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**HOUSE DEMOCRATIC POLICY COMMITTEE**

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**HOUSE OF REPRESENTATIVES**  
COMMONWEALTH OF PENNSYLVANIA

**VIRTUAL HEARING: Defending Democracy**

January 19, 2021 | 10 a.m. to 12 p.m.

*A hearing to explore Pennsylvania's election process in 2020 including the implementation of Act 77 and the improvements our communities are asking for.*

- |                             |   |
|-----------------------------|---|
| <b>10 a.m. – 11 a.m.</b>    | Jonathan Marks, Pennsylvania Department of State on election security in 2020<br>Q & A with legislators |
| <b>10:30 a.m. – 11 a.m.</b> | Andrew Szefi, Allegheny County Solicitor<br>Q & A with legislators                                      |
| <b>11 a.m. - 11:30 p.m.</b> | Philadelphia City Commissioner Al Schmidt<br>Q & A with legislators                                     |
| <b>11:30 a.m.-12 p.m.</b>   | Bob Harvie Bucks County Election Commissioner<br>Q & A with legislators                                 |

## **House Democratic Policy Committee Hearing**

### **Submitted Remarks of Jonathan Marks, Deputy Secretary for Commissions and Elections Pennsylvania Department of State January 19, 2021**

Act 77 of 2019 and Act 12 of 2020 made the most extensive changes in more than 80 years to how voters vote and how we run elections in Pennsylvania, including longer voter registration periods, no-excuse mail in voting, permanent mail-in voter lists, extended deadlines for casting mail-in and absentee ballots, in-person early voting by mail ballot, elimination of straight party ticket voting, and more.

Local and state election officials implemented all these changes in the face of a global pandemic, delivery delays acknowledged by the United States Postal Service itself, and an unprecedented amount of litigation and challenges brought throughout the year.

Despite all of these challenges, and thanks to the hard work and dedication of county and local election officials and bilingual broad-scale public education campaigns the Department of State (DOS) distributed throughout 2020, Pennsylvanians registered and voted in record numbers in the 2020 General Election. Approximately 9.1 million Pennsylvanians are registered to vote, more than 300,000 more voters than have ever previously been registered. And turnout in the November election included more than 6.9 million voters - 800,000 more Pennsylvanians than voted in any prior election in our history. The November 3, 2020 General Election was safe, secure, and accessible, no matter how eligible voters chose to vote.

Throughout 2020, DOS provided uniform guidance to all county boards of elections regarding election reforms. DOS provided updates throughout the year as courts resolved a record number of litigation disputes relating to election administration. Multiple courts hearing the litigation favorably noted the Department of State's guidance and cited it in support of their decisions.

Pennsylvania's processes ensure that no eligible voter is wrongly disenfranchised, and every qualified vote is counted. All ballots – whether cast in person or by mail -- are counted securely and accurately by the counties.

To ensure the highest standards of election security and integrity, Pennsylvania's Department of State and 67 county boards of elections collaborate with state and

federal departments of Homeland Security, the Pennsylvania State Police and National Guard, and other key local, state and federal partners.

We employ a layered set of defenses to protect the commonwealth's election processes. Counties use extensive eligibility-checking procedures and state-of-the-art voting systems that meet stringent federal and state standards for security and accessibility and provide an auditable, voter-verifiable paper ballot.

Over the last 2 years, we required every county to replace their old voting systems, most of which had no paper trail, with new voting systems that employ these advanced standards of security and every single vote has a paper trail. Every single voting system in the state must have successfully completed penetration testing, access-control testing and testing to ensure that every access point, software and firmware are protected from tampering. And no voting system is ever connected to the internet. Additionally, every county is required by law to audit 2 percent of their ballots after every election, before they certify their results.

On top of those audits, Pennsylvania is a pioneer among states in piloting the use of enhanced risk-limiting audits. These audits rely on a scientifically designed procedure and statistical methods to provide a high level of confidence and verification that the outcome of an election is accurate and to detect possible interference. This past summer, in partnership with the counties, we conducted our first statewide enhanced post-election audit pilot. It overwhelmingly confirmed the outcome of both the Democratic and Republican Presidential Primary races.

Currently, we and the PA counties are in the process of conducting another risk-limiting audit pilot of the November election.

Yet despite these strong election security and integrity practices and standards, baseless allegations, absurd conspiracy theories and frivolous lawsuits have proliferated since the election. These claims have been unequivocally debunked by Independent fact-checkers and repeatedly rejected by dozens of local, state and federal courts.

Pennsylvania held a free, fair, and secure election. Millions of Pennsylvanians of every political party complied with the rules established by the General Assembly and confirmed by the courts. These baseless attacks are nothing more than disinformation intended to subvert the will of the voters and undermine our democracy and our faith in our elections.

Thousands of election officials at the state and local levels, Republican and Democrat alike, worked tirelessly amid a pandemic to ensure that the will of the people of Pennsylvania was expressed through their votes. Counties administered the election with the highest degree of transparency, several with a 24/7 livestream of the ballot-counting process available for anyone to watch, in addition to the bipartisan teams of election officials, party officials, and other observers of the process.

The most significant change necessary to ensure even greater efficiency of our election administration is that the counties be permitted to pre-canvass mail-in and absentee ballots well ahead of Election Day, like the 46 other states that permit the same.

The Department of State and the counties will continue to fight for our democracy, to ensure that the vote of every qualified voter is counted securely and accurately.

**Testimony of Al Schmidt  
City Commissioner of Philadelphia**

**Virtual Hearing: Defending Democracy  
Pennsylvania House Democratic Policy Committee  
Harrisburg, PA  
Tuesday, January 19, 2021**

Good Afternoon Chairman Bizzarro and Members of the House Democratic Policy Committee. I'm Philadelphia City Commissioner Al Schmidt. In Philadelphia, the City Commissioners are three independently-elected officials responsible for oversight of elections and voter registration. I'm a Republican, first elected in 2011, and currently serving my third term. Some might question the appropriateness of an elected Republican official testifying before the House Democratic Policy Committee, but – as I have said repeatedly – there shouldn't be a Republican or a Democratic way to run elections. That's not to say that we will agree on every detail of every policy proposal, but that our guiding principle, as Americans, should be universal — that our Republic is better when we all have the opportunity to participate.

