

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

October 28, 2022

The Honorable Francis X. Ryan
Pennsylvania House of Representatives
149A East Wing
Harrisburg, PA 17120

Dear Representative Ryan:

I write with respect to your undated letter that the Department of State (Department) received on October 25, 2022, regarding your concern about the process used to ensure that “only qualified, legal voters vote in the 2022 General Election.” The Department shares your concern that only qualified voters vote in the upcoming election. As you should be aware, the processes used to ensure that this is the case are carefully prescribed by both federal and state law. Your claims reflect a misunderstanding of the laws guiding processes surrounding voter registration and absentee/mail-in ballot applications. Further, your claim that counties have mailed “over 240,000 unverified ballots” is incorrect and reflects a misunderstanding of the law and data. Finally, your claim that Deputy Secretary Jonathan Marks’ testimony before the House State Government Committee is somehow contradicted by the Department’s Guidance is also incorrect. Please allow me to explain.

Among the laws that govern election administration in Pennsylvania, the Help America Vote Act (“HAVA”), 52 U.S.C. § 20901 *et. seq.*, ensures that eligible voters are not disenfranchised, and that voting and election administration systems will “be the most convenient, accessible, and easy to use for voters” and “will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and have that vote counted.” 52 U.S.C. § 20981. Among its provisions, Section 21083(a)(1)(A) of HAVA requires states to maintain a centralized, computerized list of every legally registered voter in the state. Section 21083(a)(5)(A) requires states to obtain from prospective registrants either a driver’s license number (“DL”), the last four digits of a social security number (“SSN4”) or, if the applicant has neither, a statement reflecting such. Individuals who do not have DLs or SSN4s cannot be denied registration merely because they do not have a DL or SSN4; rather, HAVA specifically requires that such individuals be assigned a number to identify them for voter registration purposes. See 52 U.S.C. § 21083(a)(5)(A)(ii).

The Department’s 2018 directive that you reference, entitled *Directive Concerning HAVA – Matching Drivers’ Licenses or Social Security Numbers for Voter Registration Applications* (“Directive”), guides county boards of election in their duties to determine whether voters are qualified to vote under

state law, so counties can make decisions on registration applications. See 25 Pa.C.S. §§ 1328, 1301. As explained in the Directive, counties may not deny a registration application solely because the applicant does not provide a DL or SSN4, or because the numbers provided do not match. In fact, denying registration on that basis would violate HAVA and state law.

Under Pennsylvania law, a voter's identification is verified either the first time they vote in person in an election district or each time they request a mail-in or absentee ballot. With respect to absentee and mail-in voting, when a voter requests a ballot, county boards of elections must "determine the qualifications of the applicant by verifying the proof of identification and comparing the information provided on the application with the information contained on the applicant's permanent registration card." See 25 P.S. §§ 3150.12(b) (mail in) and 3146.2b(c) (absentee). This is primarily done through the automated HAVA verification process. Both provisions of the Election Code specifically state that: "For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector *with the absentee ballot* requiring the elector to provide proof of identification with the absentee [or mail-in] ballot or the ballot will not be counted." See 25 P.S. §§ 3150.12b(c) (mail in) and 3146.2b(d) (absentee) (emphasis added). Therefore, while the law requires counties to provide ballots to individuals pending verification of identity, the law also ensures that ballots submitted by voters who have *not* timely verified their identities will not be counted.

The Department's Guidance, which has been in existence since September of 2020 and is available on the Department's publicly accessible website, tracks these statutory requirements. Namely, the Department's September 26, 2022 *Guidance Concerning Civilian Absentee and Mail-In Ballot Procedures* (originally issued in September of 2020) specifically states as follows: "If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provided proof of identification, that can be verified by the county board, by the sixth calendar day following Election Day."

Your letter, however, ignores both these well-established laws, and the Department's relevant guidance. Instead, your letter appears to focus on language contained in another document entitled *Examination of Absentee and Mail-In Ballot Return Envelopes*. As indicated by the title, that document provides guidance to counties regarding the examination of absentee and mail-in ballot *return envelopes*, not applications. The section that you cite simply provides broad background information to ensure that election workers are aware that the ID verification process occurs as part of the ballot application process and is not related to envelope examination. Counties must and do reject mail-in and absentee ballots from individuals whose proof of identification could not be verified. In any event, nothing in that latter Guidance is inaccurate; the county boards of elections utilize multiple methods to verify that the qualified voter's absentee or mail-in application is complete and statutory requirements are satisfied. Again, under state law, no ballots cast by voters may be counted unless their identity is verified within six days after the election.

