



Testimony presented by Ray Murphy
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Senate State Government Committee Hearing:
Modernizing Pennsylvania's Election Laws

10 a.m. to noon on Tuesday, April 30, 2019

Majority Chairman Folmer, Minority Chairman Williams and members of the Committee: Thank you for providing an opportunity to Keystone Votes to testify about the bipartisan efforts to modernize Pennsylvania's electoral process. Your work on these issues is important and timely.

Over the last year, our commonwealth has seen more serious, bipartisan conversation than it has in a generation on efforts to modernize the election code, enhance election security, and offer all voters more convenient and modern options for participation.

As a nonpartisan coalition comprising 40 organizations that have been working for years to update Pennsylvania's election laws, the members of the Keystone Votes coalition are encouraged by the momentum and attention these issues have gained so early in the 2019-20 legislative session.

We look forward to working with all of you, and other stakeholders, to ensure the best forms of these bills become reality, with the goal of bringing more eligible voters into the process.

Streamlined and more cost-efficient election administration is an important goal, as outlined by this legislative package. But modernizing our elections is also about addressing the needs of all Pennsylvania voters to make voting more convenient and equally accessible for all.

As state coordinator for Keystone Votes and deputy director of Pennsylvania Voice, I will outline for the committee our analyses of **Senate Bills 411 through Senate Bill 422**. The analyses were created by many individual members of the coalition, including Disability Rights PA, Common Cause, the ACLU of PA, community organizations and more. I will begin with the bills we support, then discuss the bills that require amendments to gain our support, and close with the bills we oppose. In each case, I will provide our reasoning to help the committee as it continues its review of this legislative package.

Two measures have our full support.

They include **S.B. 412**, which would repeal the provision of the Pennsylvania Constitution that excludes federal, state, county and municipal employees from serving as poll workers; and **S.B. 422**, which would

establish the Pennsylvania Election Law Advisory Board to study the election code for modernization purposes, examine new technology, evaluate the electoral process, and more.

Specifically, with respect to **S.B. 422**, should this advisory board be created, we would hope the legislature looks to the expertise of Keystone Votes and its members for possible appointments to support its mission.

There are several measures that, as drafted, we would oppose. However, with revisions or amendments, Keystone Votes could support them. I will describe each of them in detail here.

Let me begin with **S.B. 411**, which proposes a constitutional amendment to empower voters to request and submit absentee ballots for any reason --- allowing them to vote early and by mail.

When this measure was first unveiled in January, the stated goal was to eliminate the burdensome restrictions on absentee ballots. Keystone Votes agrees with the concept. In fact, making the use of absentee ballots less restrictive so eligible voters could vote early and vote by mail has been a platform of Keystone Votes since its inception. There's no reason every voter should have to vote on one specific day.

Optional vote by mail gives residents a more convenient way to participate in our democracy, especially the increasing number of individuals who work long and nontraditional hours. Voting by mail without excuse also protects access to our democracy for people with disabilities and senior citizens, without putting up unnecessary hurdles or invading their privacy. It can make Election Day easier for counties as well, as fewer people actually vote in person, resulting in shorter lines and reducing burdens on election officials and poll workers.

Expanding access to absentee ballots is also a well-tested concept: more than 30 states in the country offer voters this option. As a result, there is a wide and deep body of experience with the implementation of this practice that Pennsylvania county election administrators can draw upon should the General Assembly update absentee voting laws here.

However, the vision of “no excuse” absentee voting in this proposal is too restrictive, as it would only offer absentee ballots as an option for voters who were away from their municipality on Election Day. That inadvertently limits who can participate and provides little convenience to voters.

A perfect example is with first responders and medical professionals who work double shifts, sometimes longer than 12 hours. They could easily live in the same municipality where they work. Their shift prevents them from being able to get to the polls. Yet, they would not be enabled to vote by absentee ballot if this constitutional amendment were to pass because they remain within the municipality where they live, and the legislature would not be required to act to protect them under this amendment. Because early in-person voting is not allowed in the state, and there is so far no proposed statutory change to allow no-excuse absentee voting, these continued restrictions on absentee ballots essentially deny them of their right to vote.

