

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Center for Coalfield Justice,	:	
Washington Branch NAACP,	:	
Bruce Jacobs, Jeffrey Marks,	:	
June Devaughn Hython,	:	
Erika Worobec, Sandra Macioce,	:	
Kenneth Elliott, and David Dean	:	
Appellees,	:	
	:	
	:	Trial Ct. No. 2024-3953
v.	:	
	:	
Washington County Board of Elections,	:	NO. 1172 C.D. 2024
Republican National Committee, and	:	
Republican Party of Pennsylvania,	:	
Appellants.	:	

BRIEF OF APPELLEES

On Appeal from the Memorandum Opinion and Order of the Court of Common
Pleas of Washington County, entered on August 23, 2024

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INTRODUCTION

In the weeks leading up to the April 2024 primary, the Washington County Board of Elections (the “Board” or “Washington County”) segregated voters’ mail-in ballots that were returned without a signature or a date or were incorrectly dated, knowing these votes would never be counted. The Board then hid that information from the voters and the public, in many cases affirmatively misleading voters into believing that their mail-in ballots would be counted, during a window when there was still time to correct the error by voting a provisional ballot. Ultimately, the Board’s actions disenfranchised 259 qualified, eligible Washington County voters in the April 2024 primary, none of whom were notified that their mail-in ballots would not be counted.

Washington County’s top election official testified candidly that during the 2023 elections, the Board had provided notice to voters who sent in flawed mail-in ballot packets, simply by selecting the right code from a drop-down menu in the state’s electronic voting system, the Statewide Uniform Registry of Electors (“SURE”), thereby triggering an automated email. The reason the elections office did not do so during the 2024 primary is that the composition of the Board changed, following which, by a 2-1 vote, the Board revoked the 2023 policy and ordered the elections staff not to enter the correct codes into SURE or even answer telephone inquiries about the status of mail-in ballots. In light of these uncontested

facts, the lower court concluded that “the burden on the government is low” through the SURE system and that the “great staff in the elections office have proven to be more than capable of contacting electors based on the Board’s 2023 policy.” Memorandum Opinion and Order (“Op.”) 21 (Dkt. No. 25).

Based on those facts—which are uncontested on appeal—the court below held that the Board had violated the due process rights of mail-in voters and enjoined the Board from employing its policy for the 2024 general election. Appellants bear the burden on appeal of establishing that the lower court abused its discretion in issuing injunctive relief, and they have failed to discharge that burden.

The right to relief is clear. The relevant test is the three-part balancing test from the seminal decision in *Mathews v. Eldridge*.¹ Under *Mathews*, courts balance three factors: 1) the private interest affected; 2) the risk of an erroneous deprivation and the value of additional or substitute safeguards; and 3) the state’s interest, including the burdens the additional or substitute procedural requirements would impose on the state. *Washington*, 306 A.3d at 300. That test is easily met here. Voting is a fundamental right, the risk of deprivation is certain if Washington County enters inaccurate codes into SURE, and the burden on the County in entering the right codes is nil.

¹ *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *Washington v. Pa. Dep’t of Corrections*, 306 A.3d 263, 284-85 (Pa. 2023); *R v. Dep’t of Pub. Welfare*, 636 A.2d 142, 152-53 (Pa. 1994).

Unable to justify the Board’s decision to ignore the rights of its own voters, Appellants try to deflect attention on appeal by challenging the ripeness of this well-developed and robustly litigated case, asserting that the dispute has already been resolved by the Pennsylvania Supreme Court, trying to take refuge in the “legislative act” doctrine, and claiming that there is no protectible interest in voting.

Appellants’ grab bag of appellate issues is empty.

First, there is a live and critically important issue here that will impact the upcoming November election. Washington County will begin mailing ballots shortly, and unless enjoined, will follow the current flawed, no-notice policy. The Board’s vigorous defense against this lawsuit dramatizes the extant controversy. This is an issue that the appellate courts of Pennsylvania should address quickly.

Second, Appellants incorrectly argue that the Pennsylvania Supreme Court settled the question at issue in *Pa. Democratic Party v. Boockvar*² (“*Pa. Dems.*”) interpreting that decision as creating an unqualified right of election boards to deny information to their constituents. But that is a twisted reading of *Pa. Dems.*, which held only that the Court had no legislative guideposts from which to create a notice and cure regime. The Court did not consider a constitutional due process challenge

² 238 A.3d 345 (Pa. 2020).

there, much less sanction county boards of elections' misuse of the existing SURE system, which has evolved significantly since 2020.

Finally, Appellants' argument that the lower court is powerless to address the constitutional wrong should be rejected. Certainly, the "legislative act" doctrine provides no justification for allowing the Board to disenfranchise individual voters. Nor did the lower court abuse its discretion in ordering the Board to enter proper codes from the SURE drop-down menu, which is precisely what the Board had been doing prior to 2024 when it put the illegal policy in place. The contention that returning to the 2023 policy constitutes some sort of improper "pre-canvassing" is both waived and in direct conflict with the statutory text of the Election Code. There is no basis for overturning the court's injunction. The judgment of the lower court should be affirmed.

COUNTER-STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the lower court correctly hold that Appellees' challenge to the Washington County Board of Elections' practice for handling mail-in ballots is ripe for adjudication, where the Board's practice is still in effect for the November 2024 election and the Board is vigorously defending that practice?

Suggested Answer: Yes.

2. Does the Washington County Board of Elections' practice of concealing information from voters about whether their mail-in ballot declaration

envelope contains a disqualifying error violate the Pennsylvania Constitution's Due Process Guarantee?

Suggested Answer: Yes.

3. Did the lower court correctly hold that the Pennsylvania Supreme Court's holding in *Pa. Dems.* does not bar Appellees' claim under the Pennsylvania Constitution's Due Process Guarantee?

Suggested Answer: Yes.

4. Does the Pennsylvania Constitution's Due Process Guarantee require the Washington County Board of Elections to provide voters with pre-deprivation notice that their mail-in ballot will not be counted by inputting accurate mail-in ballot status codes into the SURE system prior to Election Day?

Suggested Answer: Yes.

COUNTER-STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

Appellees do not contest that the standard of review for the grant or denial of summary judgment is de novo. However, this Court's scope of review from an order granting a permanent injunction is limited. *O.D. Anderson, Inc. v. Cricks*, 815 A.2d 1063, 1070 (Pa. Super. 2003); *RESPA of Pennsylvania, Inc. v. Skillman*, 768 A.2d 335, 339 (Pa. Super. 2001). The Court must accept the lower court's factual findings and accord them the weight of a jury verdict if they are supported by competent evidence. The Court may reverse the conclusions drawn from those

facts or the lower court’s legal conclusions based on an abuse of discretion or error of law. *Id.*

COUNTER-STATEMENT OF THE CASE

Appellants do not contest that the material facts in this case are undisputed.

I. Voting by Mail in Pennsylvania

In 2019, Pennsylvania adopted “no excuse” absentee or mail-in voting, allowing registered voters to submit a mail-in ballot without having to justify why they cannot go to the polls on Election Day. Accordingly, since the 2020 primary election, all registered, eligible Pennsylvania voters have had the right to vote by mail-in ballot.³ Act of Oct. 31, 2019, P.L. 552 No. 77 (“Act 77”).

Upon receipt of the mail-in ballot packet, a voter must mark the ballot, place it in a “secrecy” envelope, and then place the secrecy envelope in a pre-addressed outer return envelope, which contains the voter declaration and spaces to sign and handwrite the date (the “declaration envelope”). 25 P.S. §§ 3146.6(a), 3150.16(a). Mail-in ballots are not counted if the voter fails to sign or correctly date the declaration envelope or forgets to include the secrecy envelope.⁴ *See Ball v.*

³ Identical procedures govern how voters apply for, complete, and return both absentee and mail-in ballots. For ease of reference, the term “mail-in ballots” is used to encompass both absentee and mail-in ballots.

⁴ On August 30, 2024, this Court found that the handwritten date requirement is unconstitutional when enforced against voters who timely submit their ballots. *Black Political Empowerment Project, et al. v. Schmidt et al.* No. 283 M.D. 2024, 2024 WL 4002321 (Pa. Cmwlth. August 30, 2024). The case is now on appeal before the Pennsylvania Supreme Court.

Chapman, 289 A.3d 1, 28 (Pa. 2023); *Pa. Dems.*, 238 A.3d at 380. In every election since the implementation of Act 77, thousands of voters across the Commonwealth have made disqualifying mistakes when submitting their mail-in ballot that have resulted in their vote not being counted. *See* July 1, 2024 Verified Complaint (“Compl.”) ¶ 32 (Dkt. No. 1)..

II. The SURE System

In order to facilitate the election process, the Legislature directed the Department of State (“DOS”) to implement “a single, uniform integrated computer system,” the SURE system. 25 Pa.C.S. § 1222. *See also* Deposition of Deputy Secretary for Elections and Commissions Jonathan Marks (“Marks Tr.”) 24:3-12 (Dkt. No. 17, Ex. 1). Counties are required to work in and through the SURE system. *See* 25 Pa.C.S. § 1222(c) (“All [county election] commissions shall be connected electronically to the SURE system and shall maintain their registration records in the system.”); *see also id.* § 1222(e) (“[E]ach commission shall be required to use the SURE system as its general register.”); Jul. 18, 2024 deposition of Washington County Elections Director Melanie Ostrander (“Ostrander Tr.”) 203:24-204:1; 204:6-10.⁵ Counties must enter data into the SURE system, including data identifying “registered electors who have been issued absentee

⁵ A true and correct copy of Melanie Ostrander’s deposition transcript is attached hereto as Exhibit 1.

ballots,” 25 Pa.C.S. § 1222(c)(19), and data identifying “registered electors who vote in an election and the method by which their ballots were cast.” *Id.* § 1222(c)(20). *See also* 4 Pa. Code § 183.4(b)(2) (“A commission shall enter. . . voting history for registrants.”). As a practical matter and to comply with other Election Code provisions, counties must also promptly and accurately enter this data into SURE in order to generate accurate poll books for Election Day.⁶

According to DOS protocols for processing mail-in ballots, upon receiving a mail-in ballot, counties are required to stamp the receipt date on the outer envelope and record the receipt in the SURE system. Parties’ Joint Stipulation of Facts (“Stip. Facts”), Ex. I, Pa. Dep’t of State, Guidance Concerning Examination of Absentee and Mail-in Ballot Return Envelopes at 2 (Dkt. No. 11); Marks Tr. 12:20-25; 18:20-19:1; 86:16-18 (Dkt. No. 17, Ex. 1). When a mail-in ballot is scanned into the SURE system, the election worker is presented with a drop-down menu with 23 options for coding the status of the ballot. *See* Stip. Facts, Ex. D , Pa. Dep’t of State, SURE Project County Release Notes (Mar. 11, 2024) (“SURE

⁶ Specifically, county boards of election must promptly and accurately enter this data into SURE to “[p]ermit the timely printing and transmission” of “district registers,” more commonly known as poll books, “and all other information contained in the system as may be necessary for the operation of the polling places on election days.” 25 Pa.C.S. § 1222(c)(13). Without that up-to-date information, counties could not generate accurate poll books for Election Day that identify voters who requested a mail-in ballot and returned it and those who did not. For example, if the poll book shows that the voter was sent a mail-in ballot but has not returned it, the voter may vote by provisional ballot. *Id.* § 3150.16(b)(2) (mail-in ballots); *id.* § 3146.6(b)(2) (absentee ballots). As a practical matter, however, no voter may be denied the opportunity to submit a provisional ballot.

County Release Notes”) (Dkt. No. 11); *see also* Stip. Facts, Ex. I at 3 (Dkt. No. 11); Marks Tr. 31:6-18; 38:11-16 (Dkt. No. 17, Ex. 1). The Board of Elections decides which code to use to indicate the ballot status, which triggers a corresponding automatic email notification to the voter. Stip. Facts ¶ 24 (Dkt. No. 11); Marks Tr. 57:7-12; 69:25-70:6 (Dkt. No. 17, Ex. 1); Ostrander Tr. 34:25-35:12; 38:24-39:8 (Ex. 1).

For example, DOS provides a “RECORD – BALLOT RETURNED” code to record the voter’s ballot as timely returned. Stip. Facts, Ex. D at 10 (Dkt. No. 11). When a county board of elections selects this code, it automatically generates an email indicating that the voter’s ballot has been received and that if there is a problem, they may hear from the county later:

Your ballot has been received by [County Name] County as of [DateRecorded]. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot and you are no longer permitted to vote at your polling place location.

Id.

DOS provides a set of “CANC” codes – short for “CANCELLED” – for ballots with disqualifying errors on the declaration envelope. Stip. Facts, Ex. D at 3 (Dkt. No. 11). The SURE County Release Notes explain that the “cancelled” codes are intended to be used when a voter returns the ballot packet with an error and the

county “has made a final decision as to the ballot, *or it does not offer the opportunity to cure.*” *Id.* at 8-9 (emphasis added). Selecting a particular “CANC” code generates a corresponding email notification to the voter. For example, if the county selects the “CANC – NO DATE” code, the following email is automatically sent to the voter:

Your mail ballot may not be counted because you did not date the declaration on your ballot return envelope. If you do not have time to request a new ballot before [Ballot Application Deadline Date], or if the deadline has passed, you can go to your polling place on election day and cast a provisional ballot.

Id. at 8.

In addition to triggering an email that notifies voters that their ballot has a disqualifying error, coding a mail-in ballot with a disqualifying error allows each voter to “track” the status of their mail-in ballot at a DOS website. *Id.* at 15. This data is also made publicly available to requestors by statute, enabling political parties and voting rights organizations to reach out to affected voters and notify them of their ballot status. *Stip. Facts* ¶ 24 (Dkt. No. 11); *Marks Tr.* 28:19-22 (Dkt. No. 17, Ex. 1). *See* 25 P.S. §§ 3146.9, 3150.17. The codes also impact the way voters’ ballot status is listed in the poll books on election day: for example, a voter whose defective mail-in ballot is marked “cancelled” in the SURE system will be listed in the poll books as having been issued a mail ballot, but not having returned it. *See Ostrander Tr.* 44:7-25 (Ex. 1). DOS guidance specifies that “[i]t is important

that the ballot return status is promptly and accurately recorded in SURE using the specific response type as to the disposition for each ballot received.” Stip. Facts, Ex. I at 3 (Dkt. No. 11).

III. Washington County’s Use of the SURE System for Mail-In Ballots

When Washington County receives an application for a mail-in ballot, it verifies the voter’s identity and eligibility using the SURE system. Ostrander Tr. 24:24-26:1 (Ex. 1). The County then prints a unique bar code label from the SURE system that is linked with the voter and affixed to the ballot packet. *Id.* 26:2-27:5. The County then sends the ballot packet to the voter, using the SURE system to track the date when the ballot packet was mailed. *Id.* 27:14-28:9.

Once the voter returns the mail-in ballot packet, the election office date-stamps the ballot and scans the bar code on the outer declaration envelope into the SURE system to record that the ballot has been received. Stip. Facts ¶ 41 (Dkt. No. 11); Ostrander Tr. 29:5-30:10 (Ex. 1). The office also visually inspects the ballot to determine whether the outer declaration envelope is correctly and completely dated and signed. Ostrander Tr. 41:4-9 (Ex. 1). It is immediately apparent whether the declaration, which is on the same side of the outer envelope as the bar code, is missing a signature, is dated improperly, or is missing a date. *Id.* 38:1-14; 41:10-13; *see also* Marks Tr. 85:24-86:7 (Dkt. No. 17, Ex. 1).

In the lead-up to both the 2023 primary and general elections, the Washington County elections office scanned mail-in ballots with disqualifying errors on the declaration envelopes into the SURE system and on the same day, coded them using one of the “CANC” codes in SURE. Stip. Facts ¶¶ 26-27 (Dkt. No. 11); Ostrander Tr. 32:25-33:7; 34:15-35:12; 40:2-19 (Ex. 1). Based upon the type of “CANC” code that was selected by County staff, voters received an automatic email through the SURE system informing them that their ballot had been cancelled and would not be counted. Ostrander Tr. 38:24-39:17 (Ex. 1). And if there was not an email address on record, County staff placed a phone call to the voter informing them that their declaration envelope had a disqualifying error. Ostrander Tr. 43:7-13 (Ex. 1). Washington County then segregated any ballots with defective declaration envelopes into bins, filed alphabetically by precinct name, and placed in a separate area of the office’s secure mail ballot room. *Id.* 41:14-24; 47:4-48:19. In 2023, Washington County also permitted voters to “cure” mail-in ballots that lacked a signature on the declaration envelope by going to the election office to add the signature. Voters who forgot the date or wrote an “incorrect date” could request a replacement mail-in ballot. If voters were unable to cure, they could vote a provisional ballot at their local polling place on Election Day. Stip. Facts ¶ 28 (Dkt. No. 11); *id.* Ex. K; *see also* Ostrander Tr. 40:2-19; 42:22-43:13; 49:1-11; 169:15-20 (Ex. 1).

However, in advance of the April 2024 primary, the Board of Elections reversed course, and instead began depriving voters of any notice of disqualifying errors on their mail-in ballot declaration envelopes. Stip. Facts ¶¶ 29-35 (Dkt. No. 11). After a series of meetings, in which the Board was informed that dozens and ultimately hundreds of mail-in ballots had already been segregated, the Board voted 2-1 not to provide voters with notice of and the opportunity to cure mail-in ballots with disqualifying errors on the declaration envelope. *Id.* ¶¶ 33-35. A week before the April 2024 primary election, the election office had already identified and segregated 170 ballots that would not be counted. *Id.* ¶ 39; Ostrander Tr. 86:14-87:4 (Ex. 1).

Throughout the April 2024 election cycle, election office staff scanned and coded mail-in ballots in the SURE system on the day they were returned, and segregated ballots with disqualifying errors on the declaration envelope in bins, alphabetized by precinct, just as they had in 2023. Stip. Facts ¶¶ 41, 43 (Dkt. No. 11); Ostrander Tr. 74:16-75:8 (Ex. 1); *see also id.* 48:2-19. But instead of coding the segregated ballots as “CANC” as they did in 2023, the office marked every ballot in the SURE system as “Record – Ballot Returned,” whether or not the mail-in ballot declaration envelopes had disqualifying errors. Stip. Facts ¶ 42 (Dkt. No. 11); Ostrander Tr. 67:9-23; 71:5-18 (Ex. 1). As a result, voters whose mail-in

ballot declaration envelopes had disqualifying errors, such as Voter-Appellees Mr. Marks, Ms. Macioce, and Mr. Elliott, received a misleading email stating:

Your ballot has been received by WASHINGTON County as of [DATE]. If your county election office identifies an issue with your ballot envelopes that prevents the ballot from being counted, you may receive another notification. Otherwise, you will not receive any further updates on the status of your ballot from this email address and you are no longer permitted to vote at your polling place location.

Please note, if WASHINGTON County observes an issue with your ballot envelopes, you may receive another email from this account with additional information. To get more information on your ballot's status, you can look it up at <https://www.pavoterservices.pa.gov/Pages/BallotTracking.aspx>. If you have questions about your ballot, please contact WASHINGTON County at (724) 228-6750.

See Stip. Facts, Exs. A, B, C (Dkt. No. 11); Ostrander Tr. 66:14-23; 123:18-124:24; 162:23-163:7; 218:5-219:4 (Ex. 1) (agreeing that the language in the SURE emails generated by Washington County's input of the "Record – Ballot Returned" code was "misleading"). Voters checking the DOS online tracker to determine the status of their mail-in ballot saw a similar misleading message. Stip. Facts, Ex. D at 15 (Dkt. No. 11).

In the end, Washington County disenfranchised 259 eligible mail-in voters, including the seven Voter-Appellees, who timely returned ballot packets with defects, representing 2% of all timely-received mail-in ballots. *See* Stip. Facts ¶¶

51-52 (Dkt. No. 11); Ostrander Tr. 118:21-24 (Ex. 1). These voters are both Democrats and Republicans. *See* Stip. Facts ¶ 52 (Dkt. No. 11). Not one of these voters knew to vote a provisional ballot on Election Day. *Id.* ¶ 49. Only on May 17, 2024—nearly a month after the primary election—did the Board respond to a Right-To-Know-Law request that revealed the names of the 259 voters whose mail-in ballots had been segregated and not counted due to disqualifying errors. *Id.* ¶ 51.

IV. The November Election

Counties can begin processing mail-in ballot applications for the November 5, 2024, general election on September 16, 2024. 25 P.S. § 3150.12a(a). Washington County has not changed its mail ballot practices since the 2024 primary election, and the Board’s composition has not changed. Washington County’s Elections Director has testified that, in keeping with past practice, in the November 2024 general election the Washington County Board of Elections will “most likely” handle mail-in ballots with disqualifying errors on the declaration envelopes in the same way it did for the April 2024 primary. Ostrander Tr. 126:14-127:14 (Ex. 1). As a result, the Board’s election office will continue to miscode mail-in ballots with disqualifying errors on the declaration envelope in the SURE system to conceal voters’ ballot status, and hundreds and potentially thousands of

qualified, eligible mail-in voters in Washington County will once again have their vote cancelled without their knowledge, in violation of procedural due process.

SUMMARY OF ARGUMENT

Due process is not a choice: Article I, Section 1 of the Constitution demands it. Unable to deny this, Appellants argue instead that this Court cannot enforce the Pennsylvania Constitution's Due Process Guarantee because Appellees' case is not ripe, because it is foreclosed by *Pa. Dems.*, and because doing so would constitute "judicial legislation" that "reduces Pennsylvania's constitutional separation of powers to precatory musings." Brief of Appellants Republican National Committee and Republican Party of Pennsylvania ("GOP Br.") 39, 42.⁷ None of these arguments support reversal.

First, Appellees' case is ripe. The Board's current practice for handling mail-in ballots deprives voters who make disqualifying mistakes on their ballot envelopes of any notice that their ballot has been segregated and their vote will not be counted. Until and unless the Board changes course, Appellees' due process rights will continue to be violated, and they are entitled to seek relief from this Court.

⁷ Appellant Washington County Board of Elections filed a brief adopting and joining in all the arguments set forth by the Republican National Committee and the Republican Party of Pennsylvania. Accordingly, although Appellees' brief cites only to the GOP brief throughout, the arguments addressed are attributed to both Appellants.

Second, the Due Process Guarantee requires pre-deprivation notice to voters who make disqualifying errors on their mail-in ballot envelopes. Appellees have a clear liberty interest in exercising their fundamental right to vote, which is constitutionally and statutorily protected in Pennsylvania. The Board’s practice of segregating mail-in ballots with disqualifying errors, miscoding those ballots in the SURE system, and refusing to tell voters their ballots will not be counted constitutes a clear violation of due process under *Mathews v. Eldridge*, given the substantial interests at stake, the value of additional safeguards, and the de minimis burden those safeguards would impose on the Board.

Third, the lower court’s order was a proper exercise of judicial review, and the relief granted was well within its discretion. Neither *Pa. Dems.*, nor the legislative act doctrine, nor prohibitions against “pre-canvassing” precluded the court below, and this Court now, from issuing an order upholding Appellees’ constitutional rights and remedying their constitutional injuries.

This Court should affirm.

ARGUMENT

I. Appellants’ Justiciability Attack Should Be Rejected, As the Issues Presented Below Were and Remain Ripe for Adjudication.

Appellants begin by arguing that Appellees’ case should be dismissed because “no policy exists” in Washington County for handling mail-in ballots in the general election that is now only eight weeks away. GOP Br. 19. Appellants’

claim contradicts the Board's own record evidence and ignores the basic tenets of the ripeness doctrine.

The undisputed record demonstrates that in April of 2024, the Board implemented a procedure for handling mail-in ballots in which the elections office set aside mail-in ballots with disqualifying errors and then entered them into the SURE system using a code that deprived voters of notice that their vote would not be counted. Stip. Facts ¶ 42; Exs. A-C (Dkt. No. 11); Ostrander Tr. 67:9-23; 71:5-18 (Ex. 1). Board of Elections Director Melanie Ostrander testified that the Board's practice is to "review" its existing mail-in ballot process prior to each election and that, in keeping with past practice, the Board will "most likely" handle mail-in ballots with disqualifying errors on the declaration envelopes in November the same way it did for the April 2024 primary. Ostrander Tr. 126:14-127:14; 127:24-128:6 (Ex. 1).

Moreover, as demonstrated by the Board's own meeting minutes from 2023, a vote is not required to keep an existing mail-in ballot process in place. For example, at the Board's April 26, 2023 meeting, which was held ahead of the May 2023 primary, a motion was made, seconded, and approved to allow curing of certain mail-in ballots. *See* Stip. Facts, Ex. K (Dkt. No. 11). As Director Ostrander testified, the policy was subsequently applied to the November 2023 general election. Ostrander Tr. 127:4-13 (Ex. 1). However, there was no *new* vote held at

the September 19, 2023 board meeting to continue the policy: instead, the meeting minutes state only that “[t]he process for curing received absentee and mail in ballots *will remain the same as was voted on at the April 26, 2023 BOE meeting . . .*” Stip. Facts, Ex. K (Dkt. No. 11) (emphasis added). In short, the mail-in ballot process the Board implemented in April 2024 *is* the Board’s process for November unless and until the Board decides to change course.⁸ And the Board has given no indication of doing so, as evidenced by the Board’s vigorous defense of how it conducted the April 2024 primary, and its decision to file the appeal before this Court.

Accordingly, the lower court correctly held that Appellees’ challenge was ripe for adjudication. To determine whether an action for declaratory and injunctive relief is ripe, courts consider “(1) whether the issues are adequately developed for judicial review, including whether the claim involves uncertain and contingent events that may not occur as anticipated or at all; and (2) what hardship the parties will suffer if review is delayed.” *Banfield v. Cortes*, 922 A.2d 36, 45

⁸ The cases relied on by Appellants are inapposite. GOP Br. 18. In *Disability Rights Pennsylvania*, Justice Wecht concluded plaintiffs’ request for prospective relief was not ripe because it sought to remedy the impact of delays in mail service that “may or may not occur . . . in several weeks’ time.” *Disability Rights Pa. v. Boockvar*, 660 Pa. 210, 211 (2020) (Wecht, J., concurring). Here, there is no question of what will occur in November: Washington County’s *current* mail-in ballot procedure violates Appellees’ procedural due process rights, and the only “speculation” about whether that policy will be in place in November is introduced by the Board and is entirely within its control. Moreover, in *Delisle*, the Court did not dismiss the case on ripeness grounds, but merely declined to exercise King’s Bench authority. *Delisle v. Boockvar*, 660 Pa. 253, 254 (2020) (Wecht, J., concurring).

(Pa. Commw. 2007). An action is ripe for adjudication so long as “the claims of the several parties in interest, while not having reached the active stage, are nevertheless present, and indicative of threatened litigation in the immediate future, which seems unavoidable” *Berwick Twp. v. O’Brien*, 148 A.3d 872, 881 (Pa. Commw. 2016) (citation omitted).

Applying this framework, the court below held that this standard was clearly met here: “although the Board may change its policy, the policy used at the April 2024 primary election is still in effect; the parties have stipulated to sufficient factual findings for this Court to resolve the issue, and the parties are sufficiently adverse. Additionally, this Court finds that even if the case could be developed more, doing so would place a hardship on the parties in not having a result in time for the November general election.” Op. 12 (Dkt. No. 25). This Court should affirm the lower court’s well-reasoned conclusion. The undisputed record demonstrates that absent court intervention, this November the Board will continue to deprive voters of timely notice that their mail-in ballot envelope has a disqualifying error and their vote will not be counted. If the court delays its review of Appellees’ claim until after the Board once again starts segregating and miscoding mail-in ballot status for the November election, another cycle of voters will be foreclosed from rescuing their right to vote, disenfranchising hundreds of voters in Washington County. The Court does not need to wait for this harm to

occur to address it. *See Berwick*, 148 A.3d at 881; *see also Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1217-18 (Pa. Cmwlth. 2018) (an action for declaratory and injunctive relief is ripe where it presents the “ripening seeds of a controversy”) (quotation and citation omitted). Appellees’ challenge is ripe for adjudication now.

II. Washington County’s Practice of Concealing Information and Misleading Voters About the Status of Their Mail-In Ballots Violates Article I, Section I of the Pennsylvania Constitution.

Procedural due process is an “axiom of American jurisprudence” that “imposes constraints on governmental decisions which deprive individuals’ of any . . . fundamental rights.” *Washington v. Pa. Dep’t of Corr.*, 306 A.3d 263, 284 (Pa. 2023) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). Due process “minimize[s] substantively unfair or mistaken deprivations of life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests.” *Washington*, 306 A.3d at 285 (quoting *Carey v. Phipus*, 435 U.S. 247, 259 (1978)).

“The central demands of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018) (internal citation and quotations omitted). “Notice is the most basic requirement of due process.... Notice should be reasonably calculated to inform interested parties of the pending action.... The form of the notice required

depends on what is reasonable, considering the interests at stake and the burdens of providing notice.” *Bornstein v. City of Connellsville*, 39 A.3d 513, 519 (Pa. Commw. Ct. 2012) (quoting *Pa. Coal Mining Ass’n v. Ins. Dep’t*, 370 A.2d 685, 692–93 (Pa. 1977)).

Pennsylvania courts “examine procedural due process questions in two steps: the first asks whether there is a life, liberty, or property interest with which the state has interfered, and the second examines whether the procedure[s] attendant to that deprivation are constitutionally sufficient.” *S.F. v. Pennsylvania Dep’t of Hum. Servs.*, 298 A.3d 495, 510 (Pa Commw. Ct. 2023), citing *Kentucky Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (“*Thompson*”). The lower court applied the proper two-step analytical framework. This Court should affirm based either on the lower court’s reasoning, or on an even more straightforward basis for identifying a liberty interest, namely, under the Pennsylvania Constitution.

A. The Board’s actions have interfered with voters’ constitutionally and statutorily protected liberty interests.

The first step requires identifying a life, liberty, or property interest. *Commonwealth v. Turner*, 80 A.3d 754, 764 (Pa. 2013). States “create[] a protected liberty interest by placing substantive limitations on official discretion.” *Thompson*, 490 U.S. at 462 (citation omitted); *Robles v. Pennsylvania Dep’t of Corr.*, 718 A.2d 882, 883 (Pa. Commw. Ct. 1998) (“The most common manner by

which a state creates such a liberty interest is by establishing ‘substantive predicates’ to govern official decision making and by mandating the outcome of those decisions on finding that the relevant criteria have been met.”).

Here, two sources of law, the Pennsylvania Constitution and the Election Code, independently establish a protectable liberty interest in voting. While the lower court relied on two Election Code provisions, Op. 17 and 21 (Dkt. No. 25), the Pennsylvania Constitution’s voting provisions provide a more straightforward basis for this Court to affirm the finding of a liberty interest. A long line of cases holds that the Pennsylvania Constitution serves as a “basis” to establish “fundamental interest[s] which cannot be abridged without compliance with constitutional standards of due process....” *R. v. Com., Dep’t of Pub. Welfare*, 636 A.2d 142, 149 (Pa. 1994) (state constitutional protection for reputation triggers procedural due process) (citations omitted). *See also, J.P. v. Dep’t of Hum. Servs.*, 170 A.3d 575, 581 (Pa. Commw. Ct. 2017).

Voting is a fundamental right under the Pennsylvania Constitution. *See, e.g., Applewhite v. Commonwealth*, 54 A.3d 1, 3 (Pa. 2012); *Appeal of Norwood*, 116 A.2d 552, 553 (Pa. 1955) (voting is “the most treasured prerogative of citizenship”). Unlike the U.S. Constitution, which has no provision expressly protecting the right to vote, the Pennsylvania Constitution protects voting in two clauses: Article I, Section 5 (“Elections shall be free and equal; and no power, civil

or military, shall at any time interfere to prevent the free exercise of the right of suffrage”); and Article VII, Section 1 (“Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections....”).

Moreover, our Supreme Court has linked the right to vote directly to citizens’ freedoms, noting its place in the Declaration of Rights and observing that “the plain and expansive sweep of the words ‘free and equal,’ . . . [is] indicative of the framers’ intent that all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth.” *See League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018). Indeed, a liberty interest in exercising the franchise is inherent in the Court’s understanding of the right itself, which guarantees not only that “each voter under the law has the right to cast his ballot and have it honestly counted” but that voting not be encumbered by “regulation of the right to exercise the franchise” that could “deny the franchise itself, or make it so difficult as to amount to a denial.” *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914).

Appellees argued the constitutional grounding for the liberty interest in the court below, and Appellants do not address it in their brief to this Court other than

in a footnote. GOP Br. 25, n. 6. But clearly the constitutional protection for voting creates a liberty interest under Pennsylvania law.⁹

The lower court charted a different, but still correct course, holding that “protected liberty interests for purposes of procedural due process may be created by state law,” and that under the Election Code, voters’ statutory right to vote a provisional ballot under 25 P.S. 3150.16(b)(2), and to challenge the decisions of the canvass board under 25 P.S. 3157, constitute liberty interests. Op. 17 (Dkt. No. 25). These interests were directly impaired by the Board’s actions, triggering the right to due process protections: both the right to cast a provisional ballot and the right to challenge the determination of the canvassing board are extinguished if the County fails to notify the voter before Election Day that their mail-in ballot will not be counted because of a disqualifying error on the mail ballot envelope.

⁹ It is also instructive that the majority of federal district courts that have considered the question have found that voting is a liberty interest entitled to the protections of due process. The earliest case goes back to the 1960’s. *See United States v. Texas*, 252 F.Supp. 234, 250 (W.D.Tex.1966) (right to vote is “included within the concept of liberty”), *aff’d per curiam*, 384 U.S. 155 (1966) (mem.). Since then, a parade of courts have so held. *See, e.g., Raetzel v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1356–57 (D. Ariz. 1990); *Doe v. Rowe*, 156 F. Supp. 2d 35, 47–48 (D. Me. 2001); *Zessar v. Helander*, No. 05-C-1917, 2006 WL 642646, *6 (N.D. Ill. Mar. 13, 2006); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018), *denying stay pending appeal*, *Georgia Muslim Voter Project v. Kemp*, No. 18-14502-GG, 2018 WL 7822108 (11th Cir. Nov. 2, 2018); *Self Advocacy Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1052 (D.N.D. 2020); *Democracy North Carolina v. North Carolina State Bd. of Elections*, 476 F. Supp. 3d 158, 227 (M.D.N.C. 2020); *Frederick v. Lawson*, 481 F. Supp. 3d 774, 788 (S.D. Ind. 2020); *League of Women Voters of S.C. v. Andino*, 497 F. Supp. 3d 59, 77 (D.S.C. 2020), *appeal dismissed (as likely moot) and remanded*, 849 F. App’x 39 (4th Cir. 2021) *contra*, The two cases cited by Appellants are outliers. *Richardson v. Texas Sec’y of State*, 978 F.3d 220, 230 (5th Cir. 2020); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 478-79 (6th Cir. 2008).

