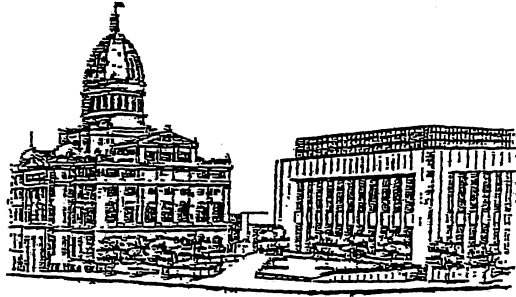


Westmoreland County

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March 22, 2021

VIA ELECTRONIC EMAIL ONLY

Senator Wayne Langerholc Jr., Chairman
Senator Sharif Street, Ranking Member
Special Committee on Election Integrity and Reform
Room 281 Main Capital
Harrisburg, PA 17120-3035

RE: Submission of Written Comments for the Public Hearing on State and Local Insight on the Administration of Elections in Pennsylvania held March 23, 2020 at 10:00 A.M.

Chairman Langerholc and Ranking Member Street:

Thank you very much for the opportunity to present at the hearing tomorrow. Please find enclosed my full testimony, from which I will deliver about 5 minutes.

Due to a health emergency in my family, my comments are later than requested. Please accept my apologies for that lateness, and I look forward to congenial discussions.

Please don't hesitate to reach out if additional information is needed. Thank you very much for this opportunity.

Very Truly Yours,

A handwritten signature in black ink, appearing to be 'Douglas W. Chew'. The signature is fluid and cursive, with a large, stylized initial 'D'.

Douglas W. Chew
Commissioner
Vice-Chairman

Written Comments
submitted for the
Public Hearing on State and Local Insight on the Administration
of Elections in Pennsylvania

held on

March 23, 2020 at 10:00 A.M.
Via Virtual Meeting

for the

Special Committee on Election Integrity and Reform

Senator Wayne Langerholc Jr., Chairman
Senator Sharif Street, Ranking Member

Room 281 Main Capital
Harrisburg, PA 17120-3035

Submitted By:

Douglas W. Chew
Vice-Chairman
Board of Commissioners
Westmoreland County
Pennsylvania

Good morning, Chairman Langerholc, Ranking Member Street, honorable members of the Special Committee on Election Integrity and Reform, and those watching these proceedings. My name is Doug Chew, and I am the Vice-Chairman of the Board of Commissioners of Westmoreland County.

Introduction

Thank you very much for convening this committee to examine recent activities within the Commonwealth that have eroded the public's confidence in the election process. Elections are of utmost importance under our constitutional government. They are how we, as Americans, self-govern. Each year, through elections, the majority either declares that their government is functioning well, or they petition that same government for redress by changing the people in charge. Regardless of the outcome, it is critical for citizens, including the winning and losing candidates, to have confidence in the fairness and integrity of the electoral process.

There are many areas that warrant discussion, so I'm going to limit my spoken comments today to Education and Training, Unrealistic Deadlines, Ballots and Canvassing, Exactness of Language, and Constituent Concerns.

Education and Training

First and foremost, the biggest challenge has been education. Within 12 months, the electorate had to absorb Act 77 of 2019, Act 12 of 2020, and numerous court orders and challenges that resulted in election processes written by the Executive and Judicial branches of government. All of us, the Commonwealth and Counties both, need to be more cognizant of the electorate going forward. The majority of us at this hearing are familiar with running for office and the election code. As Senators, you constructed and debated Acts 77 and 12. Voting and elections have been a part of the Department of State (DOS) for as long as I can remember, so they too are familiar. In most cases, we all were able to easily see what had been changed; however, the average voter spends a short time each year considering for whom to vote, and even less time I imagine considering the rules and procedures of voting.

Consider for a moment Westmoreland County data from the Primary Election of 2020: 47,669 unique voters requested a mail-in or absentee ballot, but only 40,432 ballots were received back in SURE [1]. That's 7,237 voters who potentially did not understand the election process, but those unreturned ballots could also be attributed to postal issues, honest mistakes, or even fraud. For the primary, we also processed 1,164 provisional ballots, which again, could be attributed to voters not understanding the process.

Things didn't get better when my constituents made a second attempt for the General Election: 76,198 unique voters requested a mail-in or absentee ballot, but only 59,470 ballots were received back in SURE [1]. In the worst potential scenario, with over 3,700 provisional ballots and 16,728 unreturned ballots, 20,428 people or 7.7% of Westmoreland County's total registered voters may have been disenfranchised by a lack of understanding or information on these processes in the General Election alone.