At the heart of our electoral system is the faith Americans have in the integrity of our elections. Confidence that we do everything we can to count legitimately cast votes from eligible voters. Trust that we do everything in our power to protect our elections from illegitimately cast votes. We need to come together to continue improving our election system and do what we can to restore that faith. Still, we must do so based on facts and informed by data, rejecting disinformation, and with the understanding that this past election in Pennsylvania was free and fair.

So how do we restore that faith in our election system? We need to have bipartisan conversations to identify policy solutions. Every proposed change to our election system needs to be discussed with two concepts in mind: *access* and *security*. It's these two concepts that must always be balanced. With every change improving access to voting, we must account for accompanying security measures to protect the integrity of the election.

The main problem we encountered in the General Election this past November was a disinformation campaign related to mail-in ballots. The lies about the election being stolen – while completely untrue – exploited perceived imperfections and ambiguities in the Commonwealth’s new vote-by-mail process. Act 77 of 2019 layered no-excuse vote-by-mail on top of an existing in-person election infrastructure that was not built for that purpose and was already antiquated. In addition, the pandemic accelerated the use of vote-by-mail so counties were not able to gradually grow into managing this new voting method. While many improvements can be made to the Election Code, I will focus my testimony on three broad topics related to improving mail-in voting in Pennsylvania.

1. Because of the severe partisan imbalance among voters who chose to vote by mail, it appeared as though President Trump was winning on election night in Pennsylvania and that (now) President-elect Biden was slowly catching up. This flawed and dangerous impression was caused entirely by the lack of pre-canvassing of mail-in ballots in advance of election day. Counties must be given the option to begin pre-canvassing mail-in ballots prior to election day. As part of the early pre-canvassing process, counties should be permitted to:
  - review the sufficiency of the declaration envelopes;
  - verify the signature on the declaration envelope to confirm the identity of the person submitting the ballot;
  - update voter registration records to indicate that the ballot was received (if Board of Elections personnel determined that the ballot can’t be counted, counties should be permitted to cancel the ballot, mark the declaration envelope as cancelled, and allow the voter an opportunity to submit a new ballot or vote by provisional ballot); and
  - extract ballots from the declaration and secrecy envelopes and unfold the ballots.

Ballots should be stored in secure ballot containers after being pre-canvassed and not scanned until 7:00 AM on election day. This entire process should utilize chain-of-

custody/batch control documentation to account for every ballot and should be done in front of authorized observers from the parties or campaigns. Voters whose ballots are received prior to the poll book files being generated should be removed from the poll book's main section so they can't sign in and vote on the voting machines. Additionally, ballots that aren't returned prior to the poll books being updated and packed for shipping to the polling places should not be canvassed before they can be reconciled against the poll books to prevent double voting.

2. One of the major points of contention this past election was whether ballots received after election day should be counted. This past November, nearly 10,000 ballots from Pennsylvania voters arrived after 8:00 PM on Election Day and before 5:00 PM on Friday, November 6<sup>th</sup>. Similarly, thousands of ballots arrived after election day in the Primary. From this experience, it's clear that the current statutory timeline for applying for and returning mail ballots is insufficient. Only seven days between the application deadline and the ballot receipt deadline is not a reasonable amount of time for counties or for voters. Simply moving the receipt deadline to the Friday after election day doesn't solve all of the concerns — there are still many voters who don't have the time to apply for, receive, vote, and place their ballot in the mail in only seven days. This is why in addition to moving the deadline to receive ballots from election day to the Friday after the election, I recommend moving the application deadline from the Tuesday before Election Day to at least the Friday before the current application deadline. Moving the deadlines on both ends will maximize the number of voters who are able to successfully receive, vote, and return their mail-in ballots. Another concern with the Pennsylvania Supreme Court's ruling related to the ballot receipt deadline was the issue of accepting and counting non-postmarked ballots. Counties should never be put in the position where they may be accepting and counting ballots not cast on or before election day.
3. The third and final topic I'd like to provide testimony on is the need for removing the requirement for an inner secrecy envelope. Secrecy envelopes no longer provide a

compelling security interest now that counties centrally count thousands of ballots. The extraction equipment is used at such a high speed that the clerks would neither have the ability, nor the desire, to look at how individual voters cast their vote. Removing the requirement for the second envelope would reduce the potential for voters to be unnecessarily disenfranchised and cut in half the time it would take for counties to extract ballots during the pre-canvass activities.

Chairman Bizzarro and Members of the House Democratic Policy Committee, thank you for the opportunity to testify today. As I said at the beginning of my testimony, we may not end up agreeing on the details of every policy proposal, but I remain committed to making sure that all eligible voters have the opportunity to participate in our democracy. For the sake of our Republic, I hope others will join us in working across party lines — supporting both access and security in our election system.

## Testimony to the House Policy Committee's "Defending Democracy" Hearing

Bob Harvie, Bucks County Commissioner  
Chair, Bucks County Board of Elections

January 19, 2021

Mr. Chairman and members of the Committee, thank you for inviting me to speak today, and thank you for your efforts to protect the right to vote and the integrity of our elections here in Pennsylvania.

One of the roles I fill as a Bucks County Commissioner is Chair of the Bucks County Board of Elections. Together with the other Commissioners, who make up the rest of the Board of Elections, we oversee all aspects of the elections process and so we had a front row seat to the 2020 election cycle. The 2020 elections presented several challenges to Bucks County, just like all the other counties in our Commonwealth. The implementation of Act 77 was only one part of our challenge last year. We also had to roll out new voting machines, which were purchased in December 2019. And obviously the pandemic complicated everything, as we all know. A new voting law, and new voting machines, and a pandemic would have been hard enough, but of course we were also dealing with a presidential election.

The high emotions and tensions of the presidential election were magnified in Bucks. In addition to being the fourth largest county in Pennsylvania, we are also a swing county, neither red, nor blue. Being a swing county in a swing state brought us some added attention and pressures. Bucks was visited during the late summer and through the fall by major media outlets from Japan, Norway, Finland, the UK, and the Netherlands, in addition to major American media networks and publications. This increased focus put pressure on us because we knew that we would be scrutinized very closely throughout the election.