Notably, Appellants' challenge to 25 P.S. § 3150.16(b)(2) as a predicate for a liberty interest, GOP Br. 28-29, ignores this Court's recent decision holding that voters' whose mail ballots are disqualified have a right to vote a provisional ballot and have it counted. *See Genser, et al. v. Butler County Board of Elections, et al.*, No. 1074 C.D. 2024, 2024 WL 4051375 (Pa. Cmwlth. Sept. 5, 2024) (petitions for allowance of appeal filed, 240 WAL 2024, 241 WAL 2024, 242 WAL 2024, 243 WAL 2024). *Genser* solidifies that Election Code right as a second, independent source for a protected liberty interest, triggering the *Mathews* balancing analysis.¹⁰

B. Due Process Requires Pre-Deprivation Notice to Voters Who Make Disqualifying Errors on Their Mail-In Ballot Envelopes.

Having concluded that there was a protectible liberty interest, the court below correctly applied the test set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976) and concluded that the Board had violated the due process rights of Voter-Appellees. Appellants have failed to identify any error in that analysis.

1. Appellants Now Agree that the *Mathews* Test Applies.

While Appellants disputed the applicable standard below, it is now common ground that the proper test for evaluating the due process violation in this case is

¹⁰ Appellants also misapprehend the essence of procedural due process analysis, confusing the identification of a protected interest with the process due. They argue that *Pa. Dems.* forecloses any right to notice and cure. GOP Br. 17. But the issue is what life, liberty or property interest is affected, and that is the right to vote. Upon identifying that interest, applying the balancing test required by the second part of the *Mathews* analysis dictates what process is due whenever the interest is jeopardized. As discussed below, pre-deprivation notice is a clear minimum requirement.

set out in *Mathews*.¹¹ Pennsylvania courts have long applied the three-part *Mathews* balancing test. See *Washington*, 306 A.3d at 284-85; *R v. Pa. Dep't of Pub. Welfare*, 636 A.2d at 152-53. Under *Mathews*, courts balance the following three factors: 1) the private interest affected; 2) the risk of an erroneous deprivation and the value of additional or substitute safeguards; and 3) the state's interest, including the burdens the additional or substitute procedural requirements would impose on the state. *Washington*, 306 A.3d at 300 (citations omitted).

The Pennsylvania Supreme Court has used the *Mathews* test to set forth an expansive view of procedural due process, explaining that “[t]hese rules are intended to ‘minimize substantively unfair or mistaken deprivations of life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests.’” *Washington*, 306 A.3d at 284 (citing *Carey v. Phipps*, 435 U.S. 247, 260 (1978)). This expansive view of due process aligns with the importance that Pennsylvania courts place on the “sacred,” “fundamental” right to vote, which Pennsylvania considers “the most treasured prerogative of citizenship.” *Page v Allen*, 58 Pa. 338, 347 (1868); *Kuznik v. Westmoreland Cnty.*

¹¹ Appellants reference the *Anderson/Burdick* framework in passing in a footnote, but do not develop the issue. GOP Br. 30, n. 8. However, the Board's actions would also flunk the *Anderson/Burdick* test. See also Op. 21 (“In the alternative, if this Court were to evaluate Plaintiffs’ due process claims under the *Anderson/Burdick* framework . . . the result remains the same.”).

Bd. of Comm'rs, 902 A.2d 476, 488 (Pa. 2006); *Applewhite v. Commonwealth*, 54 A.3d at 3; *Appeal of Norwood*, 116 A.2d at 553.

2. *Mathews* Requires Pre-Deprivation Notice That Provides Voters an Opportunity to Rescue Their Vote.

Each of the three *Mathews* factors weigh in favor of finding that the Board's practices violate voters' procedural due process rights. The Board has chosen to segregate mail-in ballots with disqualifying errors on the declaration envelope prior to Election Day, miscode those ballots in the SURE system, and refuse to tell voters that their ballots will not be counted. Collectively, these decisions serve to deny the voters any ability to learn that their vote will not be counted, depriving those voters of the franchise without any form of notice. Considering the substantial interests at stake, the value of additional safeguards, and the de minimis burden those safeguards would impose on the County, the court below properly found that the Board's actions constitute a clear due process violation that must be appropriately remedied.

a. Factor 1: The Private Interests Affected

For due process to attach under Article I, Section 1, the alleged deprivation must implicate a life, liberty, or property interest. *Commonwealth v. Turner*, 80 A.3d 754, 764 (Pa. 2013). To determine whether an asserted interest triggers due process protections, the Pennsylvania Supreme Court has held that the fact that an interest "is recognized and protected by our highest state law[,] our Constitution"

through “explicit reference . . . provid[es] the basis for this Court to regard it as a fundamental interest which cannot be abridged without compliance with constitutional standards of due process.” *R v. Dep’t of Public Welfare*, 636 A.2d 142, 149 (Pa. 1994) (finding that the fundamental right to reputation under the Pennsylvania Constitution triggers due process protections).

As explained above, the Board’s actions affect citizens’ constitutionally and statutorily protected liberty interests in their right to vote. The court below properly held that each voter has a clear and unequivocal right to challenge decisions made by the county canvass board under 25 P.S. § 3157. Op. 21 (Dkt. No. 25). Voters also have a statutory right to cast a provisional ballot if their mail-in ballot is not recorded on the district register under 25 P.S. § 3150.16(1). *See also Genser, et al. v. Butler County Board of Elections, et al.*, No. 1074 C.D. 2024, 2024 WL 4051375 (Pa. Cmwlth. Sept. 5, 2024) (petitions for allowance of appeal filed, 240 WAL 2024, 241 WAL 2024, 242 WAL 2024, 243 WAL 2024). Indeed, federal law guarantees the right to cast a provisional ballot in any circumstance. 52 U.S.C. § 21082. And, of course, the right to vote is enshrined in Article I, Section 5 and Article VII, Section 1 of the Pennsylvania Constitution. These are all protectible interests.

b. Factor 2: The Unacceptably High Risk of Erroneous Deprivation

As the court below found, “[t]he risk of erroneous deprivation of that interest is high as electors have no notice that their ballot has been segregated and presumptively will not be counted.” Op. 21 (Dkt. No. 25). The Board’s actions preclude any means for voters to learn if their mail-in ballot declaration envelopes have a disqualifying error before Election Day. Furthermore, without notice, the voter has no opportunity to appear at the canvas and challenge a decision to reject a ballot, nor will the voter know to go to the polls and vote a provisional ballot. Indeed, the voter’s right to vote will be extinguished. That is precisely what happened in Washington County—not a single voter who made a disqualifying error on their mail ballot packet in the April 2024 primary voted a provisional ballot. Stip. Facts ¶ 49 (Dkt. No. 11).

It is unconscionable that a government agency would hide information relating to mail-in ballot status, much less deliberately enter a code that triggers false emails to voters through the SURE system telling voters all is well with their ballot packet. As the Pennsylvania Supreme Court recently explained, the government should not engage in a “secret, one-sided determination of facts decisive of rights.” *Washington*, 306 A.3d at 266. The Board’s handling of mail-in ballots and misuse of the SURE system constitute just such a secret determination and leaves the voters powerless. Voters will be unable to learn that their right to

vote will be taken away, providing them no opportunity to challenge that decision or vote with a provisional ballot to preserve their right.¹² And the voters will have no reason to challenge the Board’s decision under 25 P.S. § 3157 because they do not know in advance that their ballot will not be counted. Combined, these factors make disenfranchisement a foregone conclusion and guarantee that qualified, eligible voters who timely return their ballots will nevertheless be deprived of their right to vote—an inexcusable result. See *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 540 (Pa. 1964) (“The disfranchisement of even one person validly exercising his right to vote is an extremely serious matter.”).

Further, as the Pennsylvania Supreme Court has held, the “controlling inquiry” under the second *Mathews* factor is “whether the state is in a position to provide for pre-deprivation process.” *Washington*, 306 A.2d at 296 (internal citations omitted). Here there can be no question that the Board is well-positioned to provide that process. The lower court’s injunction orders the Board to do no more than what the Board did prior to this new policy: it must only “notify any

¹² Recognizing the inherent problem in destroying the franchise without providing a mechanism to challenge that decision, Appellants suggest that voters are able to challenge the determination not to count a mail-in ballot by attending the meeting of the canvass board. GOP Br. 27, 31. But without knowing that their vote will not be counted, voters have no reason to attend that canvass board meeting in the first place. For this reason, the court below compared Appellants’ suggestion to “conducting a sheriff’s sale of property without any advertisement of which properties are to be sold and expecting any concerned individual to appear to ensure that their property is not one affected.” Op. 22, n. 94 (Dkt. No. 25).

elector whose mail-in packet is segregated for a disqualifying error” and “input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested.” Op. 27 (Dkt. No. 25). Doing so ensures that voters with an email address on file would receive an email alerting them that their mail-in packet has an error and that they have an option to “go to [their] polling place on election day and cast a provisional ballot.” *See* Stip. Facts, Ex. D at 8-9 (Dkt. No. 11). Without accurate information in SURE, political parties and nonprofit organizations, like Organizational Appellees, cannot reach out to affected voters and notify them of their disqualifying mistakes and their option for preserving their right to vote by voting a provisional ballot at their polling place on Election Day. *Id.* ¶ 24; Marks Tr. 28:19-22 (Dkt. No. 17, Ex. 1). *See* 25 P.S. §§ 3146.9, 3150.17. Additionally, with accurate information in SURE, voters would know that their mail-in ballot was set aside to be disqualified, and would know to go to the canvas board meeting to potentially challenge that disqualification. The court below correctly found that the Board’s actions create an unreasonably high risk of erroneous deprivation. Op. 21 (Dkt. No. 25). *See Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1053 (D.N.D. 2020) (holding the “value of additional procedures to safeguard against erroneous ballot rejections” becomes “apparent” where “[t]he result is the outright disenfranchisement of otherwise qualified electors”).

Because the risk of deprivation is so severe, and because the value of additional pre-deprivation process is substantial, the second *Mathews* factor weighs in favor of Appellees.

c. Factor 3: The Minimal Burden on the Board

The record in the lower court is clear that compliance with the lower court's order would lay little, if any, burden on the Board. The Board is already obligated to use the SURE system for tracking mail-in ballots. *See* 25 Pa.C.S. § 1222; 4 Pa. Code § 183.4(b)(2); 25 P.S. § 3150.16(b)(1). The order below serves only to have the Board do the exact same thing with mail-in ballots that it did in 2023: timely enter accurate ballot information in the SURE system to inform voters of any potential issues with their mail-in ballots, a process that takes less than a minute. Ostrander Tr. 38:7-14. (Ex. 1). Indeed, the majority of counties across Pennsylvania do exactly what Washington County did in 2023, demonstrating that the burden on the Board would be *de minimus*. *See Democracy N.C.*, 476 F. Supp. 3d at 229 (finding the burden to the state of providing pre-rejection notice to be “minimal” where “several counties have processes in place already”). As the court below correctly observed, “the great staff in the elections office have proven to be more than capable of contacting electors based on the Board’s 2023 policy.” Op. 21 (Dkt. No. 25). Appellants have not shown that finding is clearly erroneous; indeed, they do not challenge it at all.

In summary, the Court below, weighing all three of the *Mathews* factors, properly found that the Board violated Appellees' procedural due process rights. Op. 21 (Dkt. No. 25). Appellants have provided no basis to overturn that considered decision.

III. The Lower Court Correctly Held That *Pa. Dems. v. Boockvar* Does Not Bar Appellees' Claim under the Pennsylvania Constitution's Due Process Guarantee.

Appellants' arguments hinge on their repeated assertions that no process is due to mail-in voters because they have no right to "notice and cure" under the Pennsylvania Supreme Court's decision in *Pa. Dems.*, 238 A.3d 345. *See* GOP Br. 1-2, 24, 32-38. But as the lower court correctly held, *Pa. Dems.* does not foreclose Appellees' procedural due process claim for two reasons. First, *Pa. Dems.* "did not raise due process," Op. 20 (Dkt. No. 25), and the issues being addressed in the current case are "issues of first impression." *Id.* 2. Second, this case is distinguishable from *Pa. Dems.* because Appellees are not asking for the Court to mandate boards to adopt a notice and opportunity to cure policy as Appellants claim. GOP Br. 33. Rather Appellees are asking to be notified of disqualifying errors on their declaration envelope under Article I, Section 1 of the Pennsylvania Constitution while there is still time to vote by casting a provisional ballot. And although the lower court was not asked and did not rule on whether the Board would ultimately be required to count that provisional ballot, the lower court

correctly found that the “process of a voter submitting a provisional ballot is not a ‘cure’ ...but an altogether independent action” required by a separate provision of the Election Code. Op. 23 (Dkt. No. 25). *See Genser, et al. v. Butler County Board of Elections, et al.*, No. 1074 C.D. 2024, 2024 WL 4051375 at 2 (Pa. Cmwlth. Sept. 5, 2024) (petitions for allowance of appeal filed, 240 WAL 2024, 241 WAL 2024, 242 WAL 2024, 243 WAL 2024) (“question about provisional voting and counting provisional ballots...is distinct from the question whether an elector can cure a defect in a mail-in ballot”). Indeed, this Court’s recent decision in *Genser* that the Election Code “independently authorizes electors to vote by provisional ballot, and, when properly construed, it requires the County to count the provisional ballots here,” *id.*, further supports that *Pa. Dems.* does not bar Appellees’ claim.

1. *Pa. Dems.* Was Not a Procedural Due Process Case.

Appellants continue to misstate Pennsylvania precedent. *Pa. Dems.* was not a procedural due process case. It did not involve a claim under Article I, Section 1 of the Pennsylvania Constitution. Rather, the petitioners in that case, which was filed shortly after mail-in voting was adopted and implemented, sought to require county boards of election to provide “notice and cure procedures” under the Free and Equal Elections Clause of the Pennsylvania Constitution, Pa. Const. art I, § 5, and the “spirit of the Election Code.” 238 A.3d at 372-73. The Court held that

counties were not required to implement a “notice and cure procedure” because “Petitioner [had] cited no constitutional or statutory basis that would countenance imposing the procedure Petitioner seeks to require.” *Id.* at 374.

Appellees in the case before this Court rely on a distinct constitutional challenge, alleging that the Board’s segregation of mail-in ballots and failure to timely notify voters through the SURE system that they made a disqualifying error on their ballot envelope violates the basic tenets of procedural due process. This question has never before been considered or decided by a Pennsylvania court. The Court in *Pa. Dems.* did not conduct an analysis of the interest that was at stake—the fundamental right to vote—or the process that was due under Article I, Section 1 before a board of elections can deny voters their fundamental right. Nor did the Court in *Pa. Dems.* hold that there is no right to procedural due process.¹³ *See e.g.*, GOP Br. 33. The Court did not even mention procedural due process.¹⁴ In short,

¹³ Likewise, the Appellants’ reliance on an unreported decision by a single Judge in *Republican Nat’l Comm. v. Schmidt*, No. 447 M.D. 2022, 2022 WL 16754061, at *17 (Pa. Cmwlth. Sept. 29, 2022) misses the mark. GOP Br. 34. That case was also not a procedural due process case, does not preclude Appellees’ claim, and does not stand for the proposition that providing pre-deprivation notice is discretionary under the constitution’s Due Process Guarantee.

¹⁴ Nor did Justice Wecht address procedural due process as Appellants assert. GOP Br. 36. He did not consider whether voters are entitled to procedural due process protections under Article I, Section 1, because that issue was never raised and nothing in *Pa. Dems.* relieves the Board of its constitutional duty to provide voters with due process. The Supreme Court in *Pa. Dems.* declined to create a new notice and cure system, but it did not sanction the Board’s practice of misusing the existing SURE system to hide that a voter’s ballot would not be counted.

the lower court did not “plainly disregard” *Pa. Dems.*; the case is inapplicable. GOP Br. 32.

Moreover, the petitioners in *Pa. Dems.* sought sweeping relief, asking the Court to invoke its “broad authority to craft meaningful remedies” and create and mandate a statewide procedure out of whole cloth that would require boards of elections to contact voters and provide an opportunity to cure defective mail-in ballots. 238 A.3d at 373. The Court declined, particularly in light of the “open policy questions attendant to that decision, including what the precise contours of the procedure would be [and] how the concomitant burdens would be addressed,” *id.* at 374, as well as “the lack of any proposal regarding a practicable manner of relieving the problem alleged.” *Id.* at 389 (Wecht, J., concurring).

But four years later the “contours of the procedure” and the “concomitant burden” are not open policy questions as Appellants would have this Court believe. GOP Br. 32. And the “practicable manner of relieving the problem” is in place. Appellees ask for narrow relief: only that the Court direct the Board to use the existing infrastructure provided by the Department of State—the SURE system—to enter a code to notify voters about known errors on their ballot envelope before the right to vote is irrevocably lost. Failure to input accurate ballot statuses in this statewide system, which provides automated pre-Election Day notice to voters,

violates the due process rights of mail-in voters whose ballots will be rejected for disqualifying mistakes on their declaration envelopes.

In short, neither this legal claim nor these facts were before the Pennsylvania Supreme Court in *Pa. Dems.* Contrary to Appellants' repeated assertions, this Court is not being asked to ignore precedent. Rather, this Court is being asked to rule, as the lower court correctly observed, on an issue of first impression, but one that is based on longstanding and foundational principles of fairness. *See, e.g. Washington*, 306 A.3d at 267 (“a democratic government must practice fairness to be worthy of its name, and procedural due process must be afforded ...when state action infringes on a fundamental right”); *Turner*, 80 A.3d at 763-764 (due process “expresses the requirement of ‘fundamental fairness’”).

Finally, the court below did not “usurp the province of the legislature by rewriting statutes,” GOP Br. 34, 38, or act as a “Supreme, or even a Superior Legislature” or engage in “judicial legislation,” GOP Br. 39 or “weigh[] in on [] political policy judgments.” GOP Br. 40. Rather, the court below, like this Court, is asked to conduct a routine application of bedrock principles of judicial review. Whether the Board’s denial of voters’ fundamental right to vote without pre-deprivation notice violates the procedural due process requirements of the Pennsylvania Constitution is not a question entrusted to the legislature; it is

squarely in the judiciary’s domain to adjudicate. *See, e.g., Washington*, 306 A.3d at 285.

2. The Right to Vote by Provisional Ballot Is Separate and Distinct From “Curing” As This Court Recently Held In *Genser v. Butler County Board Of Elections*.

Appellants’ argument that *Pa. Dems.* is controlling is also grounded in their ongoing conflation of the separate concepts of mail-in ballot curing and the casting of a provisional ballot. GOP Br. 33. Although the Court in *Pa. Dems.* held that curing is not required, provisional voting and curing are not the same. As the lower court recognized and as this Court just held in *Genser* “[a] provisional ballot is not a ‘cure’ of a voter’s defective mail-in ballot as discussed in [*Pa. Dems.*] but is a statutory fail-safe guaranteed by the Election Code to prevent voter disenfranchisement in a diverse array of circumstances.” *Genser*, 2024 WL 4051375 at *14; Op. 23 (Dkt. No. 25). *See also Keohane v. Del. Cnty. Bd. of Elections*, CV-2023-004458, at *3 (Del. Cnty. Ct. Common Pleas Sept. 21, 2023) (ordering the Delaware County Board of Elections to count provisional ballots cast by voters whose mail-in ballots were rejected). Thus, this Court has already rejected Appellants’ arguments that counting Voter-Appellees’ provisional ballots would “mandate that a county board of elections adopt a notice-and-cure procedure,” GOP Br. 1, in violation of the Court’s holding in *Pa. Dems. Genser* Op. 32.

Here, the Board’s conduct foreclosed voters’ ability to rescue their fundamental right to vote by casting a provisional ballot, a right this Court has now recognized. *Id.* Accordingly, this Court should affirm the lower court’s order requiring the Board to “input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested,” Op. 2 (Dkt. No. 25), to ensure voters have the notice necessary to enable them to preserve their right to vote.

IV. The Court Below Correctly Held That The Legislative Act Doctrine Is Inapplicable.

The lower court correctly rejected Appellants’ argument that the “Legislative Act Doctrine” immunizes Washington County’s handling of disqualified mail ballots from a procedural due process challenge. Op. 14-16 (Dkt. No. 25). Appellants mischaracterize Appellees’ claim. GOP Br. 21-22. Appellees are not challenging the Board’s legislative adoption of the April policy. Rather, they challenge the *practice* mandated by the Board, for processing individual voters’ mail-in ballots in the April 2024 primary and in the upcoming November election. *See* Compl. ¶¶ 67-82. Specifically, Appellees are challenging the series of individualized determinations the election staff have made and will make going forward: to set aside a voter’s mail ballot because it has a known disqualifying error on the envelope; to miscode that ballot in the SURE system so that the voter never knows the ballot will not count even though there is still time for the voter to

preserve their fundamental right to vote by provisional ballot; and ultimately to not count the voter's mail ballot. *Id.* These decisions are not legislative acts. They are adjudicative acts to which the legislative act doctrine does not apply.

The legislative act doctrine holds that “procedural due process concerns are implicated only by adjudications, not by state actions that are legislative in character.” *Washington*, 306 A.3d at 298 (internal citation and quotations omitted). However, just because legislation directs agency action does not make the latter a legislative act, as Appellants suggest. GOP Br. 22. Due process safeguards still apply to “[a]djudicative agency actions [] that affect one individual or a few individuals, and apply existing laws or regulations to facts that occurred prior to the adjudication.” *Small v. Horn*, 722 A.2d 664, 671, n.12 (Pa. 1998).

Washington, relied on by the court below and the Pennsylvania Supreme Court's most recent examination of the legislative act doctrine, illustrates why the doctrine does not apply. There, the Court held that even though a state statute increased the garnishment rate for inmate accounts, the agency implementing the statute, the Department of Corrections (“DOC”), must give prisoners “pre-deprivation notice and an opportunity to be heard” before increasing prisoner's individualized garnishment rate. *Washington*, 306 A.3d. at 267.

Here, like in *Washington*, the Board verbally directed a “subordinate body,” the County Elections Office, to make individualized determinations about whether

the envelope transmitting each mail-in ballot contains a disqualifying error and to conceal information about the impending ballot disqualification from the voter. *See* Stip. Facts ¶¶ 41-44 (Dkt. No. 11); Ostrander Tr. 67:9-23; 71:5-18 (Ex. 1).

Accordingly, the court below correctly held that “the process of elections office staff screening and segregating mail-in ballots for those with disqualifying errors and then coding the ballot in the SURE system in a manner which provides no way for an individual voter to know that their ballot has been segregated affects a small portion of all mail-in voters and results in an adjudicative action.” Op. 15 (Dkt. No. 25).

Because the challenge here is to the Elections Office’s practice, as dictated by the Board, the legislative act doctrine does not shield Washington County from providing procedural due process before it disqualifies voters’ ballots. The Board cannot direct its staff to deny voters due process and then claim immunity under the legislative act doctrine when challenged for denying constitutionally required procedural due process.

A. The Scope Of Relief The Lower Court Granted Is Within Its Equitable Discretion.

Appellants assert that the lower court overstepped its authority in enjoining the Board to enter proper codes in the SURE system. GOP Br. 43-46. However, having found a violation of the Appellees’ constitutional rights, the lower court had broad equitable powers to fashion relief. This Court reviews the scope of injunctive

relief under the abuse of discretion standard. *O.D. Anderson, Inc. v. Cricks*, 815 A.2d 1063, 1071 (Pa. Super. 2003); *RESPA of Pennsylvania, Inc. v. Silkman*, 768 A.2d 335, 339 (Pa. Super. 2001). There was no abuse in the lower court’s injunction.

1. The lower court’s issuance of an injunction did not “constitutionalize” use of the SURE system

The lower court properly issued an injunction ordering the Board (1) to “notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects,” which includes inputting “the accurate status of the mail-in packet in the SURE system”; and (2) to “properly document in the poll books” a person whose mail-in packet is “segregated for a disqualifying error” and allow that individual to submit a provisional ballot at the polls. Op. 27-28 (Dkt. No. 25). The court noted that the Board could provide such pre-deprivation process through the SURE system, finding that “there is a framework in place where a different entry code can be placed into a computer to provide notice to an elector that their ballot will not be counted and is subject to challenge.” Op. 21 (Dkt. No. 25).

The issuance of the injunction was not an abuse of discretion. While Appellants cast the ordered relief as “constitutionalizing” compliance with the SURE system, it is not at all clear what that means. Certainly, there is no bar to a lower court ordering a party to use the tools at its disposal to correct a

constitutional wrong. Appellants' digression on the authority of the Secretary of State to operate the SURE system has nothing to do with the scope of judicial power to correct a constitutional wrong. The SURE system is an existing tool used by the Board to notify voters of the status of their ballots. There is no error in requiring the Board to use the system in an honest and forthright way.

2. The Lower Court's order does not violate the pre-canvassing provisions of the Election Code.

Appellants' statutory analysis on ballot handling is also wrong. For the first time on appeal, Appellants make a bizarre argument that Washington County election staff are barred from even looking at the outer declaration envelope until Election Day under the pre-canvassing rules. 25 P.S. §§ 2602(q.1), 3146.8(g)(1.1); GOP Br. 40-42, 45-46. The argument is not only wrong on the merits, it is waived because Appellants failed to raise the argument in the court below. See Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."); *Commonwealth v. Agie*, 296 A.2d 741, 741 (Pa. 1972) ("We have consistently held that issues not raised in the court below are waived...."). Accordingly, this Court should decline to review the issue on appeal. *See Reilly by Reilly v. SEPTA*, 489 A.2d 1291, 1300 (Pa. 1985) ("Waiver is indispensable to the orderly functioning of our judicial process and developed out of a sense of fairness to an opposing party and as a means of promoting

jurisprudential efficiency by avoiding appellate court determinations of issues which the appealing party has failed to preserve”).

Should this Court decide to consider the pre-canvass issue, it should reject the argument out of hand. Appellants’ arguments fail as a matter of statutory interpretation and the realities of election administration. Election staff routinely examine the outer declaration envelope to ensure completeness, and that is not “pre-canvassing” under the Election Code.

To the contrary, pre-canvassing is a multi-step process that begins at 7:00am on Election Day, *see* 25 P.S. § 3146.8(g)(1.1), during which the pre-canvass board opens mail-in ballot declaration envelopes, removes the secrecy envelopes, shuffles the secrecy envelopes, removes the ballots from them, unfolds the ballots and otherwise prepares those ballots for counting and recording at the canvass meeting that begins at the close of polls.¹⁵ Attorneys and watchers appointed by

¹⁵ Ms. Ostrander testified to the multistep nature of the pre-canvass. *See* Ostrander Tr., 103:15-104:8 (Ex. 1). During the pre-canvass process, Board staff open the declaration envelopes and remove the inner secrecy envelope. *Id.*, 103:18-22 (noting that the pre-canvass is the stage at which “absentee and mail-in ballots are officially allowed by the election law to be opened”); *see also* Marks Tr. 19:12-21 (Dkt. No. 17, Ex. 1). Next, the ballot is removed from the inner secrecy envelope, “unfolded and prepared for counting.” Ostrander Tr., 103:25-104:3 (Ex. 1). Finally, the ballots are “ultimately opened and then tabulated.” Marks Tr. 19:20-21 (Dkt. No. 17, Ex. 1). The pre-canvass is the first step in a multi-week process that culminates in the certification of the election, and is not the same as election workers “looking at the outer envelope on a ballot to make a determination as to . . . whether it was dated or signed.” Marks Tr., 41:15-18 (Dkt. No. 17, Ex. 1); *see also id.*, 47:9-15 (“I want to make sure that we’re distinguishing [pre-canvassing] from the intake the counties do prior to the pre-canvass, where they may observe, for example, an error that is made by a voter”).

candidates and campaigns are permitted to observe this process. The Election Code defines the term “pre-canvassing” as follows:

“[T]he inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots.

25 P.S. § 2602(q.1). Focusing only on the word “inspection” while leaving out the remainder of the statutory requirements that constitute “pre-canvassing,”

Appellants argue that the lower court has now ordered the Board to “**inspect mail ballots prior to 7:00 a.m. on election day**” (emphasis in original) in violation of the Election Code. *See e.g.* GOP Br. 41.

Straightforward principles of statutory interpretation make clear that merely *looking* at the unopened outer declaration envelope is not pre-canvassing. Instead, it is a process that necessarily must include inspecting *and* opening *and* counting *and* computing of ballots. *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 507 A.2d 1, 8 (Pa. 1986) (“Grammatically, this construction is indicated by the dual presence of the conjunctive ‘and’ in the list”). *Bloomsburg Town Ctr., LLC v. Town of Bloomsburg*, 241 A.3d 687 (Pa. Commw. Ct. 2020) (The use of “and” in a provision connotes “a conjunctive rather than a disjunctive list of requirements”). *See also, Com. v. Off. of Open Recs.*, 103 A.3d 1276, 1285 (Pa. 2014) (citations omitted) (every portion of statutory language is to

be read “together and in conjunction” with the remaining statutory language, “and construed with reference to the entire statute” as a whole).

Like counties across the state, the Board identifies and segregates mail-in ballots with disqualifying errors upon receipt at the election office. *See Ball v. Chapman*, 284 A.3d 1189 (Order dated Nov. 1, 2022) (“We hereby DIRECT that the Pennsylvania county boards of elections segregate and preserve any ballots contained in undated or incorrectly dated outer envelopes”). Ms. Ostrander’s deposition testimony confirms that this administrative intake process, which includes reviewing sealed declaration envelopes for errors and segregating those ballot packets, does not constitute “pre-canvassing.”

Under Appellants’ new interpretation of pre-canvassing, the Board regularly violates the Election Code. In 2023, the election office routinely looked at the outer declaration envelope and determined whether the signature or date were missing by “examining it visually.” Ostrander Tr. 41:4-13 (Ex. 1). *See id.* At 38:2-14 (reviewing the outer declaration envelopes for date or signature mistakes took “10-30 seconds or less”). The mail-in ballot packets with disqualifying errors—still unopened—were scanned into the SURE system using the “canceled” codes, locked in the mail-in ballot room, and “segregated” from packets that were correctly completed. *Id.* at 41:20-24. *See also id.* at 48:16-19 (“[t]he ballots that

were missing dates and signatures were in their own separate bin and filed alphabetically by precinct name”).

This administrative sorting procedure for mail-in ballots was identical ahead of the 2024 election: mail-in ballots were reviewed by the election staff for disqualifying errors on the declaration envelope and segregated into separate bins. *Id.* 75:2-8 (“The ballots with the properly completed declaration envelope were in one bin for that precinct, and the ballots with the declaration envelope that contained a disqualifying error were in a different bin for that precinct”). The only difference between 2023 and 2024 was the Board’s refusal to notify voters that their ballots had a disqualifying error and would ultimately not be counted. None of this constitutes pre-canvassing. *See also*, Marks Tr. 18:25-19:7 (Dkt. No. 17, Ex. 1) (Board must keep the mail-in ballots “secure until they begin pre-canvassing” but noting that “in the interim . . . they may be organizing them . . . to prepare for the pre-canvassing”).¹⁶

¹⁶ Moreover, entering the accurate status of the ballots into the SURE system is not “disclos[ing] the results of any portion of any pre-canvass meeting prior to the close of the polls.” 25 P.S. § 3146.8(g)(1.1), as Appellants argue. GOP Br. 41. The “results” referred to in this section refer to the outcome of the race, in other words, which candidate is winning after pre-canvassed ballots are tabulated. Appellants would have this court adopt an overly expansive reading of the word “results” when it is clearly intended to refer to the election results or the outcome of a particular race. Disclosure of tabulated election results before the close of the polls is prohibited in every state. *See* G. Gordon, et al., *Ballot Pre-Processing Policies Explained*, Bipartisan Policy Center, Sept. 7, 2022, available at <https://bipartisanpolicy.org/explainer/ballot-pre-processing-explained/> (“No state releases the results of mail voting before polls close on Election Day. Machines are programmed to not tabulate ballots until Election Day and states impose legal penalties to protect against the early release of results”). Thus, there is absolutely no statutory prohibition against

As a matter of statutory interpretation, election administration, and common sense, nothing in the lower court’s order interferes with or runs afoul of the “pre-canvassing” provisions under the Election Code. This Court should uphold the lower court’s grant of a permanent injunction, so that Washington County voters are not deprived of their fundamental right to vote by the Board’s unconstitutional practice of concealing the true status of mail-in ballots that contain disqualifying defects and will never be counted.

CONCLUSION

Appellees respectfully request that the Court deny Appellants’ appeal and affirm the decision below.

Dated: September 11, 2024

Respectfully submitted,

informing voters that their sealed, mail-in ballot packet contains a disqualifying error on the outer envelope.

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CERTIFICATION OF WORD COUNT

I certify that the foregoing brief complies with the 14,000-word limit established by Pa.R.A.P. 2135. According to the word count of the word-processing system used to prepare this brief, the brief contains 13,277 words, not including the supplementary matter as described in Pa.R.A.P. 2135(b).