As an educator of nearly 30 years, I feel responsible for not realizing that this past year my constituents were bombarded with so many new things, some a matter of life or death. I feel that we each have a responsibility as elected officials to help our constituents understand the laws of our Commonwealth. The Department of State needs to undertake a campaign for the next year to educate the electorate on the many changes to the Election code and to educate Precinct Election Boards (e.g., judges of election, inspectors) on the statutes governing voting. The education needs to be done using a variety of pedagogical tools, such as online sessions, recorded webinars, pamphlets and written material, and even in-person demonstrations with Q&A sessions. While the Department of State is charged by statute to take the lead in producing the necessary materials for this, I feel that each of us shares equally in a civic responsibility to educate. I suggest that the General Assembly provide funds to the Department of State and to Counties to undertake this educational objective. Before we talk about election fraud, let's confirm that the 20,000 plus unreturned ballots in Westmoreland County's General Election are not the result of gross misunderstandings of the process and that the electorate understands the electoral processes well-enough to be able to help fight fraud by "Saying Something," when they "See Something."

Unrealistic Deadlines

Under normal circumstances, the deadlines proposed for mail-in voting seem reasonable enough. Consider the deadlines codified by statute for the 2021 Primary Election. For the 2021 Primary Election scheduled for May 18, the last day to apply for a mail-in or absentee ballot is May 11, a mere 7 days before the ballot is due back at the Election Bureau. When I drop a first-class piece of mail at a post office in Westmoreland County, it usually makes it to the Pittsburgh sorting facility by truck that evening and is delivered to addresses in Westmoreland County within 36 hours.

Figure 1. Example of Mail Delivery in Westmoreland County.						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
May 9	May 10	May 11	May 12	May 13	May 14	May 15
		Apply by 4pm on May 11.	Bureau processes application and mails ballot by 4pm.	Ballot should arrive at Pittsburgh sorting facility by midnight.	Ballot arrives at residence.	Voter votes the ballot, seals it, and mails it.
May 16	May 17	May 18	May 19	May 20	May 21	May 22
		Ballot arrives back at Election Bureau by 8pm				

In **Figure 1**, you'll see that using May 11 as the final day to apply for a mail-in or civilian absentee ballot leaves no amount of time for any delay or issue at the postal service. *In other words, the law is written in a way to instill a false sense of confidence in the voter, because they are under the impression that the May 11 deadline to request a ballot will provide time for the entire process to operate with regular, ordinary resources.* The USPS does employ high speed scanners capable of scanning 35,000 #10 envelopes per hour [2, 3], but according to Fortune.com, on November 3 at approximately 2pm [4], there were still 27.5 million mail ballots yet to be delivered. Think about those numbers for a second: 27.5 million pieces of election mail alone in a postal system that delivers on average 173.1 million pieces of First-Class Mail each day. In most states, the election mail had to be delivered on November 3. Based on this, I strongly suggest utilizing an earlier cut-off deadline for receipt of an application for a mail-in or civilian absentee ballot.

Additionally, I'd like to suggest a statutory deadline for the Department of State to offer interpretation and rules pertaining to the Election Code. I counted over 24 emails from the Department of State to all counties around the November 3 General Election. Some were sent to Commissioners and the Election Director and some were sent to only the Director. The emails were sent by no fewer than 3 DOS staff, and a few were resent with a note such as this,

“Wednesday evening, Director ___ notified counties of a mass email directed to voters We have received several thoughtful phone calls and emails from counties expressing concern...”

On the worst side of the range of possibilities, the Department of State abdicated its responsibilities in 2020 concerning the General Election; on the lighter side of that range, it did no planning until the last minute, despite most of the nation on lock down for the pandemic. Emails and phone calls were made to counties and voters, before any vetting of the material or text occurred. Entire ballot questions never made it on the ballot. In the middle of a pandemic, in the middle of a Presidential election year, in the middle of significant changes to the PA Election Code, the Department of State created a lot of chaos and misunderstanding by promulgating incomplete and confusing directives. I see no reason why these emails and call scripts could not have been drafted sooner, reviewed by the Department, and sent out by one person, so counties had quick and easy access to information in a consistent manner. This is exactly the type of work product that is easy to process while working remotely during a pandemic. I strongly suggest that the General Assembly consider codifying a date by which the Department of State must produce a full and complete guide for each election year, both for counties, and for the voter. Moreover, every official correspondence, for such an important activity, should only proceed after it receives the imprimatur of the acting secretary. Lastly, I ask the Department of State to consider disseminating items to counties through one email address and involving the counties in materials and calls to the voters.