For these reasons, requiring the excuse of absence from a voter's municipality should not be a requirement for voting absentee. Our current system is out of step with how people live and work. Our government should make voting more convenient by providing additional opportunities for voters to

cast their ballots. Voting by mail gives Pennsylvanians an option that works for any schedule. **Keystone Votes supports modifying the existing statute to give all voters that option.**

Another concern with the proposal is that, based on the way the measure is drafted, it would strip current constitutional guarantees of the right to vote absentee from people with disabilities, county employees, and others if they can't vote in person because of illness, disability, religious observance, election day duties, unless they too were away from their municipality.

We do not believe that is the intent of the measure.

The simplest solution to these challenges is to withdraw S.B. 411, and instead modify the existing statute to broaden the scope of absentee voting to give all voters the option to vote by mail.

The Pennsylvania Constitution lists certain categories of voters who are to be allowed to vote by absentee ballot. They include:

- eligible voters who will be absent from the municipality where they live because their duties, occupation or business require them to be elsewhere;
- eligible voters who are unable to attend at their proper polling places because of illness or physical disability;
- eligible voters who will not attend a polling place because of the observance of a religious holiday; or
- eligible voters who cannot vote because of election day duties.

The basic legal question is whether the constitution sets a ceiling or a floor. If it sets a ceiling, the legislature can allow only voters who fall into one of these four categories to cast absentee ballots. If it sets a floor, the legislature must allow voters in these four categories to cast absentee ballots, but may go further and allow other categories of voters to do so, including by allowing any voter to opt to cast an absentee ballot.

Our analysis concludes that this provision operates as a “floor,” not as a “ceiling.” In other words, it lists the minimum set of permissible absentee voters, not the maximum set. If this were not the case, there are other categories of voters not named in the constitution whose current ability to vote by absentee ballot would be subject to a legal challenge --- specifically, spouses of military members, and then anyone who is away from their home for leaves of absence for teaching or education, vacations, sabbatical leaves, and all other absences associated with the elector's duties, occupation or business, including an elector's spouse who accompanies the elector.

Since the General Assembly can exercise any powers not denied to it by the Pennsylvania Constitution or federal law, members can extend absentee voting above this floor.

That means a constitutional amendment is not necessary to improve access to absentee ballots and transition to an optional vote by mail system. And it means the General Assembly can act on this measure in line with other proposals in this plan, rather than requiring votes in two consecutive legislative sessions, which would unnecessarily delay the reform effort.

For the benefit of the committee, the analysis Keystone Votes secured from one of its members --- the Public Interest Law Center --- is included with this written testimony.

To summarize our coalition's position on **S.B. 411**, we oppose a constitutional amendment that only requires the legislature to provide for absentee ballots to be cast by voters who are physically outside of their town between 7 a.m. and 8 p.m. as too narrow a vision. We would enthusiastically support a statutory version of this bill that allows any voter --- regardless of whether they are in or out of their city or town --- to qualify for an absentee ballot to optionally vote by mail.

When it comes to setting procedures for optional voting by mail, as proposed in **S.B. 414**, this measure offers a vast improvement to the current system but still includes several elements that deserve closer examination.

Although both of these options are much better than current law, Keystone Votes is concerned that requiring two different deadlines (Section 1306, Subsection (b)) to return mail ballots will create confusion. Voters would have the option to drop off an absentee ballot to the county election office by 8 p.m. on Election Day. However, if they mail in the ballot, it must be postmarked the day before the election. Why not make the rules consistent for those who mail ballots, and allow any ballot postmarked on Election Day to count as a valid vote?

The benefits of a bifurcated system seem minimal. An absentee ballot postmarked the day before the election will be accepted by counties for up to seven days after the election. What substantial difference will there be if these ballots were postmarked one day later? This raises the risk of a bifurcated system: offering two different deadlines could be interpreted as a violation of the constitution's equal protection clause.

The last issue we would cite with **S.B. 414** has to do with transparency.