Dated: September 11, 2024

/s/ Claudia De Palma

Claudia De Palma

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 11, 2024

/s/ Claudia De Palma

Claudia De Palma

EXHIBIT 1

Transcript of the Testimony of

MELANIE OSTRANDER

July 18, 2024

**CENTER FOR COALFIELD JUSTICE VS WASHINGTON
COUNTY BOARD OF ELECTIONS**



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1	<p style="text-align: center;">IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA</p> <p>CENTER FOR COALFIELD JUSTICE, WASHINGTON BRANCH NAACP, BRUCE JACOBS, JEFFREY MARKS, JUNE DEVAUGHN HYTHON, ERIKA WOROBEK, SANDRA MACIOCE, KENNETH ELLIOTT, and DAVID DEAN,</p> <p style="text-align: center;">Plaintiffs, -vs- WASHINGTON COUNTY BOARD OF ELECTIONS,</p> <p style="text-align: center;">Defendant.</p> <p style="text-align: center;">DEPOSITION TRANSCRIPT OF: MELANIE OSTRANDER</p> <p style="text-align: center;">DEPOSITION DATE: July 18, 2024 Thursday, 9:41 a.m.</p> <p style="text-align: center;">PARTY TAKING DEPOSITION: Plaintiffs</p> <p style="text-align: center;">COUNSEL OF RECORD FOR THIS PARTY: Mary M. McKenzie, Esq. mmckenzie@pubintl.org PUBLIC INTEREST LAW CENTER 1500 JFK Boulevard Suite 802 Philadelphia, PA 19102</p> <p style="text-align: center;">REPORTED BY: Kristina Kozlowsky Notary Public Reference No. KK60820</p>	2
3	<p>1 APPEARANCES CONT'D.:</p> <p>2 FOR THE DEFENDANT, WASHINGTON COUNTY BOARD OF ELECTIONS:</p> <p>3 David J. Berardinelli, Esq. berardinelli@deforestlawfirm.com</p> <p>4 DeFOREST KOSCELNIK & BERARDINELLI Koppers Building, 30th Floor 5 436 Seventh Avenue Pittsburgh, PA 15219 6 412-227-3135</p> <p>7</p> <p>8 FOR THE REPUBLICAN NATIONAL COMMITTEE:</p> <p>9 Kathleen A. Gallagher, Esq. kag@gallagherlawllc.com THE GALLAGHER FIRM, LLC 10 30th Floor Koppers Building 436 Seventh Avenue 11 Pittsburgh, PA 15219 412-308-5512</p> <p>12</p> <p>13</p> <p>14 FOR THE REPUBLICAN PARTY OF PENNSYLVANIA:</p> <p>15 Sophia Benoit, Esq. sbenoit@dmkcg.com</p> <p>16 DILLON McCANDLESS KING COULTER & GRAHAM, LLP 128 West Cunningham Street Butler, PA 16001 724-283-2200</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4
1	<p style="text-align: center;">DEPOSITION OF MELANIE OSTRANDER,</p> <p>a witness called by the Plaintiffs, for examination, in accordance with the Pennsylvania Rules of Civil Procedure, taken by and before Kristina Kozlowsky, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the offices of AKF Technologies, 445 Fort Pitt Boulevard, Suite 200, Pittsburgh, Pennsylvania, on Thursday, July 18, 2024, commencing at 9:41 a.m.</p> <p style="text-align: center;">- - - -</p> <p>APPEARANCES:</p> <p style="text-align: center;">FOR THE PLAINTIFFS:</p> <p>Mary M. McKenzie, Esq. mmckenzie@pubintl.org</p> <p style="text-align: center;">-and-</p> <p>Claudia De Palma, Esq. (via remotely by Zoom) cdepalma@pubintl.org</p> <p>PUBLIC INTEREST LAW CENTER 1500 JFK Boulevard, Suite 802 Philadelphia, PA 19102 215-627-7100</p> <p style="text-align: center;">-and-</p> <p>Marian K. Schneider, Esq. mschneider@aclupa.org</p> <p style="text-align: center;">-and-</p> <p>Witold J. Walczak, Esq. (via remotely by Zoom) vwalczak@aclupa.org</p> <p style="text-align: center;">-and-</p> <p>Kate I. Steiker-Ginzberg, Esq. (via remotely by Zoom) ksteiker-ginzberg@aclupa.org</p> <p>AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA P.O. Box 60173 Philadelphia, PA 19102 215-592-1513</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	2
1	<p style="text-align: center;">TRANSCRIPT INDEX</p> <p style="text-align: center;">- - - -</p> <p>Examination by Ms. McKenzie ----- 5</p> <p>Examination by Ms. Gallagher ----- 142</p> <p>Examination by Ms. Berardinelli ----- 178</p> <p>Re-Examination by Ms. McKenzie ----- 203</p> <p>Re-Examination by Ms. Berardinelli ----- 214</p> <p>Re-Examination by Ms. Gallagher ----- 216</p> <p>Certificate ----- 222</p> <p>Errata Sheet ----- 223</p> <p style="text-align: center;">- - - -</p> <p style="text-align: center;">INDEX OF EXHIBITS</p> <p style="text-align: center;">- - - -</p> <p>Exhibit No. 1 ----- 51</p> <p>Exhibit No. 2 ----- 56</p> <p>Exhibit No. 3 ----- 62</p> <p>Exhibit No. 4 ----- 64</p> <p>Exhibit No. 5 ----- 64</p> <p>Exhibit No. 6 ----- 64</p> <p>Exhibit No. 7 ----- 95</p> <p>Exhibit No. 8 ----- 97</p> <p>Exhibit No. 9 ----- 119</p>	2

5

1
2 MELANIE OSTRANDER,
3 having been duly sworn,
4 was examined and testified as follows:
5 -----
6 MR. BERARDINELLI: Mimi, it's my
7 practice to reserve all objections except as
8 to the form of the question. That's standard
9 fare at least at this state, so I just wanted
10 to put that on the record and make sure you
11 guys are comfortable with that.
12 MS. McKENZIE: Sure, that's fine.
13 And what do you want to do then about reading
14 and signing given the fast turn-around? And
15 we're asking for a Sunday, two-day.
16 MR. BERARDINELLI: We will read and
17 sign, but I think we can use the transcript
18 except for common-sensical changes, right? We
19 both can say like: Look, she said day not
20 way, right? Something like that. I think we
21 can agree to use the nonsigned version. I'm
22 comfortable with that.
23 MS. McKENZIE: Thank you.
24 MR. BERARDINELLI: Sure.
25 -----

7

1 If at any time during the deposition
2 you realize you gave an incorrect answer,
3 of course you can go back and tell me that
4 you gave an incorrect answer and you want
5 to correct it.
6 **A. Okay.**
7 Q. Okay, so what is your current
8 title?
9 **A. I'm the elections director for**
10 **Washington County, Pennsylvania.**
11 Q. And for whom do you work?
12 **A. Washington County, so the**
13 **Washington County Commissioners and**
14 **specifically to the elections office, the**
15 **Board of Elections.**
16 Q. Okay, could you briefly tell me
17 your educational background?
18 **A. Yes. I have a bachelor's of**
19 **science from West Virginia University, and**
20 **I have a master's in public administration**
21 **from West Virginia University.**
22 Q. And how long have you been the
23 elections director for Washington County?
24 **A. Since February of 2019.**
25 Q. Prior to being the elections

6

1 EXAMINATION
2 -----
3 BY MS. McKENZIE:
4 Q. Ms. Ostrander, I'm Mimi McKenzie,
5 and I'm one of the lawyers representing
6 the Plaintiffs in this litigation. Have
7 you ever had your deposition taken before?
8 **A. No.**
9 Q. Okay, so just to go over a couple
10 of the basics, the court reporter is
11 taking down everything that we say, my
12 questions, your answers, so it's really
13 important that we not speak over one
14 another so she can get it all down.
15 Do you understand that you're under
16 oath?
17 **A. Yes.**
18 Q. And is there any reason today you
19 wouldn't be able to give full and complete
20 testimony?
21 **A. No.**
22 Q. Okay, if you don't understand a
23 question, you can tell me that you don't
24 understand the question. Otherwise, I'll
25 assume that you understand the question.

8

1 director, did you work in the elections
2 office?
3 **A. Yes. I started in May of 2017 as**
4 **the assistant director.**
5 Q. And is the election office the
6 proper way to refer to your office?
7 **A. Yes, that's acceptable.**
8 Q. Okay, prior to becoming the
9 assistant director of elections, did you
10 have experience in election
11 administration?
12 **A. Yes.**
13 Q. And where was that experience?
14 **A. When I was in my undergraduate as**
15 **well as my master's program, I worked**
16 **part-time in the Monongalia County clerk's**
17 **office in Morgantown, West Virginia, in**
18 **their election and voter registration**
19 **office.**
20 Q. What did you do to prepare for this
21 deposition today?
22 **A. I met with our attorney, Mr.**
23 **Berardinelli, so that he could go over the**
24 **protocol for the deposition since I've**
25 **never been through one before.**

9

1 Q. Did you speak with anyone else
 2 about today's deposition?
 3 A. No.
 4 Q. Did you review any documents in
 5 preparation for today's deposition?
 6 A. No.
 7 Q. So as the director of elections or
 8 the elections director --
 9 A. **Either is fine.**
 10 Q. -- to whom do you report?
 11 A. **The Board of Elections.**
 12 Q. Okay, what are the responsibilities
 13 of the Board of Elections?
 14 A. **They are to administer and oversee**
 15 **the elections in Washington County**
 16 **following the Pennsylvania Election Code.**
 17 Q. And when you say administer the
 18 election, can you elaborate on that a
 19 little more? What do you mean by
 20 administer?
 21 A. **There are set guidelines or**
 22 **statutes in the election code as to what**
 23 **the Board of Elections is, you know, their**
 24 **role in elections.**
 25 **So they are to carry out and**

11

1 A. **Yes.**
 2 Q. Is the Board of Elections
 3 responsible for processing mail-in and
 4 absentee ballots?
 5 A. **Yes.**
 6 Q. Who are the current commissioners
 7 of the Board of Elections?
 8 A. **The current commissioners because**
 9 **they're not on the ballot of on the Board**
 10 **of Elections right now are Nick Sherman,**
 11 **Electra Janis, and Larry Maggi.**
 12 Q. And how long have they been the
 13 commissioners?
 14 A. **So Nick Sherman, this is his second**
 15 **term. Electra Janis, this is her first**
 16 **time, and Larry Maggi has been there a**
 17 **long time, early 2000s. I don't recall**
 18 **how many terms he has served, but they**
 19 **took office for their current term in**
 20 **January of 2024.**
 21 Q. All three commissioners began their
 22 current term in January of 2024; is that
 23 correct?
 24 A. **That's correct.**
 25 Q. And how long is a term?

10

1 **administer the elections. They choose the**
 2 **voting equipment that we use in our county**
 3 **based off of the Secretary of State's**
 4 **recommendations. They make sure that the**
 5 **polls are properly staffed with poll**
 6 **workers and that voting is available for**
 7 **registered voters in our county.**
 8 Q. Is the Board of Elections
 9 responsible for the registration records
 10 of voters in Washington County?
 11 MR. BERARDINELLI: Object to the
 12 form, calls for a legal conclusion.
 13 MS. McKENZIE: I'm sorry.
 14 MR. BERARDINELLI: I objected to
 15 form, calls for a legal conclusion, but
 16 she can answer. Go ahead.
 17 A. **They are in charge as the election**
 18 **law outlines the election records in our**
 19 **county, yes.**
 20 BY MS. McKENZIE:
 21 Q. And does that include the
 22 registration records of voters?
 23 A. **Yes.**
 24 Q. And does it include their voting
 25 history?

12

1 A. **Four years.**
 2 Q. For the 2023 election, were there
 3 different commissioners?
 4 A. **There was a Board of Elections that**
 5 **was appointed by the President Judge**
 6 **because the commissioners were on the**
 7 **ballot.**
 8 Q. All three commissioners were on the
 9 ballot in 2023; is that correct?
 10 A. **The current commissioners, yes. At**
 11 **the time in 2023, one of the commissioners**
 12 **was retiring, so she served on the Board**
 13 **of Elections while she was still county**
 14 **commissioner because she was not on the**
 15 **ballot.**
 16 Q. As the elections director, can you
 17 describe your job responsibilities?
 18 A. **So my job is the point person under**
 19 **the Board of Elections. So the election**
 20 **code outlines the Board of Elections, our**
 21 **different job responsibilities and the**
 22 **statutes. My job is to be their liaison**
 23 **and carry out those responsibilities.**
 24 **So I am in charge of everything**
 25 **leading up to election day which would**

13

1 entail the making of the ballot, making
 2 sure that the voting equipment has
 3 properly been tested through logic and
 4 accuracy testing, processing voter
 5 registration applications, processing
 6 mail-in and absentee ballot applications,
 7 making sure the polls are staffed with
 8 proper poll workers.
 9 In the local election years which
 10 would be in odd years, we're responsible
 11 for providing the petitions for the
 12 candidates to circulate, and then they
 13 file those petitions in our office.
 14 Q. And to whom do you directly report?
 15 A. To the Board of Elections.
 16 Q. To the Board of Elections. Do you
 17 supervise the individuals who work in the
 18 elections office?
 19 A. Yes.
 20 Q. Okay, how many people work in the
 21 elections office?
 22 A. Five which includes myself.
 23 Q. That staff of five, has that number
 24 increased during the time you've been the
 25 elections director?

15

1 Q. Election technician.
 2 A. Yeah. That's the formal title that
 3 our HR has, but other counties, I know a
 4 lot of counties call them clerks or
 5 registrars. It's the same.
 6 Q. Okay, and what are the job
 7 responsibilities of the assistant director
 8 of elections?
 9 A. The assistant director, her main
 10 job during the elections is to work with
 11 the poll workers, so she is to do poll
 12 worker outreach, making sure that the
 13 polls are properly staffed, answering poll
 14 worker questions, doing the training for
 15 the poll workers.
 16 And then she assists me as well as
 17 the technicians when she's available, but
 18 her main responsibility during elections
 19 is poll workers. That is a full-time
 20 responsibility.
 21 Q. And the office manager, does the
 22 office manager have any involvement in the
 23 election process?
 24 A. I'm not sure.
 25 MR. BERARDINELLI: Object to the

14

1 A. No.
 2 Q. It was five in 2019, and it remains
 3 five today?
 4 A. Correct.
 5 Q. In the time period leading up to a
 6 primary election or to a general election,
 7 does your office add on additional workers
 8 or employees?
 9 A. We do. We work with a temporary
 10 staffing agency, and depending on the
 11 election, we have anywhere from 12 to 20
 12 temporary workers.
 13 Q. Going back to the four people whom
 14 you supervise in the office, what are
 15 their job titles?
 16 A. Okay, we have an assistant
 17 director, an office manager, and two --
 18 their titles are election technicians.
 19 They are more clerks. I think other
 20 counties would call them clerks. They
 21 input the registration applications, the
 22 mail-in ballot applications, as well as
 23 answer voters' phone calls.
 24 Q. And their title is election --
 25 A. Election technician.

16

1 form.
 2 BY MS. MCKENZIE:
 3 Q. What are the job responsibilities
 4 of the office manager?
 5 A. The office manager is to directly
 6 oversee the two technicians as well as
 7 some of the temporary employees that we
 8 have in addition to registering and
 9 processing absentee and mail-in ballot
 10 applications, voter registration
 11 applications, assisting voters who visit
 12 our office, phone calls.
 13 His additional duties are the direct
 14 supervision of the two technicians as well
 15 as overseeing the -- not all of the
 16 temporary employees but usually six of the
 17 temporary employees.
 18 Q. And the six temporary employees
 19 that the office manager oversees, what are
 20 their job responsibilities?
 21 A. It could be more. It's normally
 22 six, but it could be anywhere from six to
 23 ten depending on the election.
 24 We have in-office temps, temporary
 25 workers who assist over the volume of

17

1 **absentee and mail-in applications,**
 2 **processing those, as well as voter**
 3 **registration applications. Then we have**
 4 **anywhere from two to four temporary**
 5 **employees that work in our office.**
 6 **Then we have the additional -- we do**
 7 **our mail-in balloting in-house, so we**
 8 **insert the ballots into the envelopes and**
 9 **prepare them for mailing to the voters who**
 10 **have requested absentee and mail-in**
 11 **ballots. So he oversees those individuals**
 12 **as well.**
 13 Q. He being the office manager?
 14 **A. The office manager, correct.**
 15 Q. For the upcoming November election,
 16 how many temporary employees will you be
 17 bringing on?
 18 **A. I'm counting, sorry.**
 19 Q. No. Take your time.
 20 **A. At a minimum, 18, possibly the full**
 21 **20, but at the minimum right now, we're**
 22 **looking at 18.**
 23 Q. Okay, and of the 18, how many will
 24 be overseen by the office manager?
 25 **A. Ten.**

19

1 say ballots, I hate to use the word stuff
 2 because that's become such a negative
 3 word. We say insert, insert the ballots.
 4 You're stuffing the envelopes. There's no
 5 glamorous way to describe their duties.
 6 BY MS. MCKENZIE:
 7 Q. So what are the hours of operation
 8 for the election office?
 9 **A. We are open 9 to 4:30.**
 10 Q. And is that Monday?
 11 **A. I'm sorry, yes, Monday through**
 12 **Friday.**
 13 Q. Are there any additional hours
 14 during the weeks leading up to the
 15 election?
 16 **A. Not for the public. We, my staff**
 17 **and I, will be working but not for the**
 18 **public.**
 19 Q. Where does the funding come from
 20 for the Board of Elections and the
 21 election office?
 22 **A. The County, Washington County**
 23 **funds. We also receive some grant funds**
 24 **through the State and the Federal**
 25 **Government. There's -- they're not third-**

18

1 Q. And they will be doing the
 2 processing of mail-in and absentee
 3 ballots?
 4 **A. Yes. We'll have three in-office**
 5 **processing applications, and the other,**
 6 **the seven, will be actually doing the**
 7 **labeling of the envelope and inserting the**
 8 **appropriate ballot into the voter's**
 9 **envelope.**
 10 Q. And the three that are processing
 11 applications, what does that involve?
 12 **A. So they will be -- when**
 13 **registration forms are received in our**
 14 **office, whether they're for new**
 15 **registration or change of address, they**
 16 **will be reviewing the envelope -- or, I'm**
 17 **sorry, the application to make sure that**
 18 **the voter has completed it properly.**
 19 **And then we have the Department of**
 20 **State SURE system, and they will input the**
 21 **voters' information into the SURE system.**
 22 **There's no glamorous way to --**
 23 MS. SCHNEIDER: To say that,
 24 right?
 25 THE WITNESS: Yes. And when I

20

1 **party grants. They were federal grants**
 2 **that were denoted to the Department of**
 3 **State that were then issued to the**
 4 **Counties.**
 5 Q. And during your time as the
 6 elections director, has your annual budget
 7 increased?
 8 **A. Yes.**
 9 Q. Has your annual budget increased
 10 from 2023 to 2024?
 11 **A. Yes.**
 12 Q. Do you know by how much?
 13 **A. Our current budget that was**
 14 **approved is a little over 1.7 million. We**
 15 **were somewhere for 2023 between 1.5 and**
 16 **1.6 million. I don't know the exact**
 17 **figures.**
 18 Q. And does that budget include grant
 19 money that is being extended from either
 20 the state or federal government?
 21 **A. Yes.**
 22 Q. So that's the full amount of the
 23 budget?
 24 **A. Yes.**
 25 Q. How does the Board decide to

21	<p>1 allocate the annual budget? Is that a</p> <p>2 Board decision, or do you make</p> <p>3 recommendations?</p> <p>4 MR. BERARDINELLI: Object to the</p> <p>5 form.</p> <p>6 BY MS. McKENZIE:</p> <p>7 Q. When it comes to the annual budget,</p> <p>8 who's determining how the funds are used?</p> <p>9 A. The Board of Commissioners.</p> <p>10 Q. And do you make recommendations?</p> <p>11 A. Yes. We have a budget hearing with</p> <p>12 our finance department where, as the</p> <p>13 director, I provide my recommendations.</p> <p>14 Him and his staff, the finance director</p> <p>15 and his staff, take that into</p> <p>16 consideration, and they present the budget</p> <p>17 to the Board of Commissioners for approval</p> <p>18 and adoption.</p> <p>19 Q. You testified that your you budget</p> <p>20 has increased from 2023 to 2024. Actually</p> <p>21 let me start over.</p> <p>22 What's the fiscal year for the</p> <p>23 elections office?</p> <p>24 A. It's a calendar year.</p> <p>25 Q. Okay, and you testified that the</p>	22	<p>1 budget increased from 2023 to 2024. Those</p> <p>2 increased funds, what are they being</p> <p>3 allocated towards?</p> <p>4 MR. BERARDINELLI: Object to the</p> <p>5 form. You can answer if you know.</p> <p>6 A. One in particular was postage cost</p> <p>7 for mail-in ballots. With it being a</p> <p>8 federal election, comparing previous</p> <p>9 election years, the number of mail-in and</p> <p>10 absentee ballot requests will increase, so</p> <p>11 we allocated additional funds to cover the</p> <p>12 postage.</p> <p>13 BY MS. McKENZIE:</p> <p>14 Q. Did you allocate additional funds</p> <p>15 to cover the need for temporary workers to</p> <p>16 process those mail-in and absentee</p> <p>17 ballots?</p> <p>18 A. Yes. Our contracted services line</p> <p>19 item was also increased to account for</p> <p>20 additional temporary workers.</p> <p>21 Q. So you had mentioned previously in</p> <p>22 response to a question the SURE system.</p> <p>23 Can you describe how your office uses the</p> <p>24 SURE system? Do you use it -- sorry, let</p> <p>25 me start over.</p>
23	<p>1 Does your office use the SURE system</p> <p>2 for keeping track of voter registration?</p> <p>3 A. Yes.</p> <p>4 Q. And does your office use the SURE</p> <p>5 system to track mail-in and absentee</p> <p>6 ballots?</p> <p>7 A. Yes.</p> <p>8 Q. Does the SURE system track the</p> <p>9 sending of mail-in and absentee ballots?</p> <p>10 A. Yes.</p> <p>11 Q. Do you use the office to track the</p> <p>12 receipt of the mail-in and absentee</p> <p>13 ballots back to your office?</p> <p>14 MR. BERARDINELLI: Object to the</p> <p>15 form.</p> <p>16 A. Our office?</p> <p>17 MR. BERARDINELLI: I think you</p> <p>18 misspoke. That's all right.</p> <p>19 A. Do you mean the SURE system?</p> <p>20 BY MS. McKENZIE:</p> <p>21 Q. Yes. Does your office use the SURE</p> <p>22 system to track the receipt of mail-in and</p> <p>23 absentee ballots?</p> <p>24 A. Yes.</p> <p>25 Q. Does your office use the SURE</p>	24	<p>1 system to generate poll books?</p> <p>2 A. Yes.</p> <p>3 Q. Who in your office has the</p> <p>4 responsibility for generating the poll</p> <p>5 books used on election day?</p> <p>6 A. We have electronic poll books as</p> <p>7 well as using the paper for emergency</p> <p>8 back-up. So the technicians are</p> <p>9 responsible for printing those papers. I</p> <p>10 am responsible for the generation of the</p> <p>11 data for conversion for the electronic</p> <p>12 poll books.</p> <p>13 Q. And just to clarify, the voter</p> <p>14 registration, the tracking of mail ballots</p> <p>15 out and back in, the generating of poll</p> <p>16 books, the data that your office is</p> <p>17 inputting is only on behalf of Washington</p> <p>18 County voters; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. When a voter submits an application</p> <p>21 for a mail ballot, how does the elections</p> <p>22 office process that application? Let me</p> <p>23 ask it a better way.</p> <p>24 When the voter submits an</p> <p>25 application for a mail ballot, what are</p>

25

1 the steps that the office uses to process
 2 the application?
 3 **A. The application is first reviewed**
 4 **to ensure that the voter has completed all**
 5 **the required sections, name, address,**
 6 **birth date, if provided, either the last**
 7 **four of their social or a Pennsylvania**
 8 **driver's license number, and that the**
 9 **application has been signed by the voter.**
 10 **If everything has been filled out**
 11 **correctly, then you can compare it with**
 12 **the SURE system information by inputting**
 13 **the voter's name to bring up their record**
 14 **in the SURE system, and then from there,**
 15 **you would verify that their address**
 16 **matches, their birth date matches, their**
 17 **identification, either their last four of**
 18 **their social or driver's license number.**
 19 **From there, you would input the**
 20 **information, that they're requesting a**
 21 **mail-in or absentee ballot. It does**
 22 **verify through either the Social Security**
 23 **Administration or the DMV records that**
 24 **that identification number is correct for**
 25 **that voter, that their name matches, that**

27

1 **election, according to their party, label**
 2 **the envelopes, insert the ballot into the**
 3 **envelopes -- envelope along with the**
 4 **additional information that is required**
 5 **for the mail ballot package.**
 6 Q. What other additional information
 7 would be in the packet?
 8 **A. In addition to the ballot, there**
 9 **are two envelopes. One is the return**
 10 **envelope for the voter with the voter's**
 11 **declaration on it. You also have the**
 12 **secrecy envelope, and the Department of**
 13 **State issued instructions.**
 14 Q. Once the mailing packet is prepared
 15 and is ready to be sent out, is the date
 16 that your office sends out the mail packet
 17 tracked?
 18 **A. Yes, in the SURE system.**
 19 Q. Okay, and is that by keying in a
 20 date, or is it by scanning?
 21 **A. It's by the date that the labels**
 22 **were printed. If the labels were printed**
 23 **ahead of time, when we sent our first**
 24 **mail-in out, I'm able to update that**
 25 **address -- or, I'm sorry, update that date**

26

1 **the voter is not deceased.**
 2 **And then once that, it will issue**
 3 **them -- it will provide us a label to**
 4 **print which we can then use to issue the**
 5 **ballot.**
 6 Q. The process you just described,
 7 that is the current process for processing
 8 an application for a mail ballot?
 9 **A. Yes.**
 10 Q. Okay, was that process the same in
 11 2023?
 12 **A. Yes.**
 13 Q. You said that once your office
 14 takes all the appropriate verification
 15 steps, the SURE system provides a label
 16 for you to use on the ballot envelope; is
 17 that correct?
 18 **A. Yes.**
 19 Q. Okay, what happens next in the
 20 process with the mail-in or absentee
 21 ballot after you have the label?
 22 **A. The label is printed from the SURE**
 23 **system, and that enables us to pull an**
 24 **appropriate ballot according to their**
 25 **precinct and, if it was a primary**

28

1 **so that it's the correct, exact date that**
 2 **they were mailed.**
 3 Q. And you update that date in the
 4 SURE system?
 5 **A. Yes.**
 6 Q. And was that the same process for
 7 mailing out a ballot and tracking it in
 8 2023?
 9 **A. Yes.**
 10 Q. So when a voter returned a mail
 11 ballot or an absentee ballot -- and if I
 12 say mail ballot, I'm talking about both
 13 mail ballots and absentee ballots -- how
 14 can a voter return the mail -- in 2023,
 15 how could a voter return the ballot to the
 16 elections office?
 17 **A. They could either mail through the**
 18 **U.S. Postal Service or another service,**
 19 **mail the ballot to our office, or they**
 20 **could come in person and turn in their**
 21 **ballot. And it's only -- the voter can**
 22 **only return their own personal ballot in**
 23 **person.**
 24 Q. Does Washington County use drop
 25 boxes?

29

1 **A. No.**
 2 Q. Has Washington County ever used
 3 drop boxes?
 4 **A. No.**
 5 Q. So when mail ballots are returned
 6 to your office, how is the return date
 7 tracked?
 8 **A. They are first date stamped with**
 9 **our office date stamp. Once they're date**
 10 **stamped, they are then recorded in the**
 11 **SURE system on the voter's record.**
 12 Q. Okay, and the office date stamp, is
 13 that a physical stamp?
 14 **A. Yes.**
 15 Q. Where is that stamped on the
 16 envelope?
 17 **A. On the -- not the side with the**
 18 **declaration because there's not sufficient**
 19 **room so that it's prominent. We date**
 20 **stamp in the white space on the side of**
 21 **the envelope that has our return**
 22 **information, our office address, and the**
 23 **postage markings.**
 24 Q. Okay, and in 2023 when you were
 25 tracking the receipt of ballots in the

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1 technicians or the office manager or the
 2 temporary employees were scanning the bar
 3 code, they could see whether the envelope
 4 was signed or dated?
 5 MR. BERARDINELLI: Object to the
 6 form. You can answer.
 7 MS. GALLAGHER: Join.
 8 THE WITNESS: I can answer?
 9 MR. BERARDINELLI: Yeah.
 10 **A. Yes, they visually can see the**
 11 **voter's signature and date, yes.**
 12 MR. BERARDINELLI: One second,
 13 another stipulation I typically do is an
 14 objection for one party serves as an
 15 objection for everybody. Are you
 16 comfortable with that so all three of us
 17 don't all have to lodge the same objection
 18 each time?
 19 In other words, I just objected
 20 to
 21 form. That will count for all three of
 22 us.
 23 MS. GALLAGHER: Would you like
 24 to explain that I'll be asking your
 25 questions?

30

1 SURE system, was that through scanning or
 2 keying in of data?
 3 **A. There's a label on the declarations**
 4 **side of the envelope that contains the**
 5 **voter's name and address as well as a bar**
 6 **code. That bar code is scanned into the**
 7 **SURE system. We have a handheld scanner**
 8 **that we use to scan the bar code, and it**
 9 **will record on the voter's record that**
 10 **their ballot was returned.**
 11 Q. And mail ballots in 2023, were they
 12 scanned the same day they arrived at your
 13 office?
 14 **A. Yes. We don't leave until they've**
 15 **been scanned.**
 16 Q. Where is the bar code on the return
 17 envelope in relation to the voter
 18 declaration?
 19 **A. It's on the same side as the voter**
 20 **declaration. I believe the sticker -- the**
 21 **label sticker is right below where the**
 22 **voter would sign and date, and that label**
 23 **contains their name, address, and the bar**
 24 **code.**
 25 Q. Okay, so in 2023 when one of the

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1 MS. BENOIT: Sure. She's going
 2 to be asking questions on behalf of us.
 3 MS. GALLAGHER: For expediency's
 4 sake, although the PAGOP has separate
 5 counsel here, I will be conducting the
 6 examination and lodging objections on
 7 behalf of both entities to avoid
 8 duplication.
 9 MS. McKENZIE: And assuming that
 10 you are raising the same objections to
 11 form, you don't need to say it twice.
 12 MR. BERARDINELLI: Great. Thank
 13 you.
 14 MS. McKENZIE: If for some
 15 reason you are asserting a different
 16 objection, please let me know.
 17 MR. BERARDINELLI: I appreciate
 18 it.
 19 MS. McKENZIE: Can you read back
 20 the last question?
 21 ----
 22 (The record was read by the reporter.)
 23 ----
 24 BY MS. McKENZIE:
 25 Q. In 2023 if the declaration envelope

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1 was missing a signature or a date or had
 2 an incorrect date, was there a code
 3 entered into the SURE system?
 4 MR. BERARDINELLI: Object to the
 5 form, compound. You can answer.
 6 **A. Yes. We used the SURE code's**
 7 **cancel, no signature or cancel, no date.**
 8 BY MS. McKENZIE:
 9 Q. Was there also a SURE code for
 10 cancel, incorrect date in 2023?
 11 **A. I can't recall. They have changed**
 12 **the codes quite often that I can't recall**
 13 **if that one was available in 2023.**
 14 Q. Okay, in the process for -- sorry,
 15 let me start over.
 16 When in the process of the mail
 17 ballot in 2023 was that code entered?
 18 MR. BERARDINELLI: Object to the
 19 form. You can answer if you understand.
 20 **A. When the ballot was scanned as**
 21 **being received in the system, instead of**
 22 **choosing recorded, ballot returned,**
 23 **canceled, no date, or canceled, no**
 24 **signature was selected.**
 25 BY MS. McKENZIE:

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1 your office decide which code to select?
 2 **A. If a signature was missing, it**
 3 **would be no signature. If the date was**
 4 **missing, it would be canceled, no date.**
 5 **If it was incorrect, my memory -- I**
 6 **don't believe there was an incorrect date**
 7 **in 2023, so it would have been canceled,**
 8 **no date as that is the best option that**
 9 **the Department of State provided us in the**
 10 **SURE system. And if it was correctly --**
 11 **if the voter's signature and full date**
 12 **were present, recorded, ballot returned.**
 13 Q. In 2023 if a ballot was returned
 14 without a secrecy envelope, did your
 15 office have any way to determine that?
 16 MR. BERARDINELLI: Object to the
 17 form. You can answer.
 18 **A. Not until the prec canvassing when**
 19 **the ballots were by law opened.**
 20 BY MS. McKENZIE:
 21 Q. So your office did not weigh
 22 ballots on a scale to see if there was a
 23 secrecy envelope?
 24 **A. No.**
 25 Q. Okay, and your office did not take

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1 Q. So the scanning of the ballot and
 2 the choosing of a code in 2023 happened
 3 all in one -- happened simultaneously?
 4 MR. BERARDINELLI: Object to the
 5 form.
 6 BY MS. McKENZIE:
 7 Q. I'll rephrase that. So in 2023,
 8 the scanning of the ballot and the
 9 selection of a code happened in the same
 10 sitting?
 11 **A. It happened on the same day that**
 12 **the ballot was received through either in-**
 13 **person delivery by the voter or mail**
 14 **delivery.**
 15 Q. In 2023, there were three code
 16 options your office was using, received;
 17 cancel, no signature; cancel, no date; is
 18 that correct?
 19 MR. BERARDINELLI: Object to the
 20 form. You can answer.
 21 **A. From my memory, yes, because I**
 22 **can't recall if there was a canceled,**
 23 **incorrect date option in 2023.**
 24 BY MS. McKENZIE:
 25 Q. Okay, how would you -- how would

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1 any other steps to determine before the
 2 prec canvassing if there was or was not a
 3 secrecy envelope?
 4 **A. No.**
 5 Q. So in 2023 during that scanning and
 6 selection of a code, your office did not
 7 use a code canceled, no secrecy envelope?
 8 **A. Correct.**
 9 Q. Now, one of the code options you
 10 testified about in 2023 was canceled,
 11 undated?
 12 **A. Undated. I can't recall the exact**
 13 **wording, but that was the essence of the**
 14 **code is that it was -- I believe it was**
 15 **canceled, no date.**
 16 Q. Canceled, no date, okay. And in
 17 2023, what did no date mean?
 18 MR. BERARDINELLI: Object to the
 19 form.
 20 MS. GALLAGHER: Objection.
 21 **A. It meant that their date was**
 22 **missing from the declaration, or as my**
 23 **memory serves me, it also meant that it**
 24 **was incorrectly dated. As I said, I can't**
 25 **recall, and I do not believe that the**

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1 **incorrect-date option was available in**
 2 **2023?**
 3 BY MS. McKENZIE:
 4 Q. In choosing the canceled, no date
 5 code in SURE, how would your office
 6 determine if a date was incorrect?
 7 **A. It would be between the date that**
 8 **the ballots were mailed out until election**
 9 **day, and that's the date that we began**
 10 **mailing out, our office, the ballots.**
 11 Q. So if date on the declaration
 12 envelope was between when the ballot was
 13 mailed out and election day, that would be
 14 a correct date?
 15 MR. BERARDINELLI: Object to the
 16 form. You can answer.
 17 **A. Yes.**
 18 BY MS. McKENZIE:
 19 Q. If it fell outside the range of
 20 when the ballots were mailed out and
 21 election day, that ballot would be marked
 22 canceled, no date?
 23 **A. Yes.**
 24 Q. When your office was looking at a
 25 ballot in -- I'll start over.