Ballots and Canvassing

Although most of my constituents would like to see no-excuse mail-in voting be eliminated except for reasons outlined for absentee ballots, if it is not eliminated, there are some general changes I'd recommend. First, the option to request a permanent mail ballot for that election year

should be eliminated. In Westmoreland County, we processed over 3,700 provisional ballots for the General Election and 1,164 provisional ballots for the Primary Election. For the primary, we heard many complaints about not understanding the mail-in ballot processing, which contributed to that number; however, for the General, the number one complaint was that provisional voters did not request a mail-in or absentee ballot, so they proceeded to attempt to vote in-person. Of course, the poll book indicated that they had voted already, so they were required to complete a provisional ballot. Our investigations revealed that in most cases, they had requested a mail-in ballot for the Primary, and the “permanent” box was checked. Whether they checked the box accidentally or it was checked by a registration clerk in the office is unknowable and immaterial. The permanent mail check-box leads to unnecessary confusion, and I recommend striking it from future elections.

Additionally, if 2020 is an example of how elections will proceed going forward, with many paper ballots canvassed on or after election day, then allowance needs to be made for additional watchers in several aspects of the process. When a voter goes to a polling venue to vote, he or she has a vested, personal interest in monitoring the process while they are within the venue, because they are safeguarding their own vote. When mailed or provisional ballots are canvassed, the canvassing is done by someone other than the voter him- or herself, and the person canvassing has access to more than one person’s ballot. When provisional ballots are adjudicated by provisional boards, it takes many boards to quickly and properly adjudicate nearly 3,000 provisional ballots. Therefore, because of the large square footage needed for these tasks and the large number of people involved, it is only fair that parties and candidates be allowed more than one person in these situations. Westmoreland County is the 11th most populous county in the Commonwealth, and I feel that some watchers in our county were unable to view or hear the bulk of the processes involved in canvassing or provisional adjudication. I feel strongly that the General Assembly needs to modify the statute to allow for a balanced number of watchers based on square footage or number of members on the provisional or canvassing boards. I recommend that even members of the public be allowed to view these processes, by statutorily allowing video cameras in these areas. There is no reason that transparency and privacy can’t be achieved simultaneously to ensure respect and integrity for these processes. Lastly, as some counties have demonstrated disdain for the legislation written and passed by you and your colleagues from these chambers, I would recommend attaching fines and penalties to counties and election boards that intentionally restrict access to watchers during these processes.

Exactness of Language

As you study the problems before you, I encourage you to consider the exactness of your language as you craft amendments to these processes. Good contracts in the business world begin with a preamble and a definition page. Why not include niceties like that as part of any amendments or new legislation?

Justice Clarence Thomas provides a well-written dissenting opinion to docket numbers 20-542 and 20-574. He writes,

“Unclear rules threaten to undermine this system. They sow confusion and ultimately dampen confidence in the integrity and fairness of elections. ...”

“An election system lacks clear rules when, ... different officials dispute who has authority to set or change those rules. This kind of dispute brews confusion because voters may not know which rules to follow. Even worse, with more than one system of rules in place, competing candidates might each declare victory under different sets of rules.”

This couldn't be truer than what happened in the 45th PA Senate District to constituents in my county. Justice Thomas continues,

“After election day the Pennsylvania Supreme Court nullified the legislative requirement that voters write the date on mail-in ballots.”

I felt the decision of our Supreme Court was stunning because the majority of justices agreed that your legislative intent was that the date was required, but the justices declared it would only be important to date items after 2020. Justice Thomas expanded,

“...one candidate for a state senate seat claimed victory under what she [to clarify, Nicole Ziccarelli] contended was the legislative rule that dates must be included... A federal court noted that this candidate would win by 93 votes under that rule. A second candidate claimed victory under the contrary rule announced by the Pennsylvania Supreme Court. He was seated.”

“This is not a prescription for confidence. Changing the rules in the middle of the game is bad enough. Such rule changes by officials who may lack authority to do so is even worse.”

Justice Thomas is right: changing rules in the middle of the game isn't fair, and I'd ask you to consider every word and every sentence constructed as you prepare revisions and amendments to your previous legislation.

Select Constituent Comments

I end with a presentation of a few comments received over the last 12 months by my office. I include some critical of the County, the State, and the process in general.

Michael Pardus of Hempfield Township, Westmoreland County:

Leadership, Voice of Westmoreland, Westmoreland County

“More robust training of judges at each [*sic*, precinct] is required to ensure uniform handling of absentee ballots surrendered at the polls. Discrepancies in the handling of surrendered absentee ballots was encountered during adjudication of absentee [*sic*, provisional] ballots. More robust training and education of the judges and all poll workers is required to avoid future problems.”

