



**TESTIMONY ON
ELECTION CODE REFORMS**

Presented to the Senate State Government Committee

By

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Sherene Hess, Indiana County Commissioner and Chair, CCAP Elections Reform Committee

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Commissioner Daryl Miller Election Reforms 2022 County Priorities

Good afternoon, my name is Daryl Miller, Bradford County commissioner and 2022 President County Commissioners Association of Pennsylvania (CCAP), a non-profit, non-partisan association representing the commonwealth's 67 counties. I am joined today by Sherene Hess, Indiana County commissioner and chair of the CCAP Elections Reforms Committee, and Lisa Schaefer, CCAP executive director, is also with us.

Pennsylvania's 67 counties have the primary responsibility for assuring elections remain fair, secure, accurate and accessible at every step of the process. This is a responsibility we all take extremely seriously, and I firmly believe that counties have continued to meet and exceed that responsibility, even as we faced significant challenges over the past several years. CCAP applauds the county election offices and the tens of thousands of volunteers for addressing these challenges in an extremely professional manner to deliver successful elections and maintain the security and integrity of the results.

That said, counties have learned a great deal from their experience implementing Act 77, and we know there are ways in which changes to the law can improve our ability to administer elections, as well as our ability to provide more efficient results. Ultimately, the electorate must have the utmost confidence in the integrity of the election process. For that reason, counties voted last November that one of their 2022 priorities would be to promote election integrity by advocating for changes to our election laws that will resolve existing ambiguities and make sure counties have clear rules that can be implemented consistently across Pennsylvania.

CCAP's Elections Reform Committee – which comprises county officials and county election directors from across the state – convened shortly after the November 2020 election and began reviewing county experiences, ultimately resulting in a report and recommendations released more than a year ago. These recommendations are applicable to both absentee and mail-in ballots, and Commissioner Hess will be speaking more about them.

One of the effects of Act 77 that is rarely talked about, though, is how the changes to election administration significantly increased costs to counties and the resources we need to run what is, in essence, an entirely separate election. We have heard counties reporting that their elections-related costs have at least doubled over the past few years, as we needed additional supplies, saw printing costs go up, and watched staffing and overtime needs grow to address the significant workload increases. All of this fell squarely on our shoulders – and ultimately, our county property taxpayers – because we are solely responsible for election administration, yet received no new resources to offset these new requirements.

This also had a domino effect as increased workloads, combined with the stress of trying to figure out how to implement an entirely new law, in an unrealistic timeframe in the middle of a global pandemic and a highly contentious presidential election, have caused at least a third of our counties to experience the loss of their election director and other top election staff. The

institutional knowledge we lost is immeasurable and will only continue if we fail to plan for additional funding and other support for our county election offices.

For these reasons, counties are also seeking appropriate resources and funding for counties as a priority for 2022. Counties and the state must work together as new laws and policies are developed to assure any increased costs and resource needs, as well as adequate time for implementation, are also addressed. The current state of affairs is not sustainable, and continually increasing what counties are asked to do without providing for the funding, staff and time to implement those requirements will only set us up for failure in the future.

In closing, I want to emphasize that counties are here to help, and we very much need the support of the legislature and the administration to make that happen.

The state and counties must work together to provide appropriate support for our elections, and anticipate the potential costs to counties related to any future Election Code reforms.

As we continue to assess and advocate for county needs in the changing elections environment, we appreciate this opportunity to offer our perspective related to on-the-ground needs and considerations and stand ready to partner with General Assembly in any Election Code legislation being developed.

Commissioner Sherene Hess Election Reforms: Act 77 and Beyond

Good afternoon. I am Sherene Hess, Indiana County commissioner and chair of the CCAP Elections Reforms Committee.

As Commissioner Miller shared, our committee members reacted immediately after the November 2020 election to review our experiences with Act 77. For more than a year now, we offered our recommendations on how the law could run more smoothly and give counties the tools and clarifications they need to properly fulfill their election day responsibilities. Even if Act 77 is ultimately overturned, we expect that several of these issues will still remain to be addressed as they pertain to absentee ballots.