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1 voter had an email on record, what would
 2 they receive?
 3 MR. BERARDINELLI: Object to
 4 form. You can answer.
 5 **A. The Department of State would send**
 6 **the voter an email based upon the code**
 7 **that was selected by our staff in the SURE**
 8 **system.**
 9 BY MS. McKENZIE:
 10 Q. And what would that email tell the
 11 voter?
 12 **A. For which code?**
 13 Q. The canceled, no date code.
 14 **A. That their ballot was canceled**
 15 **because it did not contain a date, and**
 16 **those emails came from the Department of**
 17 **State.**
 18 Q. Would the email provide any other
 19 instruction to the voter in 2023?
 20 MR. BERARDINELLI: Object to
 21 form.
 22 **A. I can't recall as we did not draft**
 23 **those emails nor had any input in drafting**
 24 **those emails, so I can't recall the exact**
 25 **language.**

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1 When your office was looking at a
 2 declaration envelope in 2023, how long
 3 would it take on average to determine if
 4 the date was correct?
 5 MR. BERARDINELLI: Object to the
 6 form. You can answer if you can.
 7 **A. I don't know an exact time, but it**
 8 **did not -- within seconds, 10 to 30 second**
 9 **or less.**
 10 BY MS. McKENZIE:
 11 Q. And how long would it take to
 12 determine if a date was present at all?
 13 **A. Again, I don't know the exact time**
 14 **but within 10 to 30 seconds.**
 15 Q. Okay, once that ballot is scanned
 16 in and a SURE code was selected in 2023,
 17 what would your office do with the ballots
 18 that had either a missing date or an
 19 incorrect date?
 20 **A. Those ballots were segregated, but**
 21 **they were still in the same locked, secure**
 22 **area as the ballots that contained, you**
 23 **know, correctly completed declarations.**
 24 Q. When the canceled, no date code was
 25 entered into the SURE system in 2023, if a

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1 BY MS. McKENZIE:
 2 Q. In 2023, did the Board of Elections
 3 allow a voter to come to the Board of
 4 Elections and either fix that date or
 5 request a new ballot?
 6 **A. The Board in 2023, if the voter's**
 7 **ballot was canceled for a no-date issue,**
 8 **the voter had to come in person to the**
 9 **Board of Elections office, and a new**
 10 **ballot with new declaration envelope was**
 11 **issued.**
 12 Q. Okay, in 2023 if a voter's ballot
 13 was canceled for the no-date issue and
 14 they weren't able to get to the Board of
 15 Elections prior to election day, could
 16 they vote a provisional ballot at the
 17 polling place on election day?
 18 **A. In 2023, the Board of Elections did**
 19 **allow voters to vote a provisional, yes.**
 20 Q. You also testified that in 2023
 21 there was a code for canceled, no
 22 signature; is that correct?
 23 **A. That is correct.**
 24 Q. When your office was scanning a
 25 mail-in or absentee ballot, how would they

<p style="text-align: right;">41</p> <p>1 determine if there was a signature present 2 or not present? 3 A. Can you repeat that? 4 Q. When your office was scanning a 5 ballot, how would they determine if a 6 signature was present or not present? 7 A. On the declaration envelope? 8 Q. Ah-huh. 9 A. By examining it visually. 10 Q. Was that an examination that, 11 similar to the date, took a matter of 12 seconds? 13 A. Yes. 14 Q. If a ballot was -- if the 15 declaration envelope was missing a 16 signature in 2023, what would your office 17 do with that ballot? 18 A. The ballot was scanned in the SURE 19 system, and the canceled, no signature 20 code was selected. That ballot was also 21 placed in the locked room with the other 22 ballots, but it was segregated from the 23 ballots that contained dates and 24 signatures. 25 Q. And after your office selected a</p>	<p style="text-align: right;">42</p> <p>1 canceled, no signature code in 2023, what 2 would the voter receive if they had an 3 email on file? 4 MR. BERARDINELLI: Object to 5 form. You can answer. 6 A. The voter would receive an email 7 generated from the Department of State 8 informing them that their ballot was 9 canceled because it lacked a signature. 10 But I can't recall the exact wording. 11 BY MS. McKENZIE: 12 Q. Do you recall if that email 13 provided any additional instructions to 14 the voter whose ballot was missing a 15 signature? 16 A. Again, I can't recall as those 17 emails were drafted by the Department of 18 State and the County. We did not have any 19 input in the content of the email. 20 Q. And in 2023, did your office -- let 21 me start over. 22 In 2023, did the Board of Elections 23 allow voters whose ballots were missing a 24 signature to come into the Board of 25 Elections and sign their declaration</p>
<p style="text-align: right;">43</p> <p>1 envelope? 2 A. Yes. The voter could sign the 3 original declaration envelope that was 4 missing the signature, and then that 5 ballot, the code would be changed in the 6 SURE system to recorded, ballot returned. 7 Q. In 2023, did your office call 8 voters and let them know that their ballot 9 was either missing a signature or a date 10 or had an incorrect date? 11 A. If there was not an email on the 12 voter's record, then we contacted them 13 with one phone call in 2023. 14 Q. If a voter's ballot in 2023 was 15 missing a signature or a date, did your 16 office send a letter by mail to voters to 17 let them know? 18 A. No. 19 Q. In 2023 in the general election, 20 how many voters made these types of errors 21 that we've been talking about, a missing 22 signature, a missing date, an incorrect 23 date on their declaration envelope? 24 MR. BERARDINELLI: Object to 25 form.</p>	<p style="text-align: right;">44</p> <p>1 A. I don't recall. 2 BY MS. McKENZIE: 3 Q. A news article about a Board of 4 Elections meeting in 2024 reported that in 5 2023 there were -- you know what? You can 6 scratch that question. 7 In 2023 in the poll books that were 8 generated for the election, what would the 9 poll books reflect about a voter who 10 returned a mail ballot that had a missing 11 signature or a missing date or an 12 incorrect date? 13 MR. BERARDINELLI: Object to 14 form. 15 A. It would -- if the voter corrected 16 the issue, whether it was a signature or 17 date, then it would say ballot returned. 18 If the voter did not correct the issue and 19 the ballot was marked in the SURE system 20 as canceled, then the poll book would say 21 that a ballot was issued to the voter. 22 BY MS. McKENZIE: 23 Q. Would the poll book reflect that 24 the ballot was canceled? 25 A. No.</p>

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1 Q. If a voter in the poll book is
 2 shown as in 2023 ballot issued and they
 3 came to their polling place on election
 4 day, would they be given the opportunity
 5 to cast a provisional ballot?
 6 MR. BERARDINELLI: Object to
 7 form. You can answer.
 8 **A. If the poll book said that their**
 9 **ballot was issued -- if the poll book said**
 10 **that by voter's name in the poll book that**
 11 **a ballot was issued and the voter was not**
 12 **able to surrender their ballot and**
 13 **declaration envelope, then the only option**
 14 **was a provisional ballot.**
 15 BY MS. McKENZIE:
 16 Q. In 2023 in the elections that took
 17 place that year, were there any Washington
 18 County voters who came to the polls and
 19 voted a provisional ballot?
 20 **A. Yes.**
 21 Q. Do you know, were any of those
 22 provisional ballots by voters who had
 23 attempted to vote by mail but returned a
 24 ballot without a signature or a date?
 25 **A. Possibly, but I can't recall.**

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1 MS. McKENZIE: Sure. I'll be
 2 clear if it's something like that.
 3 BY MS. McKENZIE:
 4 Q. But for the declaration envelopes
 5 that had one of those three disqualifying
 6 errors, you had testified that they were
 7 segregated --
 8 MR. BERARDINELLI: In 2023?
 9 BY MS. McKENZIE:
 10 Q. -- in 2023, and where were they
 11 stored?
 12 **A. They were stored in our -- what we**
 13 **refer to as our mail ballot room. And it**
 14 **is a separate room from the main elections**
 15 **office but still on the same floor.**
 16 **It's separated by a hallway, and**
 17 **they were stored in that room which is a**
 18 **separate lock than the lock for the**
 19 **elections office, and that room has**
 20 **security cameras.**
 21 **And the reason for the**
 22 **differentiation between our office and**
 23 **that room is that the housekeeping is not**
 24 **permitted in the mail ballot room which is**
 25 **why it's a different lock and separate**

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1 MS. McKENZIE: Why don't we take
 2 a short break.
 3 MR. BERARDINELLI: Good. I was
 4 just going to ask for one.
 5 MS. McKENZIE: And then we'll
 6 resume.
 7 ----
 8 (There was a recess in the proceedings.)
 9 ----
 10 BY MS. McKENZIE:
 11 Q. So you had testified that ballots
 12 that had a declaration envelope that were
 13 missing a date or signature or had an
 14 incorrect date -- I'm just going to call
 15 them going forward a disqualifying error
 16 so that I don't have to repeat the three
 17 errors each time making for very long-
 18 winded questions, and we'll agree that the
 19 three errors are a missing date, an
 20 incorrect date, or a missing signature.
 21 MR. BERARDINELLI: There may be
 22 circumstances where they're treated
 23 differently, though, because I think she's
 24 already testified, for example, that
 25 someone could sign if --

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1 **from the main election office.**
 2 Q. And in 2023, all mail ballots were
 3 stored in the mail ballot room?
 4 **A. Yes.**
 5 Q. But the ballots that had a
 6 disqualifying error were kept separate
 7 from the ballots that did not have any
 8 disqualifying errors; is that correct?
 9 **A. In 2023, yes. They were in the**
 10 **same room, but they were not in the same**
 11 **container as the ballots with signatures**
 12 **and dates.**
 13 Q. The ballots that were missing
 14 signatures or dates on their declaration
 15 envelope, were they separated by precinct?
 16 **A. Yes. The ballots that were missing**
 17 **dates and signatures were in their own**
 18 **separate bin and filed alphabetically by**
 19 **precinct name.**
 20 MS. SCHNEIDER: I'm sorry, I
 21 didn't hear you. Did you say filed
 22 alphabetically by precinct name?
 23 THE WITNESS: By precinct name,
 24 by Precinct A, Precinct B.
 25 BY MS. McKENZIE:

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1 Q. In 2023, why did your office choose
 2 to use the canceled codes when processing
 3 mail-in ballots?
 4 **A. The Board of Elections in 2023**
 5 **voted at their meeting on the policy that**
 6 **our office would follow for mail ballots**
 7 **that were not signed and dated, and they**
 8 **instructed us as to which codes to use and**
 9 **how to handle ballots that were missing**
 10 **dates or signatures, the Board of**
 11 **Elections in 2023.**
 12 MR. BERARDINELLI: I'm sorry,
 13 what was the end?
 14 THE WITNESS: I said they, so
 15 the Board of Elections in 2023.
 16 BY MS. McKENZIE:
 17 Q. And what was the Board of
 18 Elections's reasoning for using the
 19 canceled codes?
 20 MR. BERARDINELLI: Object to
 21 form, if you know.
 22 **A. I don't know their particular**
 23 **reasons, but out of what was offered, they**
 24 **voted for us to use the canceled codes and**
 25 **gave us instructions as to how to handle**

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1 **For example, there was a canceled -- there**
 2 **is a canceled, deceased option. So there**
 3 **are other codes available, but I can't**
 4 **recall exactly the specific wording of**
 5 **each code.**
 6 BY MS. McKENZIE:
 7 Q. For a living voter in 2023 who
 8 returned a mail ballot with a
 9 disqualifying error, what were your
 10 options in SURE for coding?
 11 MR. BERARDINELLI: Object to
 12 form, asked and answered. You can answer.
 13 **A. Canceled, no signature and**
 14 **canceled, no date. As I said before, I**
 15 **don't recall if the canceled, incorrect**
 16 **date option was available in 2023.**
 17 MS. McKENZIE: I want to mark an
 18 exhibit, Ostrander 1.
 19 ----
 20 (Exhibit No. 1 marked for identification.)
 21 ----
 22 BY MS. McKENZIE:
 23 Q. Ms. Ostrander, I'm showing you a
 24 document that's been marked Ostrander 1.
 25 Do you recognize this document?

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1 **no signature versus no date.**
 2 BY MS. McKENZIE:
 3 Q. For a mail ballot that was returned
 4 on time that was missing a date or a
 5 signature in 2023, what were the other
 6 code options?
 7 **A. Can you repeat that?**
 8 Q. If a mail ballot was returned in
 9 2023 without a date, without a signature,
 10 or any --
 11 MR. BERARDINELLI: Disqualifying
 12 error?
 13 BY MS. McKENZIE:
 14 Q. I'm breaking my own definitions.
 15 If a mail ballot was returned in 2023 with
 16 a disqualifying error, what was the
 17 election office's code options in SURE?
 18 MR. BERARDINELLI: Object to
 19 form. You can answer if you understand.
 20 **A. I don't recall all the -- there are**
 21 **other code options in SURE that the**
 22 **Department of State had in 2023. I don't**
 23 **recall every single one.**
 24 **There were options other than no**
 25 **date, no signature, and ballot returned.**

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1 **A. I do.**
 2 Q. And can you please identify it?
 3 **A. These are the approved minutes from**
 4 **the Board of Elections meeting on March**
 5 **12, 2024.**
 6 Q. I want to direct your attention to
 7 the middle of Page 1 of the document under
 8 election director comments, and the
 9 minutes state that: The procedure for the
 10 handling of absentee and mail-in ballot
 11 envelopes received as incomplete needs to
 12 be decided. Ms. Ostrander described the
 13 options available, and the Board will vote
 14 at the next meeting.
 15 How did that discussion end up on
 16 the agenda for the March 12, 2024 Board of
 17 Elections meeting?
 18 **A. I placed it on the agenda.**
 19 Q. Okay, and why did you place that
 20 item on the agenda?
 21 **A. With each new election in light of**
 22 **court -- new court rulings and new**
 23 **guidance from the Department of State and**
 24 **the Board of Elections contained new**
 25 **members because of the county**

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1 commissioner's election, it's appropriate
 2 to review and decide if there was going to
 3 be the procedure for mail-in and absentee
 4 ballots.
 5 Q. Prior to placing this item on the
 6 agenda for the March 12, 2024 board
 7 meeting, did you have any discussions with
 8 any of the three commissioners?
 9 MR. BERARDINELLI: About this?
 10 MS. McKENZIE: About placing it
 11 on the agenda.
 12 MR. BERARDINELLI: Thank you.
 13 A. I emailed the three commissioners
 14 who are the Board of Election members. On
 15 that email, I also copied our county
 16 solicitor who by election law is the Board
 17 of Elections solicitor and our chief of
 18 staff who is the -- he serves as a county
 19 administrator in between the directors and
 20 the commissioners.
 21 We're a little different than other
 22 offices since I have a Board of Elections
 23 as well, but for -- so everyone was aware,
 24 I emailed the five individuals and told
 25 them that I was placing -- that we needed

55

1 just trying to recall everything. There's
 2 so many.
 3 Q. You also said that you attached new
 4 guidance from the Department of State.
 5 What was the topic of that guidance?
 6 A. The Department of State issued
 7 guidance for examining absentee and mail-
 8 in ballot declaration envelopes.
 9 Q. At the Board meeting on March 12th,
 10 what options did you describe for the
 11 Board for handling absentee and mail-in
 12 ballots that had disqualifying errors?
 13 A. That the Board -- there was a court
 14 ruling that affirmed in -- I believe it
 15 was Ball V. Chapman that it was up to the
 16 County Board of Elections to decide curing
 17 policies, so they were to decide if -- for
 18 Washington County in 2024, the Board of
 19 Elections was to decide was Washington
 20 County offering curing, a curing for the
 21 mail-in ballots received with a
 22 disqualifying error, or a not curing
 23 policy for the disqualifying error --
 24 mail-in ballots received with
 25 disqualifying errors and then also the

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1 to discuss the procedure for handling
 2 absentee and mail-in ballots for the
 3 upcoming 2024 primary.
 4 In that email, I copied the -- I
 5 attached the Third Circuit Court ruling
 6 and the new guidance that we had received
 7 from the Department of State so they could
 8 review it and, if they had any questions,
 9 we could discuss it at the Board of
 10 Elections meeting.
 11 BY MS. McKENZIE:
 12 Q. What Third Circuit Court ruling are
 13 you referring to that you attached?
 14 A. It was -- forgive me. Because
 15 there have been so many, I can't recall
 16 all of the parties involved, but I do
 17 believe it was with the ACLU and the
 18 NAACP.
 19 And I know it was the Secretary of
 20 Pennsylvania, the Secretary of the
 21 Commonwealth, and I believe each
 22 individual county Board of Elections was
 23 named as a defendant in it as well, I
 24 think, on whether the date on the
 25 declaration envelope was required. I'm

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1 various codes that were offered by the
 2 Department of State in the SURE system as
 3 the Department of State in 2024 updated
 4 and provided new code options in the SURE
 5 system.
 6 MS. McKENZIE: I'd like to mark
 7 this document Ostrander 2.
 8 ----
 9 (Exhibit No. 2 marked for identification.)
 10 ----
 11 MS. GALLAGHER: Is this from
 12 Genzer?
 13 MS. McKENZIE: It is. David,
 14 this marking on the bottom comes from a
 15 different lawsuit.
 16 MR. BERARDINELLI: Okay, just so
 17 the records notes it.
 18 MS. GALLAGHER: That's what I
 19 wanted to know.
 20 ----
 21 (The record was read by the reporter.)
 22 ----
 23 BY MS. McKENZIE:
 24 Q. Ms. Ostrander, I'm showing you a
 25 document that's marked Ostrander 2. Have

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1 you seen this document before?
 2 **A. I have.**
 3 Q. Okay, and can you identify
 4 document?
 5 **A. This is a document that was**
 6 **provided to the counties by the Department**
 7 **of State in reference to the SURE system**
 8 **and changes for 2024 for mail ballots.**
 9 Q. And when you testified just a few
 10 minutes ago about changes in the SURE
 11 codes, are these the types of changes that
 12 you're referring to?
 13 **A. Yes, this is what I was referring**
 14 **to, correct.**
 15 Q. So in explaining to the Board about
 16 the code options available in 2024, what
 17 did you tell them at the March meeting?
 18 **A. I explained to them, to the Board**
 19 **of Elections, if they wanted to allow**
 20 **curing there were various codes that the**
 21 **Department of State issued, updated in the**
 22 **SURE system, and I explained the different**
 23 **codes that can be used. If they wanted to**
 24 **not cure, I also explained what codes**
 25 **could then be used in the SURE system.**

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1 Q. And did you inform the Board of
 2 Elections at the March 2024 meeting that
 3 there was a canceled, no signature code
 4 available?
 5 **A. Yes.**
 6 Q. Did you inform the Department --
 7 sorry, I'll start over.
 8 Did you inform the Board of
 9 Elections that there were pending codes
 10 available for ballots that had
 11 disqualifying errors?
 12 **A. Yes.**
 13 Q. And would you have informed the
 14 Board of Elections that there was a
 15 pending, incorrect date code available?
 16 **A. Yes.**
 17 Q. And did you inform the department
 18 -- I'm sorry. Did you inform the Board of
 19 Elections that there was a pending, no
 20 date code available?
 21 **A. Yes.**
 22 Q. And did you inform the Board of
 23 Elections that there was a pending, no
 24 signature code available to your office?
 25 **A. Yes.**

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1 Q. Was there any discussion at that
 2 board meeting about letting voters know if
 3 there was a disqualifying error on their
 4 declaration envelope?
 5 **A. Yes. The Board asked when these**
 6 **codes are used how would the voter be**
 7 **notified, and I explained that the**
 8 **Department of State -- depending on the**
 9 **code chosen, the Department of State**
 10 **issues an email to the voter if there is**
 11 **an email on file.**
 12 Q. Did you lay out for the Board at
 13 the March 12th meeting the availability of
 14 the canceled, no date code?
 15 MR. BERARDINELLI: Object to
 16 form. You can answer if you understand.
 17 **A. Yes, I informed the Board that the**
 18 **Department of State has a code available**
 19 **that says canceled, no date.**
 20 BY MS. McKENZIE:
 21 Q. And at the March 12th meeting, did
 22 you inform the Board of Elections that
 23 there was a canceled, incorrect date code
 24 available?
 25 **A. Yes.**

60

1 Q. At the March meeting with the Board
 2 of Elections, did you explain the
 3 different types of notice that would be
 4 sent to the voter if you entered each of
 5 those codes?
 6 **A. I didn't go over with the Board the**
 7 **exact verbiage in each email as there's**
 8 **different emails the voter would receive,**
 9 **but I summarized and told the Board of**
 10 **Elections that, if an email address was on**
 11 **file, the voter would receive an email**
 12 **from the Department of State informing**
 13 **them of which error they made on their**
 14 **ballot, declaration envelope.**
 15 Q. I think I forgot to ask this. Did
 16 you also inform the Board of Elections
 17 that there was a record ballot returned
 18 code available?
 19 **A. Yes.**
 20 Q. When you summarized for the Board
 21 the different types of emails that would
 22 be sent to the voter depending on which
 23 code was entered, what did you tell the
 24 Board about the canceled codes?
 25 **A. I informed the Board that there**

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1 **were cancel codes available in the SURE**
 2 **system provided by the Department of State**
 3 **that we could -- that the Board of**
 4 **Elections could instruct my office to use**
 5 **depending on how they wanted us to handle**
 6 **ballots received with disqualifying errors**
 7 **on the declaration envelope.**
 8 MR. BERARDINELLI: Can you read
 9 that answer back? I'm sorry.
 10 -----
 11 (The record was read by the reporter.)
 12 -----
 13 BY MS. McKENZIE:
 14 Q. And what did you tell the Board of
 15 Elections about the email a voter would
 16 receive if the Board of Elections
 17 instructed you to enter a pending code for
 18 a ballot that had a disqualifying error?
 19 **A. I informed the Board that they**
 20 **would receive an email from the Department**
 21 **of State that would inform the voter there**
 22 **was an error and depending on which code**
 23 **which error was described on their**
 24 **declaration envelope.**
 25 Q. And what did you tell the Board of

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1 Q. Ms. Ostrander, I'm showing you a
 2 document that's been marked Ostrander 3.
 3 **A. Yes.**
 4 Q. Have you seen this document before?
 5 **A. I have.**
 6 Q. And what is this document?
 7 **A. These are the approved Board of**
 8 **Election minutes from April 11, 2024.**
 9 **They're just not printed on the fancy**
 10 **minute paper like the others and signed by**
 11 **the chief clerk, but they were approved at**
 12 **the -- they were approved by the Board of**
 13 **Elections.**
 14 Q. I want to direct your attention to
 15 the second page of the document which is
 16 the first page of the minutes. In the
 17 middle of the page under the Election
 18 Director Comments, the second sentence
 19 says: Ms. Ostrander provided an example
 20 of the email voters received after their
 21 absentee or mail-in ballot had been
 22 received by the elections office.
 23 **A. Yes.**
 24 Q. Did you at that point actually
 25 physically present a copy of a sample

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1 Elections about the email that a voter
 2 would receive if the Board of Elections
 3 instructed your office to enter a record
 4 ballot returned code?
 5 **A. If the ballot returned, I informed**
 6 **the Board of Elections that they would**
 7 **receive an email from the Department of**
 8 **State informing them, the voter, that**
 9 **their ballot was received in our office.**
 10 Q. At the March 12 meeting of the
 11 Board of Elections, did you offer a
 12 recommendation to the Board about which
 13 code option to choose?
 14 **A. I did not.**
 15 Q. Did you offer a recommendation as
 16 to the Board's options for how to handle
 17 declaration envelopes that had a
 18 disqualifying error?
 19 **A. I did not.**
 20 MS. McKENZIE: Let's see, I want
 21 to mark this Ostrander 3.
 22 -----
 23 (Exhibit No. 3 marked for identification.)
 24 -----
 25 BY MS. McKENZIE:

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1 email to the Board of Elections?
 2 **A. I did.**
 3 MS. McKENZIE: Okay, I want to
 4 mark these next documents. I guess they
 5 would be 4, 5, and 6, Ostrander 4, 5, and
 6 6.
 7 ----- (Exhibit Nos. 4, 5,
 8 and 6 marked for
 9 identification.)
 10 -----
 11 BY MS. McKENZIE:
 12 Q. The document that's been marked
 13 Ostrander 4 is a copy of an email received
 14 by Plaintiff Jeffrey Marks. Ostrander 5
 15 is a document of an email received by
 16 Sandra Macioce, and Ostrander 6 is an
 17 email received by Plaintiff Kenneth
 18 Elliott.
 19 Ms. Ostrander, the documents that
 20 have been marked 4, 5, and 6, the text of
 21 those emails, is that the same text that
 22 you would have shown to the Board of
 23 Elections at the April 11th meeting where
 24 you provided examples of the emails voters
 25 received after their absentee or mail-in

65

1 ballots had been received?
 2 MR. BERARDINELLI: Object to
 3 form.
 4 **A. It is.**
 5 BY MS. McKENZIE:
 6 Q. So in 2024 for the April primary,
 7 if a voter returned a ballot that had one
 8 of these disqualifying errors, is
 9 Ostrander 4, 5, and 6 an example of the
 10 email that they would have received back?
 11 MR. BERARDINELLI: Object to
 12 form.
 13 **A. If the voter had a disqualifying**
 14 **error, the email would have had different**
 15 **verbiage than the emails presented as**
 16 **Exhibits 4, 5, and 6.**
 17 BY MS. McKENZIE:
 18 Q. In 2024?
 19 **A. 2024. You said -- these are the**
 20 **received. These are your-ballot-has-been-**
 21 **received emails. The emails for the**
 22 **disqualifying errors. Are you referring**
 23 **to what the SURE codes are, or are you**
 24 **saying the practice? I'm sorry, I didn't**
 25 **understand the question.**

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1 received return code that is entered by
 2 your office?
 3 **A. Yes, depending on the code -- the**
 4 **SURE code. Depending on the SURE code that**
 5 **my office was instructed by the Board of**
 6 **Elections to use would have determined**
 7 **which email was generated to the voter.**
 8 **Is that what you meant? Yeah.**
 9 Q. If a voter returned a mail-in
 10 ballot in April of 2024 and there were no
 11 disqualifying errors, what code in the
 12 SURE system would your office enter?
 13 **A. Recorded, ballot returned.**
 14 Q. Okay, if a voter returned a ballot
 15 in April of 2024 with a disqualifying
 16 error, which code in the SURE system would
 17 your office enter?
 18 **A. Recorded, ballot returned.**
 19 Q. So whether a voter had a
 20 disqualifying error or not, your office
 21 would enter the same SURE code in the
 22 system?
 23 **A. Yes.**
 24 Q. So looking again at Ostrander
 25 Exhibit 3, Page 3 of the document, second

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1 Q. Okay, let's start over. If a voter
 2 in April of 2024 returned a ballot with a
 3 disqualifying error, what type of email
 4 would they receive?
 5 MR. BERARDINELLI: Object to
 6 form.
 7 **A. In Washington County according to**
 8 **the Board of Elections's decision, not in**
 9 **general as to what was available?**
 10 BY MS. McKENZIE:
 11 Q. Sure, I can ask it all in one
 12 question.
 13 **A. That's why I misunderstood.**
 14 Q. In Washington County in 2024, if a
 15 voter returns a mail-in or absentee ballot
 16 with a disqualifying error and they have
 17 an email on file, what type of email do
 18 they receive?
 19 **A. The voter received an email from**
 20 **the Department of State informing them**
 21 **that their ballot had been received by**
 22 **Washington County which is the email that**
 23 **you have as Exhibits 4, 5 and 6.**
 24 Q. And they receive this email,
 25 Examples 4, 5, and 6, based on the

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1 page of the minutes near the bottom of the
 2 page, the minutes report that: Mr.
 3 Sherman moved to not allow curing of
 4 absentee and mail-in ballots received with
 5 errors on the declaration envelope. Ms.
 6 Janis seconded the motion, and then a
 7 discussion was held between members
 8 regarding curing of ballots.
 9 Do you recall that discussion that
 10 took place at the April 11th meeting?
 11 **A. Yes.**
 12 Q. And what was that discussion?
 13 **A. I don't recall each detail, but a**
 14 **summary of the discussion would be that**
 15 **one of the members of the Board of**
 16 **Elections disagreed and he spoke with his**
 17 **colleagues. He let it be known that he**
 18 **disagreed, and the three discussed as to**
 19 **why they should allow curing and why they**
 20 **should not allow curing. It was also**
 21 **discussed during that which codes my staff**
 22 **would be instructed to use in the SURE**
 23 **system.**
 24 Q. Which commissioner thought that
 25 curing -- or expressed a view that curing

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1 should be allowed?
 2 **A. Commissioner Maggi.**
 3 Q. Did Mr. Maggi state his reasons for
 4 his opinion?
 5 **A. He did.**
 6 Q. And what were his reasons?
 7 **A. His viewpoint is that curing --**
 8 **that the voters should have been allowed**
 9 **to be contacted and correct the**
 10 **declaration envelopes. Then the ballot**
 11 **could be counted.**
 12 **I don't want to -- it's not**
 13 **verbiage, but that was the summary of his**
 14 **viewpoint. He felt voters should be**
 15 **notified of their error and allowed to**
 16 **correct it.**
 17 Q. Okay, did the other two
 18 commissioners have a different viewpoint?
 19 **A. They did.**
 20 Q. And what was each of their
 21 viewpoints?
 22 **A. Commissioner Sherman expressed that**
 23 **the election law does not allow for**
 24 **curing, that the canvass doesn't take**
 25 **place until election day, and that's when**

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1 **mail-in ballots received with errors on**
 2 **the declaration envelope.**
 3 Q. And what was the vote?
 4 **A. The vote was two to one.**
 5 Q. Okay, I believe you also mentioned
 6 that at this April 11th, 2024 meeting the
 7 Board of Elections gave instructions to
 8 your office about what codes to use in the
 9 SURE system; is that correct?
 10 **A. Yes. It was during the discussion.**
 11 Q. Okay, and what did the Board of
 12 Elections tell you and your office with
 13 respect to the SURE codes for the 2024
 14 election?
 15 **A. The Board of Elections informed me**
 16 **that all ballots would be coded as**
 17 **recorded, ballot returned in the SURE**
 18 **system.**
 19 Q. I just want to refer back to the
 20 documents that have been marked Exhibits
 21 4, 5, and 6, and each of these emails in
 22 the middle of the email specifically
 23 state, to get more information on your
 24 ballot status, you can look it up at, and
 25 it provides a website.

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1 **ballots are decided if they're eligible,**
 2 **you know, if declaration envelope is**
 3 **completed, correct, during the canvass.**
 4 Q. And did Commissioner Janis express
 5 a viewpoint?
 6 **A. Commissioner Janis agreed with**
 7 **Commissioner Sherman.**
 8 Q. Did she express any additional
 9 reasoning for her viewpoint?
 10 **A. No.**
 11 Q. Was there a vote taken at that
 12 meeting --
 13 **A. Yes.**
 14 Q. On the -- sorry, let me ask a
 15 complete question. Was there a vote taken
 16 at that meeting for the handling of
 17 absentee and mail-in ballots that had
 18 disqualifying errors?
 19 **A. Yes.**
 20 Q. And was there a formal motion
 21 presented?
 22 **A. Yes.**
 23 Q. And what was the motion that was
 24 presented?
 25 **A. To not allow curing of absentee and**

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1 If a voter in April of 2024 after
 2 they had returned their ballot went to
 3 that website, a Washington County voter,
 4 what would they see on that website?
 5 MR. BERARDINELLI: Object to
 6 form, if you know.
 7 **A. The website, I believe, informs the**
 8 **voter if they applied for a mail ballot**
 9 **when it was sent and when it was received**
 10 **by our office, the Washington County**
 11 **office, elections office.**
 12 BY MS. McKENZIE:
 13 Q. If your office had entered a
 14 canceled code for a ballot that had a
 15 disqualifying error and the voter went to
 16 the website, what would they have seen?
 17 MR. BERARDINELLI: Object to
 18 form, if you know.
 19 **A. I don't know.**
 20 BY MS. McKENZIE:
 21 Q. In April of 2024 when mail-in and
 22 absentee ballots were returned to your
 23 office, were they physically stamped like
 24 they were in 2023?
 25 **A. Yes.**

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1 Q. And were they scanned into the SURE
 2 system like they were in 2023?
 3 **A. Yes. But because the Board of**
 4 **Elections voted, there were different**
 5 **codes in 2024 that were used in the SURE**
 6 **system by my staff as opposed to 2023.**
 7 Q. Okay, and I believe you testified
 8 that the only code your office used in
 9 April of 2024 was the returned received
 10 code in the SURE system?
 11 **A. Yes, for all -- I'm sorry, did you**
 12 **say 2023?**
 13 Q. 2024.
 14 **A. 2024, all ballots received by our**
 15 **office were scanned in the SURE system**
 16 **with the code record ballot returned. I**
 17 **think that's what the code says.**
 18 Q. And that scanning and selection of
 19 a SURE code was done on the same day that
 20 the ballot was returned?
 21 **A. Yes.**
 22 Q. If a mail-in ballot or absentee
 23 ballot was returned in April of 2024 and
 24 it was undated, how was that ballot
 25 handled?