“Some judges required those that surrendered their absentee ballots and cast provisional ballots were directed to sign the poll book indicating that they had

machine voted. In other instances, judges directed voters to sign the security envelope containing their provisional ballots. These issues were ultimately resolved but resulted in unnecessary delays in the vote count.”

I appreciate his criticisms, and education will be a key focus in 2021 in Westmoreland County.

Karen Taylor of Westmoreland County:

Constituent

“I would really like to address why we aren’t doing a full Forensic and investigative audit like AZ, GA, and now possibly MI. We do have a petition currently with over 4500 signatures that is climbing by 200-500 daily requesting that.”

Robert MacPherson of Sewickley Township, Westmoreland County:

Recent past Chairman, District 4, Westmoreland County Republican Committee

“While on active duty, I had to vote using the absentee voting system set up for the Department of Defense. The integrity of my vote was of the utmost importance. I recognize that some people do not see the value of that vote the same way I do, but I stayed informed about trends and the actions of the government in order to cast a vote for the people I felt would best carry out public policy. Each absentee ballot had to go through a rigorous process in order to ensure that they would be tabulated correctly. Much of this occurred before the internet. I was so passionate about the importance of voting that I was the Voting Officer on board several of my commands.”

“Signatures and ID were required. In many cases, they needed to be witnessed by myself or another commissioned officer. It kept the system honest. I am often told that requiring people to have IDs in order to vote would disenfranchise them. The people who are really being disenfranchised are the honest citizens who want that sacred privilege to count. I would challenge opponents of a more secure election identification method to consider this. With the speed and advent of technology, are they willing to risk that their opposite party might discover some new way to bypass the system and overturn the outcome of the elections by using emerging technology? At what point would they cry foul if they lose their one and only true superpower.”

“We all know that legislatures around the country have mandated ID for purchasing alcohol, tobacco and firearms. Even travelers post 9 11 have had to endure endless lines to do something as simple as boarding a plane. We endure all of these things to ensure public and personal safety. No one can convince me that Any person in America that is a legal citizen is being denied access to any of these. I am absolutely convinced that protecting the public and individuals' rights with a streamlined and verifiable identification will protect this nation and the sacred right we have all been granted by the Founders in the Constitution.”

Greg Stewart of Westmoreland County:

Current Chairman, District 4, Westmoreland County Republican Committee

“How is the signature verification process going to be protected and validated?”

William Bretz of Hempfield Township, Westmoreland County:

Current County Chairman, Westmoreland County Republican Committee

“The impact of this early voting period is heavily favorable to incumbents with established name ID, those extremely well-funded candidates that can use mail and media to campaign, or those with large teams for canvassing. I can’t imagine a grassroots mail-in campaign being effective in this environment.”

“The permanent mail-in status also needs to be eliminated. Absentee voters must solicit for a ballot for each individual election and mail-in voters should do so as well for equity. It is a huge burden on the county to prepare and mail tens of thousands of letters each cycle to those on that list and the more automatic the ballot mailing becomes the more potential fraud creeps in as control of the process becomes more remote from the original solicitation.”

“One bonus point is the headache created by the ability to surrender mail-in ballots on Election Day. This process needs fixed because I suspect that it drove the long lines at the polls and the overwhelming number of provisional ballots.”

“Finally, direct mailings of mail-in ballot applications were a huge point of confusion to voters and should be ended. Many people thought they received multiple ballots that were applications and many that claim they didn’t receive a ballot likely threw them out inadvertently.”

I concur with Chairman Bretz, that the county cost for permanent mail status is a consideration.

Conclusion

In conclusion, I hope that I’ve provided an overview of some issues that didn’t make the press every day.

I leave you with a quote from John Jay, our first Supreme Court Chief Justice, “The Americans are the first people whom Heaven has favored with an opportunity of deliberating upon and choosing the forms of government under which they should live.” There is a heavy task before you in helping the voters in this great Commonwealth once again have faith that the majority is in fact choosing the form of government under which we all will live.

Thank you, Chairman Langerholc, Ranking Member Street, and the entire committee for inviting me to this hearing and listening to my humble requests.

Endnotes

[1] Data accessed from SURE by Director JoAnn Sebastiani on March 22, 2021.

[2] <https://www.scientificamerican.com/article/mail-sorting-machines-are-crucial-for-the-u-s-postal-service/>, accessed March 20, 2021.

[3] <https://facts.usps.com/innovation/#fact396>, accessed March 20, 2021.

[4] <https://fortune.com/2020/11/03/early-voting-results-how-many-early-votes-mail-in-ballots-us-election-100-million-covid-19/>, accessed March 20, 2021.