I am proud to say that our staff did a remarkable job from top to bottom. The professionalism and diligence they displayed all year was awe-inspiring and a true testament to the democratic process. I constantly remind people that the people who carried out the election and counted the votes are not politicians or political appointees. They are normal citizens, they are our neighbors, they are people who work for the County and happen to work in the Board of Elections. Their only agenda is to do their jobs well and serve the people of their County. The record show they did a wonderful job. They did their jobs so well in fact, that the Chairs of the Bucks County Republican Committee and the Bucks County Democratic Committee took the unusual step of issuing a joint letter of thanks and congratulations to the County staff for carrying out the election in such a professional and fair manner.

We are here today though to address changes which we feel need to be made in Act 77 based on our experiences. Speaking for the County we feel Act 77 is a major improvement on the way in which we carry out elections. Governments everywhere should be making it easier for people to cast their ballot, and Act 77 did that. However, there are changes that need to be made, and some unintended consequences of the law. I think it's also important to note that in the weeks and months before the election we had regular conference calls with officials from Montgomery, Delaware and Chester counties as well as Philadelphia about the election and we all experienced the same challenges.

One of the impacts of the law was that it created parallel election processes. Boards of Election now have to carry out different elections twice a year simultaneously. One election is the in-person election and the other is the mail-in election. While there are steps in these tasks that overlap, they are very different in many ways. These differences place a man-power and economic burden on the Counties because our employees cannot service voters coming to complete in-person mail-in voting at the same time they are doing everything they need to do to get the supplies for each polling place ready for delivery and updating poll

books with the most current data available. Bucks was forced to hire a dozen per-diem employees to work for several months to help us accomplish our tasks, and also contract with a call center for two months to deal with the volume of phone calls from people who were confused about the new mail-in voting process. The vastly different nature of mail-in voting required Bucks to purchase new equipment to handle the mail-in ballots. It was only because of these extra employees and new equipment that we were able to process all the ballots in the time we did. The cost of all these extras was close to \$1.3 million. This was money that was not budgeted for and which we were able to cover partly through state grant but also through CARES funding because we knew the pandemic was playing a major part in how people were choosing to vote. But, even without a pandemic, this method of voting is more expensive for the counties and state support is going to be needed.

In terms of changes to Act 77 itself, Bucks County has several recommendations. First, I want to begin with a couple statistics from the November election.

- Of the 487,986 registered voters in Bucks County, 81.7% voted (398,797).
- Of those voters, 165,165 (41.5% of voters) voted by mail.

The job of processing these mail-in ballots was made more difficult by some of the features of Act 77. Specifically, the fact that we are not permitted to pre-canvass ballots ahead of election day, as most other states with mail-in do, forced the County to extraordinary measures. County staff worked continuously from 7am election day until approximately 11pm Wednesday night, non-stop, just on opening envelopes and preparing ballots for scanning. 40 straight hours of employees working in shifts just to get ballots opened. I would argue that of all the changes which need to be made to this law, pre-canvassing is the most important and I know that CCAP has that as one of the key items on their 2021 agenda.

Another recommendation we would make is to change several of the deadlines in current election law. With mail-in voting becoming popular, and I think we all expect it will only get more popular, the timing of our elections has changed. We need more time to mail out ballots, so we need the ballots certified earlier. Certification can't be done until petition and ballot challenges are done. Challenge deadlines prior to primaries and elections need to be pushed back so that counties have enough time to prepare ballots.

Another recommendation is for the application date for mail-ins to be pushed back to 15 days prior (absentee application deadline can stay at 7 days prior). Having the application date only a week away from the election causes serious concerns about ballots being printed, mailed, delivered and returned in time for them to count. We think the delays in getting ballots out to voters because of these deadline issues led to an enormous amount of provisional ballots being cast. Bucks had 7,191 provisional ballots cast in November, the most we have ever had. By comparison, the previous high for provisional ballots in a presidential election was 538 in 2008.

The last deadline change comes out of that increase in provisional ballots, and also is connected to the pre-canvassing. As long as we have to spend days of continuous work opening and counting ballots, getting provisional ballots counted by the current deadline is not realistic.

We also think there needs to be more clarity on what information the voter needs to put on their mail-in ballot. The County had 2,295 ballots with "Declaration Problems" related to signatures, printed name, date, and address issues. Most of these issues were deemed minor by the Board of Elections and accepted. The Trump campaign did challenge us in Court on those ballots we accepted, but we were successful in defending our decision. Still, the lack of clarity over what needs to be included on the declaration caused confusion for voters and for our staff.

We know there was a lot of concern before the election about the secrecy envelope, and we saw a tremendous amount of effort to educate voters about that. We didn't see many naked ballots (708), but having to open two different envelopes during canvassing added difficulty and time to that process.

Another recommended change to the law would be to eliminate the need to send applications every February to people who have chosen to be permanent mail-in voters. We are preparing to send out those notices and applications now. In addition to the added costs for printing and mailing, we are anticipating confusion among voters as to why they are getting the notice and why "permanent" doesn't mean "permanent". We saw a tremendous amount of confusion among the electorate in 2020, and it fell to our staff to attempt to clarify as much as we could to the thousands of people who called, emailed or visited our offices. Much of that confusion is because of the changes Act 77 introduced, and because of the new voting machines we were rolling out. Hopefully that level of confusion won't be seen again, but we know that gaps in knowledge can be fruitful ground for misconceptions and falsehoods.

One recommendation not related to mail-in specifically, deals with poll workers. We know we aren't alone in experiencing a shortage of election workers for the polling places. It would be easier for the County to make sure all those polling places are fully staffed on election day if we were able to appoint people to polls outside their precinct so long as they are registered in the county.

The overall goal of Act 77, to increase the ways people can exercise their constitutional right to vote, is something everyone in government should support. The recommendations we make here today to this committee focus on the logistics of making that happen efficiently for the voters and the employees who run our elections.



## **CCAP ELECTION REFORM PRELIMINARY REPORT**

### **January 2021**

Counties have a significant responsibility in assuring elections remain fair, secure and accessible at every step of the process. In 2020, this task was complicated greatly by a perfect storm of factors. First, counties had to implement the provisions of Act 77 of 2019, including expansion of absentee ballots to all eligible voters, and like many other significant legislative changes, they discovered a number of areas of the Election Code that would need further clarification. Then, election directors, county commissioners and other county officials confronted the unprecedented responsibility of considering risk to public health in holding an election during a global pandemic, as well as the resulting explosion in demand for mail-in ballots. And finally, ongoing uncertainty regarding court challenges at the state and federal level, as well as the potential for additional state legislation, in the weeks leading up to the November election left numerous questions and anxiety during a highly contested and highly visible presidential election.

