board of Education*, 342 U.S. 429, 96 L. Ed. 475, 72 S. Ct. 394 (1952); *Ex parte Levitt*, 302 U.S. 633, 82 [*453*] L. Ed. 493, 58 S. Ct. 1 (1937); *Buchanan v. Warley*, 245 U.S. 60, 62 L. Ed. 149, 38 S. Ct. 16 (1917).

We have examined with great care Petitioner Williams' claim to standing and to a justiciable interest to maintain this action. Petitioner Williams' claims that the challenged statutes result in the dilution of her vote in a district that is primarily black and Hispanic. Vote dilution claims are conceptually distinct [**31**] from vote denial claims because dilution claims focus on the overall harm done to a minority group's voting strength. We find that most vote dilution claims have been brought within the realm of redistricting, that is, changing political boundaries to affect minority voting power. Within that context, vote dilution takes place where qualified electors are shifted within those boundaries so that the qualified electors are grouped differently than before, or with an eye to obtaining a particular outcome. The result is to neutralize the vote of one qualified elector with the votes of other qualified electors. Such is not the case here.

The linchpin of Petitioner Williams' standing claim is that she votes in a district in which the majority of electors are black and/or Hispanic, contending that her neighbors in that district vote as a block. However, the concept of diminished voting strength recognized as actionable under federal jurisprudence as "vote dilution," is defined as "a regime that denies to minority voters the same opportunity to participate in the political process and to elect representatives of their choice that majority voters enjoy." *Reno v. Bossier Parish School Board*, 528 U.S. 320, 120 S. Ct. 866, 887, 145 L. Ed. 2d 845 (2000). [**32**] Petitioner Williams has not demonstrated, nor do we believe she can, that she does not have an equal opportunity to participate in the political process in her district. Moreover, Petitioner Williams is essentially asserting that her vote is diluted by the absence of unqualified electors. We find no merit in this argument whatsoever.

Finally, Petitioner Williams contends that she desires to protect the fundamental right to vote. This interest is not peculiar to her, is not direct, and is too remote and too speculative to afford her a standing to attack the statutory provisions she challenges.

Based on the foregoing, we sustain Respondents' preliminary objection as to the Registered Felons' and Non-Registered Felons' claim that incarcerated felons are unconstitutionally deprived of "qualified absentee elector" status; we overrule Respondents' preliminary objection as to the Released Felons' claim that Section 501 impermissibly deprives those ex-felons who had not previously registered and who have been incarcerated within the past five years, of the right to register to vote; and we sustain Respondents' preliminary objection as to the standing of Petitioner Williams, and [**33**] she is dismissed from the case.

JOSEPH T. DOYLE, President Judge

ORDER

NOW, September 18, 2000, we SUSTAIN Respondents' preliminary objection as to Petitioners' claim that incarcerated felons are unconstitutionally deprived of "qualified absentee elector" status; we OVERRULE Respondents' preliminary objection as to Petitioners' claim that Section 501 impermissibly deprives those ex-felons who have been incarcerated within the past five years of the right to register to vote; and we SUSTAIN Respondents' preliminary objection as to the standing of Petitioner Williams, and she is dismissed from the case.

Respondents shall file an answer to the remaining count of the petition for review within thirty days of the entry of this order.

JOSEPH T. DOYLE, President Judge

CONCUR BY: BERNARD L. McGINLEY (In Part); BONNIE BRIGANCE LEADBETTER (In Part)

DISSENT BY: BERNARD L. McGINLEY (In Part); BONNIE BRIGANCE LEADBETTER (In Part)

DISSENT

CONCURRING AND DISSENTING OPINION BY JUDGE McGINLEY

I concur in part to the majority's conclusion: that "incarcerated felons are not [*454*] qualified absentee electors"; that non-registered felons are not permitted to register to vote while [**34**] incarcerated; and that Petitioner Williams does not have standing "to attack the
statutory provisions that she challenges." However, I respectfully dissent in part to the majority's conclusion that "the prohibition against registration [of ex-incarcerated felons] for five years after release from confinement is constitutionally infirm . . . ." 1

1 Section 501 of the Pennsylvania Voter Registration Act (Voter Registration Act), Act of June 30, 1995, 25 P.S. § 961.501 provides:

(a) Eligibility.--A qualified elector who will be at least 18 years of age on the day of the next election, who has been a citizen of the United States, who has been a citizen of the United States for at least one month prior to the next election and who has resided in this Commonwealth and the election district where the qualified elector offers to vote at least 30 days prior to the next ensuing election and has not been confined in a penal institution for a conviction of a felony within the last five years shall be entitled to be registered as provided in this chapter. (emphasis added).