You are no doubt familiar with our call for additional time to prec canvass mail-in and absentee ballots to assist counties in providing timely results, as well as moving back the deadline for absentee and mail-in ballot applications. But beyond that, we must promote election integrity by assuring counties have clear and efficient rules to help restore the public's confidence in our elections.

For instance, counties seek clarity in the law on whether counties have the authority to use drop boxes for absentee and mail-in ballots, after questions were raised (and litigated) on this question.

In addition, the law is unclear, or in some cases silent, on how counties should address certain situations, such as what to do with naked ballots and whether voters should be contacted to be permitted to cure defects with their mail-in ballot. This lack of clarity was the basis for many of the lawsuits that were filed at the state and federal level after the 2020 Primary Election. Changing court decisions, in addition to the statutory language or lack thereof, led to a situation where counties struggled to implement the law on a consistent basis. The fatal flaws under which a mail-in ballot is not to be counted must be clearly identified, such as whether a mail-in ballot should be counted if a signature or date is missing from the voter's declaration, or what a county should do with mail-in ballots that contain writing on the privacy envelope. Counties also need a clear rule in the law on when or if curing of flaws may happen, and whether or not a county is required to contact a voter to cure their ballot and when.

Counties also note that the process regarding the permanent mail-in voter list – which is different from the permanently disabled absentee list – has created frustrations for both the voter and the county. Voters who request to be on the permanent mail-in list will have a ballot application mailed to them by the first Monday of February each year which, if completed and returned, entitles them to receive ballots in the mail for all elections taking place during the remainder of that calendar year. Experience shows that voters often do not remember checking the box for the permanent list and think they are getting ballots they did not request. The number of renewal letters that must be sent out annually further add to the burdens on county workloads. This process also needs to be addressed, or even removed.

I will also note that while Act 77 and mail-in voting have been top of mind in recent years, CCAP takes a broader, and longer view, of election reform. We originally created our Elections Reform Committee as a task force in 2013, making it a full standing committee within our Association in 2021. The task force, including county officials, county election directors and representatives from the Department of State, presented a report to our members for consideration in the spring of 2014 raising issues that varied in size and scope, and touched on both administrative and policy matters reflecting counties' experience under statute, regulation and judicial decisions. Many were subsequently adopted by our membership into the Pennsylvania County Platform, and we have provided a copy of the section related to elections with our testimony.

These issues are not ones that you will hear regularly in discussions on elections reform, and very often they are more complex than the sound bites we regularly hear with regard to this topic – issues like addressing petition or write-in requirements, poll worker recruitment and retention, timely resolution of ballot challenges or developing training for election directors. Because of that they are easy to overlook in favor of items that obscure real concerns, but these are the matters that actually address the nuts and bolts of administering fair, open and accessible elections.

We know too that state policymakers have their own ideas on changing the Election Code. Every change takes time, takes changes to procedures and protocols, takes training, and takes funding and other resources. Counties can help make sure we do not find ourselves in another Act 77

situation by working with the legislature to craft legislative language that is clear. This means counties need to be involved and consulted, as there may be practices and procedures already used by a majority of counties that can be captured and memorialized, rather than having to reinvent the wheel. In addition, this consultative process would help to assure that the procedures ultimately are understandable to those at the county level who will be trying to follow them.

Finally, I want to put on your radar screen the potential for legislative action in the event that Act 77 is ultimately overturned. In addition to the expansion of mail-in ballots, Act 77 contained a number of other reforms, such as requiring the Department of State to submit a plan to the General Assembly at least six months in advance of disapproving or decertifying voting systems in 50% or more of the counties. The law also prohibited the use of stickers on write-in ballots, which threaten to damage our voting machines, established best practices for absentee ballots and simplified the emergency absentee process.