Further, nothing about Deputy Secretary Marks' testimony is incorrect. As Deputy Secretary Marks testified, it is important to understand that there are two distinct processes at play: (1) voter registration—for which there is no federal or state requirement that DL or SSN4 match or even that a voter have such numbers; and (2) mail-in and absentee applications—where the county is required, pursuant to the Election Code, to issue a ballot even before proof of identification has been provided or

verified. Again, ballots will not count unless the voter provides verification of identification within six calendar days of the election. See 25 P.S. § 3146.8(h).

In sum, state law permits voters' identification to be verified at different points along the mail-in/absentee balloting process. Further, the Department's Guidance specifically states that if proof of identification is not received or cannot be verified for an absentee and mail-in voter, and such proof is not provided by the sixth calendar day after the election, those ballots should not be counted. To the extent you are aware of counties that fail to follow this Guidance, please let me know, and the Department will follow up with those counties.

With respect to your claim that as of October 21, 2022, 240,000 ballots are classified as "Not Verified", this reflects a misunderstanding of the SURE System data. As an initial matter, your letter does not clearly delineate how you arrived at this number. In any event, in contrast to your assertion, at no point in the SURE system is "NV" used to indicate that a mail ballot voter's proof of identification will not be verified. Assuming that you are citing a Department of State daily report from SURE that shows, among other things, the number of online requests that have been submitted for mail-in and absentee ballots, the SURE system assigns the application type "NV" under a number of different situations, all of which ensure that voters' identifications are properly verified.

For example, the system assigns the "NV" code to identify online mail ballot applications that were not processed and validated through a cross reference with PennDOT's system. This code identifies applications that require further identification check. Further, the system may assign the "NV" to applications of "permanent mail voters" to ensure that verification occurs for every election in which those permanent voters will vote. Thus, the NV coding ensures that general election ballot applications of voters on the permanent mail-in or absentee list (who request mail ballots for both the primary and general election) go through ID verification in each election. In this case, the "NV" designation denotes that the system or the county must verify identification for these permanent voters for the general election. Notably, the code does not reflect the results of any identification check but is, in fact, an additional mechanism to ensure that counties are properly verifying ID provided by voters.

Using these processes, the vast majority of mail-in and absentee ballot applications are identity-verified before the ballots are sent to voters. As Deputy Secretary Marks testified, only the small number of voters who either have no DL or SSN4, or whose DL or SSN4 have been mismatched, require further verification. The Election Code requires those voters to provide proof of identification within six days of the election. If they do not do so, their votes will not be counted. 25 P.S. § 3146.8(h). In fact, the SURE system has a hard-stop function that will not allow a ballot from a voter without verified identification to be counted.

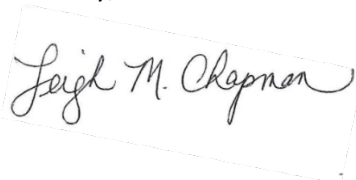
Finally, in contrast to the assertions in your letter, as of today, there are less than 7,600 ballot applications statewide that still require voter identity verification as provided by law. Please keep in mind that this is simply a point-in-time number, which will continue to decrease as the election gets closer and as voters provide required proof of identification. As stated above, any ballots without verified identification are not counted.

In summary: 1) neither HAVA nor Pennsylvania law requires or permits a county to reject voter registration applications based on a DL or SSN4 mismatch; 2) the Election Code requires counties to verify proof of identification for mail-in and absentee electors before counting their ballots; 3) the

Election Code requires counties to issue a mail-in/absentee ballot to an elector whose identification cannot be verified at the time of application, but also requires counties to notify those voters that proof of identification is required; 4) identification of a mail-in or absentee ballot elector may be (and most often is) verified through an automatic process at the time of application but can be verified up to six days after the election; 5) the SURE system will not permit a ballot from an elector whose identification has not been verified to be counted; and 6) the "NV" code does not indicate that an elector's identification is currently unverified.

I trust this letter resolves your concerns. The Department's Guidance is correct and already does direct the counties not to count ballots where a voter's proof of identification is not validated. There is no reason to "correct" it or to issue any further directive in this regard. Nor will the Department entertain your other requests for information. As you recognize, the election is only a few days away. The Department and the counties are working tirelessly to ensure that all Pennsylvanians who are qualified under the law to vote have their vote counted. We should all share that goal. Making claims that misconstrue facts and reflect an ignorance of the law are not conducive to achieving it.

Sincerely,

A handwritten signature in cursive script that reads "Leigh M. Chapman". The signature is written in black ink on a white rectangular background that is slightly tilted.

Leigh M. Chapman
Acting Secretary of the Commonwealth

CC: Representative Dawn Keefer
Representative Barb Gleim
Representative Perry Stambaugh
Representative Craig Staats
Representative Andrew Lewis
Representative Kathy Rapp
Representative Tracy Pennycuick
Representative Joseph Hamm
Representative David Rowe
Representative Leslie Rossi
Representative Barry Jozwiak
Representative Mike Puskaric
Representative Eric Nelson
Representative Mike Jones