While the first two elections using mail-in ballots were successfully completed, counties have been reviewing their experiences and lessons learned from the front lines to call for additional changes to the Election Code that will streamline administrative requirements and provide clarity and consistency across the commonwealth. This report outlines county priorities, with a renewed call to allow counties additional time to pre-canvass, as well as to move the deadline for mail-in ballot applications back to 15 days to coincide with the voter registration deadline. These two items alone could resolve a significant portion of the challenges counties saw during 2020.

### **Background**

Our counties and our election staff deserve our utmost respect and gratitude for administering a smooth, fair and successful election. Regardless of the challenges brought on by the pandemic, disagreements and lawsuits, these dedicated public servants have remained laser focused on their responsibility as stewards of our democracy.

But we have also learned a great deal from the 2020 elections, and this report outlines a number of additional matters for review that we hope will inform clear and prompt policy changes. These include additional Election Code amendments, particularly to tighten up those matters that became subjects of interpretation throughout the various lawsuits. However, they also include administrative issues to be addressed with the state, as well as recommendations related to county operations and administration.

CCAP stands ready to engage with the General Assembly and the administration to assess the successes and challenges of the 2020 General Election, so that we can work together to create positive, effective election policy. Counties, as the entities that administer our elections, must be at the table for these conversations to help create any changes brought forth regarding elections, to help create language that is clear and easily understood, and identify challenges up front regarding how, or even if, certain changes can be practically and successfully implemented. And 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, particularly if they involve developing new protocols or procedures, retraining poll workers, and so forth.

It is our responsibility to work together in the future to promote a smoother election process in support of our democracy. Running elections should not be a partisan battle but should be about making sure that our systems are secure and accurate and that our voters can have confidence that every properly cast vote will count.

It is time to put political differences aside and resolve to make meaningful improvements to the Pennsylvania Election Code. Elections are a fundamental government function, and every level of government has a stake in assuring they are secure, fair, and accurate. We look forward to working together on this important topic.

### **Summary of Priority Recommendations**

Counties have identified the following issues as top priorities for further election reforms, which could resolve many of the challenges they faced regarding the implementation of Act 77 of 2019.

*Please note:* Given that absentee ballots and mail-in ballots are, for all intents and purposes when it comes to application, processing and voting, the same, the terms may be used interchangeably throughout this report. However, regardless of the terminology, any reforms counties propose here are intended to be applied to both absentee and mail-in ballots.

#### ***Offer counties as much time as possible to begin pre-canvassing ballots to improve the likelihood of timely election results.***

Prior to Act 77, absentee ballots were provided to each voter's precinct on Election Day, to be counted and added to that precinct's vote counts once the polls closed at 8 p.m. The small number of absentee ballots made this process reasonable and did not cause any appreciable delay in tabulating results.

However, with the increase expected once mail-in ballots were available to all registered voters, Act 77 moved the processing and counting of these ballots from the precincts to central count at the county board of elections. The Election Code continued to permit the canvassing of absentee and mail-in ballots beginning at 8 p.m. on election night.

Counties began to raise concerns early in 2020 that with the expected volume of absentee and mail-in ballots, they would not be able to complete the canvass in a timely fashion if they could not begin the process until after polls closed. In response, amendments to the Election Code in Act 12 of 2020 permitted counties to begin a pre-canvass period as early as 7 a.m. on Election Day.

While these additional hours were helpful to some counties, for most it meant the prospect of essentially conducting two elections – both an in-person election and a mail-in election – on the same day, with the same resources. As expected, even with the ability to begin at 7 a.m., it took several days in most counties to fully process all of the mail-in ballots.

Immediately following the June election, counties spent the months prior to the General Election advocating for legislation that would allow them to begin pre-canvassing – opening and preparing the mail-in and absentee ballots – prior to Election Day so that results could be available on election night or shortly thereafter. Without an extended pre-canvass period, counties expected that it could take days or weeks *following the election* to see final results, because they also needed to focus their efforts on a successful in-person election on Nov. 3, rather than on the manual labor of opening and preparing substantial numbers of mail-in ballots. While any time provided ahead of Election Day would have been a significant help, counties asked for as much time as possible to avoid the anticipation of very real challenges in providing the timely results they knew would be sought, especially in a highly contested and highly visible presidential election.

But with counties only able to begin pre-canvassing on Election Day, as predicted it took several days for the millions of mail-in ballots to be counted, delaying election results and causing confusion despite counties' best efforts. Therefore, counties renew their call for legislation to allow pre-canvassing to begin prior to Election Day, thus allowing counties to focus on administering an in-person election on Election Day, improving workload management and allowing results to be available much more efficiently.

***Move back the deadline to apply for mail-in ballots to 15 days before an election.***

Act 77 of 2019 permitted voters to apply for a mail-in ballot up to seven days before an election, which created timing challenges with the postal service. This ultimately led to some voters not receiving their ballots before the deadline to submit them at 8 p.m. on Election Day or receiving them too close to the deadline to make it logistically possible for ballots to be returned via mail by 8 p.m. on election night, so that many voters faced uncertainty about whether the county would receive their ballot in time. This in turn led voters to come to their polling place to spoil their mail-in ballot and vote on the machines, or to vote by provisional ballot, just “to be on the safe side.” This wholly undermines the flexibility and convenience mail-in ballots should provide and causing unnecessary lines, crowds, more time spent in the polling location and a longer wait on election results as counties must then reconcile mail-in and provisional ballots for accuracy.

With postal delays and public health concerns, shifting this deadline to 15 days before an election (to coincide with the voter registration deadline) will benefit voters by providing more time for the ballot to be able to get from the county to the voter and back again through the mail, creating less uncertainty over whether ballots were received by 8 p.m. election night. Voters will be able to receive their confirmation email and feel confident that their ballot was received, so that they do not need to come to the polling place or find other means of returning their ballot. At the same time, counties will have more time to assure poll books are as current as possible with those voters who have applied for, and submitted, mail-in ballots, all adding up to more efficient polling place operations as well as preventing unnecessary crowds as counties continue to implement COVID-19 risk management strategies. The emergency absentee period could also be extended accordingly to accommodate this longer deadline period.

