



# **Pennsylvania Provisional Voting Guidance**

Date: October 24, 2024

Version: 2.2

## Background

This revised guidance addresses the issuance, voting, and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA).

Generally, under the applicable statutes, if a voter is not eligible to be issued a regular ballot, that voter is entitled to submit a provisional ballot at the polling place. Provisional ballots may be issued at the polling place until the close of polls on Election Day absent a court order extending voting hours.

## Using Provisional Ballots

Provisional ballots are utilized when a voter believes that they are eligible to vote, but the poll worker is unable to confirm the voter's eligibility. Provisional ballots permit the voter to submit a ballot, although the ballot is initially segregated from the regular ballots returned by voters whose eligibility was confirmed at the polls on Election Day. After Election Day, the county board of elections must adjudicate the provisional ballot voter's eligibility to vote. If the board determines that the voter is eligible and did not already vote in that election, then the provisional ballot is counted or partially counted, if applicable.

Voters are entitled to a provisional ballot when their eligibility to vote is uncertain. A poll worker must inform voters that they have a right to use a provisional ballot if their eligibility is uncertain. The circumstances which would create a situation where a voter may be issued a provisional ballot include, but are not necessarily limited to:

- Voter's name was not in the poll book or supplemental poll book.
  - For example, the voter reported to the wrong precinct, or
  - The voter did not report a recent change in residence to the county election office.
- Voter is required to show ID but cannot do so.
- Voter eligibility was challenged by an election official.
- Voter was issued an absentee or mail-in ballot but believes that they did not successfully vote the ballot, and the ballot and outer return envelope were not surrendered at the polling place to be spoiled.
- Voter returned a completed absentee or mail-in ballot that will be rejected by the county board of elections, and the voter believes they are eligible to vote.
- A special court order was issued with respect to the voter's status.
- A special court order was issued related to extending the hours of voting.

- Voter claims they are registered in a political party with which they are not affiliated (for primary elections only).

## Process for the Voter

Any voter who intends to submit a provisional ballot shall follow these steps:

- 1) Before receiving a provisional ballot, the voter must complete the sections on the provisional ballot envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials.
- 2) Upon completion of the above sections of the provisional ballot envelope, the voter must mark their provisional ballot.
- 3) After the voter marks their provisional ballot, they must seal their ballot in the secrecy envelope and then place the secrecy envelope in the provisional ballot envelope.
- 4) The voter must fill out the Voter Signature Section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector.
- 5) The voter must sign **both** the Voter Affidavit for Provisional Ballot **and** the front of the provisional ballot envelope.
- 6) The Judge of Elections and the Minority Inspector will then sign the affidavit after noting the reason for the provisional ballot.

Voters can check the status of their provisional ballot after the election by calling their county board of elections, checking the PA Voter Services website, or calling the PA Department of State. *Note: The online provisional ballot search will return results only for the active election and cannot be used to search provisional ballots from previous elections.* Voters will need to provide their provisional ballot number or their full name and date of birth to check the status of their provisional ballot.

- Voters can find the phone number for their county election office online at [vote.pa.gov/county](https://vote.pa.gov/county).
- The website for PA Voter Services is [vote.pa.gov/provisional](https://vote.pa.gov/provisional).
- The phone number for the PA Department of State is 1-877-VOTESPA (1-877-868-3772), option 6.

## Process for Poll Workers

Voters who requested an absentee or mail-in ballot may arrive at their polling place on Election Day seeking to vote. Poll workers should follow the instructions below for these voters.

1. For voters who were issued an absentee or mail-in ballot but **did not** successfully return their ballot to the board of elections:
  - These voters' names will be found in section 1 of the poll book, and the signature line will say either "Remit Absentee Ballot or Vote Provisionally" or "Remit Mail-in Ballot or Vote Provisionally."
    - Option A. If the voter has their unvoted absentee or mail-in ballot and outer envelope with them, the poll worker shall permit the voter to surrender their mail ballot and envelope and sign the Elector's Declaration to Surrender their Mail Ballot form (see **Appendix A**). After the voter does this, the poll worker shall allow the voter to vote by regular ballot the same as any other voter.
    - Option B. If the voter is designated in the poll book as having been issued an absentee or mail-in ballot but the voter does not have their absentee or mail-in ballot and outer envelope with them, the voter may submit only a provisional ballot, and the poll worker shall offer them this option.
2. For voters who **did** successfully return their absentee or mail-in ballot:
  - If a voter was issued an absentee or mail-in ballot and successfully returned their ballot, their name will be found in section 2 of the poll book, and the signature line will say either "Absentee – Ballot Cast/Not Eligible" or "Mail-in – Ballot Cast/Not Eligible."
  - If a voter listed in section 2 of the poll book believes that they have not successfully voted their absentee or mail-in ballot or otherwise contests their ballot status, the poll worker must provide the voter a provisional ballot.