[**35] In Richardson v. Ramirez, 418 U.S. 24, 41 L. Ed. 2d 551, 94 S. Ct. 2655 (1974) the United States Supreme Court rejected an equal protection challenge to a California statute which denied the right to vote to convicted felons who completed their sentences and paroles as unconstitutional. Also, In Martin v. Haggerty, 120 Pa. Commw. 134, 548 A.2d 371, 374 (Pa. Cmwlth. 1988) this Court observed that "the Court in Owens [v. Barnes, 711 F.2d 25 (3rd Cir. 1983), cert. denied, 464 U.S. 963, 78 L. Ed. 2d 341, 104 S. Ct. 400 (1983)] noted that a state does not violate the Fourteenth Amendment if it chooses to disenfranchise all convicted felons."

I believe the five-year prohibition contained in Section 501 of the Voter Registration Act does not unconstitutionally penalize a released felon based upon his unregistered status. Placing a five-year prohibition presents a rational relationship to a legitimate state interest. This legislative prohibition requires the felon to adhere to the rules of society for five years before he or she can register to vote. Because our federal and state courts have previously determined that the legislature [**36] has the statutory authority to totally deny a convicted felon the free exercise of the right to suffrage, Section 501 of the Voter Registration Act does not violate Article VII, Section 1 of the Pennsylvania Constitution and as such is constitutionally sound. Accordingly, I would sustain Respondent's preliminary objections.

BERNARD L. McGINLEY, Judge

Judge Flaherty joins in this concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION BY JUDGE LEADBETTER

I join the opinion of the majority in section IV (standing of petitioner Williams). As to sections I and II regarding absentee ballots, I concur in the result. As to section III (five-year registration ban for released prisoners), I must respectfully dissent.

Article VII, Section 14 of the Pennsylvania Constitution specifically deals with absentee voting. It provides, *inter alia*:

(a) The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be absent from the municipality of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any [**37] election, are unable to attend at their proper polling places because of illness or physical disability or who will not attend a polling place because of the observance of a religious holiday or who cannot vote because of election day duties, in the case of a county employee, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

[*455] Since incarcerated persons do not fall within the categories of those guaranteed the right to vote by absentee ballot, it must follow that the legislature is under no constitutional obligation to allow them to do so.

Because the constitution itself specifically deals with the absentee ballot issue, I would not address the more general (and more difficult) 1 question whether the General Assembly may restrict the definition of "qualified elector" beyond the terms set forth in Article VII, Section 1.

1 The majority opinion correctly cites controlling authority from the Pennsylvania Supreme Court for the proposition that the legislature may do so. I believe petitioners make a credible argument for the reconsideration of this holding, but that is not our prerogative.

[**38] With respect to the five-year registration ban, I cannot join the majority in holding that the law unfairly discriminates between registered and unregistered ex-felons, not because I find the analysis to be lacking in merit, but because the issue was not raised by petitioners. Instead, petitioners claim that the registration ban causes them to be disenfranchised in violation of Article VII, Section 1 and deprives them of a fundamental right. As to these arguments, I agree with Judge McGinley's dissent that binding precedent requires us to sustain the preliminary objections. (Indeed, the majority relies upon the same authorities in sustaining
the preliminary objections as to the absentee ballot question.) Petitioners further argue that the five-year ban violates the anti-discrimination provisions of Article I, Section 26 because it has a disparate impact on black voters. However, as the Supreme Court has noted:

Presented with a neutral state law that produces disproportionate effects along racial lines [the following approach should be applied] to determine whether the law violates the Equal Protection Clause of the Fourteenth Amendment:

"Official action will not be held unconstitutional [**39] solely because it results in a racially disproportionate impact, ... Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause."