Counties also note that changing the receipt deadline to allow ballots postmarked by election day and received up to three days after the election, instead of moving back the deadline, *will likely cause a delay in results and disruption at the polls*. This “solution” will do nothing to discourage voters from waiting until the last minute to return ballots, requires additional clarity on what constitutes a postmark as voters seek other delivery methods, and will lead to more provisional voting at the polls as, again, voters who do not yet have confirmation that their mail-in ballot was received will still show up in person to be on the safe side. Moving the application deadline back is the best opportunity to enfranchise our mail-in voters.

## **Topic Review and Discussion**

In addition to the two priority issues noted above, counties seek meaningful reforms that can address other issues that arose during the 2020 elections, in particular to promote clarity and consistency across the commonwealth. As discussions evolve, counties must continue to be at the table to provide input and perspective on how amendments can be implemented on the ground.

## **Topic: Election Code Amendments**

### ***Drop boxes:***

#### ***Background***

- Questions were raised as to whether Act 77 permitted the use of drop boxes for mail-in ballots, and whether drop boxes constituted polling places.
- In *Pennsylvania Democratic Party v Boockvar*, the Pennsylvania Supreme Court determined in its Sept. 17, 2020, ruling that the Election Code permits counties to use drop boxes.
- On Oct. 10, 2020, a federal district court dismissed claims that certain election practices were unconstitutional under the federal or state constitutions, including the claim that the use of drop boxes for mail-in ballots is unconstitutional.

#### ***Policy Considerations***

- Counties also seek further clarity in the law on their authority to use drop boxes for mail-in ballots.

- If drop boxes or return locations other than county government locations are permitted, language must be developed in conjunction with counties regarding any criteria on their location.
- Attention must also be paid to the staffing and other resource considerations that would be needed for implementation.

### ***Ballot signatures***

#### ***Background***

- 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.

#### ***Policy Considerations***

- The fatal flaws under which a mail-in ballot is not to be counted must be clearly identified.
  - Should a mail-in ballot be counted if a signature or date is missing from the voter's declaration?
  - Should naked ballots be counted?
  - What should a county do with mail-in ballots that contain writing on the privacy envelope?
- Counties 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.

### ***Permanent status***

#### ***Background***

- Act 77 allows a voter to request to be placed on a permanent mail-in voter list. These individuals 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.
- However, this process has created frustrations for both the voter and the county.
- Experience shows that voters often did not remember checking the box for the permanent list and thought they were 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.

#### ***Policy Considerations***

- Additional discussion is needed on the number of renewal letters/applications that must be mailed out each year
- Discussion is also needed regarding whether the responsibility for sending the renewal letters/applications should be at the county or state level.

## **Topic: Administrative issues with the state**

Beyond the law itself, counties experienced a number of challenges working with the commonwealth and the Department of State that should be addressed to improve administration of elections going forward.

### ***SURE system and ballot tracking website***

#### ***Background***

- Counties routinely experience technical difficulties with the SURE system, including slow speeds or even full system crashes that make it impossible to process voter registrations and ballot applications in a timely fashion, unnecessarily increasing county workloads.
- The ballot tracking website was often confusing to voters as they attempted to understand where their mail-in ballot was in the process.

#### ***Policy considerations***

- Upgrades/replacement of the SURE system are under consideration, and counties must be part of these conversations as changes are made to assure they are easily understood and user friendly.
- As the ballot tracking website is updated going forward, counties must also be part of these conversations to help identify areas of concern, either now or in the future.
- The state should consider the possibility of a state phone bank that could facilitate voter questions.

### ***DOS guidance to counties***

#### ***Background***

- In addition to the changing statutory and litigation landscape, counties also experienced confusion because of ever-changing guidance from the Department of State related to the administration of mail-in ballots.
- It was often unclear what statutory basis the DOS guidance had, and how much was truly guidance/best practices.

#### ***Policy considerations***

- While understanding that ongoing litigation was the underlying basis for some of the last-minute guidance changes in 2020, the Department of State must issue guidance as far in advance as possible to avoid the confusion of having to implement new practices immediately prior to an election and to offer greater opportunity for questions and input.
- The Department must more consistently reference the sections of the Election Code on which its guidance is based, and more clearly indicate when the guidance is merely a best practice rather than based on a statutory requirement.

## **Topic: County operations and administration**

## ***Election staff retention and development***

### ***Background***

- Since the implementation of Act 77 in 2019, more than 20 counties have experienced the loss of their election director and other top elections staff.
- The increased workloads and stress of implementing an entirely new law during a highly contentious presidential election and a global pandemic, while also having to constantly correct misinformation, respond to confused, angry and often threatening voters on a daily basis, and defend their work implementing a fair and secure election, no longer make this work environment palatable for many.
- The resulting loss of institutional knowledge is immeasurable.

### ***Policy considerations***

- Counties and the state must work together as new laws and policies are developed to assure workload needs are also considered.
- New laws and policies must be enacted with sufficient time for their implementation.
- Education and training must be available to help develop needed skill sets among election staff.
- To improve staff retention, all levels of government must work together to promote accurate information at each election, which can help reduce the level of confusion and anxiety among voters, and thus the level of anger county elections staff must address.

## ***County resource needs***

### ***Background***

- As counties implemented Act 77 in 2020, most counties saw their budgets for elections-related costs increase significantly, as additional supplies were needed and staffing and overtime needs grew to address workload requirements.
- These impacts fell squarely on county shoulders, as they are solely responsible for administration of elections at the local level.

### ***Policy considerations***

- Counties and the state must work together as new laws and policies are developed to assure any increased costs and resource needs, including supplies and staffing, are also considered.
- Appropriate resources and funding support must be provided by the federal and state governments to support counties in their critical task of administering elections.

## Dominion Summary on how Electronic Voting Machines Work

Page 1: Lays out the exact process for how only election workers have access to the machines on election day.

Page 2: Voter check in process – identity confirmed against paper rolls and an activation card is programmed.

Page 3: Voter marks their selections either on a paper ballot or on the screen of the voting machine.

Page 4: Voters walk their ballot to the tabulator which drops into a secure box. Dominion has no access to any of the above steps.

Page 5: Poll workers close the polls and print the tallies with specialized security clearance.

Page 6: Poll workers review tally sheet and compare counts in view of scrutineers under the direction of local election officials.

Page 7: Paper ballots are preserved for recounts, audits, and canvassing.

