



Office of the Commissioners

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County Commissioners

Joshua G. Parsons, Chairman
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Hon. Kathy Boockvar
Secretary of the Commonwealth
Pennsylvania Department of State
North Office Building, Suite 302
401 North Office Building
Harrisburg, PA 17120
Via email

Dear Secretary Boockvar:

As you know Act 77 of 2019, which was signed into law by Governor Wolf, created a new mail in ballot option for voters in Pennsylvania. The law as passed by the legislature and signed by the Governor requires that all mailed ballots be received by 8:00 PM on election day.

Subsequently, the Pennsylvania Supreme Court created its own new rule. It ordered that ballots are to be accepted if they are postmarked on or before election day and are received within three days after polls close. Further, a ballot with no postmark or an illegible postmark must also be accepted if it is received by that same date.

That ruling has been appealed to the United States Supreme Court. In the U.S. Supreme Court's denial of a motion to expedite the case, the court appears to have relied on information from your department that you would provide guidance to counties to segregate ballots that come in after election day. It said:

"[W]e have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate ballots received between 8:00 p.m. on November 3, 2020, and 5:00 p.m. on November 6, 2020."

On October 28th, 2020, Lancaster County received an email from Jonathan Marks, Deputy Secretary for Elections & Commissions, stating the following:

"Yesterday the Secretary issued the attached guidance related to mail-in and absentee ballots received from the United States Postal Service after 8:00 p.m. on Tuesday November 3, 2020. The guidance referenced that a motion to expedite a petition for a writ of certiorari related to the three-day extension was pending in



the United States Supreme Court. After the Secretary issued the guidance yesterday, the United States Supreme Court denied the pending motion to expedite consideration of the petition for a writ of certiorari. In doing so, three Justices of the Supreme Court joined in a statement that referenced the guidance that the Secretary issued yesterday directing county boards of elections to segregate ballots received between 8:00 p.m. on November 3, 2020 and 5:00 p.m. on November 6, 2020. Though the Secretary continues to strongly defend the 3 day extension to ensure that every timely and validly cast mail-in and absentee ballot is counted, to ensure uniformity and to respect the United States Supreme Court's consideration of the issues still before it, the Secretary strongly encourages each county board of elections to affirmatively confirm that it will comply with the attached guidance."

The attached "guidance" read:

"The county boards of elections **shall not pre-canvass or canvass any mail-in or civilian absentee ballots** received between 8:00 p.m. on Tuesday, November 3, 2020 and 5:00 p.m. on Friday, November 6, 2020 until further direction is received. These ballots shall be maintained by the county board in a secure, safe and sealed container separate from other voted ballots." [Emphasis added.]

By law, counties have eight days to complete the canvass. We have been informed by our elections office staff that once ballots are canvassed, it is logistically impossible to later remove those ballots from the total count. Thus, the guidance to keep these ballots separate and not canvass them immediately makes sense as they are likely the subject of litigation.

However, on November 1st, 2020, we received new "guidance" from Mr. Marks.

Strangely the new "guidance" has suddenly been changed to the following statement, which is in direct conflict with the earlier "guidance."

"The county board of elections **shall canvass** segregated absentee and mail-in ballots received after 8:00 P.M. on Tuesday November 3, 2020, and before 5:00 P.M. on Friday, November 6, 2020 **as soon as possible upon receipt of the ballots** and within the period specified by law for the canvass. The canvass meeting shall continue until all segregated absentee and mail-in ballots have been canvassed." [Emphasis added.]

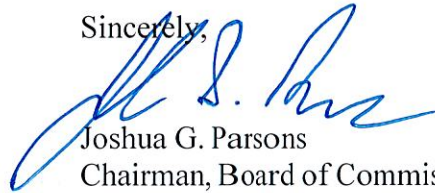
The new guidance is essentially asking us to add any ballots that come in after election day to our total count. In fact, the new "guidance" is strangely asking us to do this as "soon as possible." I anticipate that you would know full well that those contested votes cannot then be removed if the Commonwealth is ordered to do so by the United States Supreme Court.

This is in contravention to your earlier guidance and appears to be in contravention to what the United States Supreme Court relied on from your department. That court, in refusing to expedite the case, surely did not anticipate that you would make those votes impossible to remove from the total count.

As a result, at our Board of Elections meeting on November 2nd, 2020 a majority of the board exercised our legal authority to comply with the law and your first set of guidance and wait to canvass any ballots that come in after election day. We will make further decisions at a future board meeting and, of course, intend to continue to fully comply with the law, including the canvass deadline.

I remain, however, deeply concerned about this strange change in guidance by your department and what it means for the integrity of the election.

Sincerely,



Joshua G. Parsons

Chairman, Board of Commissioners

CC: Senator Joe Scarnati, President Pro Tempore, Pennsylvania Senate
Via email
Representative Bryan Cutler, Speaker of the Pennsylvania House of
Representatives
Via email