



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: September 3, 2020

RE: OPPOSITION TO HOUSE BILL 2626 P.N. 4335 (Moul)

The ACLU-PA opposes the following provisions in HB 2626 (PN 4335), strenuously opposing the first two:

1. Limiting drop-off locations for absentee and mail-in ballots;
2. Allowing out-of-county voters to serve as poll watchers;
3. Moving the deadline to request an absentee or mail-in ballot from Tuesday, October 27, 2020 to Monday, October 19, 2020; and
4. Doubling the criminal penalties for 47 different violations of the PA Election Code.

We do, however, support some provisions that ease the burdens on county election offices and offer additional transparency regarding the election process, including:

- Allowing pre-canvassing of absentee and mail-in ballots to begin three days before Election Day;
- Easing the residency requirements for poll workers, permitting voters to work at any poll within their home county and not just in their home precinct; and
- Requiring the Department of State to issue a post-election report with cooperation from counties (similar to the post-primary report requirements under [Act 35 of 2020](#)).

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose any legislation, including HB 2626, that eliminates options drop boxes for mail-in or absentee ballots or allows out-of-county voters to serve as poll watchers.

Drop boxes

HB 2626 limits drop-off options for absentee or mail-in ballots to three locations. Voters may *only* deliver their voted ballot in-person to:

- A member or employee of the county board of elections at the permanent offices of the county board of elections.
- A member or employee of the county board of elections at a location at the county courthouse designated by the county board of elections.
- A judge of elections at the elector's polling place on election day.

During the 2016 general election, nearly [one in six voters](#) nationwide cast their ballot using drop boxes. According to the Election Assistance Commission (EAC), some voters [prefer](#) ballot drop boxes to mail delivery due to "concern[s] about meeting the postmark deadline and ensuring that their ballot is returned in time to be counted." During the 2020 primary election in [Pennsylvania](#), Philadelphia and approximately [20 other counties](#) introduced drop boxes to ease the burden of a surge in mail voting. Pennsylvania counties should retain the option of using drop boxes to collect mail-in and absentee ballots in advance of the 2020 general election.

The use of drop boxes is prevalent throughout the United States. At least 34 states (and Washington, D.C.) have used or plan on using ballot drop boxes in one or more locations in 2020:

- According to the National Conference of State Legislatures, only [eight states](#)—Arizona, California, Colorado, Hawaii, Montana, New Mexico, Oregon and Washington—explicitly permit or require ballot drop boxes by statute or regulatory guidance.
- According to the Brookings Institution, [16 states](#) allow “[d]rop-off boxes, mail, and in-person channels,” including Alabama, Alaska, Delaware, Florida, Georgia, Maryland, Michigan, Nebraska, Ohio and Utah, as well as Washington, D.C.
- Many more states do not offer ballot drop boxes statewide but have implemented the drop box model in one or more counties or cities, including [Illinois](#) (in Chicago), [Iowa](#) (in Cedar Rapids and Marion), [Kansas](#) (in Sedgwick County), [Maine](#) (in Bangor), [Minnesota](#) (through a drive-through ballot drop off in Minneapolis), [Nevada](#) (in Clark County), [Pennsylvania](#) (in Philadelphia and 20 counties, pending recent [litigation](#)), [South Carolina](#) (in Charleston County), [South Dakota](#) (in Lincoln County), [Virginia](#) (in Arlington) and [Wisconsin](#) (in Milwaukee County, Sheboygan County and many cities). Many other states have implemented new ballot drop box systems since the start of the pandemic, including [Connecticut](#), [Kentucky](#), [New Jersey](#), [New Mexico](#), [North Dakota](#) and [Rhode Island](#).
- Only four states have explicitly disallowed the use of ballot drop boxes in the upcoming elections: [Tennessee](#), [New Hampshire](#), [Missouri](#), and [Iowa](#).
- And a few more states, including [New York](#), have pending legislation that may lead to the implementation of drop boxes before November’s general election.

Drop boxes are now a subject of federal and state litigation. Following the June primary, the Trump campaign [sued](#) Pennsylvania in federal court, asking the court to bar the use of drop boxes in the general election. A federal judge [ordered](#) the Trump campaign to produce evidence of voting fraud occurring via drop boxes. After the Trump campaign “[failed to produce any evidence](#) of vote-by-mail fraud in Pennsylvania,” the judge [put the case on hold](#) pending resolution in Pennsylvania [state court](#).