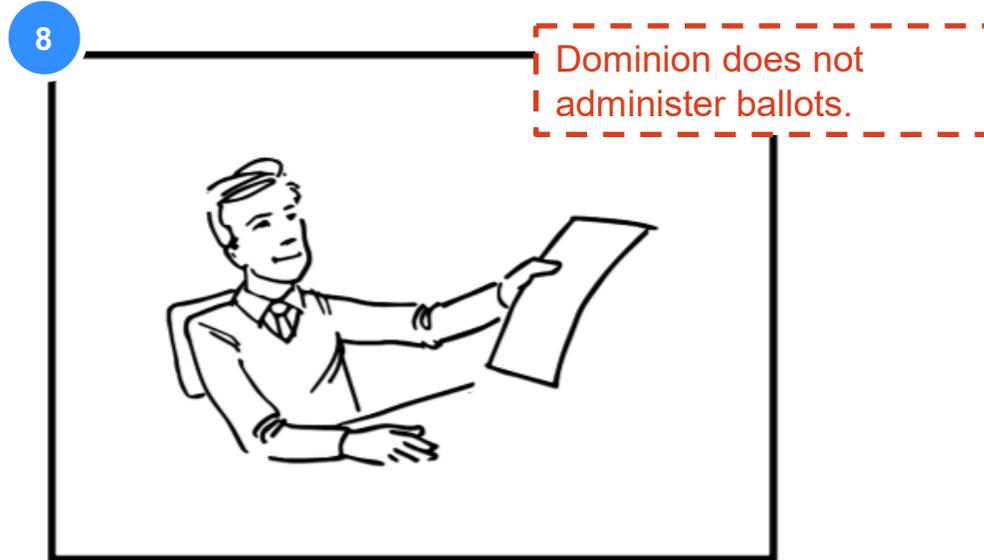
Page 8: Certification process: canvassing allows officials to identify discrepancies. Audits can reconcile ballots and chain of custody. Certification is official confirmation of results overseen by the Dept of State.



## Step 2: Poll Workers Present Voters with Paper Ballot / Activation Card

Depending on whether a precinct uses hand-marked ballots or Ballot Marking Devices, the next steps take different forms.

### Hand-Marked Ballot



After checking the voter rolls to identify the correct ballot, a **poll worker** hands the voter a paper ballot and an approved writing utensil, such as a Sharpie.

### Ballot Marking Device

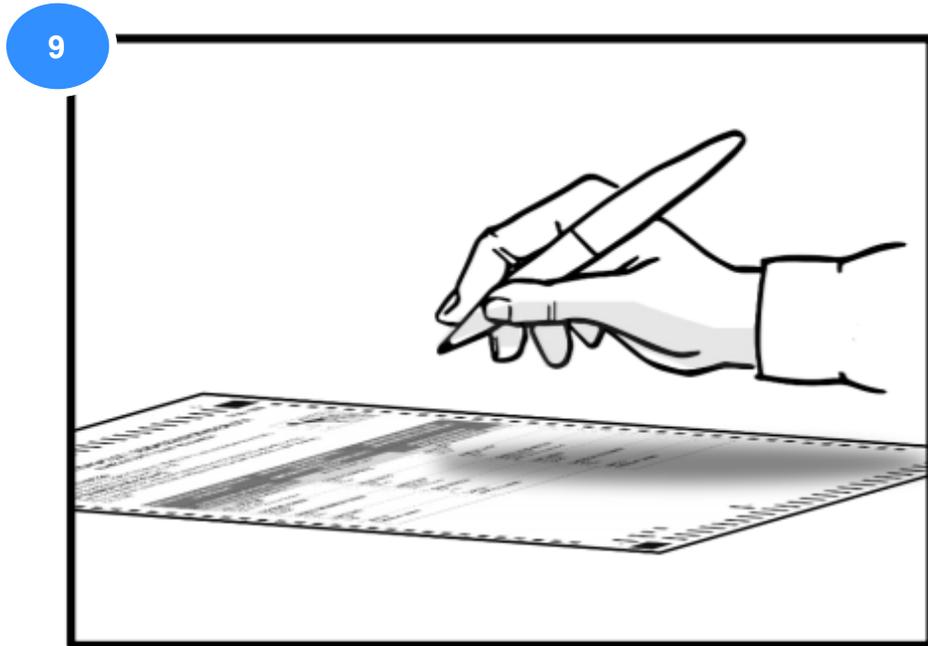


After checking the voter rolls, a **poll worker** hands the voter a one-time use activation card programmed to display that voter's correct ballot.

## Step 3: Voters Mark & Review Their Ballot

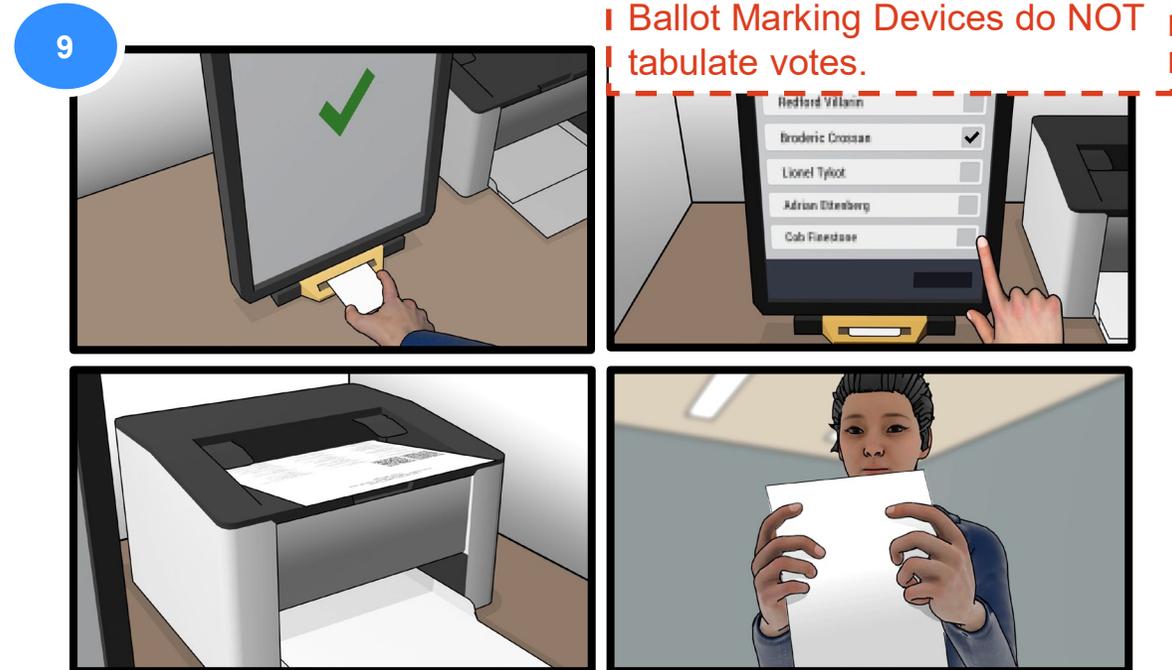
Ballot Marking Devices (“BMDs”) are fully-accessible and allow for capturing voter intent while producing a paper ballot. BMDs help to reduce errors that may not be caught using hand-marked ballots, such as mis-marked ballots, or over-voting.