75

1 **all as ballot returned, so those ballots**
 2 **were -- each precinct in our mail ballot**
 3 **room has two bins. So the ballots with the**
 4 **properly completed declaration envelope**
 5 **were in one bin for that precinct, and the**
 6 **ballots with the declaration envelope that**
 7 **contained a disqualifying error were in a**
 8 **different bin for that precinct.**
 9 Q. For a mail-in or absentee ballot in
 10 2024 that is undated, what did that look
 11 like on the envelope?
 12 **A. Can you repeat that?**
 13 MR. BERARDINELLI: Object to the
 14 form.
 15 BY MS. MCKENZIE:
 16 Q. What does it mean for a ballot to
 17 be undated in April of 2024?
 18 **A. The area on the declaration**
 19 **envelope that says today's date would be**
 20 **blank.**
 21 Q. So it's missing a month and a day
 22 and a year?
 23 **A. Correct.**
 24 Q. Or any one of those items, a month
 25 a day or a year, or does it have to be

74

1 MS. GALLAGHER: Object to form.
 2 MR. BERARDINELLI: Can you read
 3 that back? I'm sorry, I got lost.
 4 MS. MCKENZIE: I can just repeat
 5 it.
 6 MR. BERARDINELLI: I'd
 7 appreciate that.
 8 BY MS. MCKENZIE:
 9 Q. If a mail-in or absentee ballot was
 10 returned to your office in April of 2024
 11 and the declaration envelope was undated,
 12 how did your office process that ballot?
 13 **A. The ballot was scanned into the**
 14 **SURE system using the code record ballot**
 15 **returned.**
 16 Q. Was that ballot set aside or
 17 segregated in any way from the other mail-
 18 in ballots that were returned that did not
 19 have errors?
 20 **A. Yes.**
 21 Q. Were they similarly based in the
 22 mail ballot room but segregated like they
 23 were in 2023?
 24 **A. Yes. But it was different in 2024**
 25 **as to 2023 because we were recording them**

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1 missing all three items to be undated?
 2 **A. Undated is all three items missing.**
 3 Q. Okay, what is an incorrectly dated
 4 mail-in ballot in April of 2023?
 5 **A. You said '23.**
 6 Q. I'm sorry, I need more caffeine.
 7 What is an incorrectly dated ballot in
 8 April of 2024?
 9 **A. In 2024, an incorrect date would be**
 10 **a date outside of the date April 1st,**
 11 **2024, which is the date the first ballots**
 12 **went out and election day which was April**
 13 **23rd, 2024.**
 14 Q. If a ballot was missing the month
 15 or the day on the declaration envelope, is
 16 that an undated ballot or an incorrectly
 17 dated ballot?
 18 **A. We classified those in a third**
 19 **category called incomplete date, so the**
 20 **date was not complete.**
 21 Q. So there are three categories of
 22 disqualifying errors when it comes to the
 23 date on the declaration envelope from the
 24 Washington County Board's perspective?
 25 **A. In 2024, according to the date,**

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1 **just the date part, yes.**
 2 Q. And that could be it's missing a
 3 date altogether; is that correct?
 4 **A. Yes.**
 5 Q. It's outside of the April 1st to
 6 April 23rd range that you described?
 7 **A. Yes.**
 8 Q. Or it's missing a month or the day
 9 of the month or the year?
 10 **A. Yes.**
 11 MR. BERARDINELLI: Or some
 12 combination thereof.
 13 **A. Or some combination thereof, yes,**
 14 **because it could have been missing the day**
 15 **and the last two digits of the year or --**
 16 **yes.**
 17 BY MS. McKENZIE:
 18 Q. Okay, so if a -- let me start over.
 19 In 2024 on the declaration envelope for
 20 the year, 2-0 was prefilled; is that
 21 correct?
 22 **A. Yes. The Secretary of the**
 23 **Commonwealth, Department of State, designs**
 24 **the envelope that is used by all counties,**
 25 **and they prefilled in the 2-0 on the**

79

1 code is entered in SURE?
 2 MR. BERARDINELLI: Objection,
 3 asked and answered. Go ahead.
 4 **A. Again, I don't know. The**
 5 **Washington County Board of Elections**
 6 **doesn't control the website. The**
 7 **Department of State does, and they don't**
 8 **ask our input. So I'm not familiar with**
 9 **what exactly is on there other than it**
 10 **tells them when their ballot was mailed**
 11 **and when it was received.**
 12 BY MS. McKENZIE:
 13 Q. I want to direct your attention
 14 back to Ostrander 2, and I want to just
 15 make SURE the record is clear on this.
 16 Ostrander 2 is what?
 17 **A. It is the SURE user guide from the**
 18 **Department of State as to the codes**
 19 **available in SURE when you record a**
 20 **ballot.**
 21 Q. Okay, in Ostrander 2 -- actually
 22 I'm going to scratch that question.
 23 When you testified earlier about the
 24 email you sent the commissioners and some
 25 other folks before the March 12th Board of

78

1 **template.**
 2 Q. And if 2-4 was missing on the
 3 declaration envelope, that ballot was
 4 considered incompletely dated?
 5 **A. Yes.**
 6 MR. BERARDINELLI: Can we take a
 7 quick break?
 8 MS. McKENZIE: Ah-huh.
 9 ----
 10 (There was a recess in the proceedings.)
 11 ----
 12 BY MS. McKENZIE:
 13 Q. Ms. Ostrander, I just wanted to ask
 14 you a question about Emails 4, 5, and 6,
 15 and I had directed you to the sentence
 16 about the fact that if the voter goes to
 17 the app to --
 18 MR. BERARDINELLI: The website.
 19 MS. McKENZIE: The website,
 20 you're correct, to get more information on
 21 their ballot status.
 22 BY MS. McKENZIE:
 23 Q. Does the voter get different
 24 information if a canceled code is entered
 25 compared to a recorded, ballot returned

80

1 Elections meeting, was this document part
 2 of the email that you sent to them?
 3 MR. BERARDINELLI: Object to
 4 form. Go ahead.
 5 **A. It was not.**
 6 BY MS. McKENZIE:
 7 Q. And attached to that email that was
 8 sent in March was the NAACP Third Circuit
 9 decision. And I believe you said something
 10 else, and I apologize. Could you just
 11 tell me what was attached to the email
 12 that you sent to the commissioners in
 13 March of 2024?
 14 **A. There was guidance from the**
 15 **Department of State that was issued that**
 16 **was -- I believe the title of it was**
 17 **examining an absentee mail-in ballot**
 18 **envelope.**
 19 Q. Okay, thank you for clarifying
 20 that. In April of 2024, if a ballot was
 21 returned to your office that was missing a
 22 signature, was that ballot segregated?
 23 **A. Yes.**
 24 Q. And similarly, was it placed in the
 25 ballot room by precinct in a separate bin

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1 than the ballots that didn't have
 2 disqualifying errors?
 3 **A. Yes.**
 4 Q. In April of 2024, did your office
 5 have any way to determine when a ballot
 6 was returned that a secrecy envelope was
 7 missing?
 8 **A. No.**
 9 Q. You didn't weigh ballots to see if
 10 a secrecy envelope was missing?
 11 **A. No.**
 12 Q. And you didn't use the envelope
 13 that had a hole punch in it so you could
 14 determine if a secrecy envelope was
 15 missing?
 16 **A. No.**
 17 Q. Was there ever any discussion with
 18 the Board of Elections around using the
 19 option of having a hole punch in the
 20 outside envelope to see if the secrecy
 21 envelope was there or not there?
 22 **A. No.**
 23 Q. Who made the decision to not use
 24 the hole-punched envelope?
 25 MS. GALLAGHER: Objection.

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1 MR. BERARDINELLI: Object to
 2 form. You can answer.
 3 **A. The Board of Elections. The**
 4 **election code states that the envelopes**
 5 **can't be opened until 7 a.m. election**
 6 **morning. You have no way to know if the**
 7 **secrecy envelope is there or not until the**
 8 **envelope is actually opened.**
 9 BY MS. McKENZIE:
 10 Q. In April of 2024, was there an
 11 option to use an envelope that had a hole
 12 punch so you could see if the yellow
 13 secrecy envelope was present or not
 14 present?
 15 MR. BERARDINELLI: Object to
 16 form.
 17 **A. You mean an option from the**
 18 **Department of State?**
 19 BY MS. McKENZIE:
 20 Q. Correct.
 21 **A. Or an option from our county?**
 22 Q. Correct, an option from the
 23 Department of State to use an envelope
 24 with a hole punch so that you could
 25 determine without opening the envelope

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1 whether or not there was a secrecy
 2 envelope missing.
 3 MR. BERARDINELLI: Object to
 4 form.
 5 **A. Yes, that was available.**
 6 BY MS. McKENZIE:
 7 Q. Okay, and was there any discussion
 8 among the Board of Elections with you as
 9 to whether or not you should use that
 10 hole-punched envelope option?
 11 **A. Yes. We said no -- or the Board of**
 12 **Elections decided against it because the**
 13 **hole punch is providing an opening in the**
 14 **envelope, and we're not to open those**
 15 **until 7 a.m. election morning.**
 16 Q. Okay, and when did that discussion
 17 take place about using the envelope with
 18 the hole punch?
 19 **A. I think our solicitor advised**
 20 **against it.**
 21 MR. BERARDINELLI: Unless the
 22 solicitor said that at a public meeting,
 23 you're not going to talk about that.
 24 **A. No, it wasn't.**
 25 BY MS. McKENZIE:

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1 Q. In April of 2024 when mail-in and
 2 absentee ballots were returned with
 3 disqualifying errors, was your office
 4 maintaining a list of the voters whose
 5 ballots had those errors?
 6 MR. BERARDINELLI: Object to
 7 form.
 8 **A. Can you repeat that? I'm sorry.**
 9 BY MS. McKENZIE:
 10 Q. In April of 2024, did your office
 11 maintain a list of voters whose ballots
 12 had disqualifying errors?
 13 MR. BERARDINELLI: Before or
 14 after election day?
 15 MS. McKENZIE: In the weeks
 16 leading up to the election.
 17 MR. BERARDINELLI: Objection.
 18 **A. No.**
 19 BY MS. McKENZIE:
 20 Q. In April of 2024 in the weeks
 21 leading up to the election, did your
 22 office keep count of the number of mail-
 23 in ballots and absentee ballots that were
 24 returned with qualifying errors?
 25 **A. I can't answer yes or no. It**

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1 **wasn't every day when one came in we added**
 2 **to the count. It was when I would be --**
 3 **it was when the Board of Elections would**
 4 **inquire we would count.**
 5 Q. Okay, and how often did the Board
 6 of Elections inquire as to the number of
 7 ballots that had been returned in April of
 8 2024 with disqualifying errors?
 9 **A. I can't recall. It was either two**
 10 **or three times. I know it was on -- I**
 11 **think it was twice. There was once after**
 12 **the April 11th meeting, the Board of**
 13 **Elections meeting, and a second time was**
 14 **the day before election day.**
 15 Q. I'll direct your attention to
 16 Ostrander 3 which are the minutes from the
 17 April 11th, 2024 meeting. On the second
 18 page of the document, the first page of
 19 the minutes under election director
 20 comments, it states that: Ms. Ostrander
 21 provided an update on the number of
 22 absentee and mail-in ballots sent and
 23 received.
 24 Do you recall providing that update
 25 at the April 11th, 2024 meeting?

87

1 The Herald Standard that reported the
 2 number was 170 ballots. Does that refresh
 3 your recollection?
 4 **A. Yes. Well said. I was right.**
 5 Q. These 170 ballots that were
 6 returned with disqualifying errors, would
 7 they be counted on election day during the
 8 precanvass and canvass?
 9 MR. BERARDINELLI: Object to
 10 form. You can answer.
 11 **A. If the canvass -- when they were**
 12 **canvassed, if the ultimate decision was**
 13 **made by the canvassers that they had**
 14 **disqualifying errors, they would not be**
 15 **counted.**
 16 BY MS. McKENZIE:
 17 Q. If a ballot is returned in the
 18 declaration envelope in 2024 and is
 19 missing a signature, will anything change
 20 between the time that ballot is returned
 21 without a signature and the canvass that
 22 would allow that ballot to be counted?
 23 MR. BERARDINELLI: Object to
 24 form.
 25 **A. I don't understand what you're**

86

1 **A. I do.**
 2 Q. Okay, do you recall at that point
 3 how many ballots had been returned with
 4 disqualifying errors at that April 11,
 5 2024 meeting?
 6 **A. I believe it was 60.**
 7 Q. Would that have been the first time
 8 you updated on the number of disqualifying
 9 -- I'll start over.
 10 Would that have been the first time
 11 you reported on the number of ballots that
 12 had disqualifying errors in April of 2023?
 13 **A. Yes.**
 14 Q. Do you recall the second time that
 15 you reported on that?
 16 **A. Yes, it was prior to the**
 17 **commissioner's public meeting on April**
 18 **18th.**
 19 Q. Okay, do you recall at that point
 20 how many ballots had been returned with
 21 disqualifying errors?
 22 **A. I don't recall. It may have been**
 23 **-- 170 is sticking out to me, but I'm not**
 24 **certain on that number.**
 25 Q. There was a newspaper article in

88

1 **asking.**
 2 BY MS. McKENZIE:
 3 Q. In April of 2024 when a ballot is
 4 returned without a signature, will that
 5 ballot be counted or not counted?
 6 **A. The canvass board would make the**
 7 **decision on whether it was counted or not**
 8 **counted according to the election law,**
 9 **which election law says it needs a**
 10 **signature.**
 11 Q. Okay, when a ballot was returned in
 12 April of 2024 with a missing date, an
 13 incomplete date, or an incorrect date,
 14 would that ballot be counted?
 15 MR. BERARDINELLI: Object to
 16 form.
 17 **A. It would be the same situation as**
 18 **the unsigned declaration envelope ballot;**
 19 **that when during canvassing, the canvass**
 20 **board would decide according to election**
 21 **code can that ballot be counted or not**
 22 **with an incomplete, incorrect, or missing**
 23 **date on the declaration envelope.**
 24 **And according to election law, it**
 25 **shall be signed and dated which was upheld**

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1 **by the Third Circuit Court that the**
 2 **declaration envelope needs a date, a**
 3 **correct date.**
 4 BY MS. McKENZIE:
 5 Q. In April of 2024, what would the
 6 poll books reflect for a voter who
 7 returned a mail ballot with a
 8 disqualifying error?
 9 **A. The poll book would say that their**
 10 **mail ballot was returned.**
 11 Q. If a voter who returned a ballot
 12 with a disqualifying error went to their
 13 polling place on election day in April of
 14 2024 and asked to vote a provisional
 15 ballot, what would they have been told?
 16 MR. BERARDINELLI: Object to
 17 form. Go ahead.
 18 **A. All voters or anyone can vote a**
 19 **provisional ballot.**
 20 BY MS. McKENZIE:
 21 Q. If a voter returned a ballot with a
 22 disqualifying error in April of 2024 and
 23 they went to the polling place and voted a
 24 provisional ballot, would that ballot be
 25 counted?

91

1 **specific voters or any voter? I'm sorry,**
 2 **I didn't catch the beginning of that**
 3 **question.**
 4 Q. Yes, did any voters in April of
 5 2024 call and ask about the status of
 6 their mail-in ballot?
 7 MR. BERARDINELLI: You're not
 8 asking did John Smith call? You're asking
 9 in general?
 10 BY MS. McKENZIE:
 11 Q. Any voters.
 12 **A. Yes, voters would call and inquire**
 13 **if their ballot had been received by our**
 14 **office.**
 15 Q. Okay, did any voters call and ask
 16 if their ballot had disqualifying errors
 17 in April of 2024?
 18 **A. I can't recall if specifically they**
 19 **asked that question.**
 20 Q. Did the Board of Elections instruct
 21 your office how to respond to voter
 22 inquiries about whether they had any
 23 disqualifying errors?
 24 **A. We would inform voters when they**
 25 **called and asked about their mail ballot**

90

1 **A. The canvass board would make the**
 2 **decision, but according to the election**
 3 **law, if the voter had already returned**
 4 **their mail ballot regardless if there was**
 5 **a disqualifying error and then voted a**
 6 **provisional ballot, that provisional**
 7 **ballot would not be counted because they**
 8 **already returned a mail ballot.**
 9 Q. When a voter returned a ballot in
 10 person at the election office in April of
 11 2024, did the election office remind the
 12 voter to sign and date the declaration
 13 envelope?
 14 **A. If the voter inquired -- if the**
 15 **voter asked us prior to relinquishing the**
 16 **ballot to us, we would help them. We're**
 17 **not mean. If they didn't hand us the**
 18 **ballot yet and they asked, we would answer**
 19 **their question.**
 20 Q. In the weeks leading up to the
 21 election in April of 2024, did any voters
 22 who had returned a mail-in or absentee
 23 ballot call the election office and ask
 24 about the status of their ballot?
 25 **A. You do you mean are you asking on**

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1 **that if their ballot was received, we**
 2 **would tell them that their ballot was**
 3 **received and it was locked -- according to**
 4 **the election law, it was locked and it**
 5 **would be reviewed during the canvass.**
 6 Q. Would anyone in your office --
 7 actually, no, I'll withdraw that question.
 8 Were there any written instructions
 9 to the employees working in your office
 10 about how to respond to voter inquiries in
 11 April of 2024 about whether or not they
 12 had properly filled out their declaration
 13 envelope?
 14 **A. No, no written instructions.**
 15 Q. In April of 2024, did your office
 16 inform any voters who called that their
 17 ballot was not signed or was incorrectly
 18 dated?
 19 MR. BERARDINELLI: Object to
 20 form. You can answer.
 21 **A. Can you repeat that? I didn't**
 22 **understand.**
 23 BY MS. McKENZIE:
 24 Q. In April of 2024, did your office
 25 tell voters if their ballot had been

93

1 segregated because it was not signed or
 2 not dated?
 3 MR. BERARDINELLI: Object to
 4 form. You can answer.
 5 **A. If I'm understanding this**
 6 **correctly, you're asking did my staff tell**
 7 **any voter that their declaration envelope**
 8 **had a disqualifying error? Is that what**
 9 **you're asking?**
 10 BY MS. McKENZIE:
 11 Q. Yes.
 12 **A. No.**
 13 Q. In April of 2024, did any voter or
 14 -- I'll start over.
 15 In April of 2024, did any voter,
 16 Washington County voter, ask the election
 17 office for a list of voters whose mail-in
 18 ballots had disqualifying errors?
 19 MR. BERARDINELLI: Object to the
 20 form.
 21 **A. You're asking did a resident or**
 22 **voter of Washington County ask us, my**
 23 **office, for a list of the voters with**
 24 **disqualifying errors?**
 25 BY MS. McKENZIE:

95

1 **A. Because the ballots had not been**
 2 **canvassed as of yet. Canvassing doesn't**
 3 **start until election day at 7 a.m.**
 4 MS. McKENZIE: What number are
 5 we on?
 6 THE REPORTER: 7.
 7 ----
 8 (Exhibit No. 7 marked for identification.)
 9 ----
 10 BY MS. McKENZIE:
 11 Q. I'm showing you a document that's
 12 been marked Exhibit 7. Ms. Ostrander,
 13 have you seen this document before?
 14 **A. I have.**
 15 Q. And what is this?
 16 **A. This is an email that was sent to**
 17 **the counties from Deputy Secretary**
 18 **Jonathan Marks. Well, it was signed --**
 19 **well, sent on behalf of because Rachel**
 20 **Hadrick sent it, but it was sent on behalf**
 21 **of Deputy Secretary Marks.**
 22 Q. And this email in the bottom half
 23 talks about the different types of
 24 incorrect and undated ballots, and I just
 25 want to make sure I understand this.

94

1 Q. Yes.
 2 **A. Yes.**
 3 Q. And when was that?
 4 **A. There was a phone inquiry by a**
 5 **resident who asked for that, and I told**
 6 **her I was not able to provide it.**
 7 **But the verbal -- or, I'm sorry, a**
 8 **written request, there was a written**
 9 **request from the Center for Coalfield**
 10 **Justice. There was a representative, but**
 11 **I don't know if he was a Washington County**
 12 **voter. I don't know who he was. There**
 13 **was a representative that brought us a**
 14 **written letter.**
 15 Q. Do you recall when the phone
 16 inquiry was from a voter asking for the
 17 list?
 18 **A. It was around when the**
 19 **commissioners had their public meeting on**
 20 **April 18th. I can't recall if it was**
 21 **right before or right after, but it was**
 22 **around the April 18th commissioners'**
 23 **public meeting.**
 24 Q. And why weren't you able to provide
 25 a list to that voter who had called?

96

1 In Washington County, if the voter
 2 entered the month and the day but did not
 3 write '24 in the year field, was that
 4 ballot segregated?
 5 **A. Yes.**
 6 Q. In April of 2024, if the voter used
 7 the European dating convention where the
 8 date is listed first, then the month and
 9 the year, would that ballot have been
 10 segregated?
 11 **A. No. I don't recall any ballots**
 12 **being received for that issue, but we**
 13 **would note have rejected for the European**
 14 **dating because that's common on UMOVA**
 15 **ballots that we receive, the overseas**
 16 **civilian and military ballots.**
 17 Q. And I forgot to ask this. If the
 18 voter entered the month and the day but
 19 did not write '24 in the year field that
 20 was segregated, did that ballot ever get
 21 counted?
 22 MR. BERARDINELLI: Object to
 23 form.
 24 **A. That was considered an incomplete**
 25 **date by the canvass board.**

97

1 BY MS. McKENZIE:
 2 Q. And therefore, it was not counted?
 3 A. **The canvass board ruled or chose,**
 4 **you know -- those ballots were not**
 5 **counted, no.**
 6 Q. And the third category is the use
 7 of slashes in empty boxes. If a
 8 declaration envelope used slashes in empty
 9 boxes, would that ballot have been
 10 segregated?
 11 A. **I don't recall having any ballots**
 12 **with that issue on it, but as long as the**
 13 **canvass board was able to identify that it**
 14 **was a slash and not a number one, it would**
 15 **have been counted.**
 16 MS. McKENZIE: We are on what
 17 number?
 18 THE REPORTER: 8.
 19 ----
 20 (Exhibit No. 8 marked for identification.)
 21 ----
 22 BY MS. McKENZIE:
 23 Q. I'm showing you a document that's
 24 been marked Exhibit 8. Have you seen this
 25 document before?

99

1 signed, wrong area indicate?
 2 A. **They did not sign in the provided-**
 3 **for area that the declaration envelope**
 4 **indicated that they were to sign in. From**
 5 **my memory, I believe one of them signed in**
 6 **the area marked for the witness.**
 7 MR. BERARDINELLI: I want to
 8 make sure I'm on the right page, okay? So
 9 the legend is signed, wrong area, not
 10 dated.
 11 A. **If the voter is not able to for**
 12 **some type of disability sign their name**
 13 **completely, they are able to indicate with**
 14 **some type of mark in the area where the**
 15 **voter is designated to sign, and down**
 16 **towards the bottom of the envelope, they**
 17 **have to have a witness who signs -- I**
 18 **believe they have to put their name and**
 19 **address on there as well. I can't recall**
 20 **exactly, but I do know that there is a**
 21 **spot that they are to sign.**
 22 BY MS. McKENZIE:
 23 Q. So the document that's been marked
 24 Exhibit 8, do you know of this list of
 25 voters who had made disqualifying errors

98

1 A. **I have.**
 2 Q. And what is this document?
 3 A. **This document is a spreadsheet**
 4 **listing the voters whose ballots were not**
 5 **counted as well as the reason as to why.**
 6 **So there was an issue with the declaration**
 7 **envelope, and the canvass board decided**
 8 **that they could not be counted.**
 9 Q. So one specific question I have,
 10 there is a category of errors called
 11 signed, wrong area, not dated?
 12 A. **Ah-huh.**
 13 MR. BERARDINELLI: Which page
 14 roughly where we're looking for --
 15 MS. McKENZIE: It would be like
 16 the fourth item in the packet. There's
 17 three ballots listed, and in the lower
 18 left-hand corner are the reasons.
 19 MR. BERARDINELLI: Can I peek
 20 off yours?
 21 MS. McKENZIE: Yeah.
 22 MR. BERARDINELLI: Oh, I see.
 23 Thank you.
 24 BY MS. McKENZIE:
 25 Q. And my question is, what does

100

1 on these ballots were counted how this
 2 list was generated?
 3 A. **After the canvass was complete, I**
 4 **typed this information into Microsoft**
 5 **Excel.**
 6 Q. When you say you typed this
 7 information into Microsoft Excel, do you
 8 mean each individual name and address and
 9 precinct and party?
 10 A. **I do. I made this. This is my**
 11 **list.**
 12 Q. So there was no way to generate
 13 this list from the SURE system?
 14 A. **No.**
 15 Q. Has the elections office ever
 16 updated the SURE system to reflect that
 17 these voters did not vote in the 2024
 18 primary?
 19 MR. BERARDINELLI: Object to
 20 form
 21 MS. GALLAGHER: Objection.
 22 THE WITNESS: Answer?
 23 MR. BERARDINELLI: You can.
 24 A. **No.**
 25 BY MS. McKENZIE:

101

1 Q. Has the elections office ever
 2 updated the SURE system to reflect that
 3 the mail-in or absentee ballots of these
 4 voters were not counted?
 5 MR. BERARDINELLI: Object to
 6 form.
 7 **A. There's not an option for -- no.**
 8 **There's only return -- recorded ballot**
 9 **returned.**
 10 BY MS. McKENZIE:
 11 Q. Is there any way for any of these
 12 voters today to find out that their ballot
 13 was not counted?
 14 MR. BERARDINELLI: The votes on
 15 that list?
 16 MS. McKENZIE: Yes.
 17 MR. BERARDINELLI: Thank you.
 18 **A. If a voter from this list**
 19 **personally calls, I will tell them that**
 20 **they are on the list and what error they**
 21 **made.**
 22 BY MS. McKENZIE:
 23 Q. So how will your office record the
 24 voting history in the SURE system for
 25 these voters that are listed on Exhibit 8?

103

1 Q. Is the prec canvass open to the
 2 public?
 3 **A. No. The prec canvass by election law**
 4 **is open to one authorized representative**
 5 **per candidate on the ballot and one**
 6 **authorized representative per political**
 7 **party on the ballot.**
 8 Q. And how long does the prec canvass
 9 typically take?
 10 **A. The prec canvass period is until**
 11 **close of polls which is 8 o'clock p.m. In**
 12 **Washington County based on past elections,**
 13 **we have finished somewhere between 5 p.m.,**
 14 **7 p.m.**
 15 Q. Okay, and what happens to mail-in
 16 and absentee ballots during the
 17 prec canvass?
 18 **A. During the prec canvass, absentee and**
 19 **mail-in ballots are officially allowed by**
 20 **the election law to be opened. So they**
 21 **are opened, and the declaration envelopes**
 22 **are reviewed.**
 23 **If the declaration envelope is**
 24 **complete, meaning it has both a valid date**
 25 **and signature, then the secrecy envelope**

102

1 MR. BERARDINELLI: Object to
 2 form. You can answer if you can.
 3 **A. Yeah, I don't understand. The SURE**
 4 **system, the code that we used was**
 5 **recorded, ballot returned.**
 6 BY MS. McKENZIE:
 7 Q. And there's no further updates to
 8 the status of those voters who had
 9 disqualifying errors?
 10 **A. No.**
 11 MS. McKENZIE: Why don't we take
 12 a lunch break now, and then I do have a
 13 couple more topics. But if we -- do you
 14 want to take a lunch break until like
 15 1:30?
 16 MR. BERARDINELLI: I was going
 17 to say not a long one. That's good.
 18 - - -
 19 (There was a recess in the proceedings.)
 20 - - -
 21 BY MS. McKENZIE:
 22 Q. Ms. Ostrander, when does the
 23 prec canvass take place?
 24 **A. 7 a.m. election day. So for the**
 25 **2024 primary, it was 7 a.m., April 23rd.**

104

1 **is removed, and then the secrecy envelope**
 2 **would be opened. The ballot would be**
 3 **unfolded and prepared for counting.**
 4 Q. What does prepared for counting
 5 mean?
 6 **A. Unfolded.**
 7 Q. Unfolded?
 8 **A. And flattened.**
 9 Q. Okay, that's very helpful.
 10 **A. A lot of the words we have to use**
 11 **aren't glamorous. I try to make them**
 12 **sound a little more glamorous. It's**
 13 **actually prepared.**
 14 Q. I actually think it's very
 15 glamorous. In April -- on April 23rd at 7
 16 a.m., 2024, the mail-in and absentee
 17 ballots that had been segregated for
 18 disqualifying errors, were they dealt with
 19 first, or was there an order of
 20 operations, I guess?
 21 MR. BERARDINELLI: Object to
 22 form.
 23 **A. They were -- the absentee and mail-**
 24 **ins that my staff segregated were brought**
 25 **out for the prec canvass members to review.**

105

1 **But during the review of the**
 2 **declaration envelopes on the envelopes,**
 3 **they also were reviewing to make sure**
 4 **there was a valid -- the declaration**
 5 **envelope was valid meaning a signature and**
 6 **a correct date. If it was not, then it**
 7 **was set aside.**
 8 **And that was one of my roles during**
 9 **the prec canvass was to collect ballots that**
 10 **they had reviewed and deemed not able to**
 11 **be counted and then to add them to the**
 12 **segregated ballots, the already segregated**
 13 **ballots.**
 14 BY MS. McKENZIE:
 15 Q. On April 23rd, 2024, were the
 16 segregated ballots' declaration envelopes
 17 reviewed again?
 18 **A. They were -- no. The prec canvass**
 19 **members did not individually go through**
 20 **them.**
 21 Q. Okay.
 22 **A. They added to them.**
 23 Q. Okay, and do you recall on April
 24 23rd, 2024, how long the prec canvass took?
 25 **A. Let's see, we were there the -- the**

107

1 **A. That was not the instructions from**
 2 **the Board of Elections, Washington County**
 3 **Board of Elections.**
 4 BY MS. McKENZIE:
 5 Q. And do you know why there were no
 6 instructions to put an updated canceled
 7 code in the SURE system?
 8 MS. GALLAGHER: Objection to
 9 form.
 10 **A. And can you refresh me? Which time**
 11 **period are you indicating? The day after**
 12 **the election?**
 13 BY MS. McKENZIE:
 14 Q. So there are ballots that have been
 15 segregated?
 16 **A. Yes.**
 17 Q. And then during the prec canvass,
 18 more ballots get added to that pile if
 19 they're missing a signature or a date or
 20 have an incorrect date. At that point, you
 21 testified that you were not instructed to
 22 put in a canceled code?
 23 **A. Correct.**
 24 Q. And my question is, do you know why
 25 the Board did not want you to update that

106

1 **opening and reviewing of the ballots, the**
 2 **declaration and the preparing for**
 3 **counting, was completed prior to the**
 4 **actual tabulating of the ballots.**
 5 **If I can recall, the prec canvass**
 6 **workers were dismissed -- it was before 5**
 7 **o'clock, maybe 3. The tabulating, if I**
 8 **recall, it would be about 5 that the**
 9 **tabulating finished.**
 10 Q. And is there anything else that we
 11 haven't discussed that takes place during
 12 the prec canvass?
 13 MR. BERARDINELLI: Object to
 14 form.
 15 **A. No.**
 16 BY MS. McKENZIE:
 17 Q. For the ballots that had already
 18 been segregated because of disqualifying
 19 errors in 2024 and then the ballots that
 20 are added to that pile during the
 21 prec canvassing, after that happens, could
 22 you put a canceled code in the SURE
 23 system?
 24 MR. BERARDINELLI: Object to
 25 form.

108

1 canceled code?
 2 MR. BERARDINELLI: Object to
 3 form.
 4 **A. I don't know their exact reasons,**
 5 **but I know what was discussed at the Board**
 6 **of Elections meeting which was that the**
 7 **ballots, until they were canvassed, there**
 8 **was no decision made and that the voter**
 9 **did cast a ballot.**
 10 BY MS. McKENZIE:
 11 Q. So after the prec canvass takes
 12 place, I believe you said the votes are
 13 then tabulated. The ballots that are
 14 segregated are not tabulated; is that
 15 correct?
 16 **A. Yes.**
 17 MS. GALLAGHER: Object to form.
 18 MS. McKENZIE: What's wrong with
 19 the form?
 20 MS. GALLAGHER: The word
 21 tabulating.
 22 MS. McKENZIE: I was just using
 23 her word. Counted, is that a better word?
 24 MS. GALLAGHER: I'll ask her.
 25 **A. We use tabulation in place of**

109

1 **counted. It sounds fancier.**
 2 BY MS. MCKENZIE:
 3 Q. So when you say tabulated, that's
 4 the same as counting the vote?
 5 **A. Yes, because it's fancier, right?**
 6 Q. Either way, it's an important thing
 7 to do?
 8 **A. Yes. Tabulation is the process of**
 9 **counting the ballots.**
 10 Q. Okay, so the segregated ballots are
 11 not tabulated once that tabulation starts
 12 or are not counted once that tabulation
 13 starts?
 14 MR. BERARDINELLI: Object to
 15 form.
 16 **A. That's correct.**
 17 BY MS. MCKENZIE:
 18 Q. I think you said something about a
 19 canvass board meeting.
 20 **A. Yes.**
 21 Q. What is the canvass board meeting?
 22 **A. Beginning the Friday after election**
 23 **-- so the election law requires three days**
 24 **after the election which would be the**
 25 **Friday after for the canvasser computation**

111

1 **A. Each Board of Elections appoints**
 2 **two electors from Washington County to**
 3 **represent them.**
 4 Q. So there are six people?
 5 **A. Correct.**
 6 Q. Do you attend the meeting of the
 7 canvass board three days after election?
 8 **A. Yes.**
 9 Q. Is that meeting open to the public?
 10 **A. It is.**
 11 Q. How is the public notified about
 12 that meeting?
 13 **A. It is advertised in a newspaper of**
 14 **general circulation in the county. So we**
 15 **have two newspapers that are in**
 16 **circulation in our county, and we publish**
 17 **the notice of canvass meeting. It's**
 18 **required by law a week's notice, so the**
 19 **Friday prior, the notice would be in both**
 20 **newspapers.**
 21 Q. And what are the two newspapers?
 22 **A. Mon Valley Independent and The**
 23 **Observer Reporter.**
 24 Q. And where did the canvass board
 25 meet on Friday, April 26, 2024?