Critically, Act 77 also requires mail-in and absentee ballots to be counted centrally at the county board of elections' office, rather than distributed to polling places and counted there. If ballots were to go back to the precincts, counties would not be able to do anything with them until after they come back to the county, long after polls close at 8 p.m. We also anticipate that the numbers of absentee ballots would not go back to pre-Act 77 levels, and to maintain secrecy and security it is important for the counties to keep these ballots to count rather than sending large numbers of ballots out to the precincts for poll workers to handle.

For counties, we think that perhaps the better way to frame this conversation is as non-partisan, rather than bipartisan, election reform – our counties understand that election administration is not about party affiliation, but about making our democracy run smoothly. Even while debates over election reforms often focus on big picture concepts like voter access or election security, counties know it is the small, often unseen tasks related to day-to-day administration that can have big ramifications on the outcome of elections.

I conclude by echoing two points. One, any changes to the Election Code must be enacted well in advance of an election to allow for enough time to properly implement any changes, and with county input and appropriate funding to support those changes. And two, to reiterate that regardless of the rhetoric, regardless of the lawsuits, regardless of the noise, our county officials and the dedicated public servants who work in our county election offices remain laser focused on their responsibility as stewards of our democracy.

Thank you again for the opportunity to offer our testimony and your consideration of these comments. We look forward to continuing to work with you on the necessary legislative changes to improve the administration of elections in Pennsylvania.

Pennsylvania County Platform 2021-2022

VI ELECTIONS

A. General

1. The Association believes that the Pennsylvania Election Code contains many conflicting and antiquated provisions and, as a result, supports a complete rewrite or codification of the law. (Readopted 2012, readopted 2016, readopted 2020)
2. The Association supports provisions in all amendments to the Election Code to provide realistic and adequate time and state resources to support implementation of new laws, procedures, and systems. (Added Spring 2014, readopted 2018, amended 2021)
3. The Association supports federal and state reimbursement to counties for the expense of conducting and administering federal and state elections. (Amended 2010, readopted 2012, readopted 2014, amended 2018)
4. The Association opposes any change in the date for primary election unless all other necessary changes in the Registration Laws and Election Code are also made at the same time. (Readopted 2012, readopted 2016, readopted 2020)
5. The Association opposes any legislation that would authorize initiative and referendum where the referendum would be binding on local officials. (Readopted 2012, readopted 2016, readopted 2020)
6. The Association supports the elimination of the “yes” retention question for judges, instead requiring judges to stand for re-election. (Readopted 2012, amended 2013, technical edit 2019)
7. The Association supports an amendment to the Election Code to require the Commonwealth to reimburse counties, in the same manner as is done for special elections for Pennsylvania House and Senate seats, for the cost of special elections for Congressional races. (Added 2002, readopted 2012, readopted 2014, readopted 2018)
8. The Association supports implementation of voter identification requirements in a manner which results in the greatest possible access for qualified electors, which will require close cooperation with the Department of State, clear and detailed information for county election directors and voters on requirements and rights, prompt and uniform response to legal and practical questions, broad multimedia dissemination of information on ID requirements and how to obtain ID, uniform rules on what qualifies as ID, uniform and detailed training of poll workers, and access to data to assist county election offices in identifying registered voters who lack ID. (Amended and readopted, 2012, readopted 2016, readopted 2020)