### Hand-Marked Ballot



The voter marks his or her candidates on the paper ballot. The voter reviews the ballot.

### Ballot Marking Device



The voter selects choices on the touchscreen. After confirming choices are correct, the BMD prints a **readable paper ballot** with the voter's choices written out for voter review.

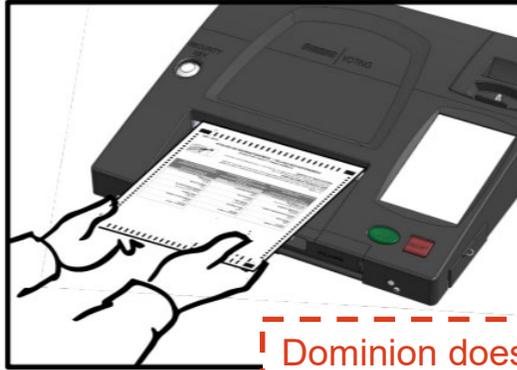
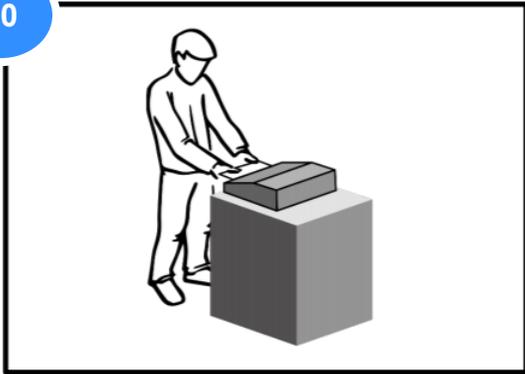
# Step 4: Voters Take Their Marked Paper Ballot To The Precinct Tabulator

Ballots—both hand-marked and those printed on paper from a BMD—are counted by tabulator machines. Tabulators are stand alone (not connected to the Internet) and secured, operated and controlled by election officials.

Hand-Marked Ballot

Ballot Marking Device

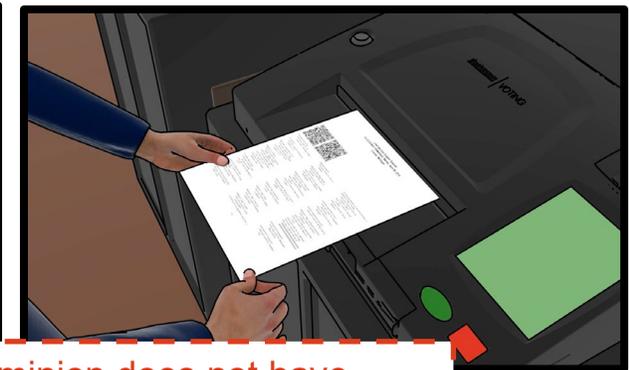
10



Dominion does not operate or have unauthorized access to tabulators.

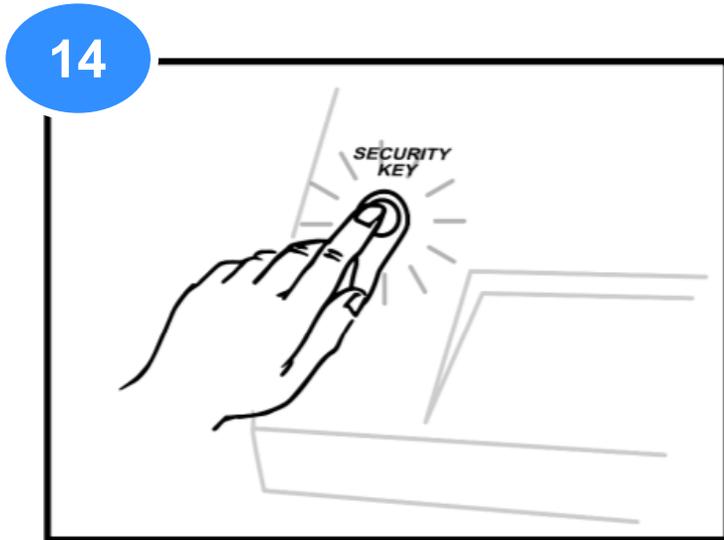


Dominion does not have access to the ballots.

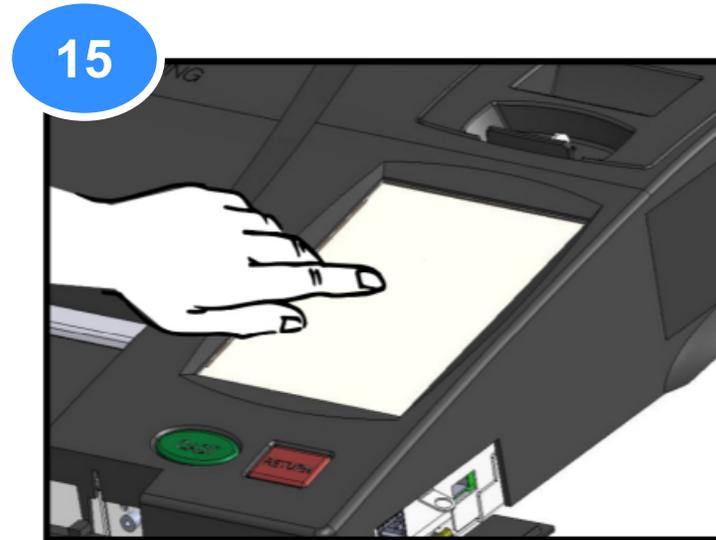


Voters insert their paper ballot into the tabulator, which drops into a secure box. These paper ballots provide a paper trail for later reference, if necessary.