110

1 -- canvassing and computation of the
 2 election or of the vote. I can't remember
 3 the exact word that's used in the election
 4 code.
 5 **So that would be when. The canvass**
 6 **board meets 9 a.m. the Friday after the**
 7 **election.**
 8 Q. Okay, and did that take place then
 9 on Friday, April 26, 2024, that the
 10 canvass board met?
 11 **A. Yes.**
 12 Q. And is that the appropriate term
 13 that I should be using? Canvass board?
 14 Computation board? Just so we're clear on
 15 --
 16 **A. In Washington County because I know**
 17 **every county considers it something**
 18 **different, returns board, computation**
 19 **board. In Washington County, we use the**
 20 **word canvass board.**
 21 Q. Canvass board, okay.
 22 **A. It's essentially the same thing as**
 23 **a returns board or computation as other**
 24 **counties use those terms.**
 25 Q. And who sits on the canvass board?

112

1 **A. They meet in what is referred to in**
 2 **our county as Conference Room G-17. It's**
 3 **on the other side of the hallway from**
 4 **where the elections office is. It's all**
 5 **located on the ground floor. The G-17**
 6 **conference room is next to the**
 7 **commissioners public meeting room.**
 8 Q. Is that meeting recorded?
 9 **A. It is not.**
 10 Q. Are there minutes taken of that
 11 meeting?
 12 **A. No.**
 13 Q. How long did that meeting last?
 14 **A. It lasts day to day until finished.**
 15 **So we meet from -- the first day, we meet**
 16 **at 9 a.m. because that is what is said in**
 17 **the law, in the election law. Then we**
 18 **meet until approximately 3 o'clock each**
 19 **day.**
 20 **After the initial 9 o'clock meeting,**
 21 **we convene at 8:30, and so we work 8:30 to**
 22 **approximately 3 o'clock until the work is**
 23 **finished.**
 24 Q. Okay, and do you meet on Saturdays
 25 and Sundays?

113

1 **A. We do not.**
 2 Q. Okay, so in April of 2024, how many
 3 meeting days did the canvass board meet
 4 for?
 5 **A. We met -- if I recall, I believe it**
 6 **was May 6. And the election -- the**
 7 **election results are required to be**
 8 **certified according to the election law by**
 9 **the third Monday after the election which**
 10 **was May 13th. And the canvass board does**
 11 **not certify the election. The Board of**
 12 **Elections does at a publicly advertised**
 13 **meeting.**
 14 Q. So in April of 2024 for the
 15 primary, it sounds like the canvass board
 16 would have met on seven different dates?
 17 **A. That sounds right.**
 18 MR. BERARDINELLI: Good math.
 19 BY MS. McKENZIE:
 20 Q. Are each of those meeting dates
 21 publicly advertised?
 22 **A. Not each day. The initial first**
 23 **day is advertised that they will continue**
 24 **to meet until the work is done.**
 25 Q. In April of 2024, did you have

115

1 **A. Yes. And it is advertised in the**
 2 **same newspapers as well. I think it's 48**
 3 **hours before.**
 4 Q. When the canvass board began
 5 meeting on Friday, April 26, 2024, did
 6 members of the public show up to that
 7 meeting?
 8 **A. Yes.**
 9 Q. Do you know approximately how many
 10 on the first day of the meeting?
 11 **A. I believe we had -- I think his**
 12 **wife was there. I think we had three on**
 13 **the first day.**
 14 Q. Do you know on the subsequent days
 15 that the canvass board met how many
 16 members of the public showed up?
 17 **A. They were there Friday for a**
 18 **portion of the meeting. I can't recall if**
 19 **they were there when we did the**
 20 **provisional which we started on Monday.**
 21 **They came back, but I just can't recall**
 22 **which day. There were two that came back.**
 23 Q. The mail-in and absentee ballots
 24 that have been segregated and not part of
 25 that tabulation, are they in any way

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1 voters calling your office and asking when
 2 the canvass board would meet?
 3 **A. I believe -- I'm trying to think**
 4 **here. I don't believe anyone called. I**
 5 **know we had inquiries about it, but I**
 6 **believe they inquired about it at the**
 7 **public test that was held the Friday**
 8 **before the election. But I cannot recall**
 9 **if anyone contacted us via telephone to**
 10 **ask about the canvass meeting.**
 11 Q. Did anyone contact you via email?
 12 **A. I can't recall. Someone may have,**
 13 **but I can't recall.**
 14 Q. And you said you believed there
 15 might have been inquiries at the public
 16 test. What is the public test?
 17 **A. I can't recall the number of days.**
 18 **We always do ours on the Thursday before**
 19 **the election, but you have to have a**
 20 **public test where you tabulate -- or**
 21 **sorry, where you do logic and accuracy**
 22 **testing on the central count voting**
 23 **machine, scanner.**
 24 Q. Okay, and that public test is open
 25 to the public?

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1 addressed at the meeting of the canvass
 2 board?
 3 **A. Yes.**
 4 Q. Okay, when did that take place?
 5 **A. That took place Monday if my memory**
 6 **is correct.**
 7 Q. And what --
 8 MR. BERARDINELLI: Monday, the
 9 29th?
 10 MS. McKENZIE: Yes.
 11 MR. BERARDINELLI: Thank you.
 12 BY MS. McKENZIE:
 13 Q. And what actions does the canvass
 14 board take with respect to the mail-in and
 15 absentee ballots that have been
 16 segregated?
 17 **A. They reviewed the declaration**
 18 **envelope of each and decided -- and agreed**
 19 **with the segregation and decided that**
 20 **those were not to be counted because the**
 21 **declaration envelope had a disqualifying**
 22 **error.**
 23 **And then they were segregated**
 24 **into -- or they were placed into**
 25 **categories based upon what the**

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1 **disqualifying error was. Then they were**
 2 **counted as to how many were in each**
 3 **category. They were gum-banded, and a**
 4 **note of the number and what the**
 5 **disqualifying error was placed on that**
 6 **note. That's how I made the list.**
 7 Q. And were any additional SURE codes
 8 placed into the system about those ballots
 9 that had been segregated and note counted?
 10 **A. No, no.**
 11 MR. BERARDINELLI: Object to the
 12 form.
 13 **A. No.**
 14 BY MS. McKENZIE:
 15 Q. You testified that there are six
 16 members to the canvass board?
 17 **A. That's correct.**
 18 Q. And how does just physically that
 19 review of the ballots segregated for
 20 disqualifying errors take place?
 21 **A. So each -- to make sure that it's**
 22 **done bipartisan, each commissioner, as I**
 23 **said, has two appointees. So we have one**
 24 **democrat commissioner, so we form two**
 25 **teams to make SURE that one of the**

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1 segregated and reviewed by the canvass
 2 board end up being counted?
 3 **A. No.**
 4 Q. Sorry, just to be clear --
 5 **A. No.**
 6 Q. Is there a practice at this public
 7 meeting of the canvass board to identify
 8 by name voters whose mail-in ballots are
 9 being reviewed because of a disqualifying
 10 error?
 11 **A. The canvass board does not read**
 12 **aloud the names. If a member of the**
 13 **public was present and asked, we would**
 14 **produce them the information, but our**
 15 **practice is we don't read aloud the names**
 16 **on the envelopes.**
 17 MS. McKENZIE: No. 9?
 18 THE REPORTER: Yes.
 19 ----
 20 (Exhibit No. 9 marked for identification.)
 21 ----
 22 BY MS. McKENZIE:
 23 Q. I'm showing you a document that's
 24 been marked Exhibit 9, and I ask if you
 25 have seen this document before.

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1 **democrat commissioner representatives is**
 2 **on one team and one is on the other team.**
 3 **So we end up with three, three people on**
 4 **each team. They divide envelopes and**
 5 **individually review them.**
 6 Q. So each team of three is looking at
 7 half the ballots; is that correct?
 8 **A. Yes. And if they have a**
 9 **disagreement, we can bring in members of**
 10 **the other team to review the ballot that**
 11 **there may be a disagreement on.**
 12 Q. Okay.
 13 **A. We want to make sure that if there**
 14 **is a disagreement, all six canvass board**
 15 **members have reviewed it. If there is not**
 16 **disagreement, then they remain in their**
 17 **two teams.**
 18 Q. Were there any disagreements on
 19 Monday, April 29th?
 20 **A. There were not.**
 21 Q. At that point, how many ballots
 22 were in this segregated category for
 23 having qualifying errors?
 24 **A. I believe it was over 250.**
 25 Q. Did any ballots that had been

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1 **A. I have.**
 2 Q. And what is this document?
 3 **A. This document is an email we**
 4 **receive from Deputy Secretary Jonathan**
 5 **Marks regarding feedback sessions that the**
 6 **Department of State was holding virtually**
 7 **to discuss the language in the emails that**
 8 **they send to voters when their ballot is**
 9 **marked using one of the codes in the SURE**
 10 **system.**
 11 Q. And did you attend one of these
 12 meetings?
 13 **A. I did.**
 14 Q. Which meeting did you attend?
 15 **A. I attended the Friday, May 10th**
 16 **meeting.**
 17 Q. Did this meeting take place over
 18 Zoom?
 19 **A. Microsoft Teams.**
 20 Q. Do you know if this meeting was
 21 recorded?
 22 **A. I do not.**
 23 Q. How many people attended the May
 24 10th meeting?
 25 **A. I can't recall.**

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1 Q. Are you able to approximate how
 2 many people attended?
 3 **A. Based upon how many election**
 4 **directors there are and how many counties,**
 5 **I would -- and this is just a guess, maybe**
 6 **30. In Microsoft Teams, the format, they**
 7 **just put the little bubbles, and then it**
 8 **says plus however many. And I don't recall**
 9 **what it says.**
 10 Q. Fair enough.
 11 MS. McKENZIE: Off the record.
 12 ----
 13 (There was a discussion off the record.)
 14 ----
 15 BY MS. McKENZIE:
 16 Q. Did anyone else from the Washington
 17 County's election office or Board of
 18 Elections attend that meeting with you?
 19 **A. No.**
 20 Q. Do you know, did they attend any of
 21 the other meetings?
 22 **A. They did not.**
 23 Q. How long did the meeting last on
 24 May 10th?
 25 **A. I don't recall for sure, but based**

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1 **contained in the Department of State**
 2 **emails that are generated by the SURE**
 3 **codes, and they asked for feedback**
 4 **regarding the language.**
 5 BY MS. McKENZIE:
 6 Q. Did you provide any feedback
 7 regarding the codes or the language in the
 8 emails during that meeting?
 9 **A. Yes. I did not bring up the topic,**
 10 **but I agreed with some of my colleagues**
 11 **from other counties that I personally did**
 12 **not care for the language in the ballot**
 13 **received email which is generated from the**
 14 **record, ballot returned SURE code because**
 15 **the language does not reflect the decision**
 16 **made by the Washington County Board of**
 17 **Elections.**
 18 Q. And how did the language not
 19 reflect the decision made by the county
 20 Board of Elections?
 21 **A. It had an indication that -- I**
 22 **can't recall. We have it as an exhibit,**
 23 **but it was if there was --**
 24 Q. You can refer to the exhibits.
 25 **A. Yeah, we can. It's the language of**

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1 **on past practice, the Department of State**
 2 **does very well that if they indicate a**
 3 **start and end time that they adhere to the**
 4 **start and end time.**
 5 **So based upon this, I'm going to --**
 6 **my best guess would be an hour just based**
 7 **upon knowing that they do stick to their**
 8 **start and end times.**
 9 Q. Who spoke on behalf of the
 10 Department of State?
 11 **A. I can't recall if Secretary Marks**
 12 **was present, but I do recall there was a**
 13 **gentleman, Beecher, Robert Beecher. I**
 14 **think his first name is Robert, right?**
 15 **That sounds right. He's the director or --**
 16 **I don't know what he does. He deals with**
 17 **policy.**
 18 Q. What did -- well, let me start
 19 over. What was discussed during this May
 20 10th, 2024 meeting?
 21 MR. BERARDINELLI: Object to
 22 form. Go ahead.
 23 **A. The codes the Department of State**
 24 **has available in the SURE system for**
 25 **marking mail-in ballots and the language**

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1 **the email in Exhibit 4, 5, and 6, the part**
 2 **that does not reflect the decision by the**
 3 **Washington County Board of Elections is**
 4 **the sentence: If your county election**
 5 **office identifies an issue with your**
 6 **ballot envelope that prevents the ballot**
 7 **from being counted, you may receive**
 8 **another notification. Otherwise -- well,**
 9 **I guess two sentences: Otherwise, you**
 10 **will not receive any further updates on**
 11 **the status of your ballot from this email**
 12 **address, and you are no longer permitted**
 13 **to vote at your polling place/location.**
 14 **So the language in those two**
 15 **sentences I do not agree with because they**
 16 **do not reflect the decision made by the**
 17 **Washington County Board of Elections.**
 18 Q. And what decision is that?
 19 **A. The decision is that the election**
 20 **office does not identify and prevent your**
 21 **ballot from being counted. That decision**
 22 **is a made when they are canvassed. So to**
 23 **voters in Washington County, the language**
 24 **in the email is misleading.**
 25 Q. Did the representatives from the

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1 Department of State at the May 10, 2024
 2 meeting make any statements about the
 3 Department of State's position on the
 4 codes or the emails?
 5 **A. I can't recall.**
 6 Q. Okay, were there any statements
 7 made by the Department of State at that
 8 meeting on May 10 about any next steps or
 9 follow-up from the Department of State?
 10 **A. The Department of State indicated**
 11 **that after the feedback sessions were**
 12 **complete and they, the Department of**
 13 **State, reviewed the feedback, the**
 14 **Department of State would issue a follow-**
 15 **up, some type of follow-up information, on**
 16 **their next step.**
 17 Q. Has there been any follow-up from
 18 the Department of State to that May 10
 19 meeting?
 20 **A. There has not been.**
 21 Q. Are you familiar with a directive
 22 that has been issued by the Department of
 23 State on July 1, 2024, concerning the form
 24 of absentee and mail-in ballot materials?
 25 **A. Yes, that one, yes.**

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1 **ballot procedure -- absentee and mail-in**
 2 **ballot procedure will be on the agenda.**
 3 BY MS. McKENZIE:
 4 Q. Has the past practice been that the
 5 absentee and mail-in ballot practice be
 6 the same in the primary and the general
 7 election in the same year, calendar year?
 8 MR. BERARDINELLI: Object to the
 9 form.
 10 **A. Past practice in 2023, what was**
 11 **followed in the primary, was again voted**
 12 **and decided and to follow in the general**
 13 **election, so based on that, most likely it**
 14 **will be the same.**
 15 **I can't speak for other years**
 16 **because of all the various litigation that**
 17 **has gone on, but in 2023, there was not**
 18 **any.**
 19 BY MS. McKENZIE:
 20 Q. There was not any --
 21 **A. Any litigation. There were several**
 22 **court rulings after the 2020 election,**
 23 **after 2022.**
 24 Q. So the same process for processing
 25 mail-in ballots in the April '23 primary

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1 Q. Does the Washington County Board of
 2 Elections and your office intend to follow
 3 that directive that was issued on July 1,
 4 2024?
 5 MR. BERARDINELLI: Object to the
 6 form.
 7 **A. Yes, the Board of Elections will**
 8 **follow the directive.**
 9 BY MS. McKENZIE:
 10 Q. Concerning the form of absentee and
 11 mail-in ballot materials?
 12 **A. Yes.**
 13 Q. I really am getting near the end.
 14 For the upcoming November general
 15 election, does the Board of Elections plan
 16 to use the same process for handling mail-
 17 in ballots that are returned with one of
 18 these disqualifying errors?
 19 MR. BERARDINELLI: Object to the
 20 form. Go ahead.
 21 **A. I haven't spoken directly to the**
 22 **Board of Elections in regards to this, but**
 23 **our past practice is that it's reviewed**
 24 **prior to each election. So we will have a**
 25 **Board of Elections public meeting, and the**

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1 and the November '23 election was the
 2 same?
 3 **A. In 2023?**
 4 Q. Yes.
 5 **A. Yeah. The primary was in May of**
 6 **2023.**
 7 Q. Correct.
 8 **A. Pennsylvania has those new little**
 9 **nuances in the election.**
 10 MS. SCHNEIDER: Little.
 11 **A. So the primary was May of 2023 and**
 12 **then November of 2023 for the election.**
 13 BY MS. McKENZIE:
 14 Q. Okay, are you familiar with what
 15 any nearby counties are doing with respect
 16 to mail-in and absentee ballots that are
 17 returned with disqualifying errors?
 18 **A. I know of the counties that are in**
 19 **our newspaper circulation area based upon**
 20 **articles that have been in our Observer**
 21 **Reporter since they also cover Greene**
 22 **County and Fayette County.**
 23 **So based upon what was reported on**
 24 **the newspaper, I knew of Greene County and**
 25 **Fayette County, what their boards had**

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1 **decided.**
 2 Q. Do you ever have any discussions
 3 about nearby counties' process for
 4 handling mail-in and absentee ballots with
 5 errors with your counterparts in those
 6 counties?
 7 MR. BERARDINELLI: Object to the
 8 form.
 9 **A. In unofficial conversations, we**
 10 **have asked each other how are we handling**
 11 **it.**
 12 **And especially in the viewing -- the**
 13 **television viewing area, the counties that**
 14 **are in the Pittsburgh television news**
 15 **station areas, I do like to know what they**
 16 **are doing just so I'm aware of what voters**
 17 **may be calling and asking questions when**
 18 **they say they saw a news story, because**
 19 **they don't always understand that it's**
 20 **just Allegheny, Washington. We're each**
 21 **separate, and our separate Board of**
 22 **Elections makes the decisions.**
 23 BY MS. McKENZIE:
 24 Q. Do you know for Fayette County,
 25 does their Board of Elections use canceled

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1 had a disqualifying error?
 2 MR. BERARDINELLI: Object to the
 3 form.
 4 **A. I don't know. The only thing I**
 5 **knew is that Fayette County was allowing**
 6 **to cure absentee and mail-ins, but I don't**
 7 **know the specifics that their board**
 8 **allowed.**
 9 BY MS. McKENZIE:
 10 Q. And for Greene County, do you know
 11 what codes Greene County was using in the
 12 SURE system when a mail-in or absentee
 13 ballot was returned with a disqualifying
 14 error?
 15 MR. BERARDINELLI: Object to the
 16 form.
 17 **A. I do not.**
 18 BY MS. McKENZIE:
 19 Q. Do you know if the Greene County
 20 Board of Elections allowed voters to
 21 correct any disqualifying errors on their
 22 mail-in ballots that had been returned?
 23 **A. I know the same as with Fayette. I**
 24 **know Greene Board of Elections was**
 25 **allowing curing, but I don't know the**

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1 or pending codes when ballots are returned
 2 with disqualifying errors?
 3 MR. BERARDINELLI: Object to the
 4 form.
 5 **A. I don't know what codes. I don't**
 6 **know how they code their ballots using the**
 7 **SURE system.**
 8 BY MS. McKENZIE:
 9 Q. Okay, do you know if Fayette County
 10 allows voters to come into their office
 11 and either correct an error or request a
 12 new ballot if there's an error on their
 13 mail-in ballot?
 14 MR. BERARDINELLI: Object to the
 15 form.
 16 **A. I know that Fayette County Board of**
 17 **Elections allowed curing. I don't know**
 18 **the specifics on how it was handled.**
 19 BY MS. McKENZIE:
 20 Q. Do you know if Fayette County
 21 allows voters who -- let me ask this a
 22 different way. You can withdraw that.
 23 Do you know if Fayette County would
 24 count a provisional ballot that was cast
 25 by a voter who had returned a ballot that

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1 **specifics as to how their Board of**
 2 **Elections voted to handle it.**
 3 Q. And do you know if Greene County
 4 would count a provisional ballot that had
 5 been cast by a voter who returned a mail-
 6 in ballot with a disqualifying error?
 7 MR. BERARDINELLI: Object to the
 8 form.
 9 **A. I do not.**
 10 BY MS. McKENZIE:
 11 Q. Were there any other -- let me
 12 withdraw that.
 13 Are you familiar with how Beaver
 14 County was handling mail-in and absentee
 15 ballots that were returned with a
 16 disqualifying error?
 17 MR. BERARDINELLI: Object to the
 18 form.
 19 **A. I know Beaver County allowed**
 20 **curing, but again, I don't know the**
 21 **specifics in the procedure that their**
 22 **Board of Elections voted to follow.**
 23 BY MS. McKENZIE:
 24 Q. Are you aware of any other
 25 counties' boards of election who use the

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1 -- let me make sure I say this right --
 2 record ballot returned code in the SURE
 3 system when a ballot is returned to the
 4 election office with a disqualifying
 5 error?
 6 MR. BERARDINELLI: Object to the
 7 form.
 8 **A. So can I make sure I understand**
 9 **this? Are you asking me do I know of any**
 10 **county who used the SURE codes --**
 11 BY MS. McKENZIE:
 12 Q. Let me ask it a different way.
 13 **A. I'm not sure I understand.**
 14 Q. Are you aware of any other counties
 15 who have the same practice as Washington
 16 County for handling mail-in ballots that
 17 are returned with disqualifying errors?
 18 MR. BERARDINELLI: Object to the
 19 form you can answer.
 20 **A. That's what I thought you were**
 21 **asking. Yes, I do.**
 22 BY MS. McKENZIE:
 23 Q. And what counties are those?
 24 **A. Now you're going to make me**
 25 **implicate them, and then you can go after**

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1 board on Friday, April 26th, that that
 2 meeting was advertised in two local
 3 newspapers; is that correct?
 4 **A. Yes, that is correct.**
 5 Q. Did your office or the Board of
 6 Elections post a notice of that meeting on
 7 your website?
 8 **A. We did not.**
 9 Q. In April of 2024, did the election
 10 office ever issue any replacement mail-in
 11 ballots?
 12 MR. BERARDINELLI: Object to the
 13 form.
 14 **A. Can you repeat that? Which year?**
 15 BY MS. McKENZIE:
 16 Q. In April of 2024, did the election
 17 office issue any replacement mail-in
 18 ballots to voters?
 19 **A. Do you mean in general or because**
 20 **of disqualifying errors?**
 21 Q. In general.
 22 **A. In general, yes.**
 23 Q. Under what circumstances would the
 24 election office issue replacement mail
 25 ballots in 2024?

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1 **my friends. Mercer County. You'll go**
 2 **after my friends.**
 3 Q. Are you aware of any other counties
 4 besides Mercer County --
 5 MR. BERARDINELLI: Object to the
 6 form.
 7 BY MS. McKENZIE:
 8 Q. -- who have the same practice as
 9 Washington County for handling the return
 10 of mail-in ballots with disqualifying
 11 errors?
 12 MR. BERARDINELLI: Object to the
 13 form.
 14 **A. No. There are others, but I do not**
 15 **know specifically of which counties.**
 16 MS. McKENZIE: If we could just
 17 take a five-minute break.
 18 MR. BERARDINELLI: Good. I have
 19 to use the rest room.
 20 ----
 21 (There was a recess in the proceedings.)
 22 ----
 23 BY MS. McKENZIE:
 24 Q. You testified in connection with
 25 advertising the meeting of the canvass

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1 **A. The ballot came back through the**
 2 **postal system as undeliverable, and we did**
 3 **not open and then give the voter that**
 4 **ballot that was contained in there. We**
 5 **issued them a new ballot.**
 6 **And there were instances of**
 7 **incorrect addresses or the voter neglected**
 8 **to put the post office box on the**
 9 **application.**
 10 Q. And for a voter to be issued a
 11 replacement ballot in April of 2024, would
 12 the voter have to come into the office?
 13 **A. No. If the voter contacted us and**
 14 **we could verify that we did indeed have**
 15 **the undeliverable ballot, we would then**
 16 **mail them a correct ballot.**
 17 **But if the address was incorrect on**
 18 **their part, the voter's part, they had to**
 19 **complete a new application with the new**
 20 **address information. If it was an error**
 21 **on the election office's part, they did**
 22 **not have to complete a new application.**
 23 **So the address was maybe since it is -- we**
 24 **are humans. We may have transposed a**
 25 **number.**

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1 Q. Are there any other circumstances
 2 in which your office would issue a
 3 replacement mail-in ballot to a voter?
 4 **A. It would not be a full mail-in
 5 ballot packet with new labels, new
 6 envelopes, but we did have voters who came
 7 in because they made an error on their
 8 ballot and they wanted to spoil the
 9 ballot.**
 10 **So we would take the ballot from
 11 them, spoil it, and give them a clean
 12 ballot, a blank ballot, a new ballot. So
 13 I don't if you would consider that a
 14 replacement.**
 15 Q. And in that circumstance when a
 16 voter made an error on the mail ballot
 17 itself, in order to be issued a new
 18 ballot, what materials did they have to
 19 bring in?
 20 **A. They had to have the entire packet.
 21 But we would not issue them new
 22 envelopes. We would just spoil the actual
 23 ballot and issue them a new ballot.**
 24 Q. And that was the policy in 2024?
 25 **A. Yes.**

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1 **the Board of Elections will. And then it
 2 has to be voted and approved by the county
 3 commissioners because we're entering into
 4 an agreement.**
 5 BY MS. McKENZIE:
 6 Q. If the Board of Elections decides
 7 to apply for this upcoming Act 88 grant,
 8 who will actually fill out the paperwork
 9 for that grant?
 10 **A. Based on past practice when we
 11 applied in previous years, I, as the
 12 elections director, completed the
 13 application.**
 14 Q. When will the Board of Elections
 15 decide whether or not to apply for the
 16 upcoming Act 88 election integrity grant?
 17 MR. BERARDINELLI: Object to
 18 form.
 19 **A. We are applying for it. Yeah, we
 20 will apply for it. It was built into our
 21 budget. So this is the second half of
 22 2024, so it was already decided on that we
 23 would be applying for it.**
 24 BY MS. McKENZIE:
 25 Q. Okay, and do you apply for a

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1 Q. Has your office applied for an Act
 2 88 election integrity grant for 2024?
 3 MR. BERARDINELLI: Object to the
 4 form.
 5 **A. The Act 88 grant is on a fiscal
 6 year, so we applied and received what
 7 would be considered 2023 to 2024. We have
 8 not yet applied as the application period
 9 is not open for 2024 to 2025.**
 10 BY MS. McKENZIE:
 11 Q. When does the fiscal year run for
 12 the Act 88 election integrity grant?
 13 **A. July 1st to June 30th. It's based
 14 upon the state's budget period.**
 15 Q. What's the deadline for the July
 16 1st, 2024, to June 30th, 2025 grant
 17 period?
 18 **A. August 1st to August 15 is the
 19 application period.**
 20 Q. Okay, will the election office
 21 apply for that election integrity grant
 22 between August 1st and August 15th, 2024?
 23 MR. BERARDINELLI: Object to
 24 form.
 25 **A. The election office will not, but**

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1 specific amount?
 2 **A. The amount is governed by the
 3 legislation that was passed.
 4 And I can't recall the exact
 5 figures, but it's based upon your
 6 certified registration numbers from -- I
 7 can't remember if it's the -- if it would
 8 be the primary of '24 or the general of
 9 '23. But it's based upon from one of
 10 those elections the certified number of
 11 registered voters that the Board of
 12 Elections certified to the Department of
 13 State. And there is a formula that you
 14 receive X-number of dollars per voter, for
 15 a registered voter.**
 16 Q. And in the most recent grant
 17 period, how much money did the Washington
 18 County Board of Elections receive pursuant
 19 to the Act 88 integrity grant?
 20 MR. BERARDINELLI: Object to the
 21 form.
 22 **A. We received approximately \$750,000.**
 23 BY MS. McKENZIE:
 24 Q. And does the Board of Elections and
 25 your office anticipate receiving a similar

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1 amount in the upcoming grant period?
 2 MR. BERARDINELLI: Object to
 3 form.
 4 **A. We do.**
 5 BY MS. McKENZIE:
 6 Q. Do you expect the amount of the
 7 grant to increase in the upcoming grant
 8 period?
 9 MR. BERARDINELLI: Object to
 10 form. Can I get a proffer of relevance of
 11 this grant, all these questions about this
 12 grant application?
 13 MS. McKENZIE: I'm almost done,
 14 but I don't really think relevance -- if
 15 we end up using this in some way, you can
 16 make that argument then.
 17 MR. BERARDINELLI: I'm just
 18 asking so I know whether to lodge proper
 19 objections or not. I'm asking you to
 20 explain why it's relevant.
 21 MS. McKENZIE: I'm just trying
 22 to understand the resources available to
 23 the Washington County Board of Elections.
 24 MR. BERARDINELLI: Thank you.
 25 **A. What was the question?**

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1 Q. And what were you are doing before
 2 that?
 3 **A. I was the assistant director from**
 4 **beginning in May of 2017.**
 5 Q. So you were the director when Act
 6 77 became effective?
 7 **A. Yes.**
 8 Q. And are you familiar with what Act
 9 77 is?
 10 **A. Yes.**
 11 Q. And for the record, could you
 12 please tell us what you understand Act 77
 13 to be?
 14 **A. Act 77 -- something just to show**
 15 **I'm smart, Act 77 also did away with**
 16 **straight party voting. Nobody ever talks**
 17 **about that.**
 18 Q. In addition to that
 19 **A. In addition to that, the main part**
 20 **of Act 77 established no-excuse mail-in**
 21 **voting in Pennsylvania.**
 22 Q. Do you know how Act 77 came about?
 23 Who wrote it? Is it a law to your
 24 understanding?
 25 **A. It is a law. It was passed by the**

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1 BY MS. McKENZIE:
 2 Q. Do you expect the grant amount that
 3 Washington County will receive pursuant to
 4 the Act 88 election integrity grant to
 5 increase in the upcoming grant period?
 6 **A. I expect it to be similar to the**
 7 **grants received in 2023.**
 8 MS. McKENZIE: I have no further
 9 questions.
 10 MS. GALLAGHER: I do.
 11 THE WITNESS: Do I face this
 12 way?
 13 - - - -
 14 EXAMINATION
 15 - - - -
 16 BY MS. GALLAGHER:
 17 Q. Ms. Ostrander my name is Kathleen
 18 Gallagher, and I represent the RNC. And
 19 for purposes of my questioning here today,
 20 these questions will also be on behalf of
 21 the Republican Party of Pennsylvania.
 22 Again, how long have you been the
 23 elections director? Was it 2019?
 24 **A. Yes. I took the director position**
 25 **in February of 2019.**

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1 **Pennsylvania State Legislature. I do not**
 2 **know the author. I do not know the**
 3 **sponsors of the bill, but I know it passed**
 4 **both the State House and Senate.**
 5 Q. And was it then signed in by
 6 Governor Wolf?
 7 **A. Yes.**
 8 Q. So it is a law?
 9 **A. Yes.**
 10 Q. Do you know if I use the acronym
 11 HAVA what that means?
 12 **A. Yes.**
 13 Q. And what is HAVA?
 14 **A. HAVA refers to the Help America**
 15 **Vote Act.**
 16 Q. Is that a law?
 17 **A. Yes.**
 18 Q. Is that a federal law?
 19 **A. It is a federal law.**
 20 Q. It is a federal election law, would
 21 you agree?
 22 **A. Yes, it is. And I wrote a paper on**
 23 **it for my master's program.**
 24 MR. BERARDINELLI: Let Kathy
 25 finish her questions.

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1 **A. I apologize. It's more**
 2 **conversational because we're like next to**
 3 **each other, so I do apologize.**
 4 BY MS. GALLAGHER:
 5 Q. And there are a couple of acronyms
 6 which I am probably going to butcher.
 7 UBACA, do you know what that is?
 8 **A. I'm sorry, can you repeat that?**
 9 Q. UBACA.
 10 **A. Can you give me the letters?**
 11 Q. You spoke of it earlier today.
 12 **A. Oh, I referred to UOCAVA.**
 13 Q. UOCAVA. Like I said, I would
 14 butcher it. Would you tell, for the
 15 record, what that is?
 16 **A. UOCAVA deals with overseas civilian**
 17 **voters and military voters, but I do not**
 18 **know exactly what each letter stands for.**
 19 Q. Is that also a federal voting
 20 regulation?
 21 **A. Yes.**
 22 Q. As the elections director for
 23 Washington County, are you required to
 24 have a familiarity with Act 77, HAVA, and
 25 UOCAVA?

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1 Ms. McCormick over there -- as to -- when
 2 the Board receives back a mail-in ballot,
 3 what does the election code require the
 4 Board to do with that ballot?
 5 MS. McKENZIE: Objection.
 6 **A. The election code requires us to**
 7 **receive the ballot, mark the voter's**
 8 **record accordingly --**
 9 BY MS. GALLAGHER:
 10 Q. Let's stop right there, and how is
 11 the voter's record marked?
 12 **A. It is marked in the SURE system**
 13 **using codes provided by the Department of**
 14 **State, and then the ballot is sealed until**
 15 **precanvassing 7 a.m. election morning.**
 16 Q. Does the election code also require
 17 how those ballots which are received are
 18 to be maintained once the ballot is
 19 received and logged in? We'll just say
 20 logged in.
 21 **A. Once it's marked in the SURE**
 22 **system, the election code tells us -- it**
 23 **outlines that the ballot is then to be**
 24 **locked until canvass -- prec canvass.**
 25 Q. Locked and secured?

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1 **A. UOCAVA.**
 2 MS. McKENZIE: Objection.
 3 **A. Yes.**
 4 BY MS. GALLAGHER:
 5 Q. Would it be fair to say that those
 6 three pieces -- those three laws govern
 7 voting in the Pennsylvania and hence
 8 Washington County in one respect or
 9 another?
 10 MS. McKENZIE: Objection.
 11 **A. Yes, in addition to the**
 12 **Pennsylvania -- the entirety of the**
 13 **Pennsylvania Election Code.**
 14 BY MS. GALLAGHER:
 15 Q. Thank you. Act 77 is part of the
 16 election code, is it not, of Pennsylvania?
 17 **A. Yes.**
 18 Q. And are you also required to deal
 19 with -- to be familiar with the election
 20 code in its entirety?
 21 MS. McKENZIE: Objection.
 22 **A. I am.**
 23 BY MS. GALLAGHER:
 24 Q. Do you have an understanding within
 25 that context -- you had some questions by

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1 **A. Locked and secured. I don't know**
 2 **the exact language.**
 3 Q. To the best of your knowledge here
 4 today, does the provision of Act 77 which
 5 requires the Boards of Election to
 6 acknowledge or record receipt of the
 7 ballot require the Boards to enter codes
 8 other than showing whether the ballot was
 9 received?
 10 MS. McKENZIE: Objection.
 11 MS. GALLAGHER: If she knows.
 12 **A. The election law only provides --**
 13 **it tells us that we are to indicate on the**
 14 **voter's record that the ballot was**
 15 **received and then lock and secure the**
 16 **ballot until canvassing.**
 17 BY MS. GALLAGHER:
 18 Q. It doesn't tell you that you have
 19 to follow the secretary of the
 20 Commonwealth's codes for cancel or
 21 anything like that, does it --
 22 MS. McKENZIE: Objection.
 23 BY MS. GALLAGHER:
 24 Q. You can answer. -- other than to
 25 show that it was received?