BONNIE [**40] BRIGANCE LEADBETTER, Judge

LORENZO L. MIXON, NATHANIEL BROWN, DOLORES FIGUEROA, JOSEPH HILL, JEFFRIE S. MCKINZIE, WILLIAM P. ALSTON AND MAUREEN WILLIAMS, Appellants v. COMMONWEALTH OF PENNSYLVANIA AND KIM HANNA PIZZINGRILLI, SECRETARY OF THE COMMONWEALTH, Appellees

No. 14 MAP 2001

SUPREME COURT OF PENNSYLVANIA

566 Pa. 616; 783 A.2d 763; 2001 Pa. LEXIS 2358

October 30, 2001, Decided

NOTICE: [*1] DECISION WITHOUT PUBLISHED OPINION


OPINION

ORDER

PER CURIAM:

AND NOW, this 30th day of October, 2001, the order of the Commonwealth Court is AFFIRMED.
OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF 
PAENNSYLVANIA 

Official Opinion No. 47 


September 11, 1974 

SYLLABUS: 
[*1] 

1. The provisions of the Pennsylvania Election Code which prohibit individuals confined in a penal institution from registering and voting absentee do not apply to pretrial detainees and convicted misdemeanants. 

2. The Commonwealth does not have a compelling state interest to absolutely disenfranchise pretrial detainees and convicted misdemeanants. 

REQUESTBY: 

Honorable C. Delores Tucker 
Secretary of State 
Harrisburg, Pennsylvania 

OPINIONBY: 

David L. Kurtz, Deputy Attorney General; Israel Packel, Attorney General 

OPINION: 

Recent litigation in the Commonwealth of Pennsylvania n1 and rulings by the United States Supreme Court have led to concern and confusion as to the voting rights of untried pretrial detainees and convicted misdemeanants who are confined in penal institutions within the State. Inquiries from your office and from county election officials have raised the question of whether or not such classes of individuals may register and vote by absentee procedures prescribed under the Pennsylvania Election Code. 


[*2] 

It is our opinion and you are hereby advised that untried pretrial detainees and convicted misdemeanants must be afforded the right to register and vote by officials responsible for administration of the election laws in the Commonwealth of Pennsylvania. 

It is self-evident that all persons who are incarcerated are denied the mobility to register and vote in person at the proper polling places. However, under the Election Code, an individual who is absent from his election district may exercise his franchise as a "qualified absentee elector" provided, however, "that the words 'qualified absentee elector' shall in nowise be construed to include persons confined in a penal institution." 25 P.S. § 2602 (W)(12), 25 P.S. § 3146.1. A preliminary reading of this provision of the Code would lead to the inescapable conclusion that convicted misdemeanants and pretrial detainees are effectively precluded from exercising the fundamental right of registration and voting.
Indeed, just such an interpretation of the law has, until recently, resulted in excluding those classes of individuals confined in prison from participating [*3] in the election process. In January of this year, the United States Supreme Court held that where as State provides for the absentee registration and voting of certain classes of individuals but denies the same opportunity to pretrial detainees and convicted misdemeanants then the schematic exclusion of such individuals is in violation of the Equal Protection Clause of the United States Constitution. *O'Brien v. Skinner*, 414 U.S. 524 (1974).

Pennsylvania law provides for absentee registration and voting by numerous categories of voters who may be unable to appear in person at the polls. The Commonwealth permits absentee registration and voting by, *inter alia*, those who are unable to appear personally because of illness or physical disability, or those whose duties, occupation or business take them out of the election district of their residence. Absentee ballots are even available to those who are on vacation outside the country on election day. 25 P.S. § 623-20.2; 623-20.3 2602(W) (1); 3146.1; 951-18.1; § 951-18.2.

It is clear therefore, that the Commonwealth permits certain categories of individuals to register and vote absentee while [*4] prohibiting pretrial detainees and convicted misdemeanants from participating in person or through the use of absentee procedures in the election process. Where the State both physically prevents a class of individuals from going to the polls and denies them alternative means of casting their ballots, then the denial of absentee registration and absentee ballots is effectively an absolute denial of the franchise to these persons. The Supreme Court in *O'Brien, supra*, held that where an electoral scheme discriminates between categories of qualified voters that results in the absolute disenfranchisement of convicted misdemeanants and persons awaiting trial but unable to make bail, then the system denies those individuals the equal protection of the law guaranteed by the Fourteenth Amendment. n2

n2 In comparing the Pennsylvania Election Code to the provisions of the New York Election Code that were challenged in the *O'Brien* case, the Supreme Court stated that the Commonwealth's electoral scheme also operated as an absolute bar to voting by all prison inmates:

"More recently in *Goosby v. Osser*, 409 U.S. 512(1973), the Court again considered the problem of inmate voting and concluded that, unlike the voting restrictions in the *McDonald* case, the statute there in question was an absolute bar to the voting because of a specific provision that 'persons confined in a penal institution' were not permitted to vote by absentee ballot. It is clear, therefore, that the appellants here, like the petitioners in *Goosby*, bring themselves within the precise fact structure that the *McDonald* holding foreshadowed." 414 U.S. at 529-530.

[*5]

Moreover, pretrial detainees and convicted misdemeanants should be allowed to exercise their right to vote by absentee ballot to preserve fundamental fairness within the democratic process. There is no justifiable interest served on behalf of the State by limiting the franchise to those individuals who are free from institutional constraints. n3 Indeed, the Election Code permits a convicted felon who has served his sentence or who is free on probation to appear personally and register and vote but denies this fundamental right to a person whose guilt or innocence has not been determined by a court of law and who is confined awaiting trial. This restriction on the exercise of one of a citizen's most protected rights defaces the time honored maxim that one is innocent until proven guilty and, accordingly, possesses all fundamental rights until such a determination. It also operates in an unconstitutionally discriminatory manner to deny a fundamental right to a class of individuals solely on the basis of confinement in a state institution.

n3 It should be emphasized that this Opinion does not embrace the very substantial constitutional problems of the statutory disenfranchisement of convicted felons, whether or not they are confined in prison, as was decided in *Richardson v. Ramirez*, 418 U.S. 24 (1974). The Court's ruling in *O'Brien* limited relief to convicted misdemeanants and pretrial detainees and, thereby, the application of this Opinion.
Finally, it is essential to the process of rehabilitating individuals confined in penal institutions that they be returned to their roles in society as fully participating citizens upon completion of their period of confinement. The disenfranchisement of misdemeanants is the antithesis of the paramount goals of modern penology. n4

n4 The National Advisory Commission on Criminal Justice Standards and Goals reports that:

"Loss of citizenship [including] the right to vote...inhibits reformatory efforts. If corrections is to reintegrate an offender into a free society, the offender must retain all attributes of citizenship. In addition, his respect for law and the legal system may well depend, in some measure, on his ability to participate in that system. Mandatory denials serve no legitimate public interest." National Advisory Commission on Criminal Justice Standards and Goals, Report on Corrections, Standard 16.17 (1973 p. 593).


Accordingly, you are hereby formally advised and instructed that in accordance with the holding of the United States Supreme Court in O'Brien v. Skinner, supra, all convicted misdemeanants and pretrial detainees shall, hereafter, be entitled to register and vote during their period of confinement in a penal institution. n5 Those provisions of the Pennsylvania Election Code which exclude "persons confined in a penal institution" from qualifying as absentee electors shall only apply to inmates convicted for felonies. 25 P. S. § 2602(W) [*8] ; 25 P.S. § 3146.1.

n5 A determination of whether or not the crime for which an individual has been convicted is a misdemeanor, shall be based upon the classification of crimes contained in the 1972 Pennsylvania Crimes Code 18 Pa.S. § 106.

You are further advised that the procedure for registering and voting by persons confined in penal institutions shall be in accordance with the provisions of the Pennsylvania Election Code. As will be set forth in detail below, these procedures are sufficiently flexible to enable election officials, based on the resources, needs and particular problems of their respective counties and communities, to provide a number of alternative procedures by which pretrial detainees and convicted misdemeanants are to be registered and to vote.