In Pennsylvania, we have sought to intervene in the Republican National Committee’s lawsuit to block the use of ballot drop boxes, which facilitate vote by mail, especially by people of color and medically vulnerable individuals. We have also moved to intervene in the related suit brought by the Democratic National Committee.

Poll watchers

HB 2626 allows out-of-county voters to serve as poll watchers, permitting any qualified elector in the state to challenge the eligibility of any voter to vote in any precinct in the commonwealth. The county residency requirement has long-served as a mechanism to allow people to observe the election process in their own communities while discouraging challenges from people outside their community.

Poll watching is not a new phenomenon. [Forty-six states](#) allow partisan political observers (political party representatives or registered voters) to challenge a voters’ right to cast a ballot, either on or prior to Election Day. But voter challenges become a problem when they are used in a discriminatory manner, when they are used to intimidate voters, or when they are based on unreliable data.

Because challenges can involve confrontations between prospective voters and persons who may be clothed with authority, they present a risk of voter intimidation. Conduct that has the purpose or effect of intimidating voters violates federal criminal law.¹ Intimidation tactics can include:

¹U.S. CONST. amend. XIV & XV, 42 U.S.C. § 1983 (prohibits anyone acting under color of law from depriving any individual of his or her constitutional rights, including his or her rights to vote and to equal protection of the laws); 42 U.S.C. § 1971(a)(2)(A) (“No person acting under color of law shall—(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any

- Verbal or physical confrontation of voters by persons dressed in official-looking uniforms.
- Physical intimidation, such as standing or hovering close to voters as they attempt to vote.
- Flyers threatening jail time or other punitive action against persons who vote.
- Direct confrontation or questioning of voters, or asking voters for documentation when none is required.
- Use of police officers to threaten or intimidate voters.

Intimidating conduct in the challenge process can include:

- Direct confrontation of prospective voters by challengers or poll watchers.
- The use of insulting, offensive, or threatening language or raised voices.
- The use of law enforcement or other official attire by poll watchers or challengers.

The ACLU-PA has always worked to protect people's right to vote, but this election cycle raises additional serious concerns about the use of these tactics in the upcoming general election. For the past 35 years, federal courts have imposed a [consent decree](#) prohibiting the national Republican Party to mount campaigns against purported voter fraud without court approval. This decree [was imposed in 1982, modified in 1986 and again in 1990](#), each time after courts found instances of Republicans intimidating or working to exclude minority voters in the name of preventing fraud. The party was found to have [violated it yet again in 2004](#) in Ohio due to its practice of heavily concentrating poll challengers in minority-majority polling locations.

In December 2017, a federal district court [moved](#) to allow this decree to expire. Since then, the national Republican Party has announced plans to recruit [50,000 poll watchers](#) to fight “[voter fraud](#)” in the upcoming election. Organizations like [True the Vote](#) have been recruiting poll watchers, including targeting [military veterans](#) as watchers. And President Trump's [recent rhetoric](#) about poll monitoring, pledging to have “sheriffs, and we're going to have law enforcement, and we're going to hopefully have U.S. attorneys and we're going to have everybody, and attorney generals” also heightens concerns about poll watching tactics in November.

Ballot request deadline

As a matter of principle, the ACLU-PA does not oppose moving up the deadline to request an absentee or mail-in ballot. However, the current October 27th deadline appears on printed materials from the Department of State as well as advertised in numerous online and print publications by partisan and non-partisan organizations alike. Changing the deadline at this late date is an avoidable recipe for voter confusion.

Penalty enhancements

In almost all cases, the ACLU of Pennsylvania opposes any legislation that creates a new crime, duplicates an existing crime, or enhances the grading or increases the penalties for existing offenses. HB 2626 doubles the penalties for **47 different violations** of the Pennsylvania Election Code. Uniformly doubling the already-serious criminal penalties for these violations is needlessly and overly punitive.

For these reasons, we urge you to oppose House Bill 2626.

standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.”); 42 U.S.C. § 1985(3) (providing cause of action if “two or more persons . . . conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws”).