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1 **A. Correct. We have to mark the**
 2 **voter's record accordingly that the ballot**
 3 **had been received.**
 4 Q. Correct. Is that what Washington
 5 County did in 2024?
 6 **A. Yes. We indicated on the voter's**
 7 **record that the ballot was recorded. The**
 8 **code we used was recorded ballot returned.**
 9 Q. If there was a code available that
 10 just said received, would that have been a
 11 -- would you have used that code, or would
 12 that have been appropriate code to use?
 13 **A. Received is appropriate according**
 14 **--**
 15 MS. McKENZIE: Wait. What was
 16 the question?
 17 MS. GALLAGHER: Can you read it
 18 back?
 19 -----
 20 (The record was read by the reporter.)
 21 -----
 22 MS. McKENZIE: I just want to
 23 place my objection as to form on that
 24 question.
 25 MS. GALLAGHER: Okay.

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1 **record that the ballot was received and**
 2 **lock and secure it. So received would have**
 3 **been appropriate to my understanding as to**
 4 **what is provided in the election code.**
 5 BY MS. GALLAGHER:
 6 Q. Do you know of any requirement
 7 under the election code that requires you
 8 to enter in any information into the SURE
 9 system as to the status of the ballot or
 10 -- strike that; as to any of the Board's
 11 observations of the ballot, as to whether
 12 a date is missing, a signature is missing,
 13 et cetera --
 14 MS. McKENZIE: Objection.
 15 BY MS. GALLAGHER:
 16 Q. -- under the election code?
 17 **A. Can I make sure I'm understanding?**
 18 Q. Ah-huh.
 19 **A. So you're saying -- or you're**
 20 **asking does the election code indicate**
 21 **that we are to record the voter's record**
 22 **based upon observations we see when we're**
 23 **looking at the declaration envelope?**
 24 Q. Correct.
 25 **A. Okay, no, it does not.**

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1 MS. McKENZIE: It's a little
 2 hard to jump in with the pace of this.
 3 THE WITNESS: I'll slow down.
 4 I'm sorry.
 5 MS. GALLAGHER: It's probably me
 6 more than anyone. Off the record.
 7 -----
 8 (There was a discussion off the record.)
 9 -----
 10 **A. Received would have been**
 11 **appropriate according to the decision made**
 12 **by the Washington County Board of**
 13 **Elections.**
 14 BY MS. GALLAGHER:
 15 Q. Would it also have been appropriate
 16 in the context of your understanding of
 17 the election code as the elections
 18 director with the requirement of the
 19 election code itself?
 20 MS. McKENZIE: Objection.
 21 MR. BERARDINELLI: Do you
 22 understand it?
 23 THE WITNESS: Yeah.
 24 **A. Yes. The election code indicates**
 25 **that we are to indicate on the voter's**

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1 Q. Are you aware of any provision of
 2 the election code that allows you to
 3 cancel a mail-in ballot?
 4 **A. Not to my knowledge.**
 5 Q. Are you aware of any provision of
 6 Act 77 which indicates that a ballot is
 7 canceled or requires a ballot to be
 8 canceled?
 9 **A. Any part of Act 77 that requires a**
 10 **ballot to be canceled?**
 11 Q. Yes.
 12 **A. Not to my knowledge.**
 13 Q. Do you have any understanding of
 14 what the term canceled -- the word
 15 canceled means in the context of the
 16 election code?
 17 **A. I don't know -- I don't know the**
 18 **word canceled where it's referenced and**
 19 **what it means in the reference. I'm**
 20 **unsure of how to answer that.**
 21 BY MS. GALLAGHER:
 22 Q. Are you aware of any provision of
 23 the election code that allows the Board of
 24 Elections once it has received a mail-in
 25 ballot to cancel that ballot?

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1 **A. To my knowledge, there's nothing in**
 2 **the election code that requires us to**
 3 **cancel a mail-in or absentee ballot.**
 4 Q. Do you know of any provision of the
 5 election code that permits the Board of
 6 Elections to cancel an absentee or mail-
 7 in ballot once it has been received?
 8 **A. To my knowledge, no.**
 9 Q. Now, I believe in response to some
 10 of Ms. McCormick's questions, towards the
 11 end of her questions she talked to you
 12 about replacement ballots. Other than
 13 those instances which you discussed with
 14 Ms. McCormick, do you know of any
 15 provision of the election code that
 16 enables you to issue a voter a second
 17 mail-in ballot?
 18 **A. Not to my knowledge.**
 19 Q. Now, I believe you testified
 20 earlier -- I believe you cited the Chapman
 21 case -- that it's your understanding that
 22 it's up to the individual boards of
 23 election to decide whether or not they're
 24 going to provide notice of incurable
 25 procedures. Was that your testimony?

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1 Q. And what is that?
 2 **A. If the voter is unable to surrender**
 3 **-- if they requested an absentee or mail-**
 4 **in ballot and they are unable to surrender**
 5 **the ballot and declaration envelope to the**
 6 **poll worker, then they are to vote a**
 7 **provisional ballot.**
 8 Q. I'll just take that back a step.
 9 If an individual has requested a mail-in
 10 ballot and that mail-in ballot comes into
 11 your office and is received, marked in the
 12 SURE system as received, is that
 13 individual under any circumstances that
 14 you're aware of under the election code
 15 allowed to vote by provisional ballot?
 16 MS. McKENZIE: Objection.
 17 **A. Anyone can vote by provisional**
 18 **ballot, but the election code does outline**
 19 **the stipulations on when provisional**
 20 **ballots are to be counted.**
 21 BY MS. GALLAGHER:
 22 Q. Okay, so let's walk through all of
 23 that. So a voter votes by requesting a
 24 mail-in ballot and it's never received.
 25 You don't receive it for whatever reason.

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1 MS. McKENZIE: Objection.
 2 **A. My nonlegal understanding of the**
 3 **Ball V. Chapman ruling was that the county**
 4 **Board of Elections in Pennsylvania were**
 5 **responsible for deciding whether they**
 6 **wanted to cure or not cure absentee and**
 7 **mail-in ballots.**
 8 BY MS. GALLAGHER:
 9 Q. With respect to curing, are you
 10 aware of the election code, just the
 11 election code's procedures -- strike that.
 12 With respect to a mail-in ballot, is
 13 there any time that a voter who has
 14 requested a mail-in ballot can vote by
 15 provisional ballot under the election code
 16 or Act 77 to the best of your knowledge?
 17 MS. McKENZIE: Objection.
 18 **A. Can you repeat that? I'm sorry.**
 19 BY MS. GALLAGHER:
 20 Q. Sure. Under the election code, to
 21 the best of your knowledge, is there any
 22 circumstance under which a voter who has
 23 requested a mail-in ballot is permitted to
 24 vote by provisional ballot?
 25 **A. Yes.**

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1 The voter goes to the polls, and it's
 2 shown that his ballot was never received.
 3 He or she does not have that ballot with
 4 them. The voter does not. How does that
 5 voter vote?
 6 **A. So because the poll book reflects**
 7 **that the voter was issued a mail-in or**
 8 **absentee ballot and because they do not**
 9 **have the ballot or declaration envelope,**
 10 **they would -- if they voted, they would**
 11 **need to vote a provisional ballot.**
 12 Q. Now, at the time of the canvass and
 13 you're going through in your counting and
 14 you find both you have a mail-in ballot
 15 for that voter and a provisional ballot
 16 for that voter, does the election code
 17 dictate which ballot may be counted?
 18 MS. McKENZIE: Objection.
 19 **A. The absentee and mail-in ballots in**
 20 **order to be recorded on the voter's record**
 21 **have to be received by 8 o'clock on**
 22 **election day, 8 o'clock p.m. So that**
 23 **ballot would have been received in the**
 24 **election office first, and that is the**
 25 **ballot that would be counted. The**

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1 **provisional ballots come in with the poll**
 2 **workers and the results after the close of**
 3 **the election.**
 4 BY MS. GALLAGHER:
 5 Q. Okay, I'd like you to look at, if
 6 you would, Exhibit No. 2.
 7 **A. Yes.**
 8 Q. I'd like you to look at -- it would
 9 be Page 2 of 18, the first paragraph. No,
 10 excuse me. If you can, go back to the
 11 first page. I believe you've identified
 12 this as what was received from the
 13 Department of State with respect to
 14 changes in the SURE system?
 15 **A. Yes. I received this via email**
 16 **from the Department of State.**
 17 Q. And could you tell us, in the
 18 right-hand top, TLP: Amber Plus Strict,
 19 what does that mean?
 20 **A. I don't know the specific acronyms.**
 21 **I believe it's through the cyber**
 22 **security, CISA, the way they identify**
 23 **documents, and based upon the color is to**
 24 **whom the document can be shared with. I**
 25 **know white is public.**

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1 **Secretary of the Commonwealth's duties are**
 2 **as outlined in the election code.**
 3 **So the directives, to my knowledge,**
 4 **reflect the Secretary of the**
 5 **Commonwealth's duties as from the election**
 6 **code.**
 7 Q. So they have to be followed within
 8 the power of the Secretary of the
 9 Commonwealth?
 10 **A. Yes, to my knowledge.**
 11 Q. Is that different from your
 12 understanding of a guidance? Does a
 13 guidance have to be followed?
 14 MS. McKENZIE: Objection.
 15 **A. My understanding of a guidance is**
 16 **that it is a recommendation but not the**
 17 **rule.**
 18 BY MS. GALLAGHER:
 19 Q. Okay, so Document No. 2, it's not
 20 marked -- is it marked as a directive for
 21 a guidance?
 22 **A. On the front page, no, it is not.**
 23 Q. Okay, so I'd like you to look at
 24 Page 2 of 18 in the first paragraph, and
 25 I'm just going to read this: As part of

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1 Q. Excuse me?
 2 **A. White is public.**
 3 Q. Do you know if an amber plus strict
 4 can be shared with the public?
 5 **A. To my knowledge, no.**
 6 Q. And just to be clear, you spoke
 7 earlier -- I believe there was a question
 8 about a July 1st directive. Do you
 9 remember that?
 10 **A. Yes, the Department of State**
 11 **directive on the mail-in and absentee**
 12 **ballot envelopes.**
 13 Q. And you were asked if Washington
 14 County Board of Elections would be
 15 following that directive, and I believe
 16 you responded yes. Could you tell us, does
 17 a Boards of Election -- do the Boards of
 18 Election have any discretion as to whether
 19 or not they will follow a directive issued
 20 by the Department of State?
 21 **A. To my knowledge, I believe the**
 22 **directives are -- the Department of**
 23 **State's Secretary of the Commonwealth, the**
 24 **directives are -- I'm trying to think of**
 25 **the word -- in relation to what the**

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1 this release, modifications have been made
 2 within the SURE VR system to add six
 3 optional pending status reasons when
 4 recording response types for absentee
 5 and/or mail-in ballots. These options may
 6 be used if a county offers ballot curing.
 7 So when you read that, when you were
 8 a curing county, did that then provide
 9 options to you that you could use if you
 10 wanted to?
 11 MR. BERARDINELLI: Object to the
 12 form.
 13 **A. These options were not available in**
 14 **2023 when the Board of Elections decided**
 15 **to cure.**
 16 BY MS. GALLAGHER:
 17 Q. But if you were a curing county now
 18 --
 19 **A. These are options that we may**
 20 **utilize.**
 21 Q. You're not required to do that,
 22 correct?
 23 **A. No.**
 24 Q. What options as a noncuring county
 25 did the Washington County Board of

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1 Elections have for the April 2024 primary
 2 when entering information as to a mail-in
 3 ballot that had been received?
 4 MS. McKENZIE: Objection.
 5 **A. Based upon the codes offered in the**
 6 **SURE system by the Department of State --**
 7 **and in Exhibit 2 on Page 3, the drop-down**
 8 **menu does show all of the various codes**
 9 **available. Based on the codes that are**
 10 **available, the Washington County Board of**
 11 **elections used record ballot return.**
 12 BY MS. GALLAGHER:
 13 Q. I'd like you to look at Exhibits 4,
 14 5, and 6 please, and again, I believe you
 15 testified earlier that these were the
 16 emails which were generated to Washington
 17 County voters, Plaintiffs in this case,
 18 following your -- not your but the Board's
 19 entering the receipt of their mail-in
 20 ballots.
 21 **A. Yes.**
 22 Q. Okay.
 23 **A. Voters who -- because we used the**
 24 **record ballot return code in SURE,**
 25 **Washington County mail ballot voters**

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1 being counted, you may receive another
 2 notification. As to Washington County for
 3 the April 2024 primary election, is that
 4 an accurate statement to that voter?
 5 **A. No. Based upon the decision made**
 6 **by the Washington County Board of**
 7 **Elections, that sentence is misleading.**
 8 Q. So to the extent a voter received
 9 this email, could you stop -- strike that.
 10 Could the Washington County Board of
 11 Elections have stopped this email from
 12 going to their voters, their mail-in
 13 voters?
 14 MS. McKENZIE: Objection.
 15 **A. No, not to -- we could have not**
 16 **included the email address in the voters'**
 17 **--**
 18 BY MS. GALLAGHER:
 19 Q. Well, that wouldn't have been
 20 accurate, would it, though?
 21 **A. That wouldn't have been accurate.**
 22 Q. So --
 23 MR. BERARDINELLI: Let her
 24 finish, please.
 25 **A. That's the only way we could have**

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1 **received this email from the Department of**
 2 **State, the emails of 4 -- Exhibits 4, 5**
 3 **and 6.**
 4 Q. Did the Washington County Board of
 5 Elections have any input into the language
 6 in that email?
 7 **A. No. To my knowledge, these emails**
 8 **were drafted by the Department of State.**
 9 Q. Did the Department of State give
 10 you prior review, an ability to review
 11 these emails prior to the implementation
 12 of the system?
 13 **A. The Washington County Board of**
 14 **Elections did not have any input in the**
 15 **language contained in the emails of**
 16 **Exhibits 4, 5, and 6.**
 17 Q. I'd like you to look at the first
 18 paragraph: Your ballot has been received
 19 by Washington County as of April 22nd,
 20 2024. Would that be an accurate statement
 21 for this? I'm looking at Mr. Marks's.
 22 **A. Yes, that sentence.**
 23 Q. The next line: If your county
 24 election office identifies an issue with
 25 your ballot that prevents the ballot from

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1 **prevented the voter from receiving an**
 2 **email is by not including their email on**
 3 **the application in the SURE system which**
 4 **would not have been accurate.**
 5 BY MS. GALLAGHER:
 6 Q. But the Department of State didn't
 7 give you that option, did they, Ms.
 8 Ostrander --
 9 MS. McKENZIE: Objection.
 10 BY MS. GALLAGHER:
 11 Q. -- to have an accurate email go out
 12 to your voter?
 13 **A. The Washington County Board of**
 14 **Elections did not have any input into the**
 15 **language of the email.**
 16 Q. Was there an option not to have --
 17 to not allow the email to be sent -- and I
 18 said that backwards. Do you understand
 19 what I meant?
 20 MS. McKENZIE: Objection.
 21 **A. No.**
 22 BY MS. GALLAGHER:
 23 Q. Did you have the ability to stop
 24 this email from going out to Washington
 25 County voters?

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1 **A. As I said before, the only way we**
 2 **could have prevented this email was to not**
 3 **have inputted the email address into the**
 4 **application which would not have been**
 5 **accurate. We would not have done that.**
 6 Q. So maybe I can ask it better. Once
 7 you put in all accurate information, did
 8 you have any control over what Washington
 9 County voters were being told?
 10 **A. No.**
 11 Q. To the extent that a voter in
 12 Washington County received this email and
 13 thought, oh, if there's a problem with my
 14 ballot, I may get more notification, was
 15 that belief caused by Washington County?
 16 MS. McKENZIE: Objection.
 17 **A. I don't understand. Could you**
 18 **rephrase?**
 19 BY MS. GALLAGHER:
 20 Q. Once a voter received this and they
 21 read this language, if your county
 22 election official identifies an issue with
 23 your ballot envelopes that prevent the
 24 ballot from being counted, you may receive
 25 another notification -- as you stated,

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1 **from Washington County. It was from the**
 2 **Department of State.**
 3 BY MS. GALLAGHER:
 4 Q. With respect to -- I'd like you to
 5 look at Exhibit No. 9. I believe you
 6 testified that you did participate in the
 7 executive session.
 8 **A. Yes, I did.**
 9 Q. Did other counties express concern
 10 with the automatically generated emails?
 11 **A. Yes. There was concern brought up**
 12 **by other counties as well.**
 13 Q. Do you recall the nature of those
 14 concerns?
 15 **A. The counties that objected, one of**
 16 **the objections was that they did not**
 17 **appreciate or care -- I don't know; care**
 18 **for that the Department of State was**
 19 **sending emails to their county voters on**
 20 **their Board's behalf without their Board**
 21 **having any input into the language and**
 22 **that the email was a blanket email for the**
 23 **record, ballot returned code in the SURE**
 24 **and not separate emails based upon if that**
 25 **county's Board of Elections had decided to**

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1 that was not true for Washington County
 2 mail-in voters, correct?
 3 **A. Yeah. That sentence was not an**
 4 **accurate reflection of the decision made**
 5 **by the Washington County Board of**
 6 **Elections, so to the voters in Washington**
 7 **County, that sentence in my opinion is**
 8 **misleading.**
 9 MR. BERARDINELLI: When you say
 10 decision, you're talking about --
 11 THE WITNESS: The Board of
 12 Elections's decision to not cure.
 13 MR. BERARDINELLI: Thank you.
 14 BY MS. GALLAGHER:
 15 Q. You believe that's misleading?
 16 **A. That's my opinion.**
 17 Q. To the extent it is, was that
 18 caused by Washington County, or was it
 19 caused by the Department of State's email?
 20 MS. McKENZIE: Objection.
 21 **A. Washington County and the Board of**
 22 **Elections did not send the email, and we**
 23 **did not draft the language contained in**
 24 **the email. So the email our voters in**
 25 **Washington County were receiving was not**

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1 **cure or not cure absentee and mail-in**
 2 **ballots.**
 3 Q. And do you recall what the
 4 Department's response was to that, those
 5 concerns?
 6 **A. The Department of State said that**
 7 **they were taking -- the Department of**
 8 **State was taking the feedback from the**
 9 **counties on the call. They were taking the**
 10 **feedback into consideration, and they were**
 11 **looking into sending out follow-ups that**
 12 **would apply to both curing and noncuring**
 13 **counties.**
 14 Q. Have you heard any more follow-up
 15 about that?
 16 **A. I have not.**
 17 Q. There has been -- within your
 18 understanding of the election code and the
 19 Board's powers to adopt those curing
 20 procedures as it's believed after some of
 21 the litigation here that's ensued since
 22 the enactment of Act 77, in your
 23 understanding of the code, is the Board
 24 allowed to make up curing procedures that
 25 do not exist --

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1 MS. McKENZIE: Objection.
 2 BY MS. GALLAGHER:
 3 Q. -- in the election code?
 4 MS. McKENZIE: Objection.
 5 **A. According to the election code**
 6 **which was affirmed in Ball V. Chapman's**
 7 **ruling, the Board of Elections can decide**
 8 **whether the County cures or does not cure**
 9 **absentee and mail-in ballots, and then**
 10 **they would decide the procedures on how**
 11 **they would cure or not cure.**
 12 BY MS. GALLAGHER:
 13 Q. As an elections director -- strike
 14 that.
 15 In 2023, was the decision to cure
 16 also done via Board vote?
 17 **A. Yes. Prior to the 2023 primary in**
 18 **May and prior to the 2023 election in**
 19 **November, the Board of Elections voted on**
 20 **the curing policy.**
 21 Q. Did you have any concerns about the
 22 curing policy that was enacted by the
 23 Board?
 24 MR. BERARDINELLI: Object to
 25 form, if you understand it.

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1 received?
 2 **A. Yes. We mark all absentee and mail**
 3 **ballots with in the SURE system. We mark**
 4 **the voter's record the same day as the**
 5 **ballots are received in our office.**
 6 Q. So the ballot is received on
 7 election day. It's entered into the SURE
 8 system. A ballot that's received at 7:45,
 9 when is that entered into the SURE system?
 10 **A. It would be entered in at 7:45 once**
 11 **it's received.**
 12 Q. If one is received at 7:59, when is
 13 that entered?
 14 **A. Sometime around the time it was**
 15 **received.**
 16 Q. But would you agree with me that a
 17 ballot that's dropped off at 7:59 is time
 18 to cast?
 19 **A. Yes. They have until 8 p.m.**
 20 Q. If there's an issue on the back, if
 21 it's undated or unsigned, is there enough
 22 time to give that voter the opportunity to
 23 fix that ballot?
 24 **A. The polls -- if the ballot is**
 25 **received at 8:59 and the polls close at**

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1 ----
 2 (There was a discussion off the record.)
 3 ----
 4 BY MS. GALLAGHER:
 5 Q. I'm asking for your concerns, if
 6 you had concerns about it.
 7 **A. So to my understanding of the**
 8 **election code, the language that is stated**
 9 **in the election code does not allow for a**
 10 **voter to be able to change anything on**
 11 **their ballot once it's received and in the**
 12 **custody of the Board of Elections.**
 13 Q. With respect to -- so ballots
 14 continue to come in on election day; is
 15 that true? Do they come in through the
 16 mail on election day as well?
 17 **A. Yes. We receive ballots up until**
 18 **the deadline of 8 p.m. election day both**
 19 **in person and through the mail.**
 20 Q. So I understand your prec canvass as
 21 you've testified that is going on at that
 22 point -- and I'll get back to that, but
 23 with the actual ballots that come in, the
 24 mail comes in. You look at them. Do they
 25 get entered into the SURE system as

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1 **8:00 --**
 2 Q. Did you mean 7:59?
 3 **A. I'm sorry. If the ballot is**
 4 **received at 7:59 and it's marked in the**
 5 **SURE system -- the polls close at 8**
 6 **o'clock. No one can vote after 8 p.m., so**
 7 **the voter would be unable to -- according**
 8 **to election law, it does not allow any**
 9 **opportunity for the voter to come in and**
 10 **fix an error.**
 11 Q. Given the time of receipt that
 12 mail-in ballots can be received up until
 13 7:59 p.m., do you know of any way, Ms.
 14 Ostrander, to implement a cure policy
 15 which would guarantee that every mail-in
 16 voter with the same defect would have the
 17 right to cure?
 18 MR. BERARDINELLI: Object to
 19 form. Do you understand?
 20 BY MS. GALLAGHER:
 21 Q. Do you know what I mean?
 22 **A. Not within the current election**
 23 **law.**
 24 Q. So would you then agree that as to
 25 the current status, as to in 2023, were

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1 there voters with the same, let's call it,
 2 fatal defects? I forget what Ms.
 3 McCormick's term was.
 4 MR. BERARDINELLI: Disqualifying
 5 errors.
 6 **A. Disqualifying errors.**
 7 BY MS. GALLAGHER:
 8 Q. Fatal defects, disqualifying
 9 errors.
 10 MS. SCHNEIDER: Her name is
 11 McKenzie.
 12 MS. GALLAGHER: That was college
 13 sorority sister. I apologize for that.
 14 Would you please correct that on the
 15 record? I'm embarrassed. Thank you.
 16 BY MS. GALLAGHER:
 17 Q. Is there any way for those voters
 18 to be treated the same as every other
 19 voter with the same defect into their
 20 ballot?
 21 MS. McKENZIE: Objection.
 22 MR. BERARDINELLI: Object to
 23 form.
 24 **A. Can you repeat the question?**
 25 BY MS. GALLAGHER:

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1 **A. Not under Pennsylvania's current**
 2 **election code. It does not -- we would**
 3 **not be able to provide each voter an**
 4 **opportunity to correct a disqualifying**
 5 **error.**
 6 BY MS. GALLAGHER:
 7 Q. Would you agree that by not
 8 allowing any curing, all voters are being
 9 treated equally?
 10 MS. McKENZIE: Objection.
 11 **A. By not allowing curing, it's -- not**
 12 **allowing curing is, for lack of a better**
 13 **word, more fair because you're not --**
 14 **those voters who turn their ballot in at**
 15 **7:45, 7:59 with a disqualifying error**
 16 **aren't losing out on a special privilege**
 17 **than voters who turned their ballot in two**
 18 **weeks ahead of time and a disqualifying**
 19 **error was discovered.**
 20 BY MS. GALLAGHER:
 21 Q. So it goes through the canvass, and
 22 it's not counted. Does that voter, as you
 23 understand it, have a right to challenge
 24 that no count -- strike that.
 25 For someone whose ballot is not

174

1 Q. Probably not, but I can have it
 2 read back.
 3 - - - - (The record was
 4 read by the reporter.)
 5 - - - -
 6 MS. McKENZIE: Objection.
 7 MS. GALLAGHER: Why don't we
 8 strike it.
 9 BY MS. GALLAGHER:
 10 Q. So for the voter who cast their
 11 mail-in ballot --
 12 **A. Which year are you talking?**
 13 Q. We'll just talk about this year.
 14 **A. Okay, 2024.**
 15 Q. -- if you were to adopt a curing
 16 policy, is there a way to ensure that
 17 every mail-in voter didn't have a date,
 18 any date, a day, on their ballot to ensure
 19 that every voter no matter when they cast
 20 that ballot as long as it was legally cast
 21 would have the same opportunity to cure
 22 it?
 23 MS. McKENZIE: Objection.
 24 MR. BERARDINELLI: Object to
 25 form.

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1 counted because it's missing a signature
 2 or a date, do they have a right to
 3 challenge that action or appeal from that
 4 decision if you know?
 5 MS. McKENZIE: Objection.
 6 MR. BERARDINELLI: Object to the
 7 form.
 8 **A. During the canvass, the voter can**
 9 **challenge a decision made by the canvass**
 10 **board.**
 11 BY MS. GALLAGHER:
 12 Q. You were asked if Washington County
 13 had utilized the envelope with the hole in
 14 it to be able to see if there's a secrecy
 15 ballot. And I apologize, but I could not
 16 hear all of your answer at the time. What
 17 was your response?
 18 **A. We do not utilize an envelope with**
 19 **a hole.**
 20 Q. I'm sorry, you do not what?
 21 **A. We don't utilize -- we don't use an**
 22 **envelope that has a hole in the**
 23 **declaration envelope, no.**
 24 Q. And why is that?
 25 **A. The hole would cause the envelope**

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1 **to be opened, to have an opening.**
 2 **According to election law, the envelopes**
 3 **are not to be opened until 7 a.m. on**
 4 **election morning.**
 5 Q. So you would agree then the hole
 6 exposes the contents of the envelope,
 7 correct, the declaration envelope?
 8 MS. McKENZIE: Objection.
 9 MR. BERARDINELLI: Join.
 10 **A. The hole provides an opening, and**
 11 **according to the election code, the**
 12 **envelope is not to be opened until**
 13 **election morning at 7 a.m.**
 14 BY MS. GALLAGHER:
 15 Q. I just have a few more questions.
 16 Just give me one second.
 17 If a voter calls with a question
 18 during the time they are filling out their
 19 mail-in ballot, do you provide assistance?
 20 **A. Yes. We provide customer service**
 21 **to voters. If they call and they have not**
 22 **relinquished their ballot to us and they**
 23 **have a question on filling out the**
 24 **envelope, we'll direct them to the**
 25 **instructions that were included with the**

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1 jump around a little bit. At some point,
 2 you were asked whether after the Board of
 3 Elections voted in favor of a noncuring
 4 policy and directed use of the received,
 5 record code, whatever the right term of
 6 art is which I apologize for messing up,
 7 whether you provide any written
 8 instructions to your employees. And I
 9 believe your answer is no.
 10 **A. That's correct. I did not give**
 11 **them written instructions.**
 12 Q. Did you give them instructions?
 13 **A. Yes, I did.**
 14 Q. Can you walk us through what you
 15 did?
 16 **A. Okay, I provided them with verbal**
 17 **instructions which then they took notes**
 18 **for themselves, but I informed them after**
 19 **the Board of Elections met on April 11th**
 20 **and voted to not allow curing.**
 21 **I informed my staff as to that**
 22 **decision, and then I informed them that**
 23 **for all ballots received, we would be**
 24 **using the record, ballot return code in**
 25 **SURE as that was the most appropriate code**

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1 **ballot packet, and if they need any**
 2 **clarification, we will answer questions.**
 3 MS. GALLAGHER: I think that's
 4 it.
 5 MR. BERARDINELLI: Can we take a
 6 short break? And you can look at your
 7 notes. I have to use the rest room.
 8 MS. GALLAGHER: Yeah.
 9 MR. BERARDINELLI: Thanks.
 10 ----
 11 (There was a recess in the proceedings.)
 12 ----
 13 MS. SCHNEIDER: Did you have
 14 more? MS. GALLAGHER: No.
 15 MS. McKENZIE: I have just a
 16 couple of questions, but I think it makes
 17 sense to until you ask yours.
 18 MR. BERARDINELLI: I was just
 19 going to suggest the same thing, and I
 20 don't have very many.
 21 ----
 22 EXAMINATION
 23 ----
 24 BY MR. BERARDINELLI:
 25 Q. Melanie, I apologize, I'm going to

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1 **that was provided and that if any voter**
 2 **called asking if their ballot had been**
 3 **received that we were to tell them, you**
 4 **know, according to our system that, yes,**
 5 **their ballot had been received if it was**
 6 **on their record that had been recorded.**
 7 **If they began to ask more detailed**
 8 **questions on did I, you know, properly**
 9 **complete the declaration envelope, they**
 10 **would respond that according to the**
 11 **election law their ballot was received and**
 12 **it is locked and secure until the**
 13 **canvassing begins 7 a.m. on election**
 14 **morning.**
 15 Q. Did you have sort of like a staff
 16 meeting?
 17 **A. Yes.**
 18 Q. You were asked some questions about
 19 after the canvass whether you updated
 20 voter status in the SURE system. Do you
 21 recall that?
 22 **A. Yes, I do.**
 23 Q. Are you aware of anything in the
 24 election code that would dictate that you
 25 should update the SURE system post

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1 canvass?
 2 MS. McKENZIE: Objection.
 3 MR. BERARDINELLI: Legal
 4 conclusion, that's my understanding.
 5 Thank you.
 6 **A. To my knowledge, no, the election**
 7 **code does not require counties to update**
 8 **any of the codes in the SURE system.**
 9 BY MR. BERARDINELLI:
 10 Q. Exhibit 2, this sort of changes to
 11 SURE VR and VR voter services as of March
 12 11, 2024, it's got 18 pages of information
 13 about the SURE system, right?
 14 **A. Right.**
 15 Q. Anywhere in Exhibit 2, are you
 16 advised that you ought to update the SURE
 17 system after the canvass?
 18 **A. To my knowledge, no.**
 19 Q. Are you aware of any -- I'll break
 20 this down. I want to make sure I
 21 understand. An instruction is something
 22 that the Department of State tells you
 23 that you have to follow, right?
 24 **A. Directive.**
 25 Q. Directive. I always mess that up,

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1 Q. In 2024 after the Board of
 2 Elections voted not to allow curing, could
 3 someone get a replacement ballot if they
 4 improperly filled out the declaration
 5 envelope?
 6 **A. No, after the Board of Elections's**
 7 **decision not to cure, no.**
 8 Q. Because giving them a second ballot
 9 would be allowing them to cure?
 10 **A. Yes, that's correct.**
 11 Q. I want to make sure I understand
 12 some of the your testimony about what
 13 happens at the canvass, all right?
 14 **A. (Witness nods head up and down.)**
 15 Q. Members of the public can come,
 16 right?
 17 **A. That is correct.**
 18 Q. And as part of the canvass process,
 19 the canvass board is going through the
 20 ballots, the mail-in ballots, that have
 21 been segregated as having disqualifying
 22 errors, right?
 23 **A. Yes.**
 24 Q. So those ballots have now gone
 25 through first an initial -- I don't want

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1 directive. Are you aware of any directive
 2 from the Department of State mandating
 3 that you update the SURE system after the
 4 canvass?
 5 **A. No. There is -- to my knowledge,**
 6 **there is no directive that mandates**
 7 **counties to update the SURE system after**
 8 **canvassing.**
 9 Q. And guidance is the other term of
 10 art, and I think I heard you say that is
 11 more like a recommendation; is that right?
 12 **A. Yes. That's my interpretation.**
 13 Q. Is there any guidance, a formal
 14 guidance, from the Secretary of State
 15 where they're recommending that you update
 16 the SURE system after the canvass?
 17 **A. To my knowledge, I don't believe**
 18 **that that is in any of the guidance that**
 19 **we've received.**
 20 Q. You were asked some questions about
 21 whether someone could get a replacement
 22 mail-in ballot. Do you remember that?
 23 **A. Yes.**
 24 Q. In 2024. I want to focus on 2024.
 25 **A. Yes.**

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1 to call it cursory but an initial review
 2 upon receipt by your staff and have been
 3 segregated, right?
 4 **A. Yes.**
 5 Q. And then they went through a
 6 prec canvass review and remained segregated,
 7 right?
 8 **A. Yes.**
 9 MS. McKENZIE: Objection.
 10 BY MR. BERARDINELLI:
 11 Q. And then after the close of the
 12 polls sometime during the canvass process,
 13 understanding that can take several days,
 14 the canvass board looks at those ballots
 15 and evaluates them as well, correct?
 16 **A. Yes.**
 17 Q. And if someone is there as a member
 18 of the public, can they ask to see those
 19 ballots that have been set aside or
 20 segregated?
 21 **A. Yes.**
 22 Q. And would they be able to write
 23 down the names of all the voters whose
 24 ballots have been segregated?
 25 **A. Yes, they could.**

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1 Q. And Ms. Gallagher asked you whether
 2 anybody filed an appeal of any decision of
 3 the canvassing board to the Board of
 4 Elections in the 2024 primary. Do you
 5 recall that?
 6 **A. Yes, I do.**
 7 Q. Do you also understand that a voter
 8 can file an appeal in Common Pleas Court?
 9 **A. Yes. There are provisions in the**
 10 **election code for that.**
 11 Q. Did anybody file an appeal in the
 12 Common Pleas Court in the 2024 primary?
 13 **A. No.**
 14 Q. And leading up to the primary,
 15 you're aware that the decision -- the
 16 Board's decision not to allow curing was
 17 discussed at several public meetings
 18 including a commissioners' meeting?
 19 **A. That's correct.**
 20 Q. Just the week before election day?
 21 **A. Yes. I believe April 18th was the**
 22 **commissioners' public meeting?**
 23 Q. So I understand the ballot in the
 24 2024 primary for the calendar year had 2-
 25 0 and then a line where a voter was to

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1 **A. That is correct.**
 2 Q. And in addition to signed, wrong
 3 area, it also says not dated. Does that
 4 mean these three voters also failed to
 5 date their ballot?
 6 **A. That is correct.**
 7 Q. Is that an independent and separate
 8 reason for not counting their ballot in
 9 addition to it being signed in the wrong
 10 area?
 11 **A. Yes. There was no date present on**
 12 **the declaration envelope.**
 13 Q. I may have missed it. I looked for
 14 it. Tell me if I'm wrong. Is there a
 15 sheet that just has ballots being rejected
 16 for signing in the wrong area?
 17 **A. From reviewing Exhibit 8, there is**
 18 **not a category of just signed in the wrong**
 19 **area.**
 20 Q. And what does that mean to you as
 21 the person who put the spreadsheet
 22 together?
 23 **A. That we did not -- that the canvass**
 24 **board did not disqualify any voter's mail**
 25 **ballot based upon that they signed in the**

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1 fill in '24, correct?
 2 **A. That's correct. It was a block, so**
 3 **there was 2-0, and then there were two**
 4 **empty blocks that were blank for the voter**
 5 **to place the year in.**
 6 Q. And if I'm understanding the
 7 testimony, if the voter left that blank,
 8 that ballot was segregated and not counted
 9 as not having a complete date?
 10 **A. That is correct.**
 11 Q. Did any voter appeal either to the
 12 Board or to Common Pleas Court a decision
 13 not to count their ballot for that reason?
 14 **A. We did not receive any appeals.**
 15 **The Board of Elections or the Common Pleas**
 16 **Court.**
 17 Q. Can you get Exhibit 8 out? And you
 18 were asked some questions about one page
 19 of the document that in the bottom left-
 20 hand corner has among other verbiage
 21 signed, wrong area. Do you recall that?
 22 **A. Yes, I do.**
 23 Q. That page has three voters whose
 24 ballots were not counted for the reason as
 25 stated on that document, right?