Registration of inmates whose place of residence is outside of the election district within which the institution is located shall be accomplished by the making of [*9] a written request to the Election Commissioners in the manner provided for persons in the Military Service. 25 P.S. § 623-20.2; 25 P.S. § 951-18.1. Registration of inmates whose place of residence is within the same election district as the institution may be made either by the provisions regarding persons in the military, or by having election officials send a team of traveling registrars to the institution pursuant to 25 P.S. § 623-17 and 25 P.S. § 951-16.
As to voting by absentee ballot, an inmate whose residence is not in the same election district within which the institution is located, shall make an application for and subsequently vote by absentee ballot in the manner provided for persons in the military service. 25 P.S. § 3146.2(a), (b) and (c). An inmate whose place of residence is within the same election district as the institution may vote by absentee procedures provided in 25 P.S. § 3146.2(2)(b) and (c); or the election officials may conduct the election at the prison in the same manner that is provided for patients in public institutions. 25 P.S. § 3146.2 (f) [*10] and (g). The inmates' official residency for voting purposes shall be deemed to be their official residence prior to incarceration and not the institution where they are confined.

Legal Topics:

For related research and practice materials, see the following legal topics:
Civil Rights LawPrisoner RightsDiscriminationConstitutional LawEqual ProtectionScope of ProtectionGovernmentsLocal GovernmentsElections
ALERT RE: DRIVER'S LICENSE AND SOCIAL SECURITY DATA COMPARISON PROCESSES REQUIRED BY THE HELP AMERICA VOTE ACT (HAVA)

The Help America Vote Act of 2002 (HAVA) requires (1) that all applications for new voter registration include a current and valid PA driver’s license number, the last four digits of the applicant’s social security number, or a statement indicating that the applicant has neither a valid and current PA driver’s license or social security number; and (2) that voter registration commissions compare the information provided by an applicant with the Department of Transportation’s driver’s license database or the database of the Social Security Administration, as appropriate. However, HAVA does not require as a condition of the approval of an application for voter registration that the voter registration commission successfully verify the information through those databases. Rather, under HAVA and Pennsylvania law, the disposition of an application for voter registration must be made solely by the county voter registration commission under the standards and procedures prescribed by Pennsylvania law.

The Department of State sends this alert to revise and clarify the policies and procedures that it previously adopted to comply with the database comparison process that HAVA has required for applications for new voter registration since the beginning of the year.

I. Background

Effective January 1, 2006, section 303(a)(5) of HAVA required State and local voter registration officials to implement processes for comparing information submitted on applications for new voter registration with the State’s driver’s license records and the
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database of the Social Security Administration. The Department of State in January 2006 implemented these processes in Pennsylvania as a component of the Statewide Uniform Registry of Electors (SURE) system. Those policies and procedures were written based on the Department’s understanding of the requirements of section 303(a)(5) of HAVA at that time.

During the months that these processes have been in use, however, it has become apparent to the Department that the policies and procedures it established to comply with this new requirement are not well designed to comply with HAVA and Pennsylvania law governing voter registration. Most importantly, the Department’s policies and procedures appear to require the rejection of voter registration applications solely on the basis that the information submitted by the applicant failed to match information contained in the database of the Social Security Administration or on driver’s license records. Neither HAVA nor Pennsylvania law requires that result. See Washington Ass’n of Churches, et al. v. Sam Reed, No. C06-0726RSM, op. at 4-5 (W.D. Wash. August 1, 2006) (HAVA’s data comparison process “was intended as an administrative safeguard for ‘storing and managing the official list of registered voters,’ and not as a restriction on voter eligibility.”).

For example, the transposition of a digit in the driver’s license or social security number by either the applicant or at the time of data entry at the county registration office will result in a failure to match the applicant’s driver’s license record or social security record and could result in the applicant’s voter registration application being rejected, without regard to the fact that the applicant meets all the eligibility requirements under Pennsylvania law to be a registered voter. Another common example is a voter
registration application that cannot be automatically matched with a record in a
government database because the applicant customarily uses his or her middle name or a
derivation of the applicant’s given first name, rather than the applicant’s full legal name.
Completing a voter registration application using the name by which the individual is
popularly known but not formally recorded in the social security database also will result
in an inability to match the voter registration application with the person’s social security
record, notwithstanding the accuracy of all other information submitted by the applicant.

Other common examples of causes of failure to match include hyphens used
within the name in one place and not in the other; and name changes adopted by
individuals as part of the marriage or divorce processes or for other reasons that do not
precisely conform to the form of name that appears in the database of the Social Security
Administration.

Rejecting voter registration applications solely on these bases is not required by
HAVA and is not authorized by Pennsylvania law. Because its policies and procedures
appear to be resulting in the rejection of applications for reasons unrelated to the
qualification of applicants to be registered voters, the Department has concluded that its
procedures actually are frustrating the principal purpose and intent of HAVA to ensure
that eligible persons are not disenfranchised.