## Step 5: Poll Workers Close The Polls & Print The Tally Record Results



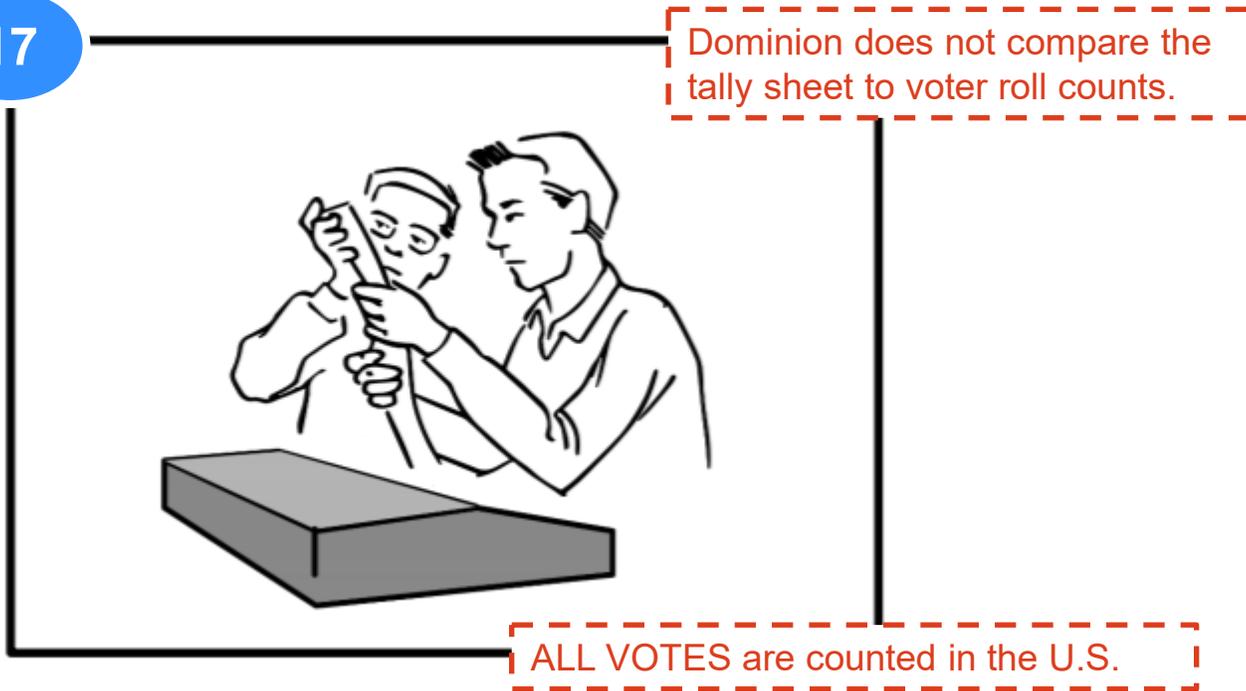
Using specialized security clearance, a **local poll worker** turns off the precinct tabulator machine.



The machine prints the precinct's tally results.

## Step 6: Poll Workers Review The Tally Sheet & Compare The Counts At The Voter Registration Desk

17



**Local election officials are responsible for reporting election tallies.**

**Scrutineers** compare number of results on the tally sheet to the counts at the voter registration desk.

# Preserving Paper Ballots For Recounting, Auditing & Canvassing

## Hand-Marked Ballot

**OFFICIAL BALLOT**

**Demonstration Election  
Demo County  
Tuesday, November 3, 2020**

Precinct 1005 PP Ballot ID 1005

**INSTRUCTIONS TO VOTERS:**  
To vote, completely fill the oval next to the name of the candidate or next to the word "Yes" or "No". NO RED INK.  
To vote for a write-in candidate, write the candidate's name in the blank space provided and fill in the corresponding oval.  
If you mismarked your ballot, please return it to a poll worker to get a new ballot.

State	School	Measures Submitted to the Voters
<b>Governor</b> Vote for One	County Unified School District	County
Amelia Earhart	<b>Governing Board Member</b> Vote for Three	<b>Z. Was this ballot easy to use?</b>
<input checked="" type="radio"/> Howard Hughes	Thomas Edison	This ballot was inspired by the EAC best practices report for ballot design. It uses sample content originally developed by the National Institute of Standards and Technology (NIST). Based on the instructions, ballot layout, and overall appearance, did you find this ballot easy to use?
Charles Lindbergh	Albert Einstein	
Write-in	Nikola Tesla	<input type="radio"/> Yes
<b>County</b>	<input checked="" type="radio"/> Carl Sagan	<input checked="" type="radio"/> No
<b>Supervisor, District 1</b> Vote for One	James Watt	
Alfred Hitchcock	Write-in	
<input checked="" type="radio"/> Vincent Price	Write-in	
Write-in		
<b>Municipal</b>		
<b>Mayor of Central City</b> Vote for One		
Mary Bailey		
<input checked="" type="radio"/> Kent Brockman		
Roy Snyder		
Patty Bouvier		
Write-in		

*English Demo 5.5 EAC*

## Ballot Marking Device

**OFFICIAL BALLOT**  
Demonstration Election  
Demo County  
Tuesday, March 3, 2020

**Instructions to Voters:**  
1. If you make a mistake, contact a Poll Worker before placing your ballot in the ballot box. Do not cross out or erase errors.  
2. Remember to place your ballot in the ballot box before exiting the Vote Center.

1003 PP 1003



Governor  
Vote for Howard Hughes,

Supervisor, District 1  
Vote for Vincent Price,

Mayor  
Vote for Kent Brockman,

County Unified Gov Brd Mem  
UNDER\_VOTE\_BY 2  
Vote for Carl Sagan,

Measure Z  
Vote for No

Ballot Marking Devices  
produce legible text with the  
voter's choices printed.

# Certification of Election Results



**Post-election canvassing** allows election officials to identify and resolve discrepancies, validate vote counts, and take actions to ensure the completeness and accuracy of vote totals for certification



**Post-election audits** can include reconciling ballots issued and cast, verifying chain of custody or other procedures, and validating vote tabulation.



**Certification** is the official confirmation of results. The chief state election official, governor and/or board of canvassers typically oversee this final step. Deadlines vary by state. .