9. The Association supports changes in election law and practice that would:
- a. Amend the Pennsylvania Constitution, if necessary, to eliminate all reasons or conditions necessary to qualify for an absentee ballot and permit any qualified elector to vote by absentee ballot without excuse, consistent with current law authorizing mail-in ballots;
 - b. Improve administration of absentee and mail-in balloting to provide greater convenience and accountability, including ease in application and submission of ballots, such as allowing completed ballots to be returned to a voter's polling place on election, and permanent absentee registration for qualified permanently disabled electors without reassertion of disability, while maintaining the integrity, security, and secrecy of the process;
 - c. Provide for cooperation from the courts in recognizing the practical and cost implications of late action on ballot determinations, including a requirement that those factors be noted by the court during its deliberative process, relieving any county from requirements to reprint or reprogram ballots when a decision is rendered with insufficient time for the county to practically and with confidence make the required change, and requiring commonwealth reimbursement of costs incurred by counties for reprinting or reprogramming ballots based on decisions rendered within four weeks of the election;
 - d. Maintain the schedule for uniformed and overseas citizens absentee voting and provide that the federal write-in absentee ballot can be used in all elections for all offices. The Association also supports exploration of processes and technologies that will facilitate, with proper security, the registration, absentee application, and balloting processes for uniformed and overseas citizens.
 - e. Address delayed receipt of absentee and mail-in ballots sent late in the deadline window, based on US Postal Service (USPS) scheduling and routing by moving the deadline to apply for ballots to 14 days prior to an election, as well as other changes that do not affect the timely count of absentees, permits as necessary central count of absentees, do not inadvertently encourage late filing, educates the public on timely mailing, and takes into account other practical issues have arisen with authorization of mail-in ballots.
 - f. Include in the polling place school-use mandate all schools that receive state instructional funding, and designate the date of the primary and general election as school in-service days to support the closing of schools that are used as polling places.
 - g. Improve administration of elections within the provisions of the Help America Vote Act, including clarity on provisional ballot procedures and tabulation, standards and enforcement of accessibility, alternative language accessibility, and what constitutes a vote.
 - h. Defer questions of electoral college reform to the national level but provide for greater access to the ballot for minor political parties and political bodies,
 - i. Provide uniform standards for submission and placement of referendum questions, including a 90 day deadline for submission to the county board of elections.

- j. Make the requirement of newspaper advertising for the Election Proclamation discretionary, allowing counties instead to place the notice on the county website or other electronic publication.
- k. Clarify or correct the definition of "separate ballot" for judicial retentions, to allow printing the retention ballot on the face (as space permits) or back side of the regular ballot.
- l. Set an extended and uniform 90 day standard for the deadline for special elections for vacancies in municipal office.
- m. Allow the county board of elections to make appointments to vacancies on local election boards, effective for the balance of the unexpired term;
- n. For municipalities with fewer than 100 registered voters, permit the county to provide for the voters of the precinct to cast their ballots exclusively by mail.
- o. Make the overseer petition provision workable in Philadelphia by eliminating the requirement for concurrent assent by all law judges;
- p. Amend results certification to provide that, when the required start of certification is a holiday or observed holiday, the certification will begin instead on the next regular business day; and
- q. Allow counties to begin pre-canvassing of absentee and mail-in ballots up to three weeks prior to an election, provided that tabulation does not begin until after the polls close on election day.

(Added 2005, amended 2009, 2010, amended and readopted 2012, f and i amended and j through n added Spring 2014, b added and c amended 2014, e added 2016, m amended and o added 2017, n added 2018, b amended 2019, a, b and e amended and g added 2020)

10. The Association opposes early voting that relies on establishing and operating single or multiple polling places. (Added 2011, readopted 2012, readopted 2015, readopted 2017, amended 2020)

11. The Association supports establishment of special elections for vacancies in legislative or Congressional seats to coincide with a primary or general election whenever practical. (Added 2014, readopted 2018)

12. The Association supports an amendment to the Election Code to require that all statewide and local referenda appear on the November election ballot, with limited exceptions, to be exercised by special requirement, for placement on the primary ballot. (Added 2016, readopted 2020)

13. The Association supports legislation that would provide further definition to the reapportionment process to meet the objective of balanced and cohesive legislative and congressional districts. (Added 2017, readopted 2021)