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1 **wrong area and it was dated.**
 2 Q. Shifting gears to these listening
 3 sessions -- feedback sessions, these
 4 feedback sessions, if I'm understanding
 5 it, a representative from another county
 6 initially raised the concern that the
 7 email recorded -- tell me the terminology
 8 that you guys use.
 9 **A. Oh, record, ballot returned.**
 10 Q. The email that is sent by the
 11 Department of State related to the record,
 12 ballot returned has inaccuracies in it, a
 13 different county rep raised that concern,
 14 correct?
 15 **A. Yes, another director from another**
 16 **county in Pennsylvania raised their**
 17 **concern with the record, ballot returned**
 18 **email not being accurate.**
 19 Q. And did you speak up and speak your
 20 voice about that?
 21 **A. Yes, I agreed with my colleague.**
 22 Q. And I'm trying to understand some
 23 of the finite details. Either on the
 24 listening session you were on -- I'm
 25 sorry, the feedback session you were on or

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1 subsequent communications with
 2 representatives of the Department of
 3 State, did anybody ever tell you that they
 4 were thinking about changing the email?
 5 **A. During the feedback session, the**
 6 **Department of State alluded that they were**
 7 **going to change the language in their**
 8 **record, ballot returned email that was**
 9 **generated.**
 10 Q. And what was the change that was
 11 alluded to?
 12 **A. That they would remove the language**
 13 **stating that if your ballot contained**
 14 **errors -- that according to Exhibits 4, 5,**
 15 **and 6, if your county election office**
 16 **identifies an issue with your ballot**
 17 **envelopes that prevents the ballot from**
 18 **being counted, you may receive another**
 19 **notification. They indicated that they**
 20 **were considering removing that language.**
 21 Q. As I understand it, when you send a
 22 mail-in ballot to a voter, there's a set
 23 of instructions that go with it, right?
 24 **A. That is correct.**
 25 Q. Is there anything from -- withdraw

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1 BY MR. BERARDINELLI:
 2 Q. Let me withdraw it.
 3 **A. To my knowledge --**
 4 Q. Let me withdraw it.
 5 MR. BERARDINELLI: Why don't we
 6 mark this as -- what are we up to? 10?
 7 **A. Yeah.**
 8 -----
 9 **(Exhibit No. 10 marked for identification.)**
 10 -----
 11 MR. BERARDINELLI: Here, I have
 12 white copies. I'm violating the code by
 13 giving you the white copies.
 14 BY MR. BERARDINELLI:
 15 Q. Melanie, is what we've marked as
 16 Exhibit 10 a copy of the instructions that
 17 were sent out by Washington County with
 18 regard to -- in conjunction with sending
 19 out a mail-in ballot in the 2024 primary?
 20 **A. Yes. These directions were to be**
 21 **included in each mail ballot.**
 22 Q. And the top in bold, it says:
 23 Instructions, how to pack your ballot,
 24 right?
 25 **A. Yes.**

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1 that.
 2 Is the paper in Washington County,
 3 the instructions, printed a different
 4 color than the rest of the ballot
 5 information?
 6 **A. Yes. That is in accordance with**
 7 **the Department of State's directive on the**
 8 **absentee and mail-in ballot package that**
 9 **the directions are to be printed on a**
 10 **nonwhite color. And there's graphics on**
 11 **the directions, and we are to make sure**
 12 **it's in color font or ink so that it's**
 13 **more eye-catching.**
 14 Q. What color paper do you guys use
 15 for the instructions?
 16 **A. For the primary in 2024, we used a**
 17 **light pink.**
 18 Q. Do you know what you plan on using
 19 for the general in 2024?
 20 **A. We plan on using the same color.**
 21 Q. And those instructions, do they
 22 also warn a voter that if they don't fill
 23 out the declaration correctly that the
 24 ballot is not going to be counted?
 25 MS. McKENZIE: Objection.

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1 Q. Read into the record the next line,
 2 please.
 3 **A. For your ballot to count, you must**
 4 **follow all of these steps.**
 5 Q. And then it goes to label one, two,
 6 three, four steps with a bunch of bullet
 7 points?
 8 **A. Yes.**
 9 Q. And does every voter who receives a
 10 mail-in ballot from the Washington County
 11 Board of Elections get these instructions?
 12 **A. Yes.**
 13 Q. I want to jump back to March 12th
 14 of 2024, all right?
 15 **A. (Witness nods head up and down.)**
 16 Q. Yes?
 17 **A. Yes.**
 18 Q. I just want to make sure you're
 19 with me. I've been jumping all over the
 20 place. That was the meeting of the Board
 21 of Elections -- the first meeting of the
 22 Board of Elections in 2024 where the issue
 23 of curing or not curing was discussed,
 24 correct?
 25 **A. Yes, that was the actual first**

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1 **meeting of 2024.**
 2 Q. And I think you testified a little
 3 bit that you talked with the Board about
 4 the codes offered to the SURE system at
 5 that meeting, right?
 6 A. Yes, I did.
 7 Q. Can you walk us in a little more
 8 detail what you recall talking with them
 9 about, walk us through the discussions?
 10 A. **The guidance that was provided by**
 11 **the Department of State, not the SURE**
 12 **handout that we have but the actual**
 13 **guidance on examining an absentee or mail-**
 14 **in ballot, I shared that with them.**
 15 **And then also I did not provide them**
 16 **with a copy of that SURE handout that we**
 17 **have as Exhibit 2, but I did verbally**
 18 **speak of it letting the Board know the**
 19 **different codes the Department of State**
 20 **has provided in the SURE system and that**
 21 **we could utilize the codes in different**
 22 **ways if the Board of Elections decided to**
 23 **allow curing, you know, the canceled, no**
 24 **signature, canceled, no date, canceled,**
 25 **incorrect date.**

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1 If you guys decide noncuring, here are our
 2 code options?
 3 MS. McKENZIE: Objection.
 4 BY MR. BERARDINELLI:
 5 Q. Did you talk with them about what
 6 codes could be used for noncuring?
 7 A. Yes.
 8 Q. Can you tell us what you talked to
 9 them about?
 10 A. **Yes, that the record, ballot**
 11 **returned would be the most appropriate**
 12 **code for use if they decided not to -- if**
 13 **the Board of Elections decided not to**
 14 **cure. The other codes in my opinion were**
 15 **not applicable to a noncuring county.**
 16 **But I did tell them, the Board of**
 17 **Elections, that they could use the**
 18 **canceled, no signature/canceled, no date**
 19 **which would alert the voter with an email**
 20 **sent by the Department of State that their**
 21 **ballot was not being counted because of no**
 22 **date/no signature.**
 23 **But the email also contained**
 24 **information for the voter that they could**
 25 **correct the error, and if we used those**

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1 Q. How about the pending issue?
 2 A. **Also that there were pending codes**
 3 **now which previously were not provided.**
 4 **The pending codes could be utilized from**
 5 **my understanding if the Board of Elections**
 6 **decided to cure and, instead of replacing,**
 7 **they allowed the voter to make the**
 8 **correction on the original envelope that**
 9 **the pending code could be used.**
 10 Q. Let me interrupt. I want to try to
 11 understand that. So if I'm hearing you --
 12 let's assume we're in a county that
 13 permits curing. If I'm going to give you
 14 a new ballot, then I use the cancel code?
 15 A. Yes.
 16 Q. If I'm going to let you come in and
 17 fix your initial ballot, then I'm going to
 18 use the pending code?
 19 A. Yes.
 20 Q. And was that in substance explained
 21 to the Board so that they could evaluate
 22 the curing versus noncuring decision?
 23 A. Yes.
 24 Q. And now, how about on the noncuring
 25 side? What do you remember talking about:

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1 **codes, it would be misleading because we**
 2 **were not allowing -- that the Board of**
 3 **Elections did not decide to cure, so there**
 4 **was no correction available for the voter.**
 5 Q. In the noncuring scenario based on
 6 your knowledge of the emails that are sent
 7 from the Department of State, are any of
 8 them 100 percent accurate?
 9 A. **For a noncuring county, the SURE**
 10 **codes with the emails affixed to them are**
 11 **not appropriate for a noncuring county.**
 12 Q. The actual codes you chose -- what
 13 is the name again?
 14 A. **Record, ballot returned.**
 15 Q. Let's assume no email was sent.
 16 A. Okay.
 17 Q. That verbiage, that word, is
 18 actually what you did, right?
 19 A. **Yes. That code is appropriate, but**
 20 **because it produces an email with language**
 21 **that does not fit into Washington County's**
 22 **decision, it was misleading to voters.**
 23 Q. Now, I want to jump to the April
 24 11th meeting. At the April 11th meeting,
 25 that is when the Board voted to not allow

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1 curing, correct?
 2 **A. Yes, that is correct.**
 3 Q. And if I'm understanding your
 4 testimony, in the course of the discussion
 5 about that, they also talked about what
 6 code in the SURE drop-down menu you and
 7 your staff ought to use when dealing with
 8 a mail-in ballot?
 9 **A. Yes.**
 10 Q. Okay, first of all, do you remember
 11 any dialogue from that meeting about why
 12 to use one code versus another?
 13 **A. Because the Board of Elections**
 14 **decided with the code to use one code**
 15 **versus the other because of the emails**
 16 **that would be generated automatically to**
 17 **the voter.**
 18 Q. And tell me what you remember them
 19 discussing.
 20 **A. That the most appropriate code when**
 21 **you take in what the code says, like the**
 22 **SURE code, and the email that's sent out**
 23 **that we have no control over, the record,**
 24 **ballot returned code was the most**
 25 **appropriate in the Board of Elections of**

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1 about when a ballot is actually formally
 2 counted or not counted?
 3 **A. It would be during the canvass**
 4 **board meeting.**
 5 Q. And was that discussed as the Board
 6 was deciding what codes to use and whether
 7 to adopt curing or not curing?
 8 MS. McKENZIE: Objection.
 9 **A. Yes, it was.**
 10 BY MR. BERARDINELLI:
 11 Q. Tell us what you remember about
 12 that discussion just so we have a clear
 13 record.
 14 **A. That the election law says that the**
 15 **ballot -- once it's received by the Board**
 16 **of Elections, it is recorded on the**
 17 **voter's record. It is locked and secure**
 18 **until it's canvassed.**
 19 **So the Board decided -- you know,**
 20 **when you read that in the context of the**
 21 **law or the language, no decision can be**
 22 **made on the declaration envelope ahead of**
 23 **the canvassing, so all ballots are**
 24 **received until canvass.**
 25 MR. BERARDINELLI: Let's go off

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1 **Washington County situation.**
 2 Q. Was the concept of, quote, unquote,
 3 canceling a ballot discussed if you
 4 remember?
 5 **A. I did ask the Board of Elections if**
 6 **they wanted the code once the decision was**
 7 **made whether --**
 8 Q. Once which decision was made?
 9 **A. The canvass board.**
 10 Q. Go ahead. Please continue.
 11 **A. Once the canvass board's decision**
 12 **was made whether the ballot was counted or**
 13 **not counted based on the declaration**
 14 **envelope, I asked the Board if they wanted**
 15 **the codes changed, and the Board of**
 16 **Elections did not.**
 17 Q. During the discussion about --
 18 strike that.
 19 Was there discussion about which
 20 code to use after the vote to not permit
 21 curing, or was it all before?
 22 **A. It was during -- the decision on**
 23 **the codes was during the discussion.**
 24 Q. In that discussion about the codes,
 25 what, if anything, did the Board talk

200

1 the record for a second. I think I'm
 2 done.
 3 - - - -
 4 (There was a recess in the proceedings.)
 5 - - - -
 6 BY MR. BERARDINELLI:
 7 Q. Melanie, can you pull out Exhibit 3
 8 which is the May 14th letter from Mr.
 9 Sweats's office and the April 11th, 2024
 10 board minutes? And I want to focus our
 11 attention on the first page of the --
 12 MS. McKENZIE: Can you just give
 13 me to a minute to find Exhibit 3?
 14 MR. BERARDINELLI: Yes; second
 15 page of the exhibit.
 16 MS. SCHNEIDER: What exhibit are
 17 you on?
 18 MR. BERARDINELLI: 3.
 19 BY MR. BERARDINELLI:
 20 Q. So about halfway down that page,
 21 you'll see there's a part that says public
 22 comment on the first page of the minutes.
 23 May I?
 24 **A. Yeah.**
 25 Q. And in order to comment publicly at

201

1 a Board of Elections meeting, do citizens
 2 need to sign up in advance? How does that
 3 work?
 4 **A. Yes. In order to -- in order to**
 5 **make public comment at a public meeting in**
 6 **Washington County, the Washington County**
 7 **resident or taxpayer has to sign up, and**
 8 **they have to provide their name, their**
 9 **relationship such as resident or if**
 10 **they're representing an organization, and**
 11 **also what their topic of comment will be**
 12 **on.**
 13 Q. And how far in advance do you have
 14 to do that?
 15 **A. Whenever you come to the meeting**
 16 **that day.**
 17 Q. And in this case, a gentleman, Paul
 18 Fedore, F-e-d-o-r-e, signed up to make a
 19 public comment, correct?
 20 **A. Yes.**
 21 Q. And he indicated he was
 22 representing --
 23 MS. McKENZIE: Objection.
 24 BY MR. BERARDINELLI:
 25 Q. The document indicates that Mr.

203

1 **A. At the April 11th, 2024 Board of**
 2 **Elections meeting.**
 3 Q. Did that vote occur before or after
 4 Mr. Fedore's comments?
 5 **A. After.**
 6 MR. BERARDINELLI: Thank you.
 7 That's all I have.
 8 ----
 9 RE-EXAMINATION
 10 ----
 11 BY MS. McKENZIE:
 12 Q. I just have a few follow-up
 13 questions. You were asked by Ms.
 14 Gallagher if there had been a received
 15 code in Exhibit 2 would that have been an
 16 appropriate code for the Washington County
 17 Board of Elections to direct you to use?
 18 **A. Yes.**
 19 Q. Was there a code that was simply
 20 received with nothing else?
 21 **A. In the SURE system, the Department**
 22 **of State did not have a simply recorded or**
 23 **received code in SURE.**
 24 Q. Is Washington County required to
 25 use the SURE system in administering

202

1 Fedore was representing the Center for
 2 Coalfield Justice; is that correct?
 3 **A. That's correct.**
 4 Q. And do you actually remember Mr.
 5 Fedore getting up and talking?
 6 **A. I do.**
 7 Q. What did he talk about?
 8 **A. He spoke -- Mr. Fedore spoke on**
 9 **ballot curing, and he was in favor of**
 10 **ballot curing.**
 11 Q. And the vote whether to cure or not
 12 to cure occurred that same night?
 13 MS. McKENZIE: Objection.
 14 MR. BERARDINELLI: What's the
 15 objection?
 16 MS. McKENZIE: Well, I'm really
 17 trying not to object to all your leading
 18 questions, but --
 19 BY MR. BERARDINELLI:
 20 Q. Okay, what's the date of this
 21 meeting?
 22 **A. Of this Board of Elections meeting,**
 23 **April 11, 2024.**
 24 Q. When did the Board vote to not
 25 cure?

204

1 elections?
 2 MR. BERARDINELLI: Objection.
 3 MS. GALLAGHER: Object to form.
 4 MR. BERARDINELLI: Join. You
 5 can answer.
 6 **A. Yes. The election law outlines**
 7 **that the secretary of the Commonwealth is**
 8 **to like have the SURE system -- it's in**
 9 **the law. It's in the election law that we**
 10 **are to use the SURE system.**
 11 BY MS. McKENZIE:
 12 Q. Are you familiar with the laws
 13 concerning the SURE system and the
 14 regulations under those laws?
 15 MR. BERARDINELLI: Object to
 16 form.
 17 **A. I'm not sure. Specific codes? I**
 18 **don't understand.**
 19 BY MS. McKENZIE:
 20 Q. Are you generally familiar with the
 21 Pennsylvania law concerning the SURE
 22 system?
 23 **A. Yes.**
 24 Q. Okay, are you familiar with the
 25 regulations under the SURE system law?

205

1 MS. GALLAGHER: Objection to
 2 form.
 3 MR. BERARDINELLI: Object to the
 4 form.
 5 **A. The SURE system -- the law to use**
 6 **the SURE system is all in the election**
 7 **code. It was a bill passed by the state**
 8 **legislature as how the SURE system is to**
 9 **be used for all -- you know, each county**
 10 **is to use the SURE system as a database**
 11 **for recordkeeping of their registered**
 12 **voters.**
 13 BY MS. McKENZIE:
 14 Q. Is Washington County required to
 15 accurately enter data in the SURE system?
 16 MR. BERARDINELLI: Object to the
 17 form.
 18 **A. Washington County is to maintain**
 19 **their voter role which is their registered**
 20 **voters in the SURE system. We are to**
 21 **complete maintenance, and we're**
 22 **responsible for any maintenance that has**
 23 **to be done whether it's changing voters'**
 24 **addresses if by request, canceling voters,**
 25 **you know, removing deceased voters.**

207

1 Q. I just want to make sure one thing
 2 is clear on the record. At the meetings
 3 of the Board of Election in 2023
 4 concerning how the Board would handle
 5 mail-in ballots that had disqualifying
 6 errors, at those meetings, were you also
 7 instructed about which SURE code to use
 8 when a ballot came in with disqualifying
 9 errors on the declaration envelope?
 10 MR. BERARDINELLI: Object to
 11 form. You can answer if you understand.
 12 **A. I think I do. Yes, we were --**
 13 MR. BERARDINELLI: This is 2023?
 14 MS. McKENZIE: Yes.
 15 **A. In 2023, it was discussed at the**
 16 **Board of Elections's meeting the codes**
 17 **available in the SURE system in the**
 18 **Department of State at that time and which**
 19 **codes to use that most accurately**
 20 **reflected the Board's decision.**
 21 BY MS. McKENZIE:
 22 Q. Ms. Gallagher had asked you about
 23 whether or not Washington County Board of
 24 Elections opted to use the return envelope
 25 that had a hole punch, and there was some

206

1 BY MS. McKENZIE:
 2 Q. Is Washington County required to
 3 input accurate information about a voter's
 4 voting history in the SURE system?
 5 MR. BERARDINELLI: Object to the
 6 form.
 7 MS. GALLAGHER: Object to form.
 8 **A. Washington County is responsible**
 9 **for maintaining the voter registration**
 10 **information for Washington County's**
 11 **registered voters to the best of their**
 12 **knowledge. So in an example, voters who**
 13 **have moved and not notified the Board of**
 14 **Elections of their address change, we --**
 15 BY MS. McKENZIE:
 16 Q. In addition to voter registration
 17 records, is the County required to
 18 maintain records about whether a voter
 19 voted in an election?
 20 MR. BERARDINELLI: Object to
 21 form.
 22 **A. Yes. The voter -- the voter is to**
 23 **be -- if they voted, it's to be reflected**
 24 **on their voter record.**
 25 BY MS. McKENZIE:

208

1 dialogue back and forth about the
 2 significance of that. Have you seen one
 3 of these envelopes that has a hole punch
 4 in the outside envelope?
 5 **A. I have not.**
 6 Q. Okay, do you know how large the
 7 hole punch is?
 8 **A. I do not.**
 9 Q. Do you know if in that hole punch
 10 you can see anything other than a peek in
 11 to see the yellow envelope?
 12 **A. I do not.**
 13 Q. Do you know, can you see the ballot
 14 itself through the hole punch in the
 15 envelope?
 16 **A. No. I've never seen the envelope**
 17 **with a hole punch, so I can't speak on**
 18 **what you can see and what you can't see**
 19 **based upon the hole in the envelope or how**
 20 **large the hole was.**
 21 Q. I want to turn your attention to
 22 Exhibit 2, Pages 8 and 9. In 2024, if you
 23 had used -- withdraw that.
 24 In 2024, if the Board of Elections
 25 had directed your office to use the

209

1 canceled, no date code --

2 MR. BERARDINELLI: At the

3 bottom.

4 THE WITNESS: At the bottom,

5 okay.

6 BY MS. McKENZIE:

7 Q. -- or the canceled, incorrect date

8 at the top of the page or the canceled, no

9 signature code --

10 A. Yes.

11 Q. Could you just read for me into the

12 record what the verbiage of the email's

13 second paragraph would have said for those

14 codes?

15 A. From what is typed in the

16 directive, you just want me to read the

17 second sentence?

18 Q. That's correct.

19 A. Sure: If you do not have enough

20 time to request a new ballot before --

21 Q. I'm sorry, could you read the

22 entire paragraph, the second paragraph?

23 Because the document says -- second

24 paragraph email verbiage.

25 MR. BERARDINELLI: I'm sorry,

211

1 please read that?

2 A. Yes: Your mail ballot may not be

3 counted because you did not date the

4 declaration on your ballot return

5 envelope. If you do not have time to

6 request a new ballot before -- and there's

7 brackets, and in the brackets, it says

8 ballot application deadline date -- or if

9 the deadline has passed, you can go to

10 your polling place on election day and

11 cast a provisional ballot.

12 Q. And then same for the canceled no

13 signature, code, if that had been entered,

14 what would the email say?

15 A. Your ballot will not be counted

16 because you did not sign the declaration

17 on your ballot return envelope. If you do

18 not have time to request a new ballot

19 before and, in brackets, ballot

20 application deadline date, or if the

21 deadline has passed, you can go to your

22 polling place on election day and cast a

23 provisional ballot.

24 Q. And if a voter had sent back a mail

25 ballot that had one of these disqualifying

210

1 you've confused me now.

2 A. I'm sorry, me as well.

3 BY MS. McKENZIE:

4 Q. It's confusing. In 2024 if the

5 Board of elections in Washington County

6 had directed your office to use the

7 canceled, incorrect date code, the

8 canceled, no date code, or the canceled,

9 no signature code, in the second paragraph

10 of the email that would have been sent to

11 the voters, what would it have said? Can

12 you just read that into the record for me?

13 A. Okay, this one is under cancel,

14 incorrect date: Your mail ballot may not

15 be counted because you did not correctly

16 date the declaration on your ballot return

17 envelope. If you do not have time to

18 request a new ballot before -- and then

19 there is brackets that would insert the

20 ballot application deadline date -- or if

21 the deadline has passed, you can go to

22 your polling place on election day and

23 cast a provisional ballot.

24 Do you want me to read the no date?

25 Q. And the cancel, no date, could you

212

1 errors, are they able to go to their

2 polling place on election day and cast a

3 provisional ballot?

4 MR. BERARDINELLI: Object to

5 form.

6 MS. GALLAGHER: Object to form.

7 A. Any voter can go to the polling

8 place and request to cast a provisional

9 ballot.

10 ----

11 (There was a discussion off the record.)

12 ----

13 BY MS. McKENZIE:

14 Q. One last question, your master's

15 paper on HAVA, what was that thesis?

16 A. Well, it wasn't a dissertation. So

17 the West Virginia University considered

18 the master's in public administration a

19 professional degree, so we did not do a

20 thesis and dissertation.

21 We had to take an aspect -- we had

22 an internship, which my internship was in

23 the county clerk's office which in West

24 Virginia they are structured differently

25 than Pennsylvania. So they have a county

213

1 clerk, and there are different divisions.
 2 And one of them is elections and voter
 3 registration. And that is where I worked.
 4 And I had to have a specific task
 5 that I was in charge of, and then I had to
 6 write a paper on it. So for one election,
 7 my specific task was to make sure that all
 8 the poll places were properly staffed with
 9 poll workers.
 10 And then I also had to look at the
 11 way the office functioned and make any
 12 recommendations as to the ideas, you know,
 13 what I would change or my opinion. And
 14 one of them was through -- the Help
 15 America Vote Act had recently been
 16 implemented, and there was a lot of
 17 discussion on election reform. So I
 18 covered that in my paper as well.
 19 So when she brought that up, I was
 20 like: Oh, I remember. It brought back
 21 warm memories. So sorry about the little
 22 bit of conversation. It brought warm
 23 memories back from my work during my
 24 undergraduate -- I'm sorry, my master's
 25 program.

215

1 could go and vote a provisional, right?
 2 A. Yeah. Any voter, even a
 3 nonregistered voter, anyone can vote a
 4 provisional ballot.
 5 Q. If someone had sent in a mail-in
 6 ballot that was received by the Board of
 7 Elections and -- what was the term of art
 8 we were using?
 9 MS. McKENZIE: Disqualifying
 10 errors.
 11 BY MR. BERARDINELLI:
 12 Q. A disqualifying error or errors and
 13 they voted a provisional ballot on
 14 election day, would the provisional ballot
 15 be counted?
 16 A. Let me see if I understand this
 17 right. If the ballot had a disqualifying
 18 error and they went to the poll and voted
 19 a provisional ballot, that provisional
 20 ballot would not be counted if we had a
 21 ballot marked as received in our ballot
 22 room because we would have received that
 23 ballot.
 24 Q. Mail-in ballot?
 25 A. Mail-in ballot. We would have

214

1 MS. McKENZIE: I don't have any
 2 further questions.
 3 MR. BERARDINELLI: I just -- do
 4 you have any more? Let me do mine first.
 5 ----
 6 RE-EXAMINATION
 7 ----
 8 BY MR. BERARDINELLI:
 9 Q. On the language on Exhibit 2, if
 10 you do not have time to request a new
 11 ballot before --
 12 A. You're on Page 9?
 13 Q. 9 or 8. It is all the same. If
 14 someone had in the primary of 2024
 15 submitted their mail-in ballot already and
 16 it had a defect and they got an email like
 17 this and asked you for a new ballot, would
 18 you have given them one?
 19 A. Based upon the decision by the
 20 Board of Elections, no, I was not able.
 21 Q. The decision being what?
 22 A. The Washington County Board of
 23 Elections voted to not allow curing.
 24 Q. And you were asked some questions
 25 whether that same voter in this example

216

1 received that mail-in ballot first, so
 2 that ballot would count. And also the
 3 canvass board -- the actual decision on
 4 that ballot would not have been made until
 5 it was canvassed.
 6 MR. BERARDINELLI: That's all I
 7 have. Thank you.
 8 ----
 9 RE-EXAMINATION
 10 ----
 11 BY MS. GALLAGHER:
 12 Q. Mine is a little more basic. Could
 13 you go back to that page, please?
 14 A. Oh, yeah.
 15 Q. You were asked if you had entered
 16 canceled, incorrect date?
 17 A. Yes.
 18 Q. Had Washington County deemed mail-
 19 in ballots for 2024 with an incorrect date
 20 -- that were received with an incorrect
 21 date as canceled?
 22 A. No. The ballots were -- according
 23 to the Board's decision not to cure, the
 24 ballot was received, and then it was
 25 locked and secure until it was canvassed.

217

1 Q. So to the extent you were asked if
 2 it was important or necessary for the
 3 Board to enter correct information into
 4 the SURE system, for 2024, would it have
 5 been correct information for the Board to
 6 enter an incorrectly dated ballot as
 7 canceled?
 8 MS. McKENZIE: Objection.
 9 **A. For 2024, based on the Board's**
 10 **decision, it would not have been because**
 11 **the ballot had been received and a**
 12 **decision whether it was going to be**
 13 **counted or not wasn't made until later**
 14 **when it was canvassed.**
 15 BY MS. GALLAGHER:
 16 Q. Ms. Ostrander, I have a question.
 17 Have you read the complaint that was filed
 18 in this matter?
 19 **A. I have.**
 20 Q. Okay, are you aware of allegations
 21 that somehow Washington County misled
 22 voters?
 23 MS. McKENZIE: Objection.
 24 BY MS. GALLAGHER:
 25 Q. Are you aware of those allegations?

219

1 **were a voter receiving that email and**
 2 **reading it, I would assume that I could**
 3 **rectify the issue on the declaration**
 4 **envelope.**
 5 BY MS. GALLAGHER:
 6 Q. And once again, are you aware of
 7 any provision in the election code that
 8 cancels an otherwise fatally defective
 9 mail-in ballot?
 10 MS. McKENZIE: Objection.
 11 BY MS. GALLAGHER:
 12 Q. Cancels, that's the word.
 13 **A. The election code does not -- it**
 14 **does not tell us, tell the Board of**
 15 **Elections or the election office, to**
 16 **cancel voters' ballots based on any**
 17 **issues.**
 18 Q. So this is just the Department of
 19 State making it up, correct?
 20 MS. McKENZIE: Objection.
 21 BY MS. GALLAGHER:
 22 Q. It's either in there or it's not.
 23 **A. It's the Department of State's**
 24 **guidance.**
 25 MS. GALLAGHER: Got it. I don't

218

1 MS. GALLAGHER: She can answer.
 2 **A. That information is contained in**
 3 **the complaint.**
 4 BY MS. GALLAGHER:
 5 Q. Okay, do you believe it would
 6 mislead a voter whose ballot in 2024 the
 7 Board had already decided could not be
 8 cured to tell them that they could come
 9 and get and apply for a second ballot or
 10 vote provisionally? Do you believe that
 11 misleads them into believing that they had
 12 a right to cure that ballot?
 13 MS. McKENZIE: Objection.
 14 **A. Based upon the Board of Elections's**
 15 **decision not to allow curing, the language**
 16 **contained in the Department of State's**
 17 **emails in my opinion would mislead voters**
 18 **in Washington County.**
 19 BY MS. GALLAGHER:
 20 Q. In Washington County, in a
 21 noncuring county. It would lead them to
 22 believe that they could cure a defect in a
 23 ballot, correct?
 24 MS. McKENZIE: Objection.
 25 **A. My opinion is that reading -- if I**

220

1 have anything further.
 2 MS. McKENZIE: I think we're
 3 done.
 4 - - - (The proceedings
 5 were concluded at 4:53 p.m.)
 6 - - -
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<p style="text-align: right;">221</p> <p>1 2 COMMONWEALTH OF PENNSYLVANIA 3 COUNTY OF ERIE 4 I, Kristina Kozlowsky, a Court Reporter and 5 Notary Public in and for the Commonwealth of 6 Pennsylvania, do hereby certify that the witness, 7 MELANIE OSTRANDER, was by me first duly sworn to 8 testify to the truth; that the foregoing deposition 9 was taken at the time and place stated herein; and 10 that the said deposition was recorded 11 stenographically by me and then reduced to printing 12 under my direction, and constitutes a true record of 13 the testimony given by said witness. 14 I further certify that I am not a relative or 15 employee of any of the parties, or a relative or 16 employee of either counsel, and that I am in no way 17 interested directly or indirectly in this action. 18 IN WITNESS WHEREOF, I have hereunto set my hand 19 and affixed my seal of office this 21st day of July, 20 2024. 21 _____ 22 23 24 Notary Public 25</p>	<p style="text-align: right;">222</p> <p>1 2 COMMONWEALTH OF PENNSYLVANIA 3 COUNTY OF ERIE 4 I, MELANIE OSTRANDER, have read the foregoing pages 5 of my deposition given on July 18, 2024, and wish to 6 make the following, if any, amendments, additions, 7 deletions or corrections: 8 9 10 11 12 13 14 15 16 17 18 In all other respects, the transcript is true and 19 correct. 20 21 _____ 22 MELANIE OSTRANDER 23 24 Subscribed and sworn to before me this 25 _____ day of _____, 20__.</p> <p>_____ Notary Public</p> <p>Reference No. KK60820</p>
<p style="text-align: right;">223</p> <p>1</p>	

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