Thus, in order to better meet the purpose and intent of HAVA and to facilitate the
proper enfranchisement of all persons eligible under Pennsylvania law to vote, the
Department is modifying the procedures and processes for using the driver’s license
record and social security number data comparison component of SURE. Also, the new
policy and procedure is more consistent with the policies and procedures that a majority of the States has adopted to implement the HAVA data comparison requirement.

II. Revised Policies and Procedures

A. Applications for Voter Registration

Under HAVA, a voter registration commission may not accept or process an application for voter registration unless it includes a driver’s license number, the last four digits of a social security number, or a statement reflecting that the applicant has not been issued either a current and valid Pennsylvania driver’s license or a social security number. See HAVA § 303(a)(5)(A). The Department’s policies and procedures respecting this explicit HAVA requirement are consistent with HAVA, and therefore those policies and procedures will not be modified.

B. Comparison with PennDOT and Social Security Administration databases is required by HAVA.

If a driver’s license number has been provided as part of the application for voter registration, HAVA requires the voter registration commission to submit the information provided in the application for comparison with the database of driver’s license records maintained by the Pennsylvania Department of Transportation. See HAVA § 303(a)(5)(B)(i). If the applicant has not provided a driver’s license number, but has provided the last four digits of the applicant’s social security number, then HAVA requires the voter registration commission to submit the applicant’s name and date of birth and the last four digits of the applicant’s social security number for comparison with information maintained by the Social Security Administration. See HAVA § 303(a)(5)(B)(ii). The Department’s policies and procedures implementing these explicit mandates of HAVA also will not be modified.
C. Results and consequences of database comparisons.

The Department’s policy and procedures for use of the SURE data comparison component are clarified and revised to emphasize that under Pennsylvania law, and consistent with the purposes and intent of HAVA, the decision whether to approve or reject a proper application for voter registration is vested with the voter registration commission, as provided by 25 Pa.C.S. § 1328 (relating to approval of registration applications).

The HAVA data comparison requirements must be followed, but no provision of the HAVA data comparison requirement overrides the authority of the voter registration commission under Pennsylvania law to determine the validity of a voter registration application under the requirements of Pennsylvania law. Under HAVA and Pennsylvania law, the failure to achieve a match between a voter registration application and a record in the Commonwealth’s driver’s license database or the database of the Social Security Administration is not a reason to reject the application.¹

In anticipation of this modification in policy and procedure, the Department earlier suspended the operation of SURE’s program for automatically rejecting applications for voter registration based on an applicant’s failure to respond to notices issued to applicants seeking additional information. Thus, rejection of an application for

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¹ By contrast, section 303(b)(3)(B) of HAVA does explicitly require that an election official successfully match the information provided on a mail-in application for voter registration with an existing State identification record bearing the same driver’s license number or last four digits of the individual’s social security number in order for the applicant to qualify for exemption from HAVA’s voter identification requirement for first-time voters prescribed by section 303(b)(1) of HAVA. However, section 303(b)(3)(B) of HAVA does not affect the authority of a voter registration commission to approve an application for voter registration under Pennsylvania law; it applies only to the voter identification requirements imposed on electors whose applications for voter registration have been approved. As it has done since 2004, the SURE system will track and identify for county boards of elections those registered electors who are required by HAVA to present or submit voter identification as a condition of voting for the first time in Pennsylvania (including by absentee ballot) in an election for Federal office.
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voter registration now can be accomplished only by the affirmative action of the voter
registration commission or its authorized staff, acting pursuant to its authority under
Pennsylvania law.

In addition, the issuance to applicants of all form notices that are prescribed by
the SURE system is at the sole discretion of the voter registration commission, acting in
the exercise of its judgment under Pennsylvania law.

Until the Department has modified the policies and procedures issued
through the SURE system, the Department of State recommends that the voter
registration commissions perform their powers and duties respecting the
consideration and approval or disapproval of applications for voter registration
based on the provisions of Federal and Pennsylvania law, as outlined in this notice.
Of course, as with all matters, the voter registration commissions should consult with
their solicitors for necessary legal advice and counsel.