The General Assembly is focused on openness and transparency, as shown by these hearings and the public discussions around these measures. But the provision in this measure to take away the responsibility to post a list of absentee ballot voters at the polls is counter to that effort (Section 1302.3). If the physical posting of a list is too onerous, then voters' records should be marked in the state's SURE system, with the Department of State required to make voter file updates that are publicly available in real time. Hiding the list of these voters, and only making it available to candidates or campaigns, is problematic.

A simple way to address transparency is to mark up the public voter file to note who:

- requests an absentee ballot;
- returns an absentee ballot;
- joins the permanent early vote list; or
- casts their ballot at a vote center vs. their polling place.

Among other areas of confusion with this measure: The option to return voted ballots "in person" isn't clear enough. Who is eligible to return an absentee ballot to the county? Is it only the voter? Or can it be a representative? These issues need to be addressed. So do a number of sections in this measure that would need to be updated if optional vote by mail via absentee ballots becomes law.

Again, Keystone Votes believes **S.B. 414 would greatly improve the current system. However, having a different deadline for returning your ballot by mail versus in person is problematic.**

S.B. 415 would allow voters to join a permanent absentee voting list. Once a voter opts in, they automatically receive an absentee ballot for all future elections.

This is an important and a necessary bill. Optional vote by mail is a great means to increase participation and guarantee access for all. Allowing voters to permanently vote by mail --- rather than applying for a ballot for every election ---- is a best practice in other states.

However, the process outlined in this measure to create the permanent list is overly cumbersome. The bill leaves it to each county to create its own permanent early vote list application, which could create a patchwork of requirements. As it stands now, the current application for an absentee ballot is created by the Department of State and thus standardized across all 67 counties.

Keystone Votes suggests modifying the bill to mandate that the Department of State create this application in a paper and an online form, and with the minimum number of required fields needed to match the applicant to the voter file. The current absentee voter registration application, as well as the voter registration application form, also should be modified to include a checkbox that allows a voter to be added to the permanent list.

Allowing county boards of elections to create vote centers or introduce curbside drop-off of absentee ballots for people with disabilities, as proposed by **S.B. 416**, is a good idea and one that Keystone Votes supports. However, some of the voter assistance provisions included in this measure most likely would violate the federal Voting Rights Act.

Some of the proposed changes specifically conflict with federally guaranteed rights around assistance to people with disabilities, or those who need assistance in a language other than English. The voter deciding whether or not they need help is the only tenable standard to make sure people get the assistance that is rightfully guaranteed. Among our chief concerns:

- Providing the assistant's name and address as part of the voter's record (Section 1218.2(c)(1)) is likely to intimidate some voters and assistants from getting and receiving help.
- Some of new Section 1218.3 ("Unlawful Assistance") would intimidate voters with disabilities or who are not proficient in English and intimidate their assistants, preventing those voters from getting assistance to which they are entitled.
- Because of the provision regarding not counting the ballots (Section 1218.3(c)), the bill could force people who need assistance to vote a provisional ballot, or worse, be denied the opportunity to vote entirely if they are wrongly accused by poll workers.
- The definition of "assistance" (Section 1200) generally may limit the type of assistance people who are entitled to it can get, depending on how it is enforced.
- The provision related to assistance for marking the ballot (Section 1218.2) is too limited and conflicts with federal law.

The idea for vote centers is a good one. Secure and convenient opportunities to vote are important. Within this bill, however --- unrelated to the actual vote center concept --- there are changes to voter assistance that, if not withdrawn, would force us to oppose the legislation.

S.B. 418 would reduce the number of backup ballots required per precinct from 110 percent to a number derived from a formula based on past turnout.

Keystone Votes sympathizes with county election officials who are concerned about wasting time and resources to produce backup ballots that may never be used. But we believe the formula to determine the actual number needs to be fine-tuned, because it relies on an average of three previous election cycles and may not yield accurate results.

For example, to determine the number of paper ballots required for the 2020 General Election, the formula would average the number of voters in the 2017, 2018 and 2019 General Elections, and then add 10 percent to that averaged total. Based on past turnout, this could result in a significant under-projection of the actual number of ballots required in a 2020 presidential year election.