For **everyone** receiving a provisional ballot, poll workers must ensure that, before the provisional ballot is issued, the Voter Information, Voter Affidavit for Provisional Ballot, and Current Address sections on the provisional ballot envelope are completed by the voter. Again, the voter must sign **both** the Voter Affidavit for Provisional Ballot **and** the front of the provisional ballot envelope.

Poll workers must ensure that the voter signs their name in the presence of both the Judge of Elections and the Minority Inspector. Poll workers must also ensure that both the Judge of Elections and Minority Inspector sign the affidavit.

If polling place hours are extended beyond 8:00 p.m. on Election Day by court order, all votes submitted after 8:00 p.m. shall be submitted via provisional ballot only.

## Process for County Elections Officials

**Within seven days after the election, the county board of elections must review and make a determination for each provisional ballot cast on Election Day.**

Counties should notify parties and the public a week in advance of the date that election officials will meet to examine and reconcile provisional ballots during the post-election official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act<sup>1</sup> for public meetings.

### Parameters for canvassing provisional ballots:

- When determining whether to count a provisional ballot, the county board of elections must reconcile provisional ballots with ballots cast in person on Election Day and with returned absentee and mail-in ballots. If a voter cast an Election Day ballot or successfully voted an absentee or mail-in ballot, the provisional ballot shall not be counted.
- A county board of elections can approve a provisional ballot for counting only if the voter is qualified and eligible to vote in the election.
- When researching provisional ballots during the canvassing period, the county election staff should enter the voter's provisional voting information from the provisional envelope into the SURE system to maintain an accounting of the number of provisional ballots issued for the election.
- If a voter's mail-in or absentee ballot was rejected for a reason unrelated to the voter's qualifications, and the voter submitted a provisional ballot and meets other provisional ballot requirements, the provisional ballot shall be counted if the county determines that the voter is eligible to vote.<sup>2</sup>
- Counties are prohibited from counting a provisional ballot submitted by a qualified registered voter of another county.
- During the canvass, the county board of elections must determine, for each provisional ballot, whether:
  - The provisional ballot should be counted in full (i.e., all contests on the ballot are counted);
  - The provisional ballot should be partially counted (i.e., some contests but not all contests on the ballot are counted) and the reason(s) for the partial counting;

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<sup>1</sup> 65 Pa.C.S. § 701, *et seq.*

<sup>2</sup> See *Genser v. Butler County*, Nos. 26 and 27 WAP 2024 (Pa. Oct. 23, 2024).

- The provisional ballot is invalid because the voter successfully submitted another ballot; or
- The provisional ballot should be rejected for another reason(s) and the reason(s) for the rejection.

### Hearings for provisional ballots challenged during the canvass:

If a provisional ballot is challenged during the canvass, the county board of elections must schedule a hearing within seven days of the challenge to consider the challenge and determine the disposition of the ballot. Additionally, notice shall be given where possible to the challenged provisional voter and to the attorney, watcher, or candidate who made the challenge.

- It is recommended that counties notify parties and the public of the hearing a week in advance of the date, noting that election officials will meet to examine and reconcile provisional ballots during the post-election official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act<sup>3</sup> for public meetings.
- During the hearing, the county board of elections must decide whether to uphold or dismiss the challenge. The county board is not bound by the Pennsylvania Rules of Evidence. Any testimony presented must be stenographically recorded.

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<sup>3</sup> 65 Pa.C.S. § 701, *et seq.*

<b>Version</b>	<b>Date</b>	<b>Description</b>
1.0	3.5.2020	Initial document release
1.1	10.21.2020	Updated per Act 12 of 2020
2.0	10.12.2023	Updated to reflect judicial guidance
2.1	3.11.2024	Updated to implement clarifying edits and modified affidavit form.
2.2	10.24.2024	Updated to note new legal authority.

**Elector's Declaration to Surrender Their Mail Ballot****For the Voter:**

I hereby declare that I am a qualified registered elector who was issued an absentee or mail-in ballot for this election, but that I have not mailed or cast an absentee or mail-in ballot in this election. Instead, I am hereby remitting my absentee or mail-in ballot and its declaration envelope to the judge of elections at my polling place to be spoiled. I request that my absentee or mail-in ballot be voided, and that I be permitted to sign the poll book and vote a regular ballot.

I verify that the statements made in this declaration are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the criminal penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

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(Printed Name of Elector)

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(Signature of Elector)

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(Address of Elector)

**For Election Officials Only:**

I hereby declare I have received the voter's ballot and envelope containing the voter's declaration from the voter and I am spoiling it and permitting the voter to sign the poll book and vote a regular ballot.

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(Printed Name of Judge of Elections)

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(Judge of Elections Signature)

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(Precinct)

Instructions after completion: This form should be attached to the voter's surrendered balloting material and returned in the [container] [bag] designated for spoiled ballots. Do not forget to check the "**BALLOT REMITTED?**" option next to the voter's name in the poll book.