14. The Association supports statutory clarity of write-in balloting, to include:

- a. Only tabulate and process votes for a write-in if the number of write-in votes cast exceeds the number of signatures required to qualify for the nominating petition for that office;
- b. Delineate clear standards on timing, means, and method for the county to notify successful write-in candidates following certification of the count, require successful write-ins to certify that they accept the nomination or position, and require successful write-ins to file the candidate affidavit and pay relevant filing fees; and
- c. Recognize local party rules governing nominations to party offices. (Added 2017, amended 2020)

15. The Association supports amendments to the Election Code that clarify the responsibilities of the county boards of elections, thereby promoting uniform interpretation of the law, while providing flexibility for counties to meet local needs. (Added 2021)

B. Qualifications and Petitions

1. The Association supports legislation to improve the petition circulation process, including better clarity on petition content and circulation rules and increased penalties for fraudulent practices. (Added 2013, readopted 2017, amended 2021)
2. The Association supports an amendment to the Election Code to reduce or eliminate petition requirements for judge of election and inspector of elections. (Added Spring 2014, readopted 2018)

C. Polling Places

1. The Association believes that constables should no longer be required to be present at each polling place in every election district, and the decision to eliminate or maintain their presence should be at the option of the local election board. (Readopted 2012, readopted 2016, readopted 2020)
2. The Association supports means to increase the pool of available poll workers and facilitate their ability to serve by:
 - a. Allowing government employees to be poll workers, except for those with conflict of interest as defined by statute;
 - b. Allowing employees to take leave without penalty, whether paid or unpaid, to serve as poll workers; and
 - c. Allowing a poll worker who is a registered elector in the county to be designated to serve in any precinct in the county that has a vacancy within 30 days of election day. (Added 2019)
3. The Association opposes authorization for curbside voting. (Added 2019)

D. Ballots and Election Systems

1. The Association supports county choice in selection of voting equipment, believing the determination, while compliant with state and federal certification requirements:
 - a. Should be on a voluntary calendar that is predicated on market, equipment availability, and reasonable timelines including employee, poll worker and voter training,
 - b. Should meet the needs and expectations of the county's voters,
 - c. Should have available reliable and ongoing state and federal funding, and
 - d. Should be statutorily framed as a decision by the board of commissioners or home rule equivalent, rather than the election board. (Added 2018)
2. The Association supports full and sustainable federal funding, or in absence of full federal funding full Commonwealth funding, of the equipment, registration, accessibility, and related provisions of any federal or state election laws that alter the operation of elections in the commonwealth. (Added 2003, amended 2009, readopted 2012, readopted 2013, readopted 2017, amended 2021)
3. The Association supports election system certifications based on objective criteria, including the quality of the equipment, its utility to the electors, and its compliance with Pennsylvania statute and practice, supports legislation to allow expedited consideration of new and updated technologies, and supports limiting decertification of equipment to circumstances where there are demonstrated systemic flaws or there are material changes to statutes governing equipment features or operability. (Added 2001, readopted 2012, readopted 2016, amended 2018)
4. The Association opposes the use of voting systems (such as internet voting) or electronic transmittal of completed ballots, data or information that might influence the tabulation or canvass of the ballots or certification of results, until concerns for the security and integrity of the election process and the outcome are fully addressed. (Added 2001; amended 2006, readopted 2012, amended 2014, readopted 2018)
5. The Association supports large print absentee and mail-in ballot applications and absentee and mail-in ballots only if they can be accomplished while still preserving automated tabulation, including positioning of date registration and a voter's ballot marks. (Added 2019, technical edits 2020)

E. Voter Registration

1. The Association opposes legislation permitting same day voter registration, with the exception of dual use of the Federal Write-in Absentee Ballot (FWAB) for registration purposes by a member of the uniformed services or merchant marine on active duty, or an eligible spouse or dependent at the time the absentee ballot is cast. (Amended 2011, readopted 2012, readopted 2015, readopted 2019)
2. The Association opposes automatic voter registration. (Added 2016, readopted 2020)