Rather than focusing on the passage of time, it makes more sense to build a formula that averages presidential year turnout in presidential elections, gubernatorial turnout in gubernatorial elections, etc., so the average more accurately reflects why voters are going to the polls that year.

Pre-registering youth to vote, as we understand the sponsor's intent in **S.B. 420**, is among the foundational issues of Keystone Votes. Many young, first-time voters may be unaware of Pennsylvania's registration deadlines or even how to register to vote. Offering young people aged 16 and 17 the opportunity to preregister to vote would make it easier for these voters to cast a ballot once they turn 18, and would engage them in the voting process early on.

A majority of Pennsylvania voter registrations are generated by the Pennsylvania Department of Transportation. Youth voter pre-registration would increase if 16-year-olds could pre-register when they first get a driver's license. Otherwise, they may not be offered another chance to register through PennDOT until their 21st birthday when they renew their license.

As drafted, this bill will not allow the state or counties to enjoy any of the cost-savings that pre-registration for youth laws create in other states. Instead, it actually adds a layer of bureaucracy by creating a two-step process when this could be efficiently done in one step. The bill requires PennDOT to keep records of individuals under 18 who seek a license and then follow up with them to fill out registration forms once they reach the age of eligibility to vote in the next election.

Rather than adding in an extra layer of bureaucracy, what most states do is allow 16- and 17-year-olds to transmit an application to vote to the Department of State, in the same way as anyone else, but their names are withheld from poll books until the election at which they come of age. At that point in time, county election boards would mail these voters a Voter Registration ID card, and add their names to the poll books, and thus they are eligible to vote. Pennsylvania should do the same.

Separate from the legislative package, Keystone Votes also believes that in addition to the enactment of voting modernization laws as modified, based on the feedback above, we posit the idea that these laws cannot be effectively implemented without the provision of funds to the Department of State and all of the county election boards for trainings as well as updates to cybersecurity infrastructure.

Three other measures are outside our scope, so we have no opinion on them as a coalition.

They include **S.B. 413**, which would amend the Pennsylvania Constitution to eliminate the requirement for a separate ballot or a separate column on voting machines for the retention of justices, judges, and justices of the peace; **S.B. 417**, which would require write-in vote candidates to get at least as many write-in votes as the number of petition signatures required by code for the office they are seeking; and **S.B. 421**, which would abolish straight ticket or straight party voting as an option in general elections.

Keystone Votes opposes one measure without compromise: **S.B. 419**, which would consolidate smaller precincts and eliminate in-person voting opportunities for people who live in small precincts.

We fully support and encourage the Department of State, county decision-makers, and fellow voter advocates to update and innovate Pennsylvania's antiquated election system. However, **the changes proposed in S.B. 419, which is intended to make election administration more cost efficient, especially in relation to county population differentials, miss the mark and likely violate the equal protection clause of the U.S. Constitution, as well as Article 7, Section 6 of the Pennsylvania Constitution, which requires uniformity of elections.**

Keystone Votes recognizes the need to make election administration more streamlined and cost-effective. But we also believe that voters should be able to vote in person if they choose. And total elimination of in-person voting, regardless of the precinct size, takes away voters' choice. Equally important, it would be particularly challenging for individuals with disabilities for whom a mail ballot is not accessible.

At the beginning of my remarks, I talked about our shared goal of modernizing our elections while ensuring voting remains equally accessible for all. This proposal is in direct conflict with that mission.

Pennsylvania's "modern" election system is governed by an election code that hasn't been updated in more than 60 years. This first real effort by lawmakers to modernize the system is welcome and encouraging --- but it certainly won't be easy.

Pennsylvanians face more challenges than ever before. Work schedules, educational pursuits, and family commitments vary dramatically among residents, all of whom have an important stake in the outcome of our elections. None of them should be penalized by a system that creates barriers to voting.

Increasing flexibility and choice reduces barriers and gives every eligible voter the opportunity to participate in our elections and ensure their voices heard. At Keystone Votes, we firmly believe that is the full intent of this legislative package.

As legislative leaders, you have kept your doors open and have welcomed engagement with groups like us working to ensure real election reform. We appreciate the opportunity and believe this exchange of ideas can only strengthen the proposed package.

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